

CCSF-DOCUMENT 00700

GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE 1 - GENERAL PROVISIONS

1.01 THE CONTRACT DOCUMENTS

- A. The Contract Documents consist of the Drawings, Project Manual, and all Addenda thereto, the Agreement, and other documents listed in the Agreement, the Bonds, Change Orders, including Unilateral Change Orders, and all provisions of the Bid Documents as defined in the Instructions to Bidders.
- B. Bidding Documents, General and Special Conditions of the Contract, and Division 1 - General Requirements contain information necessary for completion of every part of the Project and are applicable to each Section of the Specifications.
- C. Where items of Work are done under subcontracts, each item shall be subject to these conditions.

1.02 THE CONTRACT

- A. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification executed by the parties hereto.
- B. Nothing in the Contract Documents shall be construed to create a contractual relationship between the City College of San Francisco and a Subcontractor, Supplier, Lower Tier Subcontractor or Supplier, or a person or entity other than the Contractor.
- C. The Contractor's signing of the Contract signifies its acceptance of the time limits as being sufficient for completion of the Work, as well as acceptance of the other terms and conditions of the Contract Documents.

1.03 BASIC DEFINITIONS OF TERMS USED IN THE CONTRACT DOCUMENTS

- A. Basic Definitions of Terms Used in the Contract Documents:
 - 1. Addenda: Written or graphic instruments issued prior to the opening of Bids which make changes, additions or deletions to the Bid Documents or the Contract Documents.
 - 2. Accepted, Approved: Accepted or approved, or satisfactory for the Work, as determined in writing by the District, unless otherwise specified. Where used in conjunction with the District's response to submittals, requests, applications, inquiries, and reports by the Contractor, the term "approved" shall be held to limitations of the District's responsibilities and duties as specified in the Conditions of the Contract. In no case shall the District's approval be interpreted as a release of the Contractor from its responsibilities to fulfill the requirements of the Contract Documents.
 - 3. Agreement: The Agreement or Contract between the District and the Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement and made part thereof as provided herein.
 - 4. Approved Equal, Accepted Equal: Approved in writing by the District as being of equivalent quality, utility and appearance. Equivalent means equality in the opinion of the authorized District representative. The burden of proof of equality is the responsibility of the Contractor.
 - 5. Architect: The person holding a valid state Architect's license, whose firm has been designated within the Contract Documents as the Architect to provide architectural services on this Project.

6. As Required: In accordance with the requirements of the Contract Documents.
7. Bid, Bid Documents: See Instructions to Bidders, SECTION D.
8. Bonds: Bid, Performance, and Payment (labor and materials) bonds and other instruments of security acceptable to the District.
9. By Others: Work on this Project that is outside the scope of Work to be performed by the Contractor under this Contract, but that will be performed by the District or other contractors, or other means or at other expense.
10. Change Order: A written instrument prepared by the District, signed by the District and the Contractor, and approved by the District's Board of Trustees, stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, including all costs, overhead and profit, if any; and (3) the extent of the adjustment in the Contract Time, if any, issued after the effective date of the Agreement.
11. Claim: A written demand by the Contractor for an adjustment in the Contract Sum or Contract Time, or both, which is submitted in accordance with the requirements of the Contract Documents. See Section 4.02.
12. Clarification: A document consisting of supplementary details, instructions or information issued by the District which clarifies or supplements the Contract Documents and becomes a part of the Contract Documents. Clarifications do not constitute a change in Contract Sum or an extension of Time except as otherwise approved by the District. Clarifications will be issued through the Request for Information (RFI) administrative system.
13. Completion: The date of written acceptance of the Work by the District when the Contract has been fully performed, including all punchlist items, and when all contractual and administrative requirements have been fulfilled. Completion, Final Completion, and Project Completion have the same meaning.
14. Concealed: Work not exposed to view in the finished Work, including within or behind various construction elements.
15. Construction Manager: An independent consultant hired by the District to monitor and manage the construction work on behalf of the District.
16. Contract [also referred to as Agreement]: The legally binding agreement between the District and the Contractor, wherein the Contractor agrees to furnish the labor, materials, equipment, plant and appurtenances required to perform the work described in the Contract Documents, and the District agrees to pay the Contractor for such work.
17. Contract Modification: Same as Modification.
18. Contract Sum: The sum stated in the Agreement and, including District authorized adjustments, the total amount payable by the District to the Contractor for the performance of the Work under the Contract Documents.
19. Contractor: The person or entity holding a valid Contractor's License in the state of California with whom the District has executed the Agreement and is identified as such therein and referred to throughout the Contract Documents as if singular in number and neuter in gender. The term "Contractor" means the Contractor or its authorized representative.
20. Day: Calendar day, of 24 hours, measured from midnight to the next midnight, unless otherwise specifically stipulated.
21. Defective Work: Work that is unsatisfactory, faulty, or deficient, that does not conform to the Contract Documents or the general standards of workmanship of the particular industry or trade; that fails to perform to the reasonable expectation of the ultimate user, or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or work that has been damaged prior to the filing of the Notice of Completion by the

- District whether observed before or after Project completion.
22. Delivery: In reference to any item specified or indicated shall mean to unload and store with proper protection at the Project site.
 23. Designated, Determined, Directed: Required by the District, unless otherwise specified.
 24. District: The City College of San Francisco, its Board of Trustees, and its Superintendent.
 25. District Representative: The authorized, on-site representative as identified by the District at the pre-construction conference, in the performance of on-site inspection and administration of the contract. All liaison between the District and the Contractor shall be directed through the District Representatives.
 26. District-Furnished, Contractor-Installed: Items furnished and paid for by the District for installation by the Contractor pursuant to the Contract Documents.
 27. Division of the State Architect (DSA): The enforcement arm of the Division of the State Architect, having jurisdiction over school building construction projects in lieu of the local building department.
 28. Drawings: The graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
 29. Effective Date of the Agreement: The date indicated in the Agreement on which it was executed, but if no such date is indicated it shall mean the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
 30. Exposed: Work exposed to view in the finished Work, including behind louvers, grilles, registers and various other construction elements.
 31. Force Account: Change Order Work to be paid for on the basis of direct costs plus markup on direct costs for overhead and profit. See paragraph 7.03.
 32. Furnish or Supply: Purchase and deliver to the Project site, including proper storage only; no installation is included. The term "furnish" also means to supply and deliver to the Project site.
 33. Indicated or As Shown: Shown or noted on the Drawings or written in the Specifications, whichever is more restrictive.
 34. Inspector of Record: The person responsible for inspection of the work during fabrication and construction. Acts under the direction of the Architect but is responsible to the District and the Division of the State Architect, Structural Safety Section.
 35. Install: Apply, connect or erect items that have been furnished; furnishing or supplying is not included. The term "install" also describes operations at the Project site, including the actual unloading, unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.
 36. Installer: The "installer" is the person engaged by the Contractor, its subcontractor or lower tier sub-subcontractor for performance of a particular element of construction at the Project site, including installation, erection, application and similar required operations. It is a requirement that installers are experienced and licensed in the operations they are engaged to perform.
 37. Lower-Tier Subcontractor or Supplier: A person or entity who has a direct contract with a Subcontractor or Supplier, or with another Lower-Tier Subcontractor or Supplier, to perform a portion of the Work at the site or to furnish materials or equipment to be incorporated in the Work by the Contractor, Subcontractor, or Lower-Tier Subcontractor, as applicable.
 38. Modification: (a) A written amendment to the Contract signed by both parties, or (b) a written Change Order, or (c) a written order for a change in the Work (Unilateral Change Order and Force Account Change Order) issued by the District after the effective date of the Contract.

39. Non-Conforming Work: Work that is unsatisfactory, faulty, defective, or deficient; Work that does not conform to the requirements of the Contract Documents; Work that does not meet the requirements of inspection, reference standards, tests, or approval referred to in the Contract Documents; or Work that has been damaged prior to the filing of the Notice of Completion by the District.
40. Notice to Proceed: The written notice issued by the District to the Contractor authorizing the Contractor to proceed with the Work and establishing the date of commencement of the Contract Time.
41. Notice of Completion: The legal document filed by the District, with the Recorder's Office, after the Project has been fully completed as required by the contract documents.
42. Notice of Substantial Completion: The written notice issued by the District to the Contractor acknowledging that the Work is substantially complete as determined by the District. Said Notice shall not be considered as final acceptance of any portion of the Work or relieve the Contractor from completing punch list items attached to said Notice within the specified time and in full compliance with the contract documents.
43. Owner: The City College of San Francisco ("CCSF" also referred to herein as "District") identified as such in the Agreement and referred to throughout the Contract Documents as if singular in number. The term "Owner" means the District, its governing board, employees, and its authorized agents or representatives. Also referred to as "District."
44. Partial Occupancy: The stage in the progress of the Work when the District finds the Work or designated portion thereof sufficiently complete in accordance with the Contract Documents to occupy and utilize the Work for its intended use.
45. Progress Report: A periodic (monthly, weekly, etc.) report submitted by Contractor to District with progress payment invoices comparing actual work accomplished to the Project Schedule. See Section 9.03 F of the GENERAL CONDITIONS titled PROGRESS PAYMENT. All reports to be verified as per Sections 4-335, 4-336, 4-337 and 4-343 of PART 1 of Title 24 of the California Code of Regulations.
46. Project: The City College of San Francisco Project and adjacent areas as indicated elsewhere in the Contract Documents; the total of the work and obligations agreed to be performed by Contractor under the Contract.
47. Project Completion: Project Completion shall be the date of such acceptance of the Work by the District, as provided under California Civil Code Section 3086, when the Contract has been performed, including all remedial (punch-list) items, and when all contractual requirements are fulfilled.
48. Project Manual: The bound, written portion of the Contract Documents prepared for bidding and construction Work. A listing of the contents of the Project Manual, which includes the General Conditions, Documents, and Specification sections and may include schedules, is contained in the Table of Contents.
49. Provide: Furnish and install or supply and install complete in place at the site.
50. Regular Working Hours: 7:00 a.m. to 5:30 p.m., Monday through Friday, except District legal holidays.
51. Request for Change (RFC): See paragraph 4.01 and 4.02.
52. Request for Information (RFI): A document prepared by the Contractor or District requesting information from one of the parties regarding the Project or Contract Documents. The RFI system is also a means for the District to submit Contract Document clarifications or supplements to the Contractor.
53. Request For Substitution: A request from the Contractor in accordance with the conditions specified in Paragraph 3.10B to substitute an item, type of construction, or process indicated in the Contract Documents with another item, type of construction or process that shall be equal in all respects to that

so indicated.

54. School Building: Any building used for community college purposes and built according to the California State Building Code containing the regulations of the Division of the State Architect, Division of the State Architect/Structural Safety Section covering the construction of public schools.
55. Site or Project Site: Geographical location of the Project as shown elsewhere in the Contract Documents.
56. Specifications: The written portion of the Project Manual, which includes requirements for and technical descriptions of materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
57. Specified: Written in the Contract Documents.
58. Subcontractor: A person or entity who has a direct contract with the Contractor to perform a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and neuter in gender 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.
59. Substantial Completion: The Work has progressed to the point where, as evidenced by the Notice of Substantial Completion issued by the District, it is sufficiently complete in accordance with the Contract Documents as deemed by the District so that the entire Project could be occupied for the intended purpose and the Work utilized for its intended purpose.
60. Supplier: A manufacturer, fabricator, distributor, or vendor having a direct contract with Contractor or with a Subcontractor to furnish materials or equipment to be incorporated in the work.
61. Work, The Work: The performance by Contractor of all its responsibilities and obligations set forth in the Contract Documents. Work shall include but not be limited to, providing all labor, services, and documentation required by the Contract Documents.

1.04 EXECUTION, CORRELATION AND INTENT OF CONTRACT DOCUMENTS

- A. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. All Work, materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as necessary to properly execute and complete the Work to conform to the requirements of the Contract Documents shall be provided by Contractor with no change in the Contract Sum or Contract Time.
- B. Arrangement and titles of Drawings, and organization of the Specifications into divisions, sections and articles in the Contract Documents shall not be construed as segregation of the various units of material and labor, and shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor may arrange and delegate its Work in conformance with trade practices and shall be responsible therefor. The District assumes no liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Drawings and Specifications. The District assumes no responsibility to act as arbiter to establish subcontract limits between any portions of the Work, but the District shall be promptly notified in writing by Contractor of obstacles encountered which might in any way affect the timely prosecution of the Work.
- C. In interpreting the Contract Documents, words describing materials or Work with a well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well-known meaning.

- D. A typical or representative detail on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Drawings, the Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to prior approval by the District. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.
- E. If a conflict exists in the Contract Documents regarding the quality of a product, the highest quality product shall be provided as determined by the District.
- F. The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories on the Drawings is shown in diagrams and symbols to illustrate the relationships existing between the parts of the Work, and all variations in alignment, elevation, and detail required to avoid interference and satisfy architectural and structural limitations are not necessarily shown. If rerouting, i.e. relocating a duct, pipe, conduit or similar utilities from the indicated room or space to another room or space to avoid structural interference, causes an increase in linear footage which exceeds one hundred twenty-five (125%) of the indicated rout if the structural interference did not exist, then the Contractor will be compensated for the amount in excess of one hundred twenty-five (125%) under the provisions for Change Orders of Article 7. Actual layout of the Work shall be carried out without affecting the architectural and structural integrity and limitations of the Work and shall be performed in such sequence and manner as to avoid conflicts; provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment, said clear access defined as arms reach without required use of special equipment or the dismantling of building systems or equipment; obtain maximum headroom; and provide adequate clearances as required for operation and maintenance unless specifically detailed otherwise.
- G. The Drawings shall not be scaled for dimensions when figured dimensions are given, dimensions could be calculated, or field measured. When a true dimension cannot be determined from the Drawings or field measurement, the Contractor shall request same from the District, giving reasonable advance notice, but not less than thirty (30) calendar days, so as not to delay or disrupt the Work.
- H. 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.
- I. When there is a conflict between existing on-site conditions and the Drawings, the existing condition shall govern. The Contractor shall provide the Work and adjust to the existing condition at no additional cost to the District.

1.05 INTERPRETATION OF CONTRACT DOCUMENTS

- A. Interpretation of Drawings and Specifications: The Contractor shall check Drawings and Specifications furnished by District and shall promptly notify the District in writing of any discrepancies between the drawings and specifications or other Contract Documents. Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in the Drawings or Specifications, or other Contract Documents, the matter shall be referred to the District, who shall decide the true meaning and intent of the Drawings or Specifications, and the District's decision shall be binding on the Contractor at no additional cost to the District. Suitable instructions will be given when any such discrepancy or misunderstanding is discovered.
- B. Interpretation of Phrases: Wherever the words "as directed," "as permitted," or words to the like effect are used, it shall be understood that the direction, requirement, or permission of the District, or governmental regulatory agency having jurisdiction is intended. The words "sufficient," "necessary," "proper," and the like shall mean sufficient, necessary, or proper in the judgment of the authorized District representative. Wherever the words "inspect," "approved," "acceptable," "satisfactory," or words of like import are used to describe a requirement, direction, review, or judgment of the District as to the Work, it is intended that such requirement, direction, review, or judgment will be solely to observe and evaluate, in general, the completed work for compliance with the requirements of the Contract Documents, unless otherwise

specifically stated and does not waive or alter the Contractor's responsibility for completion of the Work in compliance with the Project Documents.

- C. Reasonably Implied Parts of Work Shall Be Done Though Absent From the Drawings or Specifications: Any part of the Work which is not mentioned in the Specifications but is shown on the Drawings, or any part not shown on the Drawings but described in the Specifications, but is necessary or normally required as a part of such Work, or is necessary or required to make each installation satisfactorily or legally operable, shall be performed by the Contractor as incidental Work without extra cost to the District, as if fully described in the Contract Documents, and the expense thereof shall be included in the price bid.

1.06 AMENDING CONTRACT DOCUMENTS

- A. The Contract Documents may be amended after execution of the Agreement to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
 - 1. A Change Order, or
 - 2. A Unilateral Change Order, or
 - 3. Force Account Change Order.
- B. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:
 - 1. District's written interpretation or clarification.
 - 2. Architect's supplemental instructions or notes added to shop drawings or samples.

1.07 PRECEDENCE OF DOCUMENTS

- A. The Contract Documents are complementary. Anything mentioned in Specifications and not shown on Drawings, or shown on Drawings and not mentioned in Specifications, shall be of like effect as if shown or mentioned in both. In case of difference between Drawings and Specifications, if true intent is not obvious and/or if issue cannot be resolved by addressing the documents in the order of preference identified below, the Contractor shall submit a Request for Information, and a determination will be made by the District, as provided in Paragraph 1.05A hereinabove. Omissions from Drawings or Specifications or mis-description of details of work which are manifestly necessary to carry out the intent of Drawings and Specifications, or which are customarily performed by a Contractor, shall not relieve the Contractor from performing such omitted or mis-described details of work; they shall be fully performed as if fully and correctly set forth and described in the Drawings and Specifications.
- B. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail (listed in order of highest to lowest precedence):
 - 1. Modifications in inverse chronological order, and in the same order as specific portions they are modifying.
 - 2. Executed Agreement.
 - 3. Addenda.
 - 4. General Requirements.
 - 5. Bidding and Contracting Requirements.
 - 6. Specifications.
 - 7. Contract Drawings.
- C. With reference to the Drawings, the order of precedence shall be as follows (listed in order of highest to lowest precedence):

1. Written numbers over figures, unless obviously incorrect.
2. Figured dimensions over scaled dimensions.
3. Large-scale Drawings over small-scale Drawings (e.g. 1/4" = 1'-0" over 1/8" = 1'-0" .
4. Schedules or Drawings or in Project Manual over conflicting information on other portions of Drawings.
5. Detail Drawings govern over general Drawings.
6. Drawing with highest revision number prevails.

1.08 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

- A. The Contract Documents were prepared for use for the Work of this Contract only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of the District. All drawings, specifications and copies thereof shall be returned to the District at completion of the Work. The District shall have the right to copyright all such plans, drawings, specifications and other Contract Documents, and the District shall have all additional common law, statutory and other reserved rights to such plans, drawings, specifications and other Contract Documents, and Contractor hereby waives all of said rights (including, without limitation, the right to copyright any of the Contract Documents). Any unauthorized use of the Contract Documents is at the sole liability and risk of the user.

1.09 CONFERENCES AND MEETINGS:

- A. See INVITATION FOR BIDS on whether a Pre-bid Conference will be held or not. The site may be inspected at the times noted in the INVITATION FOR BIDS. Where an appointment is shown as required, Bidders shall follow the procedure stated. Questions regarding the extent, nature, and details of the work shall be directed to Facilities Planning & Construction, CCSF.
- B. Upon notification to the Contractor that it is the lowest responsible bidder, an itemized summary, known as the Schedule of Values, must be submitted during the Pre-construction Conference. The Schedule of Values must reflect the Original Bid.
- C. The Contractor and/or its representative shall attend a mandatory conference at the Project Site at the beginning of construction for the purpose of determining Contractor's access to, and use of the site, verifying utilities, and such other items as may be pertinent to the start of construction.
- D. Progress meetings will be held at the frequency, (typically weekly) day and time as determined by the District's representative for this project. The Contractor and each Subcontractor will attend these meetings to discuss current issues and coordination. Architect, consultants, and Inspectors may also be required to attend as needed. The purpose of these meetings is to provide a formal and regular forum for the project team to coordinate and present questions, problems and issues that need to be addressed. It will also provide an opportunity to review the progress on previous issues and action items along with submittal and schedule review.
- E. Special meetings may be requested by the District and may include any members of the project team.
- F. Contractor shall give a minimum of forty-eight (48) hours prior notice to District, through Architect on Construction Project before expected work completion. Meeting and walk-through to be scheduled at site, wherein an inspection of work shall be made by all parties concerned on construction, to determine completeness and conformity of the work to the Contract. Deficiencies observed and noted shall be given to the Contractor in writing and as per SECTION 9.07 A of the GENERAL CONDITIONS titled PROJECT COMPLETION AND FINAL PAYMENT, all deficiencies shall be corrected to the satisfaction of the District.

ARTICLE 2 - DISTRICT'S RESPONSIBILITIES

2.01 INFORMATION AND SERVICES REQUIRED OF THE DISTRICT

- A. The District shall furnish surveys and reports describing physical characteristics, legal limitations for the site of the Project, and a legal description of the site for informational purposes only.
- B. The District shall provide for approval from the California Office of Regulatory Services and shall pay all permanent utility service connection fees. All other permits, easements, approvals, and other charges required for construction shall be secured and paid for by the Contractor.
 - 1. The District will furnish to the Contractor an approved set of plans and specifications.
 - 2. The District's responsibility in respect of certain inspections, tests, and approvals is set forth in Paragraph 13.05.
- C. The foregoing are in addition to other duties and responsibilities of the District enumerated herein in these General Conditions.
- D. The Contractor will be furnished up to ten (10) sets of Drawings and Specifications and one (1) reproducible set of Drawings and Specifications for use as the As-Built drawings at no cost. The Contractor shall pay the reproduction costs of any additional sets required. Subsequent modifications, Change Orders, and Proposed Change Orders will be issued in the same manner.

2.02 DISTRICT'S RIGHT TO STOP THE WORK

- A. The District may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. Any Stop Work Order shall be in writing, signed by a District representative specifically empowered by the District in writing to issue such orders.
- B. However, 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.
- C. If a stop work order is ordered by the District due to the failure on the part of the Contractor to carry out orders or to perform any provisions of the Contract Documents, the days on which the suspension order is in effect shall be considered working days, and shall not in any way modify or invalidate any of the provisions of the Contract Documents, and the Contractor shall not be entitled to any damages or compensation on account of such suspension or delay.
- D. Reasons for Stop Work Order include, but are not limited to, the following:
 - 1. If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents.
 - 2. If the Contractor fails to carry out Work in accordance with the Contract Documents.
 - 3. If the Contractor disregards the authority of the authorized District representative.
 - 4. If the Contractor disregards the Laws and Regulations of any public body having jurisdiction over the project.
 - 5. If the Contractor violates in any substantial way any provision of the Contract Documents.
 - 6. Failure to maintain current certificates of insurance on file with the District.
 - 7. When original contract work is proceeding but will be modified by pending Contract Modification.

2.03 DISTRICT'S RIGHT TO CARRY OUT THE WORK

- A. If the Contractor fails, defaults, or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the District to commence and continue correction of such default or neglect with diligence and promptness, the District

may after such seven-day (7) period give the Contractor a second written notice to correct such deficiencies within a second seven-day (7) period. If the Contractor within such second seven-day (7) period after receipt of such second notice fails to commence and continue to correct any deficiencies, the District may, without prejudice to other remedies the District may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the District representative's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District.

2.04 NO WAIVER OF RIGHTS

- A. None of the following shall operate as a waiver of any provision of this Contract or of any power herein reserved by the District or any right to damages herein provided:
 - 1. inspection by the District or its authorized agents or representatives;
 - 2. any order or certificate for the payment of money, or any payment for, or acceptance of the whole or any part of the Work by the District;
 - 3. any extension of time;
 - 4. any position taken by the District or its authorized agents or representatives.
- B. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.
- C. All remedies provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided; and the District shall have any and all equitable and legal remedies which it would in any case have.

2.05 DISTRICT'S ADMINISTRATION OF THE CONTRACT

- A. The District has designated a representative to administer the Contract Documents during construction. The District's representative shall have limited authority to act on behalf of the District. Additionally, the designated authorized representatives of the Department of General Services will have limited authority to act on behalf of the District. The District may at any time during the performance of this Contract, make changes in the authority of any District representative or may designate additional representatives. These changes will be communicated to the Contractor in writing. The Contractor assumes all risks and consequences of performing the Contract in accordance with any order, including but not limited to instruction, direction, interpretation or determination, of anyone not authorized to issue such order.
- B. The District will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The District will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The District will not have control over or charge of and will not be responsible for the acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- C. The District will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, Samples and other submittals, but only for the limited purpose of checking for **GENERAL** conformance with information given and the design concept expressed in the Contract Documents. The District's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor or separate contractors, while allowing sufficient time in the District consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The District's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents, including, but not limited to, the Contractor's responsibility to

notify the District of errors or omissions in the Contract Documents in accordance with paragraphs 3.01 and 4.01, and to provide all labor, equipment, and material necessary for the proper execution of the Work. The District's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The District's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- D. Administration of construction per Title 24 shall include the following delineation of responsibilities: Duties of architect, structural engineer, or professional engineer per Section 4-341; Duties of contractor per Section 4-343; and Verified reports per Sections 4-336 and 4-343.

ARTICLE 3 - CONTRACTOR'S RESPONSIBILITIES

3.01 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS

- A. The Contract Documents are diagrammatic and do not show every detail but show the purpose and intent only, and the Contractor shall comply with their true intent and meaning, taken as a whole, and shall not avail itself of any manifest error, omission, discrepancy or ambiguity which appear in the Contract Documents, instructions or work performed by others.
- B. The Contractor shall verify all dimensions and determine all existing conditions that may affect its Work adequately in advance of the Work to allow for resolution of questions without delaying said Work, and shall be responsible for the accuracy of such dimensions and determinations.
- C. The Contractor during the progress of the Work, shall review the appropriate portions of the Contract Documents a minimum of thirty (30) days prior to commencement of the related Work for the expressed purposes of checking for any manifest errors, omissions, discrepancies or ambiguities. The Contractor shall not be entitled to any compensation for delays, disruptions, inefficiencies or additional administrative effort caused by the Contractor's untimely review of the Contract Documents.
- D. Using a RFI form provided by the District, the Contractor shall notify the District in writing immediately upon discovery of errors, omissions, discrepancies or ambiguities, and a clarification will be issued as to the procedure to be followed.
- E. If the Contractor proceeds with any such Work without receiving such clarification, it shall be responsible for any and all resulting damage, including but not limited to that occasioned by delay, and defects.
- F. The Contractor shall be responsible for its costs and the costs of its subcontractors to implement and administer a Request for Information (RFI) system throughout the Contract duration. Such costs shall include the distribution of RFIs to its subcontractors, subcontractor reviewing and posting of RFIs, and coordinating the clarification responses by its subcontractors. The Contractor shall be responsible for both the District's and District's administrative costs for answering its RFIs where the answer could reasonably be found by reviewing the Contract Documents.

3.02 SUPERVISION AND CONSTRUCTION PROCEDURES

- A. The Contractor shall be solely responsible for supervising and directing the Work, using the Contractor's best skill and attention. Further, the Contractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.
- B. The Contractor shall supervise and coordinate the Work of its subcontractors so that information required by one will be furnished by others involved in time for incorporation into the Work in the proper sequence and without delay of materials, devices, or provisions for future Work.
- C. Whenever the Work of a subcontractor is dependent upon the Work of other subcontractors or contractors, then the Contractor shall require the subcontractor to:
 - 1. Coordinate its Work with the dependent work.

2. Provide necessary dependent data and requirements.
 3. Supply and/or install items to be built into dependent work of others.
 4. Make provisions for dependent work of others.
 5. Examine dependent drawings and specifications and submittals.
 6. Examine previously placed dependent work.
 7. Check and verify dependent dimensions of previously placed Work.
 8. Notify Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of its Work.
 9. Not proceed with its Work until the unsatisfactory dependent conditions have been corrected.
- D. The Contractor shall immediately comply with any and all orders and instructions given in accordance with the terms of the Contract Documents by the District, but nothing herein contained shall be taken to relieve the Contractor of any of its obligations or liabilities under this Contract, or of performing its required detailed direction and supervision.
- E. The Contractor shall at all times from the issuance of the Notice to Proceed until Project Completion of the herein specified Work and during the various guarantee periods, permit the District, its agents and authorized representatives to visit and inspect the Work, the materials and the manufacture and preparation of such materials and subject them to inspection and rejection if the Work does not conform to the requirements of the Contract Documents. This obligation shall include maintaining proper facilities and safe access for such inspection. Where the Contract requires Work to be tested and/or inspected, it shall not be covered up until inspection and approval by the District, and the Contractor shall be solely responsible for notifying the District at least two (2) working days prior to performing such Work, so that necessary arrangements for inspection and testing can be made. Should any such Work be covered without such test and approval, it shall be uncovered and recovered at the Contractor's expense, regardless of whether or not the Work is in conformance.
- F. With the exception of emergency or safety measures, no unauthorized work shall be performed on Saturday, Sunday or legal holiday. Should any work become necessary during that time period, the Contractor shall give notice to the District of such desire and request and obtain its written permission at least two (2) working days prior to performing such Work, or such other period as may be specified, so that the District may make the necessary arrangement for testing and inspection.
- G. If either concealed conditions or unknown physical conditions of unusual nature (meaning they differ materially from those ordinarily encountered and generally recognized as inherent in the Work) are encountered below the surface of the ground or concealed in existing construction and which affect the performance of the Work of this Contract, the Contractor shall immediately notify the District of such conditions. The Contractor shall also inform the District as to how such conditions affect its Work and shall also recommend methods to overcome such conditions. The Contractor shall then wait for instructions in writing from the District prior to proceeding with the affected Work.
- H. If the Contractor is notified that a clarification is forthcoming from the District, any Work performed before the receipt of same shall be coordinated with the District to minimize the effect of the clarification on Work in progress. Any Work performed after notification but before receipt of clarification and not so coordinated shall be at the Contractor's risk.
- I. Material, Work or workmanship which, in the opinion of the District, or its authorized representatives does not conform to the Contract Documents, or is not equal to the samples submitted to and approved by the District, or is in any way unsatisfactory or unsuited to the purpose for which it is intended, will be rejected. The Contractor shall bear the cost of correcting non-conforming Work. The Contractor shall make a close inspection of all materials as delivered, and shall promptly return all defective materials without waiting for their rejection by the District.
- J. The Contractor shall remove all rejected material and Work, and all defective and non-conforming Work, from the site without delay. If the Contractor fails to remove such Work within forty-eight (48) hours after

having been so directed by the District, the District may perform the removal and the cost of such removal shall be deducted from progress payments.

- K. All defective and non-conforming Work discovered shall be corrected immediately by the Contractor, and any unsatisfactory materials shall be rejected, notwithstanding that they may have been overlooked by authorized inspection. Inspection of the Work shall not relieve the Contractor of any of its obligations to perform satisfactory Work as herein prescribed.
- L. Failure or neglect on the part of the District or any of its authorized agents and/or representatives to condemn or reject defective and non-conforming Work or materials shall not be construed to imply acceptance of such Work or materials or waiver of any claim or right if it becomes evident at any time prior to Project Completion; neither shall it be construed as barring the District at any subsequent time from the recovery of damages or of such a sum of money as may be needed to build anew all portions of the Work in which fraud was practiced or improper materials or workmanship used whenever found.
- M. The Contractor shall carry on the Work and adhere to the construction schedule required to be submitted under the requirements of the Contract Documents during all disputes or disagreements with the District. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the District and the Contractor may otherwise agree in writing.
- N. The Contractor shall make and submit to the Division of the State Architect such verified reports as required by California Code of Regulations, Title 21, Section 36, and Title 24 Sections 4-336 and 4-343.

3.03 LABOR AND MATERIALS

- A. The Contractor shall employ only competent and skillful persons to perform the Work, and whenever the District notifies the Contractor that any employee on the Work is, in the District's opinion (1) incompetent, obnoxious, unfaithful, or disorderly; or (2) refuses to carry out the directions of the Architect or the District or the provisions of the Contract; or (3) has intimidated or sexually harassed a student, District employee, agent, or member of the public, such employee shall be removed from the Work.
- B. In order that the District can determine whether the Contractor has complied or is complying with the requirements of the Contract which are not readily enforceable by inspection and test of the Work and materials, the Contractor shall upon request submit properly authenticated documents or other satisfactory proof of its compliance with such requirements.
- C. Except in the event of emergency, no substantial field operations shall be performed outside regular working hours without prior notification to, and permission from, the District. Should the Contractor perform Work outside regular working hours, the District shall be compensated for all expenses in excess of those that would have been incurred had the work been performed during regular working hours. The Contractor will not be entitled to additional compensation for Work performed outside regular working hours except as otherwise expressly authorized in writing by the District prior to the performance of such overtime Work. Any additional compensation for such authorized overtime shall be limited to the direct cost of the premium portion of such authorized overtime.
- D. Before ordering materials, equipment, or performing Work, the Contractor shall verify indicated dimensions. If a discrepancy exists, the Contractor shall notify the District of same immediately. The District will then clarify the intended design. The Contractor shall take field measurements required for the proper fabrication and installation of the Work in a timely fashion in accordance with Article 3 herein. Upon commencement of any item of Work, the Contractor shall be responsible for dimensions related to such item of Work.
- E. All materials and equipment shall be delivered, handled, stored, installed, and protected to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with Contract Document requirements. The Contractor shall store packaged materials and equipment in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use. The Contractor shall deliver materials and equipment in ample time to facilitate inspection and tests prior to installation. Damaged materials or equipment will be rejected.

- F. Unless otherwise specified in the Contract Documents, the Contractor shall provide and assume full responsibility for all materials, equipment, labor, transportation, construction equipment, and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities and incidentals necessary for the provision, performance, testing, start-up, and completion of the Work.

3.04 WARRANTY

- A. The Contractor warrants to the District that materials and equipment provided 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 and of the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents.
- B. Contractor additionally warrants manufacturers' product warranties as may be required by the Contract Documents.
- C. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and may be ordered, removed and replaced by the Contractor at no additional cost to the District. The Contractor's warranty excludes remedy for damage or defect caused by District's abuse, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.
- D. If required by the District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- E. Testing shall not be construed as operation.
- F. Contractor shall deliver warranties and guarantees conforming to the requirements of the Specifications to the District Representative prior to the Substantial Completion.
- G. The warranty provisions of this paragraph 3.04 are separate and in addition to the provisions for correction of Non-conforming Work as specified in Article 12.

3.05 TAXES

- A. The Contractor shall pay sales, consumer, use and all other taxes which are applicable during the performance of the Work or portions thereof, whether or not the taxes were in effect when Bids were received or were increased after Bid opening.
- B. Federal excise tax is not applicable to the Work, products, and services supplied under the Contract.
 - 1. The Contractor will be issued an exemption certificate on request.

3.06 PERMITS, FEES AND NOTICES

- A. The Contractor shall pay all utility charges for temporary connections to the Work.
- B. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits (other than approval by the Division of the State Architect), governmental fees (other than permanent utility service connection fees), licenses, and inspections (other than required and special inspections which are to be performed at the expense of the District to comply with prevailing laws and regulations) necessary for proper execution and completion of the Work. Contractor shall comply with the Environmental Quality Act of 1970, if applicable.
 - 1. The Contractor shall coordinate and obtain all permits prior to starting Work for which the permits are required.
 - 2. The Contractor shall pay all temporary sewer connection fees under the provisions for Allowances in the General Requirements.
- C. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

- D. If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, it shall promptly notify the District in writing, and necessary changes shall be accomplished by appropriate Modification.
- E. If the Contractor performs Work knowing, or should have known, it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the District, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs of correction.
- F. The Contractor shall keep all permits and an approved set of plans and specifications at the job site readily available for inspection during regular hours for the duration of the Contract.
- G. The Contractor shall arrange for all required inspections and special inspections with the appropriate District Representative or agency and notify the District, so that a District representative will be present at these inspections.
- H. The Contractor shall be responsible for submitting all shop drawings, product data, and manufacturer's certificates to the appropriate District Representative or agency for approval as may be required under the conditions of applicable permits (e.g., Division of the State Architect).
- I. The Contractor shall submit to the District's Representative as a condition precedent to Final Completion signed permit documents including, but not limited to, job cards, permit applications, permit Drawings, and certificates of occupancy.

3.07 SUPERINTENDENTS

- A. The Contractor shall at all times be represented at the site by a full time and English speaking project manager or the superintendent whom it has authorized in writing to make decisions, receive and carry out any instructions that may be given to it or them by the District, and the Contractor will be held liable for the faithful observance of such instructions. Prior to the issuance of Notice to Proceed, the Contractor shall inform the District, in writing, of the names, addresses and telephone numbers of its key personnel whom it has authorized to act as its representatives at the site and who are to be contacted in case of emergencies on the job during non-working hours, including Saturdays, Sundays and Holidays.
- B. The District reserves the right to approve the Contractor's project manager, assistant project manager, general construction superintendents, project coordinator, project engineers, project schedulers, and foremen, and the right to reject them at any time at the District's sole discretion. The District also reserves the right to refuse replacement of the Contractor's superintendents and foremen if it believes such replacement will negatively affect the Contract.

3.08 CONTRACTOR'S DAILY REPORT

- A. Contractor shall complete, and submit to the District on the next day, consecutively numbered daily construction reports.
- B. In addition, whenever Force Account Work is in progress, Contractor shall complete and submit to the District detailed written daily Force Account Work reports as provided under Paragraph 7.03 E herein.

3.09 CONSTRUCTION AND SUBMITTAL SCHEDULES

- A. Basic Progress Schedule:
 - 1. Unless a Computerized CPM Progress Schedule as described in Paragraph B below is required by the Instructions to Bidders, Contractor shall submit a Basic Progress Schedule within seven (7) days after Notice to Proceed and before starting any work.
 - 2. The Basic Progress Schedule shall be in the form of a time scaled barchart (Gantt Chart) consistent in all respects with the time and order of Work required by the Contract, in sufficient detail to show the chronological relationship of all activities of the Project including but not limited to planned starting and completion dates of various activities, submittal of shop drawings, procurement of materials and

equipment, and scheduling of deliveries and equipment.

3. The Basic Progress Schedule shall identify the Critical Path, and quantify the Float Time for all other activities.
4. District will review the Basic Progress Schedule or revision for conformance with Contract requirements. Within seven (7) days after receipt, District will accept the Basic Progress Schedule as feasible or will return it with comments, in which case Contractor shall use District's comments and revise the Basic Progress Schedule accordingly.
5. No progress payments will be made to Contractor until the schedules are submitted and are acceptable to the District.
6. A revised Basic Progress Schedule shall be submitted whenever it appears that the established schedule cannot be met, or whenever directed by District.
7. Acceptance of progress and submittal schedules by the District will neither impose on the District responsibility for the sequencing, scheduling, or progress of the Work nor interfere with or relieve the Contractor from its full responsibility therefore.

B. Computerized CPM Progress Schedule

1. The Contractor shall provide a computerized CPM Schedule if required by Instructions to Bidders. The Contractor shall use Primavera Project Planning Software or Microsoft Project and shall provide the Owner with file on 3 1/2" IBM compatible computer disk. If the contractor wishes to use any other scheduling software, approval must be first obtained from the owner. At its sole discretion the owner reserves the right to reject the use of any software other than the two stated here. The time of completion of the Project and each milestone shall adhere to the start and finish times in the Notice to Proceed, unless the Contractor requests and Owner approves in writing an earlier time of completion. Approval of such request shall be entirely at the Owner's discretion. If an earlier time of completion is approved, liquidated damages will be assessed after the new date of completion.
2. A schedule orientation meeting shall be held 14 days after the Notice to Proceed where the Contractor will be prepared to discuss the schedule, sequence of operations, cost, manpower, and equipment loading methodology. This meeting shall be attended by the Contractor's Project Manager and Scheduler, Owner's Representative, Architect (if desired), other Contractor's key personnel, major Subcontractors and Suppliers. This meeting will also discuss the monthly update requirements, reports, schedule revisions, cost breakdowns, data exchange, etc.
3. Within thirty (30) days after Notice to Proceed, the Contractor shall submit one (1) reproducible, three(3) prints, and 3-1/2" computer disks for Primavera Project Planning or Microsoft Project format of the detailed schedule. The Contract Schedule shall:
 - a. Provide a time scaled CPM diagram in a format acceptable to the owner. A schedule may be rejected if in Owner's opinion any item is unbalanced.
 - b. Provide a list identifying all imposed constraints.
 - c. Indicate activity calendars used.
 - d. Identify as a separate activity procurement of major equipment, date of ordering through receipt and inspection at the project site.
 - e. Identify as separate activities Owner furnished materials and equipment.
 - f. Identify as separate activities all submittals.
 - g. Detail activities for each milestone to show the plan for completion of the work for each milestone within the time specified.
 - h. Show dependencies (or relationships) and logic ties between activities. Open ended activities will not be permitted.

- i. Show the major equipment required for perform each activity, if applicable.
 - j. Show a responsibility code for each activity corresponding to the subcontractor responsible for performing the work.
 - k. Show the number of days needed for completion inspections, completion of punch list items, and final clean-up for the work associated with each milestone within the Contract time limit.
 - l. Show interface flag points of coordination with the work of other Contractors engaged by Owner at the site.
4. No activity on the schedule shall have a duration longer than fifteen (15) days, with the exception of submittals, fabrication, procurement and punch list activities, unless otherwise approved by Owner. Activity duration shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity. If an item of work is divided into two or more activities to meet maximum duration requirement, this division of work shall be done in a manner that is logical to the progress of the work (and not by dividing the work into percentages). Do not schedule activities that are dependent on submittal approval and/or material delivery to start earlier than the expected approval or delivery dates.
5. No more than twenty five percent (25%) of construction activities are to be considered as critical or near critical (having 10 days or less of float). Activities related to the procurement of materials and equipment (submit shop drawings, review shop drawings, manufacture of equipment, and shipping) shall not be included in the calculation of the allowable percentage of critical activities as defined above. The work shall be planned so that the schedule will reflect a true critical path, which will run through the start and finish of actual work activities. Critical path shall not run through activity lags and leads.
6. The contract schedule shall represent a practical plan to complete the work within the contract time, be suitable for monitoring progress of the work, and be in sufficient detail to demonstrate adequate planning of the work.
7. The schedule shall allow for Special District events where the District will not allow noisy, dusty or disruptive construction work. These specific dates, if any, are identified in Division 1 of the specifications.
8. Schedules shall include and allow adequate duration for work performed by District (inspections, district-furnished equipment, work by other contractors that interface with this contract).
9. District's acceptance of or review comments about schedule or scheduling data shall not relieve the contractor from its sole responsibility to plan for, perform, and complete the work within the contract time. Failure of District to discover errors or omissions in schedules it has reviewed, or to inform contractor or subs that they are behind schedule, or to direct or enforce procedures for complying with contract schedule shall not relieve the contractor from its sole responsibility to plan for, perform, and complete the work within the contract time.
10. The Owner will review this schedule when submitted and return to the Contractor within fifteen (15) days. The Contractor shall revise the schedule and resubmit within seven (7) days.
11. Once this schedule is modified to be acceptable to the Owner, the schedule becomes the Accepted Contract Schedule. If the Contractor desires to change the methods or scheduling of work, the Contractor must submit the request in writing. This request will be accepted or rejected by the Owner. This change may be tracked by a change order depending upon the severity of the change. If any critical activity falls more than seven (7) days behind schedule, Contractor must submit a recovery plan within seven (7) days.
12. The Contractor shall submit a monthly update to the schedule with the payment application. The

payment application will not be processed for payment without a satisfactory monthly updated schedule. The monthly update will include the Contractor's estimated percentage completion for each activity and actual start/finish dates. The update shall also include a narrative report describing any changes made to schedule logic, the effects of change orders identified and reflected in the updated schedule, and any other problem areas including a recovery plan.

13. A Short Interval Schedule (SIS) will be submitted weekly and will be discussed in progress meetings. The interval shall be four weeks: one week past, this week, two weeks ahead. The SIS must include the status of milestones and completion dates.

14. The Owner may request any report formats of the schedule at any time.

C. The Contractor shall prepare, submit and keep current, for the District's information, a schedule of submittals which is coordinated with the Contractor's construction schedule in accordance with the General Requirements and allows the District reasonable time to review submittals.

D. The Contractor shall provide either a staff person or firm with a minimum of five (5) years of experience in creating complete construction schedules for projects over \$1M with either of the accepted software programs. A resume shall be provided to the District for review of the staff person or firm. On the schedule of values "Scheduling" shall be listed as a separate item with the cost of this work.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

A. The Contractor shall maintain at the site for the District one (1) record copy of the Drawings, Specifications, Addenda, Change Orders, RFIs, and other Modifications, in good order and marked currently to record changes and selections made during construction ("as-built"), and in addition the Contract Documents, prevailing wage rate tables, approved Shop Drawings, Product Data, Samples and similar required submittals, all in accordance with the General Requirements. These shall be available to the District Representative and shall be delivered to the District prior to Substantial Completion.

B. Contractor shall furnish on a monthly basis the aforesaid record documents for the District to review and determine their sufficiency in conforming to the requirements set forth in subparagraph 3.09A. The District shall have the right to withhold 10 percent of the total progress payments due Contractor, in addition to the retainage, until Contractor has complied with this paragraph 3.09.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

A. PRODUCT OPTIONS

1. Provide products listed in Contract Documents, products by manufacturers listed in Contract Documents, and products meeting specified requirements.

2. For products indicated or specified only by reference standard, select any product meeting such standard.

3. For products indicated or specified by naming one or more products or manufacturers, select products of any named manufacturer which meet the specified requirements.

4. For a product or manufacturer which is not specifically named, submit request for substitution.

5. Where terms "or equal," "or approved equal," or similar references are made, submit request for substitution for product or manufacturer not specifically indicated or named in Specifications.

6. For products indicated or specified by naming only one product and manufacturer, followed by the words "no substitution allowed," Contractor must provide the product indicated and has no option of substitution.

B. REQUESTS FOR SUBSTITUTIONS

1. Consistent with section 3400 of the California Public Contract Code, Contractor, **7 calendar days prior to the final bid date**, shall submit for approval to the District a properly completed Request for

Substitution, as described below, for each material, article, or equipment that it proposes to substitute in place of, and as the equal to, a material, article, or piece of equipment specified in the Contract Documents. Failure to submit a completed, proper Request for Substitution form prior to the specified date, will be deemed adequate and reasonable grounds for the District to refuse to consider any proposed substitution.

- a. All Requests for Substitution shall be in written form and accompanied by sufficient information to enable the District to make a proper evaluation of the request.
- b. The Contractor must submit a separate request for each product and support each request with the following:
 - i. Product identification, i.e., trade name, names of any particular patentee, manufacturer or dealer, and manufacturer's literature and samples where applicable.
 - ii. Name and address of similar projects on which the product has been used and date of installation.
 - iii. Complete technical data, including drawings, manufacturer's specifications, material safety data sheets (MSDS), costs, samples, and test reports of the product proposed for substitution.
 - iv. Itemized comparison of the proposed substitution with product specified, including list of significant variations.
 - v. Effect, if any, on the construction schedule and other Work which may be affected by the substitution.
 - vi. Complete breakdown of costs, including, but not limited to, costs to other Contractors and costs for revisions to Drawings, Details, or Specifications, if the proposed substitution is accepted.
 - vii. Amount, if any, to be deducted from the Contract Sum as a result of the substitution.
 - viii. Signed statement that the proposed substitution is in full compliance with the Contract Documents and applicable regulatory requirements.
 - ix. Information on availability of maintenance, service, and source of replacement materials.
 - x. Sample of manufacturer's standard form of guarantee or warranty for the proposed substitution.
- c. Environmental Concerns: Project has been designed with special considerations for indoor air quality and environmental conditions, including attempts to limit amounts of toxic chemicals, materials, and gases in the building. Requests for Substitutions shall provide specific information regarding the environmental impact of substitutions related to toxic chemicals, materials, and gases.
 - i. Particleboard and Medium Density Fiberboard: Particleboard and medium density fiberboard are not acceptable as substitution for any specified product.
 - ii. Adhesives: Low-emitting adhesives have been specified; proposed substitutions shall be required to provide substantiating test reports indicating compliance with indoor air quality concerns.
 - iii. Submissions shall include all chemical components and their proportions in complete product.
 - iv. Include listing of all substances used in manufacture of product and identified in sample of air emitted from products that appear on any of the following lists:
 - United States Environmental Protection Agency (EPA) Carcinogen Assessment Group (CAG) list of carcinogens.
 - Clean Air Act Section 109, 111, and 112.

- The National Toxicology Program's latest published Annual Report on Carcinogens
 - IARC Human Carcinogens (Groups 1, 2A, and 2B)
 - California Proposition 65 Carcinogens
 - California Proposition 65 Reproductive Toxins
- v. Provide detection limits of analytical system for each relevant substance along with general information on sensitivity of analytical system.
 - vi. Include complete laboratory reports of any emissions tests conducted by the manufacturer or any contractor, agent, or other laboratory for the manufacturer, and any other evaluations of the impact of the product's emissions on indoor air.
- d. Substitutions will not be considered unless they are presented formally in the manner prescribed above. Specifically, for instance, substitutions will not be considered when they are indicated or implied on submittals or are requests directly from a subcontractor or supplier.
 - e. Substitutions will not be considered when they require, in the District's opinion, a substantial revision of the Contract Documents.
2. By submitting a Request for Substitution, Contractor represents the following:
 - a. Contractor has investigated the proposed substitution and determined that it is equal to or superior in all respects to the product indicated or specified.
 - b. Contractor will furnish the same guarantee/warranty or bond for the proposed substitutions as for the product indicated or specified.
 - c. Contractor will coordinate the installation of an accepted substitution into the Work, and make such other changes as required to complete the Work in accordance with the Documents and applicable regulatory requirements.
 - d. Contractor waives claims for additional costs associated with the substitution, which may subsequently become apparent.
 - e. Contractor will pay costs of changes to Contract Documents required by accepted substitutions.
 3. The District may require the Contractor to furnish, at the Contractor's expense, additional data about any proposed substitution. If the Architect or the District requests, the Contractor, at the Contractor's sole cost and expense, shall have the proposed substituted material, apparatus, equipment, or process tested under the direction of the Architect, the Inspector, or other District representative in accordance with the terms and provisions of Paragraph 13.05 of these General Conditions. Quality, strength, physical, chemical, or other characteristics, including durability finish or efficiency, shall be tested by a testing laboratory which the District shall select.
 4. The District will determine the acceptability of proposed substitutions and reserves the right to reject proposals due to insufficient information.
 5. The District shall be the sole judge as to the type, function, and quality of any substitution, and the District's decision shall be final.
 6. Substitutions necessitated by the inability to obtain materials specified will not be grounds for increase in Contract Sum or time of completion.
 7. The District may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety with respect to any substitute.
 8. Acceptance by the District of a substituted item proposed by the Contractor shall not relieve the Contractor of the responsibility for full compliance with the Contract Documents and for adequacy of the substituted item.
 9. The Contractor shall be responsible for resultant changes and all additional costs, which the accepted substitution requires in the Contractor's Work, the Work of its subcontractors of all tiers, and of other

contractors, and shall effect such changes without cost to the District.

10. In the event the substitution results in a monetary benefit, seventy-five percent (75%) of the amount of the benefit shall go to the District and twenty-five percent (25%) shall go the Contractor.
11. Contractor shall be responsible for the effect of a substitution upon related Work and shall pay the additional costs generated thereby, including the cost of Architect's and consultants' additional services associated with the substitution.
12. The Contractor shall not order substituted products without written acceptance from the District.

C. DISTRICT'S REVIEW OF PROPOSED SUBSTITUTIONS

1. The District will review requests for substitutions and notify the Contractor in writing of its decision to accept or reject proposed substitutions. It shall be understood that:
 - a. The District will use its own judgment in determining whether or not a product or item of equipment proposed is equal for the purpose intended in quality to that specified.
 - b. The decision of the District on all such questions of equality shall be final.
 - c. No claim of any sort shall be made or allowed against the District, the Architect, Architect's Subconsultants, or any of their agents, employees, or subconsultants as a result of any final decision accepting or rejecting any proposed product or equipment.
2. The District at its sole discretion will determine the acceptability of proposed substitutions, and its determination shall be final.
3. Acceptance of a proposed substitution shall not relieve the Contractor from responsibility for the proper execution of the Work and the other requirements of the Contract Documents.
4. If a proposed substitution is not accepted, use the product originally specified or indicated.

D. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

1. Shop drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review or approval of Contractor's submittals by the City is subject to the limitations described below.
2. The Contractor shall review, approve, stamp, and submit to the District Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the accepted Submittal Schedule specified in the General Requirements. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.
3. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples and other submittals until the respective submittal has been received, reviewed by the Architect and returned by the Architect. Such Work shall be in accordance with approved submittals. The Contractor is solely responsible for delays or disruptions to the Work caused by inadequate, uncoordinated, incorrect or late submittals. All submittals shall be submitted in accordance with the Submittal Schedule presented by Contractor and accepted by the District pursuant to paragraph 3.08 and shall be phased to support the Project Schedule as well as to allow Architect maximum review time.
4. By approving and submitting Shop Drawings, Product Data, Samples and other submittals, the Contractor represents that it has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the Work, the Contract Documents and the adjacent Work.
5. The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples and other submittals unless the Contractor has specifically informed the Architect in writing attached to the submittal of

- such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the District's approval thereof. Any deviation shall also be indicated on such Shop Drawing, Product Data, Sample or related submittal.
6. The Contractor shall direct specific attention, in writing, for resubmitted Shop Drawings, Product Data, Samples and other submittals, to revisions other than those requested by the Architect on previous submittals.
 7. Where a shop drawing or sample is required by the Specifications, any related Work performed prior to the Architect's review and approval of the pertinent submittal shall be at the sole expense and responsibility of the Contractor.
 8. Number of copies submitted by the Contractor shall be:
 - a. Shop Drawings: 6 minimum
 - b. Catalogue cuts, brochures, calculations, etc.: 6 minimum
 - c. Samples: 6 each as directed
 9. After review of submittals by the Architect (or the Architect's Consultants), submittals will be returned to the Contractor, indicating one of the following actions:
 - a. "Reviewed - No Exceptions Taken": No corrections or re-submissions required.
 - b. "Reviewed - Make Corrections Noted": No re-submission required. Fabrication may proceed on the basis that corrections noted are incorporated in the work. If the Contractor cannot comply or disagrees with the corrections noted, he shall revise the submittal and resubmit before fabrication.
 - c. "Revise and Resubmit": Re-submission required. Fabrication shall not proceed. Revise submittal as indicated.
 - d. "Rejected": Re-submission required. Fabrication shall not proceed. Revise in accordance with the Contract Documents.
 10. The Architect will return the reproducible copy of each shop drawing, two each of copies of catalogue cuts, brochures, calculations, etc. (or as many additional copies submitted by the Contractor over the required eight (8) minimum) and two (2) each of samples. The Contractor is responsible to obtain and pay for additional copies required for distribution to subcontractors, suppliers and the like. The Contractor shall transmit one copy of all submittals marked "Reviewed - No Exceptions Taken" and "Reviewed - Make Corrections Noted" to the Contractor's Field Office.

3.12 USE OF SITE

- A. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.
- B. Notwithstanding the designation of Contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits.
- C. Pumping, draining and control of surface and ground water shall be carried out so as to avoid endangering the Work or any adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof. Contractor shall conform to the Code and applicable laws and regulations and shall obtain all permits necessary to dispose of surface or ground water or excavated materials at the Site.
- D. The Contractor shall assume full responsibility and shall promptly settle all claims for any damage to any such areas within the Contract limits, or to any adjoining areas or the Districts or occupants thereof, resulting from the performance of the Work.

3.13 CUTTING AND PATCHING

- A. The Contractor shall be responsible for all cutting, fitting, and patching of its Work in accordance with the requirements of the specifications that may be required to make its several parts fit together or to receive the work of other contractors shown upon, or reasonably implied by, the Contract Documents for the completed Work.
- B. 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. The Contractor shall not withhold from the District the Contractor's consent to cutting or otherwise altering the Work.

3.14 CLEANING UP AND REMOVING DEBRIS

- A. The Contractor shall keep the premises and surrounding area, including public areas immediately adjacent to the site such as temporary pedestrian walkways and sidewalks, free from accumulation of waste materials, rubbish, excess materials, graffiti, and debris.
 - 1. The Contractor shall perform such clean up and removal regularly and as often as necessary.
 - 2. Prior to Substantial Completion, the Contractor shall remove from and about the Project site waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.
 - 3. At completion of the Work and prior to requesting final inspection, Contractor shall clean the interior and exterior of buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration; Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and, at the District's direction, shall remove temporary fencing, barricades, planking and construction toilet(s) and similar temporary facilities from the Project site.
 - 4. Removal and disposal of such waste materials, rubbish, and other debris shall conform to all applicable laws and regulations.
- B. If the Contractor fails to clean up as provided in the Contract Documents, the District may provide twenty-four hours written notice to the Contractor and clean up, the cost plus an additional fee of twenty-five percent (25%) for administrative costs of which shall be deducted from the amount due the Contractor under the Contract.

3.15 TEMPORARY FACILITIES

- A. The Contractor shall obtain permits for, install and maintain in safe condition, whatever scaffolds, hoisting equipment, barricades, walkways, or other temporary structures which may be required to accomplish the work on the construction project. Such structures shall be adequate for the intended use and capable of safely accepting all loads that may be imposed upon them. They shall be installed and maintained in accordance with all applicable State and Local codes and regulations. The Contractor is responsible for maintaining access to the buildings at all times.
- B. The Contractor shall provide, maintain, and remove all weather protection required to protect the work or District property.
- C. The Contractor is responsible for parking and storage as required by the Contractor, Subcontractors, and Suppliers on this project. The Contractor shall provide, maintain, and remove all work required to comply with the Storm Water Run-off Plan.
- D. The Contractor shall provide and maintain temporary heat from an approved source whenever in the course of the work it may become necessary for curing and drying of materials, or to warm spaces as may be required for the installation of materials or finishes. If new permanent HVAC equipment is used for this

purpose, equipment warranty periods shall not start at this time. All warranties begin at project completion and acceptance by CCSF.

- E. The Contractor shall provide and maintain any and all facilities that may be required for dewatering in order that work may proceed on the project. If it is necessary for dewatering to occur continually, the Contractor shall have on hand whatever spare parts or equipment that may be required to prevent interruption of dewatering.
- F. The Contractor shall provide and maintain all utility services necessary to perform the work under this Contract. These may include, but are not limited to, electricity, water, gas, sewer and telephone, including charges and installation fees. Contractor shall furnish and maintain all means of distribution of utility services required within the site to properly complete the project. Electrical work shall be consistent with Division of Industrial Safety Electrical Safety Orders (ESO), Public Utilities Commission Rules of Overhead Line Construction (G.O. 95), the Division of the State Architect, and CAL-OSHA. The Contractor shall provide and maintain adequate fire extinguishers and safety kits to be used in the event of an emergency.
- G. Materials, tools, accessories, etc., shall be stored only where directed by the District. Storage area shall be kept neat and clean. Security of stored items shall be the Contractor's responsibility.
- H. When flammable materials are stored on site, extra precaution including clear identification shall be the responsibility of the Contractor and in accordance with all applicable Federal, State, and Local laws.
- I. The Contractor shall provide and maintain temporary toilets in quantities and locations as required by CAL/OSHA and other local codes and regulations. They shall be maintained and supplied in a usable and sanitary condition at all times.
- J. If water at construction site is determined to be non-potable by Job Inspector, Contractor shall provide and maintain adequate potable water stations at site until final completion of Construction Project.
- K. The Contractor shall maintain an office at the project site which will be his headquarters for this Project. Any communications delivered to this office shall be considered as delivered to the Contractor. Location and size of office shall be such that it will adequately serve the needs of the Contractor's superintendent and assistants in the performance of their duties.
- L. The Contractor shall also provide and maintain an office for the use of the Inspector and Architect on the site at a location to be determined by the District and/or the District's representative. This office will be watertight and of adequate size to accommodate a desk, chair, filing cabinet, plan rack, two stools, and large plan table, all provided by the Contractor. Doors shall have a key-type lock or padlock hasp. Windows shall be barred. This office shall be provided with windows, lighting, heat and a non-coin operated telephone with free local telephone service, all to be paid for by the Contractor for the duration of the Project. Contractor shall also grant to the District's representatives access to a copy machine and facsimile machine located on the Project Site free of charge.
- M. The Contractor shall promptly remove all such temporary facilities when they are no longer needed for the work or for completion of the Project, mutually agreed upon by the Contractor and the District.
- N. The Contractor shall provide and maintain in the Temporary Facilities a copy of the California Code of Regulations Title 24 (Current Edition).

3.16 SURVEYS

- A. When set forth in the Contract Documents that the Contractor is to provide all staking and engineering services, the Contractor shall be responsible to do all necessary staking and engineering services to layout and control the work to the elevations, lines, and dimensions shown on the plans. Any deviations must receive prior written approval of the Architect. All staking and engineering services affecting the line or elevation of underground drainage, sewers, or utilities, and all other work within public rights of way or easements shall be performed by or under the direction and supervision of a Registered Civil Engineer or Licensed Land Surveyor, licensed by the state of California.

- B. The Contractor shall keep the Architect informed, at least two (2) working days in advance, of the times and places at which Contractor will need lines, elevations, and reference points. Unless authorized by the Architect, any work done without line and grade will be done at the Contractor's risk. The Contractor shall be responsible for the accuracy of Contractor's own layout work, and shall be liable for the preservation of all established lines and grades. Stakes damaged or destroyed by the operations of the Contractor will be replaced at Contractor's expense.

3.17 ACCESS TO WORK

- A. During the performance of the Work, the District and its authorized representatives or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, may at any time, and for any purpose, enter upon the Work, the shops where any part of such Work may be in preparation, or the factories where any materials for use in the Work are being or are to be manufactured. The Contractor shall furnish safe facilities therefor, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as the District's interest may require.

3.18 ROYALTIES AND PATENTS

- A. All fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with the performance of the Work or any part thereof, shall have been included in the Contract Sum.
- B. The Contractor shall save, defend, hold harmless, and fully indemnify the District and all its officers and employees connected with the Project, the District Architect, other parties designated in Article 11, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all damages, claims for damage, costs, or expenses in law or equity, including attorney's fees, that may at any time arise or be set up for any infringement of the patent rights, copyright or trademark of any person or persons in consequence of the use by the District, or any of its officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, of articles to be supplied under the Contract and of which the Contractor is not the patentee or assignee or has not the lawful right to sell the same. This is in addition to all other hold harmless and indemnity clauses in the Contract Documents.

3.19 INDEMNIFICATION

- A. Contractor shall defend, indemnify, and hold harmless the District, the Board and the Architect, including their inspectors, project managers, trustees, officers, agents, members, employees, affiliates, consultants, subconsultants, and representatives, harmless from any and all claims, demands, suits, causes of action, damages, costs, expenses, attorneys' fees, losses, or liability, in law or in equity, of every kind and nature whatsoever arising out of, or in connection with, Contractor's operations to be performed under this Contract, including, but not limited to:
 - 1. Personal injury (including, but not limited to, bodily injury, emotional injury or distress, sickness, or disease) or death to persons, including, but not limited to, any employees or agents of Contractor, District, **ARCHITECT**, or any subcontractor, or damage to property of anyone including the work itself (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Contractor, District, or Architect, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable;
 - 2. Penalties threatened, sought, or imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of Contractor;
 - 3. Alleged infringement of any patent rights which may be brought arising out of Contractor's work;
 - 4. Claims and liens for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages from such claims or liens;

5. Contractor's failure to fulfill any of the covenants set forth in these Contract Documents;
6. Failure of Contractor to comply with the provisions of the Contract Documents relating to insurance; and,
7. Any violation or infraction by Contractor of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupational, health, or safety of employees.

The indemnities set forth in this section shall not be limited by the insurance requirements set forth in these Contract Documents.

Contractor's indemnification of District will not include indemnification for claims which arise as the result of the sole negligence or willful misconduct of District, its agents, servants or independent contractors who are directly responsible to District, or for defects in design furnished by such persons.

- B. The District, its governing board, officers, agents, members, employees, and authorized representatives shall have no liability to Contractor for any type of special consequential or incidental damages arising out of or connected with Contractor's Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion termination, suspension, cancellation, or recession of the Work on this Contract, negligence or strict liability by the District, its governing board, representatives, consultants, or agents.
- C. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the Work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.
- D. On request, Contractor shall defend any action, claim or suit asserting a claim covered by this indemnity. Contractor shall pay all costs that may be incurred by the District and all indemnified parties specified in subparagraph 3.16 A.
- E. In the event that the Contractor and its insurance carrier(s) in bad faith refuse to negotiate and compensate a third party or parties for property damage or personal injuries which arise out of the Contractor's performance of the Work, the District shall have the right to estimate the amount of damages and to pay the same, and the amount so paid shall be deducted from the amount due the Contractor under this Contract; or an appropriate amount shall be retained by the District until all suits or claims for said damages shall have been settled or otherwise disposed of and satisfactory evidence to that effect shall have been furnished to the District.

3.20 NOT USED

3.21 DRUG-FREE WORKPLACE

- A. The Contractor shall remove any worker from the Project site when directed to do so by the District or any representative of the District. The District and all of the District's projects are "drug-free" and "tobacco-free" workplaces and, as such, require that the Contractor be subject to the requirements mandated by the California Government Code Section 8350, et seq. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Contractor to police and oversee any and all personnel used in connection with the Work and the Project, whether employed directly or indirectly by Contractor. If Contractor fails to maintain a drug-free workplace as required by the Drug-Free Workplace Act and a tobacco-free workplace, the District may enforce its lawful rights to suspend pending or

subsequent payments and to terminate the Contract and may pursue all other rights and remedies it may have against the Contractor at law and/or in equity. The Contractor shall also submit to the District the drug-free workplace certificate required by law within seven (7) days after award of the Contract.

3.22 FAIR EMPLOYMENT PRACTICES

- A. The following provisions pertaining to fair employment practices are incorporated into this Contract. All references to "contractor" in this Paragraph 13.06 shall be deemed to refer collectively to the Contractor named herein and all Subcontractors of any tier performing Work on the Project.
- B. In connection with the performance of the Work under this Contract, each contractor agrees as follows:
1. During the performance of the Contract, contractor will not unlawfully discriminate against, or deny the Contract's benefits to, any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall contractor discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
 2. The contractor shall comply with the provisions of the Fair Employment and Housing Act (Cal. Gov. Code, Section 12900, et seq.), the regulations promulgated thereunder (Cal. Code Reqs., Tit. 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Tit. 2 of the Government Code (Cal. Gov. Code, Sections 11135-11139.5), and the regulations or standards adopted by the District to implement such article.
 3. The Contractor shall give written notice of their obligations under this Paragraph 13.06 to labor organizations with which the Contractor has a collective bargaining or other agreement.
 4. The Contractor agrees to post at the Project Site in conspicuous places, available to employees and applicants for employment, notices to be provided by the District setting forth the provisions of this Paragraph 13.06.
 5. In all advertisements for labor or other personnel, or requests for employment of any nature, the Contractor shall encourage persons of all races and ethnic groups to apply and state the intention of the District to hire qualified minority and female applicants.
 6. The Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the District upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or the District shall require to ascertain compliance with this Paragraph 13.06.
 7. The contractor's commitment to specific goals for minority and female utilization, as herein required, shall constitute a commitment to make every good faith effort to meet such goals. If the contractor fails to meet the established goals, a determination of good faith in achieving those goals will be based in part upon those efforts used to broaden the recruitment base.
 8. Following the award, but within ten (10) days after issuance of the Notice to Proceed, the Contractor shall meet the following standards for affirmative action compliance, and shall ensure that each Subcontractor of every tier will meet these requirements within ten (10) days after receiving a notice to proceed from the Contractor, unless the District provides for a greater time period:
 - a. Provide evidence, as required by the District, that all Subcontractors of every tier, the Contractor's supervisors, and other personnel have been notified, in writing, of the content of this Fair Employment Practices section and their responsibilities under it by posting notices in conspicuous places, including, without limitation, the Project Site, the Contractor's offices, and in other places available to supervisors and other personnel; and

- b. Provide evidence, as required by the District, that all sources of employee referrals (including but not limited to, unions, employment agencies, and the State Employment Development Office) have been notified of the content of the Fair Employment Practices provisions set forth herein.
9. After a determination by the District that a contractor has knowingly committed a violation of Fair Employment Practices as set forth herein or of the California Fair Employment and Housing Act (if a State-funded project), or of any applicable federal law or executive order concerning equal employment practices, the District shall cause written notice to be served on the contractor and to any Subcontractor of any tier involved in such violation. The notice shall set forth the nature of the violation. Upon the District's request, the contractor shall meet with representatives of the District in order to determine the means of correcting the violation and the time period within which the violation shall be corrected. If within ten (10) days the parties are unable to agree upon a means of remedying the violation or upon the time period within which said remedy shall be effected, the District shall serve a second written notice upon the manner in which the violation shall be corrected. If the contractor has not corrected the violation in the manner prescribed by the District within fifteen (15) days after receipt of the second notice, the District may impose any or all of the following penalties:
 - a. Determine the Contractor not to be a responsible bidder for any future contract until such time as the contractor has satisfied the District that the requirements of the Fair Employment Practices provisions of this Paragraph 13.06 have been met;
 - b. Terminate the entire Contract, in which case the District shall not be liable for any further payments thereunder, or for any damages to the Contractor caused by such termination, except as provided in subsections (12) and (13) below;
 - c. Terminate and cancel any portion of the Contract or Work hereunder, or require the Contractor to terminate and cancel (or cause to be terminated and cancelled) the subcontract of any offending Subcontractor, which is related to the violation in which case the District shall not be liable for any further payments as to said portion of the contract or for any damages caused by such termination, except as provided by subsections (12) and (13) below, and may engage another Contractor or Subcontractors to perform said Work; or
10. Nothing contained in these Fair Employment Practices provisions shall be construed so as to prevent the District from pursuing any other remedies that may be available to it at law or in equity.
11. The contractor shall include the provisions of this Fair Employment Practices Section in every first tier subcontract and require each Subcontractor to bind each further Subcontractor with whom a contract exists to such provisions, so that such provisions will be binding upon every Subcontractor of every tier who performs any of the Work required by this Contract.

3.23 APPRENTICES

- A. Contractors must comply with certain apprenticeship obligations set forth in the Labor Code (Labor Code Section 1777.5). Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered.
- B. Only apprentices, as defined in Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3, are eligible to be employed as apprentices 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.
- C. When the Contractor to whom the contract is awarded by the District, or any Subcontractor on the Project, in performing any of the work under the contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established

by the joint apprenticeship committee or committees shall be subject to the approval of the administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in order to comply with this section. Every Contractor and Subcontractor shall submit 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 craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in 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 public work 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 hour of apprentices work for every five hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

- D. 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 apprentice for each five journeymen in a craft or trade classification.
- E. The Contractor or Subcontractor, if he or she is covered by this section, upon 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 hour of apprentice work for every five hours of labor performed by a journeyman, or in the land surveyor classification, one apprentice for each five 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 contract of General Contractors or those specialty Contractors involve less than thirty thousand dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.
- F. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council.
- G. A Contractor to whom the contract is awarded, or any Subcontractor under him or her, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work 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 public work 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.

- H. The prime Contractor is responsible for its compliance and the compliance of its Subcontractors with the above.
- I. All decisions of the joint apprenticeship committee under this section are subject to Labor Code Section 3081. (Amended by Stats. 1989, Ch. 1224.)
- J. Pursuant to Section 1777.6 of the California Labor Code, 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 the race, religious creed, color, national origin, ancestry, sex or age of such employee (except as provided in Section 3077 of the California Labor Code).
- K. Pursuant to California Labor Code Section 1777.7, upon a determination that the Contractor or any Subcontractor has willfully failed to comply with the provisions of this Paragraph 13.07 or Section 1777.5 of the California Labor Code, the Director of Industrial Relations may deny to the Contractor or Subcontractor, both individually and in the name of the business entity under which the Contractor or Subcontractor is doing business, the right to bid on, or to receive, any public works contract for a period of up to one (1) year for the first violation and for a period of up to three (3) years for the second and subsequent violations. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship becomes an order of the California Apprenticeship Council.
- L. A Contractor or Subcontractor who violates Labor Code Section 1777.5 or this Paragraph 13.07 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Chief of the Division of Apprenticeship Standards if the amount of the penalty would be disproportionate to the severity of the violation. A Contractor or Subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this Paragraph 13.07 shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Notwithstanding Labor Code Section 1727, upon receipt of a determination that a civil penalty has been imposed, the District shall withhold the amount of the civil penalty from Contract progress payments then due or to become due pursuant to Paragraph 9.05. In lieu of such penalty, 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. Any funds withheld by the District pursuant to this Paragraph 13.07 and Section 1777.5 of the California Labor Code shall be deposited in the general fund of the District. The interpretation and enforcement of Section 1777.5 and Section 1777.7 of the California Labor Code shall be in accordance with the rules and regulations of the California Apprenticeship Council.

3.24 WAGES AND PAYROLLS

- A. It is hereby understood and agreed that all provisions of Section 1770 *et seq.* of the California Labor Code are required to be incorporated into every contract for any public work or improvement and are provisions of this Contract. Applicable Labor Code provisions control over any conflicting provision contained herein.
- B. It is hereby understood and agreed that all provisions of California Labor Code Sections 1770 *et seq.* and sections 1810, *et seq.* are incorporated as provisions of this Contract, including, but not limited to, the following:
 1. The Contractor shall pay to all persons performing labor in and about the Work provided for in this Contract not less than the general prevailing rate of wages as determined by the Director of the California Department of Industrial Relations for their respective crafts and employment, including such wages for holiday and overtime work. The bidder is cautioned to inspect the minimum wage rates as rates are updated periodically.
 2. The Contractor shall insert in every subcontract or other arrangement which it may make for the performance of any Work or labor on the Work provided for in this Contract, a provision that said

- subcontractor shall pay to all persons performing labor or rendering service under said subcontract or other arrangement the general prevailing rate of wages determined as set forth herein after for the respective crafts and employment, including such wages for holiday and overtime work.
3. The Contractor shall keep or cause to be kept an accurate record showing the name, place or residence, occupation, and per diem pay, of each person engaged in the execution of this Contract, and every subcontractor who shall undertake the performance of any part of the Work herein required shall keep a like record of each person engaged in the execution of the subcontract. All of said records shall at all times be open to the inspection of and examination of the District and its authorized representatives.
 4. The Contractor shall submit its monthly certified payrolls with its progress payment applications to the District.
 5. Should the Contractor, or any Subcontractor who shall undertake the performance of any part of the Work herein required, fail or neglect to pay to the persons who shall perform labor under this Contract, subcontract or other arrangement for the Work the general prevailing rate of wages as herein specified, it shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, the original contractor and the subcontractor shall jointly and severally forfeit, to the District the sum of fifty dollars (\$50.00) per day for each laborer, worker or mechanic employed for each calendar day or portion thereof, while said person shall be so employed and not paid said highest general prevailing rate of wages. The District will deduct the amount which would otherwise be due on said payment the amount of said forfeiture or forfeitures as so certified.
 6. Prior to making final payment to any Subcontractor for any Work performed under the Contract, the Contractor shall obtain and provide to the District an affidavit signed under penalty of perjury from the Subcontractor that the Subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees in connection with the Work and any amounts due pursuant to California Labor Code Section 1813.
 7. No person performing labor or rendering service in the performance of any contract or subcontract for the Work herein required shall perform labor for a longer period than forty (40) hours per week, or five (5) days of eight (8) hours each, excepting those in crafts in which a shorter work day now prevails by agreement in private employment. Any Contractor or subcontractor who violates this provision shall be liable for the same penalties and forfeitures as those specified in Subparagraph 5 above for each laborer, mechanic or artisan employed for each calendar day or portion thereof wherein such laborer, mechanic or artisan is compelled or permitted to work more than the days and hours specified herein. Provided, that if it is so stipulated in the General Conditions, the number of days and hours of labor per week may be extended beyond the limitations above mentioned, but not to exceed eight (8) hours in any one calendar day, or six (6) days in any calendar week. In the event that emergency conditions shall arise making a change advisable during the performance of the Contract, or any portion thereof, the hours and days of labor may be extended beyond the limits hereinabove expressed, but not to exceed an additional eight (8) hours per day, upon the written authority of the District. Failure of the contractor to perform its contract within the time provided shall not be deemed to constitute an emergency.
 8. Any work required to be performed after regular working hours or on Sundays or other holidays shall be performed without additional expense to the District.
- C. Certification of Payroll Records: In accordance with Section 1776 of the California Labor Code:
1. The Contractor shall, and shall require that it's Subcontractors, keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by it or her in connection with this Contract.
 2. The payroll records shall be certified and shall be submitted to the District within five (5) days of each of the payroll periods of the Contractor and his subcontractors, and at least once monthly. Pay requests shall not be processed until certified payroll records have been submitted up-to-date. In addition, the payroll records shall be available for inspection at all reasonable hours at the job site

office of the Contractor on the following basis:

- a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or its or her authorized representative on request.
 - b. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the District.
 - c. A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District or the Department of Industrial Relations
3. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request.
 4. Any copy of payroll records made available for inspection as copies and furnished upon request of the public or any public agency by the District shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.
 5. The Contractor shall inform the District of the location of the 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.
 6. In the event of noncompliance with the requirements of said Section 1776, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with said section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the District, forfeit twenty-five dollars (\$25.00) for each calendar day, or a portion thereof of non-compliance, for each worker, until strict compliance is effected. Upon the request of the Department of Industrial Relations, or the District, such penalties shall be withheld from progress payments then due. All penalties and forfeitures set forth herein shall at the expiration of ninety (90) days after completion of the contract and formal acceptance of the work by the District, be forwarded to the State Treasurer if requested by the Division of Labor Standards Enforcement.
 7. The responsibility for compliance with California Labor Code Section 1776 shall be on the Contractor.
 8. No progress payments will be processed until the Contractor has submitted, to the District, certified payrolls pursuant to Section 1770 et seq. of the California Labor Code for the periods involved for all employees including those of subcontractors. The District will not be liable to the Contractor for costs arising from the delay in making progress payments.
 9. If the District receives formal notice either by service or summons or registered mail of a suit commenced to recover the withheld amounts within the ninety (90) day period following contract completion, it shall retain them until a final court judgment is obtained. It shall distribute the withheld amounts in accordance with said judgment.
 10. Should the District not have withheld sufficient funds to cover all penalties and forfeitures due, it shall notify the Department of Labor Standards Enforcement of the judgment and provide whatever assistance is requested by the Division of Labor Standards Enforcement to recover penalties due for failure to pay prevailing wage.
 11. Should there be a reasonable belief on the part of the District that prevailing wages are not being paid by the contractor or his subcontractors, it may conduct an investigation to determine if this is the case. After a full investigation, if the District determines that the prevailing wage is not being paid, it shall withhold fifty dollars (\$50.00) per day per worker (in accordance with Labor Code 1775) whom it determines is not being paid the prevailing wage from the next progress payment due, or final payment. Alternatively, the District may notify the Division of Labor Standards Enforcement, requesting a full investigation. Should the result of the investigation conclude that the prevailing wage was not being paid, the District will withhold the amount indicated above in the manner set forth herein.

12. The statutory penalties for willful noncompliance with prevailing wage requirements may be enforced after a formal determination of non-compliance. A willful violation may result in debarment of one (1) to three (3) years in accordance with Labor Code Section 1777.1.

13. The District retains the right to consider the contractor's willful failure to pay prevailing wage in awarding future contracts, to the extent permitted by law.

D. Copies of such prevailing rates of per diem wages are on file at the Division of Labor Statistics and Research, Prevailing Wage Unit, 455 Golden Gate Avenue, 8th Floor, San Francisco, California 94102 or at City College of San Francisco, 33 Gough Street, San Francisco, California 94103, Contract Office.

3.25 INSTRUCTIONS AND MANUALS

A. Three copies each of all maintenance instructions, application/installation instructions and service materials called for in the Contract Documents shall be provided by the Contractor. These shall be complete as to drawings, details parts lists, performance data and other information that may be required for the District to easily maintain and service the materials and equipment installed under this Contract.

B. All manufacturer's application/installation instructions shall be given to the Inspector at least ten (10) days prior to first material application or installation of the item by the Contractor.

C. The maintenance instructions and manuals, along with any specified guarantees, shall be delivered by the Contractor to the Architect for review prior to submission to the District. The Contractor or appropriate Subcontractors shall instruct District's personnel in the operation and maintenance of the more complex equipment prior to final acceptance of the Project.

3.26 AS-BUILT DRAWINGS

A. The Contractor and all his subcontractors shall maintain a separate complete set of contract drawings at the work site, which will be used solely for the purpose of recording changes made in any portion of the work during the course of construction, regardless of the reason for the change. As changes occur, they will be included or marked on this record set on a daily basis if at all possible to keep them up to date at all times. Actual locations to scale shall be identified on the drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, and furred spaces, or otherwise concealed areas. Deviations from the drawings shall be shown in detail. All main runs, whether piping, conduit, duct work, drain lines, etc., shall be located in addition, by dimension and elevation. Where appropriate, the source document of the change shall be noted, i.e., RFI #, etc.)

B. Progress payments may be delayed or withheld until such time as the record set (AS-BUILT DRAWINGS) is brought up to date to the satisfaction of the Architect. The AS-BUILT drawings should be submitted in both CAD and hard copy form. The Contractor shall verify that all changes in the work are included in the AS-BUILT drawings and shall deliver the complete set thereof to the Architect for his review and satisfaction prior to submittal to the District. A necessary condition for release of final retention shall be submission of complete set of AS BUILT drawings to the District as approved by the Architect. These drawings shall be submitted to the District with request for final payment.

ARTICLE 4 – CLARIFICATIONS AND CLAIMS

4.01 CLARIFICATION AND REQUEST FOR CHANGE (RFC) NOTIFICATION

A. If in the opinion of the Contractor, the Contract Documents are not sufficiently detailed or explained, or should the Contractor have any questions as to the meaning or intent of the Contract Documents of the Contract, the Contractor shall request written clarification by submitting a Request for Information (i.e., RFI) within seven (7) calendar days of discovery. If, in the Contractor's opinion, the District's clarification (e.g., response to the Contractor's RFI), exceeds the requirements of the Contract Documents, the Contractor shall give the District written notice of that opinion in the form the District has approved (i.e., a Request for Change). The Contractor shall give its written notice within seven (7) calendar days of

receiving the District's clarification and before proceeding with the work that is the subject of inquiry. If the District does not receive the Contractor's notice or if the Contractor proceeds with the work without giving notice, the Contractor shall be deemed to have waived its right to submit a Request for Change or a Claim for additional costs or an extension of time as related to the work that is the subject of inquiry.

4.02 RESOLUTION OF RFCs & CLAIMS

A. Request for Change

1. A Request for Change (RFC) is a document prepared by the Contractor to seek additional compensation and time from the District. It shall include all costs, overhead and profit.
2. The Contractor and the District shall make good-faith attempts to resolve any and all RFCs that may arise during the performance of the Work of this Contract. Within seven (7) calendars of the written RFC to the District, the Contractor shall provide a written RFC narrative explaining its reasons for requesting additional compensation or time. The written RFC narrative shall reference all related schedule activities and contract specification sections and drawings directly pertaining to the RFC.
3. The District will review the Contractor's timely written RFC narrative and provide a decision within thirty (30) calendar days after receipt of the Contractor's RFC written narrative. Unless otherwise directed by the District in writing, the Contractor shall diligently proceed with the Work in accordance with the District's decision. In no event shall the Contractor be permitted to cease work during the negotiation of any proposed change order.

B. Claim:

1. "Claim" means a separate written demand by the Contractor for (1) an extension to the Contract Time, (2) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for in the Contract Documents or the Contractor is otherwise entitled, or (3) an amount the payment of which is disputed by the District. A voucher, invoice, other routine request for payment, or an RFC submitted by the Contractor shall not be considered a claim under the Contract. The Contractor hereby waives any evidentiary privilege, if any is applicable, that may attach to said claim or otherwise render it inadmissible as evidence in a court of law.
2. If, after receiving the District's decision in response to the Contractor's written RFC narrative, the Contractor still considers the Work required of it to be outside the requirements of the Contract Documents, it shall notify the District by submitting a written notice of potential claim within seven (7) calendar days after receiving the District's decision.
3. Within thirty (30) days of receiving the District's decision in response to the Contractor's written RFC narrative, the Contractor shall submit a claim with all the documentation required by Article 4.02C and 4.02D. The Contractor hereby agrees that failure to provide written notice of potential claim to the District within seven (7) calendar days, and all required documentation within thirty (30) calendar days, will result in the Contractor waiving its right to additional compensation and time pertaining to said claim.
4. Upon receipt of the Contractor's claim and all documentation required by Article 4.02C and 4.02D, the District will review said claim pursuant to the procedures in Article 4.03 or 4.04.

C. Certification:

1. The Contractor, under penalty of perjury, shall submit with the claim its and its Subcontractors' certification that:
 - a. The claim is made in good faith.
 - b. Supporting data are accurate and complete to the best of the Contractor's and/or Subcontractor's knowledge and belief.

- c. The amount requested accurately reflects the Contract adjustment for which the Contractor believes the District is liable.
 - d. That any privilege, if any is applicable, that would prevent the claim or its contents from being admitted as evidence in any judicial or quasi-judicial forum, is waived by the Contractor and any party involved in the presentation of the claim.
2. If the Contractor is an individual, the certification shall be executed by that individual.
 3. If the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.
 4. If a false claim is submitted, it will be considered fraud, and the Contractor will be subject to damages and criminal prosecution.
 5. In regard to any claim or portion of a claim for Subcontractor work, the Contractor shall fully review said claim and certify said claim, under penalty of perjury, to have been made in good faith.
 6. The Contractor hereby agrees that failure to furnish certification as required hereinbefore within specified time limits will result in the Contractor waiving its right to the subject claim.
- D. Claim Format:
1. The Contractor shall submit the claim documentation in the following format:
 - a. Summary of claim merit and quantum plus clause under which the claim is made.
 - b. List of documents relating to claim:
 - 1) Specifications.
 - 2) Drawings.
 - 3) Clarifications/Requests for Information.
 - 4) Schedules.
 - 5) Other.
 - c. Chronology of events and correspondence.
 - d. Analysis of claim merit.
 - e. Analysis of claim cost.
 - f. Cover letter and certification.
 - g. Attachments:
 - 1) Specifications.
 - 2) Drawings.
 - 3) Clarifications/Requests for Information.
 - 4) Correspondence.
 - 5) Schedules.
 - 6) Other.

4.03 RESOLUTION OF CLAIMS OF \$375,000 OR LESS

- A. Claims (as defined below) by the Contractor in the amount of \$375,000 or less in the aggregate, and all other disputes between the parties relating to the Contract Documents or the Project in the amount of \$375,000 or less in the aggregate (even if such claims are not expressly covered by the terms and provisions of Section 20104 et seq. of the California Public Contract Code), shall be made and processed pursuant to the terms and provisions of, and the procedures outlined in, California Public Contract Code

Sections 20104, et seq. (as may be amended or recodified from time to time), which procedures (as of September 1, 1996) are set forth below. All mediations and arbitrations shall take place at a location selected by the arbitrator in the City of San Francisco, California.

- B. Claims; requirements; tort claims excluded. For any Claim, the following requirements apply:
1. The claim shall be in writing and include the documents specified in Paragraph 4.02D above necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by the Contract for the filing of claims.
 2. For claims of less than fifty thousand dollars (\$50,000):
 - a. The District shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim that the District may have against the Contractor.
 - b. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the District and the Contractor.
 - c. The District's written response to the claim, as further documented, shall be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
 3. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000):
 - a. The District shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim that the District may have against the Contractor.
 - b. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the District and the Contractor.
 - c. The District's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
 4. If the Contractor disputes the District's written response, or the District fails to respond within the time prescribed, the Contractor may so notify the District, in writing, either within 15 days of receipt of the District's response or within 15 days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within 30 days for settlement of the dispute.
 5. Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (1) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
 6. These procedures do not apply to tort claims and nothing herein is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

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

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

1. Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
2. If the matter remains in dispute:
 - a. the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
 - b. Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.
 - c. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.
 - d. The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

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

1. The District shall not fail to pay money as to any portion of a Claim which is undisputed except as otherwise provided in the Contract.
2. In any suit filed under Article 4.03C, the District shall pay interest at the legal rate on any arbitration award or judgment against it. The interest shall begin to accrue on the date the suit is filed in a court of law.

4.04 RESOLUTION OF CLAIMS IN EXCESS OF \$375,000

Any controversy or Claim arising out of or related to the Contract Documents or breach thereof, which involves any sum in excess of \$375,000 in the aggregate, shall be resolved by formal judicial proceedings initiated in a Federal or State court in the City of San Francisco. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PERSON ARISING OUT OF OR RELATING TO THE CONTRACT DOCUMENTS MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE CITY OF SAN FRANCISCO, CALIFORNIA, AND BY EXECUTION AND DELIVERY OF THE CONTRACT DOCUMENTS EACH PARTY HERETO ACCEPTS FOR ITSELF, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF AFORESAID COURTS AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THE CONTRACT DOCUMENTS.

EACH OF THE PARTIES TO THIS CONTRACT HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING

OUT OF THE CONTRACT DOCUMENTS, THE WORK OR THE PROJECT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE AL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THAT RELATIONSHIP, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, ANTITRUST CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON-LAW OR STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS CONTRACT AND ALL OTHER CONTRACT DOCUMENTS AND INSTRUMENTS PROVIDED FOR HEREIN, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING, OR HAS HAD AN OPPORTUNITY TO DO SO, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS CONTRACT OR ANY OTHER CONTRACT DOCUMENTS OR DOCUMENT ENTERED INTO BETWEEN THE PARTIES IN CONNECTION WITH THIS CONTRACT OR THE PROJECT. IN THE EVENT OF LITIGATION, THIS CONTRACT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT WITHOUT A JURY.

CONTRACTOR'S _____ DISTRICT'S _____
INITIALS: _____ INITIALS: _____

4.05 CONTINUING CONTRACT PERFORMANCE.

Pending final resolution of any item hereunder unless otherwise provided by any term or provision of the Contract Documents or instructed by the District in writing, the Contractor shall proceed diligently with performance of the Work, and the District shall continue to make payment of all undisputed amounts in accordance with the Contract Documents.

ARTICLE 5 - SUBCONTRACTORS

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

- A. Subcontracting shall be in accordance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Section 4100 et seq., which shall govern the designation of, failure to specify, and substitution of Subcontractors and assignment, transfer, and performance of subcontracts.
- B. Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, within five (5) working days after award of contract, shall furnish in writing to the District, in addition to those in the Subcontractor's Listing Form, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each portion of the Work including lower tier Subcontractors. The District will promptly notify the Contractor in writing stating whether or not the District, after due investigation, has reasonable objection to any such proposed person or entity.
- C. The Contractor shall not contract with a proposed person or entity to whom the District has made reasonable and timely objection.
- D. If the District has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the District has no reasonable objection. The District shall not be responsible for added costs, if any, of the Contractor retaining another person or entity.
- E. The District's consent to or approval of any Subcontractor under this Contract shall not in any way relieve the Contractor of its obligations under this Contract with respect to such persons and no such consent or approval shall be deemed to waive any such provisions of this Contract.

5.02 SUBCONTRACTOR RELATIONS

A. By appropriate agreement 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 the obligations and responsibilities which the Contractor, by these Documents, assumes toward the District. Each subcontract agreement shall preserve and protect the rights of the District under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. 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, and, upon written request of the Subcontractor, identify to the Subcontractor 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.

B. The Contractor shall require that each Subcontract (including, but not limited to contracts for provision of services, supply of goods, lease of equipment or tools, or labor) contain the following provision:

Subcontractor does hereby release Contractor and the District, and save Contractor and the District harmless, from and against all claims and liabilities of every nature (including but not limited to injury to or death of Subcontractor's employees, injury or damage to property or persons, attorneys' fees, and court costs) directly or indirectly arising from the performance of this agreement, or, arising out of the failure of Subcontractor to comply with the requirement of the Subcontractor to provide a safe place to work (including as required by sections 3300, 6401 and 6406 of the California Labor Code) and from any claims, loss, damage, injury, death or liability however caused or incurred, including injury to or death of Subcontractor's employees, resulting directly or indirectly from the nature of the work or provision of supplies or rental of equipment or tools covered by this agreement. Such duties to release and save Contractor and the District harmless shall apply to liability incurred or claimed as a result of negligence, regardless of responsibility for such negligence, including the active negligence of the Contractor or the District, provided; however, that nothing in this agreement purports to or should be understood to provide for indemnity of Contractor or the District for Contractor's or the District's sole negligence or willful misconduct.

C. The Contractor agrees to assign the above-described indemnification rights to the District upon the occurrence of the following events:

1. The making of any claim, institution of any proceeding to recover damages or establish liability as to the District, or the notification of an intent to bring any claim as against the District for any loss, damage, injury, or relief from conditions arising out of or in anyway related to the Work; and
2. Written demand from the District to the Contractor for assignment of the express indemnification rights contained in the Subcontracts or other contracts for the provision of services, supply of goods, lease of equipment or tools, or labor.

5.03 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

A. Except as otherwise provided herein, each subcontract agreement for a portion of the Work is assigned by the Contractor to the District provided that:

1. assignment is effective only after termination of the Contract by the District for cause pursuant to Article 14 of these General Conditions, and only for those subcontract agreements which the District accepts by notifying the Subcontractor in writing; and
2. assignment is subject to the prior rights, if any, of the surety, obligated by the bond provided under the Contract.

ARTICLE 6 - CONSTRUCTION BY DISTRICT OR BY SEPARATE CONTRACTORS

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

- A. The Contractor is alerted to the Project conditions of the areas in which work will be performed under the Contract. Certain governmental departments, public or private utility companies, and other contractors employed by the District may be working simultaneously with and in the vicinity of the Contractor's work areas, and the District may award other contracts which may similarly affect the Contractor's work.
 - 1. Utility Relocation Work: The Contractor shall cooperate fully with all utility forces of the District or forces of other public or private agencies engaged in relocating, altering, or otherwise rearranging of any facilities which interfere with the progress or proper completion of the Work, and shall schedule the Work so as to minimize interference with said relocating, altering, or other rearranging of facilities.
 - 2. Should construction work, or work of any nature, be indicated elsewhere in the Contract Documents to be performed by other Contractors or other forces within or adjacent to the limits of Work, or be underway at the time the Work was advertised for Bids, Contractor shall cooperate with all such Contractors or forces to the end that delay or hinderance to their Work shall be avoided. The cost of such cooperation shall be considered as included in Contractor's bid price and no direct or additional payment will be made therefor.
- B. 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.
- C. The District reserves the right to perform other or additional work, within or adjacent to the limits of work specified at any time by the use of other forces or contractors. In the event that another contractor, in the course of performing work on behalf of the District, gives the Contractor written notice concerning work to be performed at the location(s) where the Contractor is already performing Work, and if the District grants approval, the Contractor shall fully cooperate with said contractor and shall schedule and coordinate its Work with the work of the other contractor and shall assume the following mutual responsibilities at no additional cost to the District.
 - 1. The Contractor and the other contractor shall both execute identical agreements mutually indemnifying each other from any loss, damage, or injury that may be incurred as a result of the performance of work by the other while both are performing work in these areas.
 - 2. The Contractor and the other contractor shall each add the other as an additional insured under their respective liability policies.
 - 3. The party seeking to use portions of the construction site of the other to perform its work shall pay all direct costs incurred by the other party to accommodate its operations.
 - 4. If the Contractor claims that delay or additional cost is involved because of such action by the District, the Contractor shall make such claim as provided elsewhere in the Contract Documents.
- D. The District shall not be a party to any of the agreements between the Contractor and the other contractor and shall have no liability to the other party with regard to the lack of coordination and cooperation or the inability of a party to obtain work areas from the other party. The Contractor agrees to indemnify and hold harmless the District for any claims or losses that it or the other contractor may incur as a result of their inability to successfully negotiate the joint use of property under the control of one of the parties.

6.02 MUTUAL RESPONSIBILITY

- A. The Contractor shall afford all such other contractors reasonable opportunity for storage of their materials, shall ensure that the execution of its Work properly connects and coordinates with work of all other pertinent contractors, and shall cooperate with said other contractors to facilitate the progress of the Work in such a manner as the District may direct.

- B. Notice of Conflicting Conditions: Where the Contractor's Work is associated with that of another contractor, the Contractor shall examine the adjacent work and report in writing to the District any visible defect or condition preventing the proper execution of its Contract. If it proceeds without giving notice, the Contractor shall be held to have accepted the work or material and the existing conditions, and shall be responsible for any defects in its own Work consequent thereon, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.
- C. To the extent that any part of the Contractor's Work is to interface with work performed or installed by other contractors, the Contractor shall inspect and measure the in-place work and promptly report to the District any defect in such in-place work that will impede or increase the cost of the Contractor's interface unless corrected. The District will require the contractor responsible for the defective work to make corrections so as to conform to its contract requirements, or, if the defect is the result of a default or omission in the Contract Documents, issue a change order. If the Contractor fails to measure, inspect and/or report defects that are reasonably discoverable, all costs of accomplishing the interface acceptably shall be borne by the Contractor. The foregoing does not apply to latent defects. The Contractor shall report latent defects in another contractor's work at any time such defects become known, and the District or its authorized representatives shall promptly thereafter take such steps as may be appropriate.
- D. The Contractor shall notify the District in writing when another contractor on this Project fails to coordinate its work with the Work of this Contract as directed.
- E. The Contractor shall suspend any part of the Work herein specified or shall carry on the same in such manner as may be specified or shall carry on the same in such manner as directed by the District when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or claims by the Contractor will be allowed therefor other than an extension of the time as specified in this Contract for the completion of the Work. Such an extension will be for a period of time as the District shall consider the Contractor to have been delayed in the Completion of the Work by reason of the work of other contractors or workers.
- F. The Contractor shall prepare coordination drawings as necessary, as determined by the District, to satisfactorily coordinate and interface the Work of its Contract with the work of all other contracts thereby avoiding conflicts which may otherwise arise.
- G. At any time during the progress of the Work, the District shall have authority to require the Contractor to attend any conference of any or all of the contractors engaged in the Work, and any notice of such conference shall be duly observed and complied with by the Contractor.
- H. The District shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from the award or performance or attempted performance of any other contract or contracts on the Project, or caused by any decision or omission of the District respecting the order of precedence in performance of contracts. Should the Contractor cause damage to the work of another contractor on the Project site, Contractor agrees, upon due notice, to settle with such other contractor by agreement or arbitration without cost to the District.

6.03 COORDINATION

- A. If the District determines that the Contractor is failing to coordinate its Work with the work of other contractors as directed, the District may upon seventy-two (72) hour written notice:
 - 1. Withhold any payment otherwise owed hereunder until the Contractor complies with the District's directions.
 - 2. Direct others to perform portions of the Contract and charge the cost of Work against the Contract amount.
 - 3. Terminate any and all portions of the Contract for the Contractor's failure to perform in accordance with the Contract.

6.04 CLEAN UP RESPONSIBILITIES

- A. Contractor and other Contractors shall each bear responsibility for maintaining their respective work areas on the premises and adjoining areas free of waste, rubbish, graffiti, debris, or excess materials and equipment at all times.
- B. 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, rubbish, and excess materials and equipment, the District may, after twenty-four (24) hour written notice, clean up and allocate the cost plus an additional fee of twenty-five percent (25%) for administrative costs among those responsible as it determines to be just.

ARTICLE 7 - CHANGES IN THE WORK

7.01 ADDITIONS, DELETIONS AND REVISIONS

- A. The District, before the date of Project Completion, may order additions, deletions, or revisions in the Work herein required, and the Contractor shall promptly comply with such orders and proceed with the work, which shall be performed under the applicable requirements of the Contract Documents. Such additions, deletions, and revisions will be authorized by a Contract Modification as defined in Article 1.03 of the Contract General Conditions.
- B. Additions, deletions, and revisions, which result in a change in the Contract Sum or Contract Time, shall be effected by a written Contract Modification, which has been approved by the District. Those additions, deletions, and revisions which do not result in a change in the Contract Sum or Contract Time, shall be effected by a written directive from the District such as a response to a Contractor generated Request for Information. All addenda and change orders are subject to approval by the Division of the State Architect. See, the California Code of Regulations, Title 24, Part 1, section 4-338, under Change Orders.
- C. Contract Modifications made pursuant to Article 7 of these General Conditions and extensions of Contract Time necessary by reason thereof, shall not in any way release any guarantees/warranties given by the Contractor pursuant to the provisions of the Contract Documents, nor shall such Contract Modifications relieve or release the sureties of bonds executed pursuant to said provisions. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such Contract Modification and to any extension of time made by reason thereof. The Contractor shall be responsible for giving notice of any change affecting the Work, Contract Sum or Contract Time, which is required by the provisions of any bond to be given to a surety and shall increase the amounts of each of the Payment Bond and Performance Bond in proportion to any increase in the Contract Sum.

7.02 CONTRACT MODIFICATION PROCEDURES

- A. Initiation: Additions, deletions, and revisions may be initiated by either the Contractor or the District. Contractor initiated Contract Modifications shall be in the form of a Request for Change (RFC). Notice and procedure requirements for RFCs are addressed in Article 4.02 of these General Conditions. The District will initiate Contract Modifications by issuing a Proposed Change Order (PCO), which will include a detailed description of the proposed modification with supplementary or revised Drawings and Specifications and request a quotation of cost of such additions, deletions or revisions and time of completion from the Contractor. The District reserves the right to order in writing such work arising from unforeseen or other anticipated conditions on a force account basis as provided in Paragraph 7.03 as may be determined by the District to be required for proper completion of the Work.
- B. Cost Proposal Time Period: The Contractor shall submit a PCO cost proposal to the District within twenty-one (21) calendar days upon receipt of the PCO. If the Contractor fails to submit a PCO cost proposal within twenty-one (21) calendar days, or the price cannot be agreed upon, the District may issue a Unilateral Change Order instructing the Contractor to proceed with the proposed modification for subsequent inclusion in a Contractor Modification based on the District's estimate of the cost. All requests

for time extensions pursuant to Paragraph 8.02 or claims for damages for delay caused by the District's processing of Contract Modifications will be reduced by the additional time in excess of that allowed for the Contractor to submit a cost proposal as provided hereinabove.

- C. Cost Proposal Breakdown: The Contractor shall furnish two (2) copies of its cost proposal, and it shall include a complete itemized breakdown of labor, material, equipment, taxes, insurance, bonds, and markup for overhead and profit for both additions and deletions on a form supplied by the District. A complete itemized breakdown is also required for Subcontractor cost proposal on the same form as required for the Contractor. At a minimum, the following documentation shall be provided to support Contractor and Subcontractor computations: material quantities and types of products; labor breakdown by trade classification, wage rates, and estimated hours; equipment breakdown by make, type, size, rental rates, and equipment hours; taxes, insurance and bonds; justification for any adjustment in Contract Time including a schedule analysis identifying critical schedule activities delayed by the PCO.
- D. Contractor Overhead and Profit: The Contractor's profit and overhead shall be based on a markup calculation and not a margin calculation. The markup for overhead and profit on Contract Modifications will be determined as follows:
 - 1. For Work performed by the Contractor, the markup shall be equal to fifteen percent (15%) of the direct cost as defined herein. Costs of tax and insurance shall not be marked up.
 - 2. For Work performed by a Subcontractor, the Contractor markup shall be five percent (5%) of the direct cost of the Subcontractor and the Subcontractor markup shall be fifteen percent (15%) of his own direct cost. Costs of tax and insurance shall not be marked up.
 - 3. For Work performed by a Sub-Subcontractor, the Contractor markup shall be five percent (5%) of the direct cost of the Sub-Subcontractor, the Subcontractor markup shall be five percent (5%) of the Sub-Subcontractor direct cost, and the Sub-Subcontractor markup shall be fifteen percent (15%) of his own direct cost. Costs of tax and insurance shall not be marked up.
 - 4. All tiers lower than the Sub-Subcontractor shall have their markup included in the Sub-Subcontractor markup.
 - 5. In all cases the total markup on the direct cost shall not exceed twenty five percent (25%). There shall be no compound markup.

The table below summaries the allowable markups:

Work Done By	Markup by			Total
	Contractor	Sub	Sub-Sub	
Contractor	15%			15%
Sub-Contractor	5%	15%		20%
Sub-Sub-Contractor	5%	5%	15%	25%

- E. Direct Cost Defined: Direct costs shall only include the basic wage rates for labor, labor burden, material and equipment required for the Contract Modification.
 - 1. Labor rates will not be recognized when in excess of those prevailing in the locality and time the Work under Contract Modification is being performed. The costs for all supervision, including general superintendents and foreman, shall be included in the markup defined herein. Working foreman will be considered a direct cost if the individual is on the project site only installing Work under Contract Modification with no other work being performed at the time. A breakdown of the Labor payroll rates with the corresponding classifications for each trade used for Contract Modifications shall be furnished to the District with the Proposal Change Order (PCO).

2. Labor burden shall be based on rates currently in effect at the time the Work under the Change Order is being performed and shall include only fringe benefits by governing trade organizations, Federal Insurance Contributions Act, Federal and State Unemployment taxes, San Francisco business and payroll taxes, and net actual premium paid for public liability, workers' compensation, property damage, and other forms of insurance required by the District. No other costs will be included as labor burden.
3. Material costs directly required for the performance of the Contract Modification are direct costs. Such costs may include the cost of transportation. If a trade reduction by an actual supplier is available to the Contractor, it shall be credited to the District. If the materials are obtained from a supplier or source owned wholly by or in part by the Contractor, payment thereof will not exceed the current wholesale price for the materials. The term trade reduction includes the concept of cash discounting.
 - a. For general building construction, material shall be based on the most current Lee Saylor Book with a thirty percent (30%) reduction for material and labor figures.
 - b. For concrete work, material and labor costs shall be based on the most current Lee Saylor Book.
 - c. For electrical work, material costs shall be based on the most current Biddle Book, end column, with a ten percent (10%) reduction. Costs of all major equipment and/or material unlisted shall be based on vendor's invoices. Copies of all invoices shall be provided as support documentation with each Contract Modification cost proposal.
 - d. For mechanical work, material costs shall be based on the most current Trade Service Corporation Manual with a thirty percent (30%) reduction. Costs on all major equipment and/or material unlisted shall be based on vendor's invoices. Copies of all invoices shall be provided as support documentation with each Contract Modification cost proposal.
4. Equipment Costs: The allowance for equipment costs (both rental as well as Contractor-owned equipment) shall be based on eighty percent (80%) of the K-111 AED Blue Book rental rates. Hourly, daily, weekly, or monthly rates shall be used, whichever is lower. Hourly rates including operator shall not be used. Unless otherwise specified, manufacturer's ratings, and manufacturer approved modifications, shall be used to classify equipment for determination of applicable rental rates.
 - a. The actual time to be paid for equipment shall be the time that the equipment is in productive operation on the Work under Contract Modification. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to and from the project site. No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site in any other way than upon the work directly related to the Contract Modification.
 - b. Individual pieces of equipment having a replacement value of one thousand dollars (\$1,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein.
 - c. Payment to the Contractor for the use of equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to the Contractor incidental to the use of the equipment.
5. Labor Productivity Rates: All Contract Modification work involving mechanical and electrical trades shall use labor productivity rates based on the following: Electrical labor productivity rates shall be based on the most current edition of N.E.C.A Column 1 with a five percent (5%) reduction. Wet side

mechanical labor productivity rates shall be based on the most current edition of "M.C.A. Standards" with a twenty percent (20%) reduction. Dry side mechanical labor productivity rates shall use SMACNA Standards at a twenty percent (20%) reduction.

- F. Costs Included as part of the Markup for Project General Conditions (hereinafter "Overhead"), and Profit: All Contract Modification costs not specifically listed above as a direct cost shall be included in the markup for general conditions, including overhead and profit. No separate allowance or itemization for general conditions, including overhead costs shall be allowed. Below is a list of costs, which is not intended to be comprehensive, of the type of costs included in the markup for overhead and profit for all Contract Modifications including Force Account Work.
1. Field and home office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftsmen, schedulers, consultants, watchmen, payroll clerks, administrative assistants, and secretaries.
 2. All field and home office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service and long distance telephone calls, fax machines, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under one thousand dollars (\$1000.00) each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to regulatory requirements including compliance to safety regulations, safety programs and meetings, cartage, warranties, as-builts, as well as any related maintenance costs.
 3. Administrative functions such as, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, expediting, engineering, drawing, detailing, revising shop drawings, carting, layout, cleaning, protecting the work, and other incidental Work related to the Contract Modifications.
 4. The Contractor shall be solely responsible for determining which of its Subcontractors receive Contract Modifications. No additional compensation will be provided the Contractor for the Subcontractor's cost to review, post, coordinate and perform related tasks to administer Contract Modifications that do not result in direct cost charges from said Subcontractor. Such costs are considered normal business costs that are contractually determined prior to bid between the Contractor and its subcontractors, and that such costs shall be included in the Total Lump Sum Bid.
 5. Taxes: Federal excise tax shall not be included. The District will issue an exemption on request.
 6. Insurance and Bond Premiums: The actual cost to the Contractor of the following will be allowed with no markup for overhead and profit: Federal Insurance Contributions Act taxes, bond premiums, Federal and State Unemployment taxes; and net actual premium paid for public liability, workers' compensation, property damage, and other forms of insurance required by the District.
 7. All other costs and taxes required to be paid, but not included under direct costs as defined above.
- G. Time Adjustment Proposal Requirements: If Contractor asserts it is entitled to an adjustment in Contract Time due to the proposed change order work, Contractor shall provide a separate Notice of Delay prior to submitting a PCO or COR time adjustment proposal. At a minimum, Contractor shall provide the following documentation to the District in support of Contractor and Subcontractor time adjustment proposals:
1. Contractor shall submit to the District a CPM time impact evaluation using subnetwork or fragmentary network and including a written narrative and a schedule diagram or other written documentation acceptable to the District, showing the detailed work activities involved in a change that may affect the Contract Time and impact of the change on other Work and activities of the proposed schedule adjustment. This subnetwork shall be tied to the complete progress schedule network with appropriate logic so that a true analysis of critical path can be made. Failure timely to provide the Notice of Delay or the supporting documentation required under subparagraph 7.02 G.1 within the 21-day period provided in subparagraph 7.02 B will result in Contractor waiving its right for additional time.

- H. Execution of Change Orders: When the District and Contractor agree on the total cost and time of a PCO, the District will prepare for signatures of parties a Change Order to formally implement the Work described in the PCO. No oral instructions of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract.
- I. Release of Claims: Contractor shall agree to the terms and conditions of Change Orders and to release the District from claims for additional compensation or time relating to the undisputed amount of the change in the Work.
 - 1. If Contractor fails to provide timely documentation of delay to the District as described in subparagraph 7.02 G.1, which shall be sufficient to entitle Contractor to a time extension pursuant to paragraph 8.02, Contractor shall execute the Change Order without being granted any extension of time.
 - 2. It shall be a material breach of the Contract for Contractor to refuse to execute a Change Order and thereby delay to the Project based on Contractor's failure to demonstrate that Contractor is entitled to a time extension for the changed Work.
 - 3. All delays caused to the progress schedule as a result of Contractor's failure to execute timely a Change Order in accordance with this Paragraph 7.02 shall be the responsibility of the Contractor and shall subject Contractor to liability for liquidated damages as specified in Document 00802-Contract Time and Liquidated Damages.
 - 4. Contractor shall not be entitled to make a reservation of rights to seek at a later time additional Contract Time for the changed Work addressed in the Change Order.
- J. Miscellaneous Requirements:
 - 1. Records: The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Contract Modifications and the cost of the original Work. This requirement pertains to all types of Contract Modifications, as well as the Contractor's Requests for Changes and Claims.
 - 2. The Contractor hereby reconfirms that it has intensively reviewed the Drawings and Specifications and the Project Site and is familiar with all laws, rules and regulations that may be imposed upon the Project or the Work by any governmental entity. The Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time for any concealed or unknown condition encountered in the performance of the Work, or for correcting any mistakes or omissions in the Drawings or Specifications, if the Contractor knew of or should have recognized (given the Contractor's investigation of the Drawings and Specifications, the Project Site and the proposed Work) the condition or mistake/omission prior to commencement of the Work.

7.03 UNILATERAL CHANGE ORDERS

- A. General: When time does not allow for the Contract Modification to be negotiated through the PCO process, or when the District and the Contractor are unable to agree on the cost or time required to complete the change in the Work described in the PCO, the District may issue a Unilateral Change Order instructing the Contractor to proceed with the Work based on the District's estimate of cost and time to perform the change in the Work, if any. Upon receipt of a Unilateral Change Order, the Contractor shall proceed with the ordered Work.
- B. Protest: Should the Contractor disagree with any terms or conditions set forth in a Unilateral Change Order, the Contractor shall submit a written RFC within seven (7) calendar days of receipt of the said Unilateral Change Order and before proceeding with the Work thereof. If a written RFC is not submitted as required, the Contractor waives all rights to additional compensation for said work, and payment will be made as set forth in the Unilateral Change Order. Such payment shall constitute full compensation for Work. After the RFC has been filed, and after the Unilateral Change Order work is completed in the field, the Contractor shall notify the District within seven (7) calendar days of its intent to submit a claim for the cost differential between the Contractor's actual cost and the District's estimate included in the Unilateral

Change Order. The Contractor shall then submit a claim in accordance with the requirements of Article 2.07 of these Contract General Conditions. The Contractor shall waive its rights to claim if notice is not provided as stipulated above.

7.04 FORCE ACCOUNT CHANGE ORDER

- A. General: When Work, a definite price for which has not been agreed upon in advance, is to be paid for on a force account basis, all direct costs necessarily incurred and paid by the Contractor for labor, material and equipment used in the performance of such work, shall be subject to the approval of the District and compensation will be determined as set forth herein.
 - 1. The District will issue a Force Account Change Order to proceed with the Work on a force account basis, and the District will establish a not-to-exceed budget.
 - 2. With the exception of labor productivity rates for mechanical and electrical work, all requirements regarding direct cost for labor, labor burden, material, equipment and markups on direct costs for overhead and profit described in Article 7.01 and 7.02 of these General Conditions shall apply to Force Account Change Orders. However, the District will only pay for actual costs verified in the field by the District on a daily basis.
 - 3. The Contractor shall be responsible for all cost related to the administration of Force Account Change Orders. The markup for overhead and profit for Contractor Modifications shall be full compensation to the Contractor to administer Force Account Change Orders.
- B. Notification: The Contractor shall notify the District at least twenty-four (24) hours prior to proceeding with any of the force account work. In addition, the Contractor shall notify the District when it has consumed eighty percent (80%) of the budget, and shall not exceed the budget unless specifically authorized in writing by the District. The Contractor will not be compensated for force account work in the event the Contractor fails to timely notify the District regarding the commencement of force account work, or exceeding the force account budget.
- C. Reports: The Contractor shall diligently proceed with the work, and on a daily basis, submit a daily force account report on a form supplied by the District no later than 5:00 p.m. that day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the force account work. The classification of labor employed, and the names and social security numbers of the individuals performing the force account work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. The District will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to the Contractor for their records. The District will not sign, nor will the Contractor receive compensation for work the District can not verify. The Contractor will provide a weekly force account summary indicating the status of each Force Account Change Order in terms of percent complete of the NTE budget and the estimated percent complete of the work. Upon completion of the change in the Work, a Change Order will be issued and signed by the District and the Contractor based upon the aforesaid records.
- D. Agreement: In the event the Contractor and District reach a negotiated, signed agreement on the cost of a Contract Modification while the work is proceeding based on a Force Account Change Order, the Contractor's signed daily force account reports shall be discontinued and all previously signed reports shall be invalid.

7.05 UNIT PRICE CHANGE ORDERS

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established Unit Price for each Bid Item of unit price Work times the estimated quantity of each item as indicated in the Schedule of Bid Prices. The estimated quantities of unit price Bid items are not guaranteed and are solely for the purpose of comparing Bids and determining an initial Contract Total Lump Sum Bid. Determination of the actual quantities and classifications of Unit Price Work will be made by the District in accordance with Section 01027 - Application for Payment.

1. Each Unit Price bid on the Schedule of Bid Prices shall include an amount considered by the Contractor to cover Contractor's markup for overhead and profit provided in Paragraph 7.02.
- B. Procedure: For pre-determined unit prices and quantities, a Unit Price Change Order will be executed on a fixed unit price basis. An adjustment in the Contract Unit Price may be made for changes which result in an increase or decrease in the quantity of any unit price Bid Item of the Work in excess of thirty percent (30%) of the estimated quantity indicated on the Schedule of Bid Prices, or for eliminated items of Work.
- C. Quantity Increases: Should the total quantity of any item of Work required under the Contract exceed the estimated quantity indicated on the Schedule of Bid Prices by more than ten percent (10%), the Work in excess of one-hundred ten percent (110%) of such estimated quantity will be paid for by adjusting the Contract Unit Price as hereinafter provided, or at the District's option, payment for the Work involved in such excess will be made on a contract modification procedure or force account basis as provided in Paragraph 7.02 or 7.03.
 1. Such adjustment of the Contract Unit Price will be the difference between the Contract Unit price and the actual unit cost, which will be determined as hereinafter provided, of the total pay quantity of the item. If costs applicable to such item of work include fixed costs, such fixed costs will be deemed to have been recovered by the Contractor by payment made for one-hundred ten percent (110%) of the Schedule of Bid Price quantity for such item, and in computing the actual unit cost, such fixed costs shall be excluded. Subject to the above provisions, such actual unit cost will be determined by the District in the same manner as if the Work were paid for on contract modification procedure or force account basis as provided in Paragraph 7.02 or 7.03, or such adjustment will be as agreed to by the Contractor and the District.
 2. The payment for the total pay quantity of such item of Work will in no case exceed the payment which would be made for the performance of one hundred ten percent (110%) of the estimated quantity as indicated on the Schedule of Bid Prices at the original Contract Unit Price.
 3. At the District's option, payment for the Unit Price Work in such excess will be made on a Force Account basis as provided in Paragraph 7.04 in lieu of adjusting the unit price in accordance with subparagraphs 7.05 C.1 and 7.05 C.2.
- D. Quantity Decreases: Should the total quantity of any item of Work required under the Contract be less than seventy percent (70%) of the estimated quantity indicated in the Schedule of Bid Prices, an adjustment in compensation will not be made unless the Contractor submits a written RFC as provided in Paragraph 2.07. If the Contractor so requests, the quantity of said item performed will be paid for by adjusting the Contract Unit Price as hereinafter provided, or at the District's option, payment for the Work involved will be made on a force account basis as provided in Paragraph 7.04, provided however, that in no case shall the payment for such Work be less than that which would be made at the Contract Unit Price.
 1. Such adjustment of the Contract Unit Price will be the difference between the Contract Unit price and the actual unit cost, which will be determined as hereinafter provided, of the total pay quantity of the Item, including fixed costs. Such actual unit cost will be determined by the District in the same manner as if the Work were paid for by a contract modification procedure or on a force account basis as provided in Paragraph 7.02 or 7.04; or such adjustment will be as agreed to by the Contractor and the District.
 2. The payment for the total pay quantity of such item of Work will in no case exceed the payment which would be made for the performance of seventy percent (70%) of the estimated quantity as indicated on the Schedule of Bid Prices at the original Contract Unit Price.
- E. Deleted Items: Should any Contract Bid item of Work be deleted in its entirety, payment will be made to the Contractor for its actual direct costs incurred in connection with such deleted Contract Bid item if incurred prior to the date of notification in writing by the District of such deletion.
 1. If acceptable material is ordered by the Contractor for the deleted item prior to the date of notification of such deletion by the District, and if orders for such material cannot be canceled, it will be paid for at the actual cost to the Contractor. In such case, the material paid for shall become the property of the District and the actual cost of any further handling will be paid for by the District. If the material is

returnable to the vendor and if the District so directs, the material shall be returned and the Contractor will be paid for the actual cost of charges made by the vendor for returning the material, including the actual cost of freight in returning material.

2. The actual costs or charges to be paid by the District to the Contractor for any deleted Contract item will be computed in the same manner as if the Work were to be paid on contract modification or force account basis as provided in Paragraph 7.02 or 7.04.

7.06 AUDITS

- A. The District shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontracts, job cost reports, and other data of the Contractor, Subcontractors, and suppliers including computations, and projections related to bidding, negotiating, pricing, or performing the Work, or Contract Modification in order to evaluate the accuracy, completeness, and currency of the cost or pricing data at no additional cost to the District.
- B. The Contractor shall make available at its office at all reasonable times the materials described in Subparagraph 7.06A herein before for examination, audit, or reproduction, until three (3) years after final payment under this Contract.
- C. The Contractor shall insert a clause containing all the provisions of Article 7 herein before, including this Paragraph, in all Subcontractors and lower-tier Subcontractors and Suppliers for this Contract over Ten Thousand Dollars (\$10,000).

ARTICLE 8 - TIME

8.01 PROGRESS AND COMPLETION

- A. Time is of the essence. The Contractor shall commence the Work of the Contract within five (5) calendar days from issuance of written Notice to Proceed from the District and shall diligently prosecute the Work to Project Completion.
- B. No demolition, removal, or reconstruction Work at the site shall be started until Contractor has presented evidence satisfactory to the District Representative that it can, upon commencement, prosecute the Work continuously and expeditiously, and specific authorization has been issued by the District for Work to start. A progress schedule submitted by Contractor and accepted by the District in accordance with the requirements of the Contract Documents shall be the basis for determining the date on which Work at the Site may start.
- C. The continuous prosecution of the Work by the Contractor shall be subject only to the delays defined hereinafter. The start of Work shall include attendance at pre-construction conferences, preparation and submittal of Shop Drawings, equipment lists, Schedule of Values, CPM construction schedules, requests for substitutions and other similar activities. Submittals shall be prepared in accordance with the Contract Documents and shall be made within the time limits required. It may be necessary that certain portions of the work be completed at different times to minimize disruption of school activities and maintain continued smooth operations of the District. The Contractor shall coordinate with the District and include these interface activities in the Contract Schedule.
- D. The Work of this Contract shall be brought to Substantial Completion and final completion, as determined by the District, in the manner provided for in the Contract Documents and in the number of calendar days set forth as follows, from and after the receipt by the Contractor of the written Notice to Proceed.
 1. **CONTRACT TIME:** The Contract Time shall be as defined in the Instructions to Bidders and the Agreement, for calendar days beginning with and including the official date of Notice to Proceed to the official date of Notice of Completion, both issued by the District. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

- a. Notice of Substantial Completion is a document issued by the District to the Contractor acknowledging that the Work can be utilized for its intended purpose and the entire Project could be occupied for the intended purpose.
 - b. During the time between Substantial Completion and Final Completion, Contractor shall complete the punchlist work, but Contractor shall not disrupt the District's beneficial occupancy of the Project or any public use of the Work.
 - c. Notice of Project Final Completion is a document issued by the District to the Contractor acknowledging that the Project is complete. Final completion is a condition precedent to final payment.
2. The time limit for the Work as specified shall not be affected by the acceptance of any of the alternate(s); provided that said Alternates were incorporated into the Contract within six (6) months after Notice to Proceed.
 3. The specified limits of Contract Time may be changed only by Change Order. Claims for compensation because of adjustment of the limits of Contract Time shall be made in accordance with the requirements of Paragraph 4.02.
- E. Failure to reach the completion dates as provided hereinabove, as determined by the District, within the required number of calendar days, and in the manner required by the Contract Documents, shall subject the Contractor to liquidated damages as stipulated hereinafter, unless extensions of time are granted in accordance with the provisions hereinafter.
- F. The Contractor shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at the rate necessary to reach completion dates required hereinabove of the Work herein required within the times specified in the Agreement and in accordance with the initial Contract schedule. Work shall not start and the Project be left in an incomplete state for an indeterminate period of time, while equipment and materials are in transit.
- G. It shall be the responsibility of the Contractor to maintain its schedule so as not to delay the progress of the Project or the schedules of other contractors. The Contractor is required by virtue of this Contract to cooperate in every way possible with other contractors in order to maintain its Contract duration. Except as otherwise provided, no additional compensation will be paid for such cooperation. If the Contractor delays the progress of the project or the progress of other contractors, it shall be the responsibility of the Contractor to take some or all of the steps outlined hereinafter to improve its progress.
- H. If, in the opinion of the District, the Contractor falls behind the Contract and current update of the Contract schedule and is not entitled to an extension of time, as presented in these Contract Documents, the Contractor shall take some or all of the steps outlined below to improve its progress at no additional cost to the District, and shall submit operational plans to demonstrate the manner in which the desired rate of progress may be regained.
- I. Whenever it becomes apparent that the Contractor due to its own actions has fallen behind the required rate of progress, or delays the progress of other contractors, some or all of the following steps must be taken.
1. Increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work.
 2. When permitted in writing by the District, work overtime or increase the construction equipment in an amount sufficient to substantially eliminate the backlog of work.
 3. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.
 4. Expedite delivery of materials and equipment such as by air freight.
 5. Accelerate the priority of manufacture or fabrication of Work on order with the manufacturer, vendor, or supplier should such priority lists exist as a normal course of its business. Said acceleration shall also apply to shipment preparation.
 6. Any other means deemed appropriate.

- J. If the District directs the Contractor to take measures previously described, the Contractor shall bear all costs of complying, including additional administrative costs for the District and the District representatives.
- K. Should the Contractor at any time during the progress of Work, refuse, neglect, or be unable for avoidable reasons to supply sufficient materials, supervision, or workers to prosecute the Work at the rate necessary to complete the Work within the time specified in this Contract, in accordance with the currently accepted updated construction schedule, the District shall have the right to terminate the Contract as hereinafter set forth or it may give this Contractor written notice, specifying the default and requiring its correction. If the Contractor does not comply with such notice from the District within three (3) days of the date of service thereof, the District shall have the right to provide the materials and workers to finish said Work. The sums necessary to meet the expenses thereby incurred shall be deducted from any monies due or which may thereafter become due under the Contract, and paid to persons supplying such materials and doing such Work. The amount of any such payments shall be deducted from the construction fund set aside for the purposes of this Contract and charged to the Contractor as if paid to it.

8.02 DELAYS AND EXTENSIONS OF TIME

A. Unavoidable Delays:

- 1. For the purposes of these Contract Documents the term "Unavoidable Delay" shall mean an interruption of the Work beyond the control of the Contractor, and which could have not been avoided or shortened by the Contractor's exercising care, prudence, foresight, and diligence. Moreover, the Contractor must demonstrate with satisfactory evidence that the "Unavoidable Delay" actually extended the most current Contract Project Completion Date. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.
 - a. The Contractor will be entitled to a time extension for the following types of "Unavoidable Delay" but at no additional compensation: Acts of God; acts of the public enemy; inclement weather conditions; fires; floods; windstorms; tornadoes; earthquakes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sitdowns; slowdowns; other labor trouble; labor shortages; material shortages; fuel shortages; freight embargoes; acts of government agencies outside the District; acts of public utilities; priorities or privileges established for the manufacture, assembly or allotment of material by order, decree, or otherwise of the United States. This list is not intended to be comprehensive, and similar types of delay will not entitle the Contractor to additional compensation or a compensable time extension.
 - b. The Contractor shall be entitled to a compensable time extension for an "Unavoidable Delay" caused by a Contract Modification initiated or caused by the District provided such unavoidable delay is critical, extends the most current Contract Completion date, and is not concurrent with a Contractor caused delay or other type of Unavoidable delay previously defined. All other types of "Unavoidable delay" shall not entitle the Contractor to a compensable time extension which shall be the total amount included in the Contract Modification.
 - c. The Contractor shall be entitled to a non-compensable time extension in the event a compensable "Unavoidable Delay" is concurrent with either a Contractor generated "Avoidable Delay," or a non-compensable "Unavoidable Delay."

B. Avoidable Delays:

- 1. The term "Avoidable Delay" shall include, but is not limited to the following:
 - a. Any delay which could have been avoided or shortened by the exercise of care, prudence, foresight and diligence on the part of the Contractor;
 - b. Any delay in the prosecution of parts of the Work, which may in itself be unavoidable, but which does not necessarily prevent or delay the prosecution of other parts of the Work, nor delay the specified Project Completion date;

- c. Any delay caused by the untimely review by the Contractor of the Contract Drawings and Specifications pursuant to the General Conditions paragraph 3.01C;
 - d. Any delay arising from an interruption in the prosecution of the Work resulting from a reasonable interference from other contractors employed by the District, but does not delay the specified Project Completion date.
- C. Inclement Weather Delays:
1. Inclement weather shall not be a prima facie reason for the granting of a non-compensable time extension, and the Contractor shall make every effort to continue Work under prevailing conditions. Such efforts by the Contractor shall include, but are not limited to, providing temporary gravel roads; installing a rain de-watering system; protecting interior and exterior areas exposed to rain, wind, and extreme temperatures; and installing protective covers at roof, window or other openings; and providing temporary heat where required for work to proceed without delay.
 2. The District may classify an inclement weather day as a non-compensable "Unavoidable Delay," provided the Contractor made efforts to work during inclement weather and to avoid the impacts of inclement weather to its schedule. If such an event occurs, and the Contractor is prevented by inclement weather or conditions from proceeding with at least seventy-five percent (75%) of the scheduled labor, material and equipment resources for at least five (5) hours per work day on activities shown as critical on the most current and accepted schedule update, the delay will be classified as an "Unavoidable Delay," and the Contractor will be granted a non-compensable time extension.
 3. During unfavorable weather and other conditions, the Contractor shall pursue only such portions of the work as will not be damaged thereby. No portions of the work the satisfactory quality or efficiency of which will be affected by any unfavorable conditions shall be constructed while these conditions remain, unless, by special means or precautions approved by the **ARCHITECT**, the Contractor shall be able to overcome these conditions.
 4. Regardless of the type and severity of the inclement weather, the Contractor shall be responsible for all costs to make efforts to mitigate the impacts of inclement weather during the Contract duration.
- D. Notice of Delay: The Contractor shall promptly notify the District in writing of any anticipated delay in the prosecution of the Work, and, in any event, promptly upon the occurrence of a delay. Said notice shall constitute an application for an extension only if the notice requests such extension and sets forth the Contractor's estimate, if feasible, of the additional time required together with a full recital of the cause of delay relied upon. The District may take steps to prevent the occurrence or continuance of the delay and may determine to what extent the Project Completion is delayed thereby. The determination of the existence of any delay for which an extension of time will be granted will be based on whether such delay can be demonstrated by the Contractor to extend the Contractor's current critical path on the current construction schedule or require the formulation of a new extended critical path. If notice of a delay is not submitted on or prior to three (3) consecutive working days after the start of the occurrence of such a delay, the Contractor thereby admits the occurrence had no effect on the length of its duration of Work, and no extension of time is necessary, and no extension of time will be granted by the District. In either case the Contractor will not be entitled to extra compensation.
- E. Extensions of Time:
1. In the event it is deemed necessary by the District to extend the time of completion of the Work to be done under these Contract Documents beyond the required dates of the completion herein specified, such extensions shall in no way release any guarantees/warranties given by the Contractor pursuant to the provisions of the Contract Documents, or the Contract let hereunder, nor shall such extension of time relieve or release the sureties on the bonds executed pursuant to said provision. The sureties in executing such bonds shall be deemed to have expressly agreed to any such extension of time. The amount of time allowed in any extension of time shall be limited to the period of the delay giving rise to the same as determined by the District. The granting of an extension of time because of a delay shall in no way operate as a waiver on the part of the District of the right to collect liquidated and/or other damages or of any other rights to which the District are entitled. All guarantees and warranties

shall begin after final completion.

2. Should the Contractor, any Subcontractor of any tier or any supplier of any tier seek an extension of time for the completion of the Work under the provisions of this Paragraph, the Contractor and/or Subcontractor and/or supplier must submit justification for the extension of the time requested and otherwise comply with all provisions of these Contract Documents with respect to requests for extensions of time.
3. Neither this provision, nor any other provision of the Contract Documents, are intended by the parties to be contrary to any express provision of law. The parties specifically agree, acknowledge and warrant that neither this provision, nor any other provision of the Contract Documents, has for its object, directly or indirectly, the exemption of the District, the Architect, their consultants, and their respective directors, officers, members, employees, and authorized representatives from responsibility for their own sole negligence, violation of law or other willful injury to the person or property of another.

8.03 NOTICE OF LABOR DISPUTES

- A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay the timely performance of its Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the District. In addition, the Contractor shall take all appropriate measures to eliminate or minimize the effect of such labor dispute on the currently accepted construction Schedule, including but not limited to such measures as promptly seeking appropriate injunctive relief; filing appropriate charges with the National Labor Relations Board under the applicable provisions of the Labor Management Relations Act of 1947, as amended; filing appropriate damage actions; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; or any other measures that may be appropriately utilized to limit or eliminate the effect of the labor dispute. To the extent the Contractor fails to initiate measures that are appropriate, it is not entitled to an extension of time. In addition, any delay impact on any other Contractor's schedule or on the Construction Schedule will be considered as a Contractor-caused delay under any and all applicable provisions of the Contract.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.01 CONTRACT SUM

- A. Payment to the Contractor at the lump sum price fixed in the Contract for performing all Work required under the Contract, as adjusted for any Contract Modifications approved as hereinbefore specified, shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the Work, and for performing and completing, in accordance with these Contract Documents, all Work required under the Contract, and for all expenses incurred by the Contractor for any purpose in connection with the performance and completion of said Work.
- B. Whenever it is specified in the Contract Documents that Contractor is to perform Work or furnish materials of any class for which no price is fixed in the Contract, it shall be understood that such Work is to be performed without extra charge, allowance or direct payment of any sort, and that the cost of performing such Work or furnishing such materials is included in Contractor's Total Bid Price.

9.02 SCHEDULE OF VALUES

- A. Within 10 days of the date of commencement shown in the Notice to Proceed the contractor shall submit a schedule of values to the owner for review. This schedule of values shall breakdown the contract price into various estimated items of work, together with the contractor's allowance for overhead, insurance and profit. The contractor's overhead, insurance, profit and other such costs, shall be prorated through all items so that the sum of all items in the schedule of values shall equal the contractor's total lump sum bid.

This breakdown, which must be approved by the owner, will be the basis for determining the value of work performed for purposes of making payments to the contractor.

- B. The contractor's schedule of values shall include a separate line item for "project closeout" (with an assigned value attributed to it.)
- C. The contractor's schedule of values shall include a separate line item for "building commissioning" (with an assigned value attributed to it.)
- D. The Contractor shall not submit an application for payment without an approved schedule of values.

9.03 PROGRESS PAYMENTS

- A. Subject to the conditions set forth in these General Conditions, and to the authorization of the District or the authorized representatives of the District, payment shall be made upon demand of the Contractor and pursuant to the Contract Documents as follows.
- B. The District will, on or about the twentieth (20th) day of each month, after receiving the Contractor's monthly Schedule update, make an estimate of the value of the Work done by the Contractor completed after that Work which was included in the last preceding estimate in performance of the Contract. The monthly value of the Work described shall be estimated by the District pursuant to the applicable schedule of values prepared in accordance with Paragraph 9.02. Estimates need not be based on strict measurements, but may be approximate only, and will be in due proportion to the total amount, considering payments previously made, that will have become due for such Work satisfactorily completed under the Contract. No allowance will be made for materials or equipment not incorporated into the Work.
- C. On the 25th of each month, the Contractor shall submit to the District Representative for review an Application for Payment filled out and signed by the Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as otherwise set forth in the Contract Documents.
 - 1. In addition to other required items, each Application for Payment shall be accompanied by the following:
 - a. a duly executed and acknowledged sworn statement showing all Subcontractors with whom the Contractor has entered into contracts, the amount of each such contract, the amount requested for any Subcontractors in the Application for Payment, together with similar sworn statements from all such Subcontractors,
 - b. duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from Contractor, and all Subcontractors providing labor, services, materials or equipment in connection with the Work, whereby such persons conditionally waive all lien and stop notice rights against the District, the Project and the Project Site with respect to all payments to be made pursuant to the Application for Payment being submitted,
 - c. duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from Contractor, and all Subcontractors providing labor, services, materials or equipment in connection with the Work, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project site with respect to all payments made pursuant to all previous Applications for Payment,
 - d. copies of all recently issued permits or other governmental licenses and approvals with respect to the Work or the Project,
 - e. copies of certified payroll records (in the form described in Paragraph 13.08 hereof) from Contractor and each Subcontractor performing any work during the current payment period,
 - f. Architect's approval that the as-built drawings are current, and
 - g. all other information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the District or the Architect.

2. No payment shall be made for materials and equipment not incorporated in the Work.
- D. The Application for Payment shall identify the amount of the Contractor's total earnings to date.
- E. Monthly progress payment amounts to the Contractor shall be based upon completed Work activities or percentages of Work activities completed prior to the end of the payment period. A detailed payment procedure shall be transmitted to the Contractor by the District following the formal approval of the Schedule of Values.
- F. Monthly payment applications shall be based on information developed at monthly Application for Payment Approval Meetings and shall be prepared by the Contractor. Submission of Schedule updates for same period of Progress Payment Application shall be a condition precedent to making progress payment applications. Contractor shall submit monthly Schedule update information to the District three (3) working days after the Construction Schedule Approval Meeting and before submission of the progress payment application. No progress payment shall be made to the Contractor until all cost information requested by the District is submitted and reviewed.
- G. As soon as practicable after making each progress estimate, the District will pay to the Contractor in a manner provided by law, an amount equal to ninety percent (90%) of the value, based upon Contract prices, of labor and materials incorporated in the Work at the Project site up until midnight of the twenty-fifth (25th) day of the current month less the aggregate of previous payments, provided that payments may be withheld at any time that the Work, in the District's estimation, is not proceeding in accordance with the Contract, or as otherwise provided in Paragraph 9.05. When the District determines that the Work is fifty percent (50%) complete, the Contractor is making satisfactory progress and there is no specific cause for greater withholding, progress payments may, in the District's sole discretion, be made not to exceed an amount the lesser of either ninety-five percent (95%) of the value of the Work and labor, equipment and material furnished or ninety-five percent (95%) of the Contract Sum.
 1. The payment shall be made within thirty (30) calendar days after application has been made and certified by the District.
- H. In accordance with the provisions of the California Public Contract Code 22300 et seq., the Contractor will be permitted to substitute securities for any moneys withheld by the District to ensure performance under the Contract.
- I. Payment for material stored on or off the Site will not be allowed other than as provided in this paragraph. Where advance payment is allowed at the sole discretion of the District necessary to keep the Project on schedule for very large, long lead items, proof of off-site material purchases (invoices and checks) and appropriate insurance coverage will be required. The Contractor shall furnish to the District written consent from the Surety approving the advanced payment for materials stored off site. The maximum prepayment allowed by the District shall be seventy five percent (75%) of the actual value of the item being considered. The District and the District Representative shall be the sole judges of fair market value. The Contractor shall protect stored materials from damage. Damaged materials, even though paid for, shall not be incorporated into the work.
- J. No inaccuracy or error in said monthly estimates shall operate to release the Contractor or Surety from damages arising from such Work or from the enforcement of each and every provision of the Contract Documents, and the District shall have the right subsequently to correct any error made in any estimate for payment.
- K. The granting of any progress payment, or the receipt thereof by the Contractor, shall not constitute acceptance of the Work or any portion thereof, and shall in no way lessen the liability of the Contractor to replace unsatisfactory Work or material, though the unsatisfactory character of such Work or material may not have been apparent or detected at the time such payment was made.
- L. It is mutually understood and agreed that the District may withhold from any payment otherwise due Contractor so much as may be necessary to protect the District to insure completion of the project pursuant to the requirements of this Contract. The failure or refusal of the District to withhold any moneys from the Contractor shall in no way impair the obligations of any surety or sureties under any bonds furnished under this Contract.

- M. Only Contract Modifications completely approved and executed shall be included on the Payment Authorization and only that portion of the Change Order work actually performed shall be submitted for payment. Submit breakdown for each Contract Modification by Specification Section number on Application for Payment.

9.04 PAYMENT AUTHORIZATION

- A. The District will, after receipt of the Contractor's Application for Payment, issue a Payment Authorization to the Controller's Office for such amount as the District and District Representative determine is properly due. The District will notify the Contractor in writing of the reasons for withholding authorization in whole or in part as provided hereinafter.
- B. A Payment Authorization will be issued by the District, based on the District's representation of observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point stated in the Application for Payment and that 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, and/or to minor deviations from the Contract Documents correctable prior to completion. The issuance of a Payment Authorization will further constitute a representation that the Contractor is reasonably entitled to payment in the amount authorized. However, the issuance of a Payment Authorization will not be a representation that the District has:
 - 1. Made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
 - 2. Reviewed construction means, methods, techniques, sequences or procedures;
 - 3. Reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the District to substantiate the Contractor's right to payment; or
 - 4. Made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.05 DECISIONS TO WITHHOLD PAYMENT

- A. The District may decide not to authorize payment and may withhold a Payment Authorization in whole or in part, to the extent reasonably necessary to protect itself, if in its opinion the representations required by Subparagraph 9.04 B cannot be made. If the District is unable to authorize payment in the amount of the Application, the District will notify the Contractor as provided in Subparagraph 9.04 A. If the Contractor and District cannot agree on a revised amount, the District will promptly issue a Payment Authorization for the amount it deems proper. The District may also decide not to authorize payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Payment Authorization previously issued, for one or more of the following reasons:
 - 1. defective Work not remedied;
 - 2. third party claims filed or reasonable evidence indicating probable filing of such claims;
 - 3. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 - 4. damage to the District or another contractor for which Contractor is responsible;
 - 5. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - 6. failure to carry out the Work in accordance with the Contract Documents;
 - 7. failure to timely submit Contract Modification cost breakdowns in accordance with the Contract Documents;
 - 8. failure to timely submit schedules, schedule updates and reports in accordance with the Contract Documents;

9. failure to timely maintain updated as-built Contract Documents;
 10. failure to submit Coordination Drawings in accordance with the General Requirements;
 11. failure to submit Record Documents in accordance with the General Requirements;
 12. failure to submit certified payroll records in accordance with the Contract Documents;
 13. stop notices;
 14. failure of Contractor to make timely payments due to subcontractors for material or labor;
 15. liquidated damages assessed;
 16. failure to timely comply with other requirements of the Contract Documents, or
 17. any other failure of Contractor to perform its obligations under the Contract Documents.
- B. When the reasons for withholding authorization are removed, authorization will be made for amounts previously withheld.

9.06 PARTIAL OCCUPANCY OR USE

- A. Whenever, in the opinion of the District, the Work or any part thereof is in a condition suitable for use, and the best interest of the District requires such use, the District may take possession of, connect to, open for public use, or use the Work or a part thereof at no additional cost to the District. When so used, maintenance and repair due to ordinary wear and tear or vandalism will be District's responsibility and will be made at the District's expense. The use by the District of the Work or part thereof shall in no case be construed as constituting completion of the Work. Such use shall neither relieve the Contractor of any of its responsibilities under the contract, nor act as a waiver by the District of any of the conditions thereof. The District shall assume payment of all utility costs and expenses incurred in connection with the building or portion thereof so occupied and shall procure insurance for (or self-insure) the occupied building or portion thereof. The Contractor shall continue to pay all utility costs and expenses and provide insurance for any portion of the Project that is not so occupied by the District and shall coordinate with the District before canceling or reducing insurance coverage.
- B. Such partial occupancy or use may commence whether or not the portion has achieved Substantial Completion. The stage of the progress of the Work shall be determined by the District.
- C. Immediately prior to such partial occupancy or use, the Contractor and District 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.
- D. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.
- E. Contractor shall perform final cleaning of portions of the Work to be partially occupied or used as specified in the General Requirements.

9.07 SUBSTANTIAL COMPLETION

- A. Contractor shall notify the District in writing when Contractor considers that the Work is Substantially Complete and request the District inspect the Work and prepare a Notice of Substantial Completion. Completion of start-up services and submittal of warranties, guarantees, and record documents shall be a condition precedent to requesting an inspection for Substantial Completion. Attached to Contractor's request for a Substantial Completion inspection shall be preliminary list of items to be completed or corrected before Final Completion.
- B. Within 2 working days from receipt of Contractor's written notification, the District will commence an inspection to determine whether the Work is Substantially Complete. If, after completing the inspection, the District determines that the Work is not Substantially Complete, the District will provide Contractor a

list of deficiency items that shall be corrected or completed before the District considers the Work Substantially Complete.

- C. Once Contractor has completed all items on the deficiency list, Contractor shall request a second inspection by the District to verify that the Work is Substantially Complete. If the District determines that the Work is not Substantially Complete, the District will follow the same procedure as for the first inspection as described in subparagraph 9.07B. Contractor shall reimburse the District for costs incurred by the District and its consultants related to all additional inspections necessary to achieve Substantial Completion.
- D. As a condition precedent to Substantial Completion, Contractor shall obtain all certificates necessary for the Work to be used for its intended purpose.
- E. When the District determines that the Work is Substantial Complete, the District will prepare a notice of Substantial Completion, which shall establish the Substantial Completion date.
- F. At the time of delivery of the Notice of Substantial Completion, the District will deliver to Contractor a punch list of deficient items to be corrected by Contractor prior to Final Completion and a written determination as to the division of responsibilities regarding close-out requirements. Those requirements include, but are not limited to, security, operation, safety, maintenance, heat, utilities, insurance, and warranties.

9.08 PROJECT COMPLETION AND FINAL PAYMENT

- A. The following shall be conditions precedent to the final inspection/examination of the Project by the District or any of its representatives:
 - 1. All punchlist items shall be completed;
 - 2. All temporary facilities shall have been removed from the Project Premises if the District has so instructed the Contractor;
 - 3. The buildings, Project Premises and all other facilities located thereon shall have been thoroughly cleaned as required by the Contract Documents;
 - 4. All plumbing, mechanical and electrical equipment shall operate quietly and free from vibration;
 - 5. All systems shall function as designed and shall meet specified requirements for the Project; and
 - 6. All operating instructions for equipment shall be properly mounted and posted.
- B. When the Contractor considers that the Work is complete, including all contractual requirements, which include, but are not limited to, all start-up services, warranties, guarantees, as-builts, etc, and requests that the District prepare a Notice of Completion, Contractor shall notify the District in writing by submitting a written certification in the form of Exhibit H attached hereto and incorporated herein by this reference certifying that: (i) The Work has been inspected by the Contractor for compliance with the Contract Documents and by all public agencies having jurisdiction, (ii) the Work has been completed in accordance with the Contract Documents, (iii) all equipment and systems have been tested in the presence of the District's designated representative, and when so required, the Architect, the Inspector and other consultants, inspectors and governing agencies, and all such equipment and systems are operational, and (iv) the Work is fully complete and ready for final examination. Within seven (7) days from receipt of the Contractor's written notification, the District will make an inspection to determine whether the Work is complete. If the District determines the work is not complete, the District will provide the Contractor with a deficiency list of all items that must be corrected or completed before the District would consider the Work complete. This list will be provided to the Contractor within fourteen (14) calendar days from receipt of the Contractor's written notification. Once the Contractor has completed all items on the deficiency list, the Contractor can request a second inspection by the District to verify the Work is complete. If the Work is not complete, the District will follow the same procedure as for the first inspection, and the Contractor shall reimburse the District and the District's representatives for all of their costs related to the second inspection and any inspection thereafter. When the Work is considered completed, the District shall prepare a Notice of Completion, which shall establish the date of Completion.

- C. If additional inspections are required, including special inspections such as fire alarm certification, all costs of the District and District representatives conducting such additional inspections shall be deducted from progress payments owed the Contractor.
- D. Immediately upon the District's approval of the final inspection, and in addition to any other submittals required to be made by the Contractor under any other provision of the Contract Documents, the Contractor shall submit the following close-out documentation to the District with its final Application for Payment:
1. Operations and maintenance data for equipment as required by this Contract, the Specifications, the Drawings, Change Orders, Addenda or any other Contract Document, (including, without limitation, three (3) complete sets of manuals containing manufacturers' instructions on the operation of each item and apparatus furnished under the Contract Documents) and for such other items when and as directed by the District or the Contract Documents;
 2. Project Record Drawings;
 3. Warranties and bonds for equipment put into service;
 4. Keys and keying schedule and "Identification Tagging" master template (if Project Work is tagged);
 5. Tools, spare parts and maintenance materials;
 6. A list of all Subcontractors of every tier providing services and/or materials in connection with the Project, in a formal, adequately bound, cataloged form, which shall include the names, addresses, telephone numbers and fax numbers of such persons, and shall further include notices as to where pertinent persons can and may be reached for emergency service, inclusive of nights, weekends and holidays;
 7. A fully executed Guarantee in the form attached hereto from every Subcontractor providing labor or materials in connection with the Work.
- E. Contractor shall certify that each of the items submitted to the District in accordance with this Subparagraph 9.08C above is complete and accurate and all of the items submitted, taken together, cover all of the Work.
1. Contractor shall deliver evidence of compliance with any and all requirements of all applicable governmental regulatory agencies at all levels, including, without limitation, the District, City, State and Federal government and agencies, as may be reasonably required by the District.
 2. Contractor shall deliver certificates of inspection for vertical transportation systems, life safety systems and mechanical and electrical Work as may be applicable.
 3. Contractor shall deliver certificates of insurance for products and completed operations, bonds, maintenance bonds, warranties and any and all other required certificates as may be applicable and required by any of the Contract Documents.
 4. Contractor shall submit Contractor's final affidavit of payment of debts and complete payroll certifications.
- F. The remaining value of the Work performed under this Contract, if unencumbered, shall be processed for payment after thirty-five (35) days after the date the Notice of Completion is recorded by the District. Acceptance by the Contractor of said final payment shall constitute a waiver of all claims against the District arising under the Contract Documents. As a condition precedent to final payment, the Contractor shall furnish a "release" pursuant to the following subparagraph.
1. The Contractor and each assignee under any assignment in effect at the time of final payment shall, if required by the District, execute and deliver at the time of final payment as a condition precedent to final payment, a release in form and substance satisfactory to and containing such exemptions as may be found appropriate by the District, discharging the District, and the District's Consultants, and their directors, officers, members, employees, agents and authorized representatives, of and from all liabilities, obligations and claims arising under this Contract.

9.09 LIQUIDATED DAMAGES

- A. It is agreed by the Contractor and the District that, if the project fails to reach Substantial Completion within the Contract time plus any authorized extensions of time pursuant to properly approved modification, then (a) as compensation to the District for the loss of the beneficial use of the project during the period of delay, there shall be assessed against the Contractor as liquidated damages, but not as a penalty, the amount stated in the Invitation to Bidders for each day thereafter until the date that physical completion of the Work and the project has reached Substantial Completion, and (b) as compensation for the actual additional out-of-pocket costs and expenses incurred by the District as a result of the delay in completion, there shall also be assessed against the Contractor the actual and verifiable out-of-pocket costs and expenses incurred by the District as a result of the delay (such as, for example, additional compensation paid to the District's architect, construction manager(s) and other consultant(s) and the legal fees and expenses incurred by the District in connection with the delay).
- B. It is agreed by the Contractor and the District that, if the project fails to reach Final Completion within the contract time following Substantial Completion, plus any authorized extension of time pursuant to properly approved modification, or, if no Substantial Completion date is specified, by the Final Completion date specified, then: (a) as compensation to the District for the loss of full use of the Project during the period of delay, there shall be assessed against the Contractor as Liquidated Damages, but not as a penalty, the amount stated in the Instructions to Bidders for each day thereafter until the date that Completion of the Work and the Project has reached Final Completion. And (b) as compensation for the actual additional out-of-pocket costs and expenses incurred by the District as a result of the delay in completion, there shall also be assess against the Contractor the actual and verifiable out-of-pocket costs and expenses incurred by the District as a result of the delay (such as, for example, additional compensation paid to the District's architect, construction manager(s) and other consultant(s) and the legal fees and expenses incurred by the District in connection with the delay).
- C. It is hereby agreed by the Contractor and the District that it would be impracticable and extremely difficult to fix the actual damage to the District should the entire work and project not be completed within the time periods specified above plus any authorized extensions of time hereunder and the District be deprived of the beneficial occupancy of the project or final use of the project as a result thereof. The liquidated damages provided for in paragraphs 9.09A(a) and 9.09B(a) above represent the parties' reasonable estimate of the actual damages that the District will incur if its beneficial use and/or final use of the project is delayed beyond the expiration of the contract time and such liquidated damages do not constitute a penalty nor are they intended to compensate the District for (or cover) the actual out-of-pocket damages incurred by the District in connection with any such delay (which actual out-of-pocket damages shall be separately recoverable by the District pursuant to paragraphs 9.09A(b) and/or paragraph 9.09B(b)).
- D. The payment of the amounts described in paragraphs 9.09A(a) and paragraph 9.09B(a) as liquidated damages is not intended as a forfeiture or penalty within the meaning of California Civil Code Section 3275 or 3369, but is intended to constitute liquidated damages to the District pursuant to California Civil Code Sections 1671, 1676 and 1677.
- E. The parties expressly agree that the District shall be permitted to recover its actual out-of-pocket damages incurred as a result of any delay in Substantial Completion (in addition to the liquidated damages that may be recovered for the loss of the beneficial use of the Project during the period of the delay), and that such actual out-of-pocket delay damages are not liquidated hereunder, because unlike the damages resulting from the loss of the beneficial use of the Project, such actual out-of-pocket damages are not impracticable or difficult to fix.

CONTRACTOR'S

DISTRICT'S

INITIALS: _____

INITIALS: _____

The District may deduct liquidated and/or actual out-of-pocket delay damages described in Paragraphs 9.09A and 9.09B from any unpaid amounts than or thereafter due the Contractor under the Agreement in accordance with Paragraph 9.05 hereof. Any liquidated and/or actual out-of-pocket delay damages not so

deducted from any unpaid amounts due the Contractor shall be payable to the District at the demand of the District.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

10.01 SAFETY PRECAUTIONS AND PROGRAMS

- A. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.
- B. The Contractor shall designate in writing a responsible member of the Contractor's organization at the site as Project safety representative whose duty shall be the prevention of accidents. This person shall be available twenty-four (24) hours a day, seven (7) days a week by telephone or other approved means.
- C. In the event the Contractor encounters on the site material reasonably believed to be hazardous which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected, immediately advise the District. The Work in the affected area shall not be resumed except by written notification of the District.
- D. The Contractor shall to perform all Work relating to hazardous materials as required by the Contract Documents.
- E. Health, Safety, and Fire Prevention: The Contractor, his subcontractors, agents and employees shall Fully Comply with All of the provisions and requirements of CAL/OSHA, Title 8 CALIFORNIA CODE OF REGULATIONS, Industrial Relations, and all other safety codes having jurisdiction over the Project.
- F. The Contractor is warned that when the work involves existing sewers and appurtenances that have been exposed to sewage and industrial wastes, these facilities shall be considered contaminated with disease-causing organisms. Personnel in contact with contaminated facilities, debris, waste water, or similar items shall be advised by the Contractor of the necessary precautions that must be taken to avoid becoming diseased. It is the Contractor's responsibility to urge his/her personnel to observe a strict regimen of proper hygienic precautions, including any inoculations recommended by the local public health officer.
- G. Because of the potential danger of solvents, gasoline, and other hazardous material in the existing sewers and storm drain pipes, these areas shall be considered hazardous. The Contractor shall be aware of these dangers and shall comply with Article 108, "Confined Spaces," of the General Industrial Safety Orders contained in Title 8 of the California Administrative Code.
- H. In the event that this Contract requires the excavation of any trench or trenches in excess of five feet in depth, Contractor shall prepare a detailed design plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trenches. Said detailed design plan and subsequent excavating operations shall fully comply with all local, state and federal regulations including, but not limited to, the Construction Safety Orders, Section 1539, Permits and Section 1540 et seq., Excavation.

10.02 SAFETY OF PERSONS AND PROPERTY

- A. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
 - 1. employees on the Work and other persons who may be affected thereby;
 - 2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
 - 3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

- B. The Contractor shall give notices and comply with applicable laws, including California Civil Code Section 832, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- C. 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, erecting barricades, fencing, railings, and walkways as necessary, promulgating safety regulations and notifying District and users of adjacent sites and utilities.
- D. Contractor shall notify owners of adjacent property, underground facilities and utilities, such as PG&E, Pacific Bell, Municipal Railway, Hetch Hetchy Water and Power, and the San Francisco Public Utilities Commission, of Contractor's operations a reasonable time in advance thereof so as to permit the owners to make suitable markings on the street surface of the locations of such facilities. After such markings have been satisfactorily made, Contractor shall maintain them as long as necessary for the proper conduct of the Work.
- E. Contractor shall not hinder or interfere with an owner or agency having underground facilities and utilities when removing, relocating or otherwise protecting such facilities.
- G. Contractor shall perform all Work in such manner as to avoid damage to existing underground facilities and other utilities in the process of their removal or adjustment and to avoid damage to such facilities lying outside of or below a required excavation or trench area which are intended to remain in place.
- H. When use or storage of 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 and in compliance with all safety regulations.
- I. Contractor shall be responsible for coordinating the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with applicable laws and regulations.
- J. The Contractor shall promptly remedy damage and loss to property referred to in previous subparagraphs caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under the previous subparagraphs, except damage or loss attributable to the sole negligent acts or omissions of the District. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.16 in these General Conditions.
- K. The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety. The structure is designed to support the loads of the finished building. No provision is included for stresses or loads imposed by construction operations. If the Contractor desires to place such loads in excess of the design load, it shall submit drawings and calculations prepared by, and bearing the seal of a California-licensed structural engineer of the proposed method for supporting such loads for the District's review and approval. No loading of any kind in excess of design loads shall be placed on any part of the building structure prior to the District's approval of the submitted drawings and calculations. The costs of the District's review shall be reimbursed to the District by the Contractor.
- L. The Contractor shall be responsible for each operation and all Work, both permanent and temporary. It shall protect its Work and materials from damage due to construction operations, the action of the elements, the carelessness of its subcontractors, vandalism, or any other cause whatever, until Project Completion and Acceptance of the Work. Should improper Work of any trade be covered by another contractor and damage or defects result, the whole Work affected shall be made good by the contractor performing the improper Work to the satisfaction of the District without expense to the District.

10.03 EMERGENCIES

- A. In an emergency affecting safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss, and shall as promptly as conditions permit notify the insurance carriers and the District of the nature of the emergency and circumstances related thereto. Immediately thereafter, the

Contractor shall prepare a written report setting forth in detail the action taken and describing in detail all circumstances and conditions which are related to such action. Additional compensation or extension of time claimed by the Contractor on account of an emergency, if caused by fault of the District, shall be determined as provided in Paragraph 4.01 and Article 7.

10.04 SAFETY PERMITS

- A. A State Industrial Safety Permit shall be obtained and paid for by the Contractor if:
 - 1. Any building, structure, falsework or scaffolding more than 3 stories high or the equivalent of 35'-0" is to be constructed.
 - 2. The demolition of any building, structure, falsework or scaffolding more than 3 stories high or the equivalent of 35'-0" is to occur.
 - 3. A trench 5'-0" deep or deeper is constructed for foundation purposes into which a person must descend.
- B. The Contractor shall obtain and pay for all other required safety permits.

10.05 LOSS CONTROL REQUIREMENTS

- A. Contractors and subcontractors participating in this SEWUP project will be expected to comply with the following safety and loss control requirements:
 - 1. The Emergency Response Plans (with particular emphasis on access and egress routes).
 - 2. District procedures regarding dealing with the media.
 - 3. Hard hats will be mandatory on all SEWUP projects when there is an exposure to falling objects, as per Cal OSHA Construction Safety orders.
 - 4. All construction employees will be required to be attired in workpants, shirt and appropriate boots or closed toe shoes.
 - 5. No alcohol will be allowed on SEWUP construction sites at any time.
 - 6. Smoking will be allowed in designated areas only.
 - 7. All contractors will agree to conduct and fund post-injury drug screening of their employees. Those employees failing the test will be removed permanently from the job site. In addition, any contractor that shows a pattern of employees failing the tests will be reported to SEWUP, who can use the information as a factor in assessing their "responsibility" in connection with future projects.
 - 8. Controlling access to the construction site will be a very high priority, and contractors will be required to take whatever preventative measure, such as barriers, fencing, etc., deemed necessary by either the SEWUP consultant or local school safety official.
 - 9. Contractors will be required to respond to any school complaints about objectionable levels of dust or noise and will be required to provide the appropriate abatement as quickly as possible.
 - 10. Construction personnel cannot enter school grounds other than the construction site unless accompanied by district personnel, and they are allowed only 'incidental' contact with students. Violations of these requirements by any construction employee will result in a mandatory background check of that employee - including fingerprinting - as required by state law.
 - 11. The SEWUP Safety Representative, General Contractor or Construction Manager has the right to correct an unsafe act or condition. The General Contractor or Construction Manager has the right and authority to bill the non-compliant contractor for the costs associated with the correction.
 - 12. Fall protection is mandatory on all SEWUP projects in accordance with Cal OSHA, OSHA and any other appropriate code.

13. Any contractor displaying, in the opinion of the General Contractor or SEWUP consultant, a repeated disregard for safety can be removed from the job-site and their name forwarded to SEWUP, who will use the expulsion as a factor in assessing their suitability for future projects.
14. All contractors and sub-contractors must provide a copy of their Injury & Illness Prevention Program to the General Contractor or Construction Manager to be filed at the job site.
15. A site specific Injury & Illness Prevention Program shall be available on site with either the General Contractor or Construction Manager. All contractors shall abide by this program.
16. Personal radios, headsets, walkmans and CD players are not allowed on the job-site.
17. All work activities must comply with applicable Cal OSHA, OSHA, EPA, ANSI, and local laws pertaining to safety.
18. The General Contractor or Construction Manager shall assume overall responsibility for project safety compliance with the applicable safety regulations and the site specific Injury & Illness Prevention Program.
19. All contractors must attend the pre-construction safety meeting.
20. All contractors shall identify their competent person(s) to the General Contractor or Construction Manager.
21. The SEWUP Safety Representative will conduct visits to the job site at the request of the District, General Contractor, Construction Manager, JPA, or SEWUP. Contractors will be required to cooperate with the consultant and take the appropriate corrective action deemed necessary with timeframes established regarding the corrective action.
22. The SEWUP Safety Representative has the authority, during the course of the job site inspection, to suspend those aspects of the job site that are considered "imminently dangerous" until appropriate corrective action is completed.
23. The SEWUP Safety Representative may require a follow-up meeting or contact if there is a death, serious and willful claim, serious disabling injury, adverse loss experience, major fire, or serious 3rd party claim.
24. Any contractors' employee observed providing or selling cigarettes or other smoking materials to students shall be removed from the job site until further notice.
25. No sexual reference or preference shall be permitted on any piece of clothing or the hardhat. Any employee observed disregarding this policy shall be removed from the job site until further notice.
26. All contractors' employees shall park in their designated parking area. Any sticker attached to the employees' vehicle that displays any form of sexual preference or reference shall be removed prior to parking at the site. Each employee will provide his or her license plate number to the General Contractor or Construction Manager. Any employee disregarding this policy shall be removed from the site until further notice.
27. All contractors shall control the break time activities of the employees to assure the cleanup of all soda cans, food wrappers, plastic bottles, or food containers from the break area. Such areas shall be cleaned immediately after the break and all waste placed in trash receptacles. No glass containers are permitted on the site.
28. Theft or willful damage to any property of the owner, student, or other contractors will be prosecuted fully.
29. No guns, switchblades, or knives with blades greater than 2" shall be allowed on the job site. Any employee disregarding this policy shall be removed from the site until further notice.
30. All contractors will advise those non-English speaking employees in their native language either in a written format or via an interpreter of these policies.
31. All non-SEWUP members or guest who visit the job site will be required to sign a hold harmless

agreement. All such persons shall be required to be appropriately attired to include a hardhat.

ARTICLE 11 - INSURANCE AND BONDS

11.01 CONTRACTOR PROVIDED INSURANCE (FOR ALL PROJECTS)

- A. General Liability Insurance for work: All Contractors and Subcontractors of every tier shall maintain at their own expense Commercial General Liability Insurance covering operations away from the project site, and which are not otherwise insured under the OCIP. The policy form will be nothing less than the standard Commercial General Liability insurance policy (Occurrence Form”) with limits no less than:

Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
Products/Completed Operations Aggregate	\$ 1,000,000
Personal/Advertising Injury Aggregate	\$ 1,000,000

Further the policy will provide not less than thirty (30) days prior written notice to District’s Program Administrator or its Designee of any material change in the insurance or cancellation or non-renewal.

The District will be endorsed as "additional insured" on Contractor's and Subcontractors’ policy or policies. Contractor and Subcontractors shall furnish Certificates of Insurance evidencing said coverage before commencing work on the Project.

- B. Workers Compensation Insurance for work: To the extent required by law, all Contractors and Subcontractors of every tier shall maintain at their own expense Statutory Workers Compensation Insurance and Employer’s Liability Insurance covering operations away from the project site. The policy form will provide statutory limits as required in the State of California, include Maritime coverage, if appropriate and with Employer’s Liability limits no less than:

\$1,000,000	bodily injury per accident/employee;
\$1,000,000	bodily injury per disease/employee;
\$1,000,000	policy limit by disease.

Further the policy will provided not less than thirty (30) days prior written notice to District's Program Administrator or its Designee of any material change in the insurance or cancellation or non-renewal.

- C. Contractor Construction Equipment Insurance: Any policies maintained by the contractor and subcontractors on their owned and/or rented equipment and materials shall contain a provision requiring the insurance carriers to waive their rights of subrogation against the Owner and all other indemnities named in the contract.
- D. Professional Liability Insurance (Errors & Omissions): In the event any contract specifications requires your firm to provide professional services, such as but not limited to, architectural, engineering, construction management, surveying, design, etc., a certificate of insurance must be provided prior to commencing work evidencing such coverage with a limit of not less than \$1,000,000. Any material change in limits, coverages or loss of aggregate limit due to outstanding claims must be reported to the District within 30 days of any such event.
- E. Environmental and Asbestos Abatement Coverages: If this Agreement involves the removal of asbestos, the removal/replacement of underground tanks or the removal of toxic chemicals and substances, the Contractor will be required to provide adequate coverages, with limits not less than \$1,000,000 per claim basis, for such exposures subject to requirements and approval of the District.
- F. Hold Harmless clause: Work done on the premises, or in connection with the prosecution of this contract by the Contractor, shall be at the Contractor’s risk and the Contractor shall assume any and all liability and shall hold harmless the District, their agents, servants or employees, from claims or demands, cost expenses, loss or damage due to bodily injury, sickness or disease, including death to employees of the

Contractor or any other person, or damage of property including loss of use thereof suffered by employees of the Contractor or any other person; arising out of the performance of the contract, whether such are based upon negligence of the District or any other person, firm, corporation or organization for whom such contract is being performed, their agents, employees or otherwise.

11.02 PROOF OF CARRIAGE OF INSURANCE

- A. Before work is started, the Contractor shall forward to the Owner two copies of a Certificate of Insurance or Memorandum of Insurance, evidencing that all required Contractor Furnished Insurance is in force, executed by an authorized representative of the insurance company, and naming Owner as additional insured as outlined below.
- B. Certificates and insurance for contractor furnished insurance policies shall include the following clause:
“This policy shall not be cancelled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District. Date of cancellation or reduction may not be less than Thirty (30) days after date of mailing notice.”
- C. Certificates of insurance for contractor furnished insurance policies shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice.
- D. Certificates of insurance for contractor furnished insurance policies shall clearly state that the District is named as an additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District.
- E. Contractor furnished policies will be written by an insurer of satisfactory character including a Best’s rating of not less than A- VII and/or an admitted carrier in the State of California. If requested by the District, a certified copy of the actual policies with appropriate endorsement(s) and other documents shall be provided to the District.
- F. In the event the contractor or any subcontractor fails to furnish and maintain required insurance or to furnish satisfactory evidence thereof, the Owner may procure and maintain such coverages for all parties on behalf of the contractor. Contractor shall furnish all necessary information and pay the premium cost to the District immediately upon presentation of a premium invoice.
- G. Subcontractors. Should a contractor engage a subcontractor, the same conditions will apply to each subcontractor. Each subcontractor must be covered by insurance of the same character and in the same amounts as the Contractor, naming the Contractor and the Owner as additional insureds. Copies of certificates of insurance for subcontractors must be filed with the District within thirty (30) working days after issuance of a Notice to Proceed and at least five (5) working days before the subcontractor begins work on the site. Failure to provide evidence of such insurance shall result in the subcontractor being excluded from the site until proper coverage is verified. The cost of any resulting delay will be borne by the contractor.

11.03 PERFORMANCE BOND AND PAYMENT BOND

- A. At the time of execution of the Contract, the Contractor shall file with the District the following bonds:
 - 1. A Corporate Surety Bond, in a sum not less than one hundred percent (100%) of the amount of the Contract, to guarantee the faithful performance of the Contract ("Performance Bond").
 - 2. A Corporate Surety Bond, in a sum not less than one hundred percent (100%) of the amount of the Contract, to guarantee the payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in the performance of the Contract ("Payment Bond").
- B. Said Performance Bond shall cover all corrective Work required during the correction period pursuant to Paragraph 12.02 and all warranty and maintenance Work required by the Contract Documents.

- C. Corporate sureties on these bonds and on bonds accompanying bids shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing surety bonds in the State of California. All sureties shall have an "A-,VIII" rating in Bests Rating Guide and shall be satisfactory to the District. The Contractor will submit surety bonds on forms provided by the District.
- D. The amount of the Contract, as used to determine the amount of the bonds, shall be the amount based on the Contract Sum.
- E. Failure of the successful Bidder to execute the Contract and deliver the required bonds and certificates of insurance within the ten (10) day period may constitute a default, and Bid Guarantee may be forfeited. Thereupon, the District at its sole option may award the Contract to the next acceptable Bidder, waive the time limit, or readvertise for Bids. The money and proceeds from the check or bond, as the case may be, shall be applied towards payment of damages to CCSF caused by the delay on the construction schedule, and secondly, the necessity of accepting a higher or less desirable proposal due to this delay caused by the failure or refusal on the part of the successful bidder to execute the Contract. The amount of the check or bond, as the case may be, shall not constitute a limitation upon the right of the District to recover for the full amount of such damage.

11.04 MAINTENANCE WARRANTY BOND

- A. If the bid for the Project requires an additional form of security to insure compliance with the requirements of this Agreement for guarantees and warranties, the Contractor shall provide, at its sole cost and expense, a maintenance-warranty-guaranty bond for a sum equal to the lesser of (x) ten percent (10%) of the Contract Sum, and (y) One Million Dollars (\$1,000,000) (the "Maintenance Bond"). Such Maintenance Bond will be issued by a Surety meeting the requirements of this Contract. The Maintenance Bond shall cover the entire scope of the Work, shall be in addition to any and all warranties or guaranties issued by manufacturers and suppliers, and shall warrant and guaranty all of the Work for a term equal to the terms of each of the Contractor's warranties and guaranties provided in the Contract Documents so that the Maintenance Bond will fully warrant and guaranty each Contractor warranty and guaranty set forth in the Contract Documents for an equal amount of time as set forth in the Contract Documents. The Maintenance Bond shall further warrant and guaranty a response time of not more than one (1) business day from the time of District's notification to the Contractor of a defect. If the Contractor fails to respond and/or initiate any action for the repair of defects within a period of one (1) business day after notice from the District thereof, the District shall then have the right to summarily execute upon the Maintenance Bond up to its entire value and proceed to remedy and correct the defect without further notice to Contractor.

ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

12.01 UNCOVERING OF WORK

- A. No Work shall be covered until inspected by the District.
- B. If a portion of the Work is covered contrary to the District's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the District, be uncovered for the District's observation and be replaced at the Contractor's expense without change in the Contract Time.
- C. If a portion of the Work has been covered which the District has previously inspected, the District 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 Contract Modification, be paid by the District. If such Work is not in accordance with the Contract Documents, the Contractor shall pay for all costs to uncover and replace the Work, as well as related disruptions and delays.

12.02 CORRECTION OF REJECTED AND FAILING WORK

- A. The Contractor shall promptly correct Work rejected by the District or failing to conform to the requirements of the Contract Documents, whether observed before or after Project Completion and whether

or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the District representative's services and expenses made necessary thereby and at the labor rates included in contracts between District and District representatives.

- B. If, within one (1) year after the date of Project Completion, 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. This period of one (1) year shall be extended with respect to portions of Work first performed after Project Completion by the period of time between Project Completion and the actual performance of the Work. This obligation under this Subparagraph shall survive acceptance of the Work under the Contract and termination of the Contract. The District will give such notice promptly after discovery of the condition.
- C. The Contractor shall remove from the site those portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the District.
- D. If the Contractor fails to correct non-conforming Work within a reasonable time as determined by the District, the District may correct it in accordance with Paragraph 2.03. If the Contractor does not proceed with correction of such non-conforming Work within a reasonable time fixed by written notice from the District, the District may correct it and store the salvable materials or equipment and dispose of non-salvable material at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the District may upon ten additional days' written notice sell such materials and 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 reimbursement to the District of compensation for the District representatives' services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by 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.
- E. The Contractor shall bear the cost of correcting destroyed or damaged Work of the District or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- F. Nothing contained in this Paragraph 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 hereinbefore relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor 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.

12.03 CORRECTION OF DEFECTIVE WORK

- A. The Contractor shall be responsible for and shall replace any defective Work, at no additional cost to the District whether due to (i) faulty materials or errors in workmanship; or (ii) defective installation by Contractor of materials or equipment manufactured by others; or (iii) disturbance of, or damage to, District improvements by Contractor's operations contrary to the specifications; or (iv) other failure to conform to the requirements of the Contract Documents, which may be discovered in any part of the Work within one (1) year after its acceptance by the District and the District's filing of the Notice of Completion, or within such longer period as provided elsewhere in the Contract Documents or by law.
- B. Except as otherwise expressly provided elsewhere in the Contract Documents, the Contractor agrees to correct any defective work performed and any defective materials furnished hereunder for a period of one (1) year from Acceptance of the Work of this Contract by the District and the District's filing of the Notice of Project Completion.

1. The Contractor further agrees to correct any defective work performed in installation of equipment manufactured by others but installed by the Contractor.
- C. Testing shall not be construed as operation or a continuation of the work. The Contractor, after receipt of notice, shall promptly make good at its expense all defects developing during the warranty period except where such is attributable to abuse. This agreement to correct defective work shall continue for corrected or replaced articles, or, if only parts of such articles are corrected or replaced, for such corrected or replaced parts, until one (1) year after date of re-deliver or correction.
- D. If the District does not require correction or replacement of a defective or non-conforming article (a non-conforming article meaning an article that does not conform to that which is called for in the Contract Documents), the Contractor, if required by the District within a reasonable time after notice of defect or non-conformance, shall pay to the District such portion of the Contract price as is equitable in the circumstances as determined by the District.
- E. This agreement to correct defective work, and all similar agreements applicable to Subcontractors', manufacturers' or suppliers' equipment used in or as a part of the Work (whether on equipment of the nature above specified or otherwise) shall inure to the benefit of the District without necessity of separate transfer or assignment thereof.
- F. The remedies provided for in this clause shall not be restrictive but shall be cumulative and shall be in addition to all other legal remedies the District may possess with respect to latent defects or frauds.

12.04 ACCEPTANCE OF NON-CONFORMING WORK

- A. If in the judgment of the District, it is undesirable or impracticable to replace any defective or non-conforming Work, the compensation to be paid to the Contractor shall be reduced by such amount as in the judgment of the District and its authorized representatives shall be equitable, or Contractor shall rebate moneys previously paid by the District.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.01 GOVERNING LAW

- A. The Contractor shall keep itself fully informed of and comply with all Federal, State and Local laws and orders of any properly constituted authority in any manner affecting this contract, the performance of the Work or those persons engaged therein, including but not limited to Titles 19, 21, and 24 of the California Code of Regulations, California Code of Regulations Title 16, Chapter 8, Paragraph 810-887, Title 1, Division 5 of the California Government Code (Section 4000, *et seq.*, Public Work and Public Purchases), the California Public Contract Code, The California Contractor's Licensing law and Title 2, Division 2, Part 23, Chapter 2 of the California Education Code (Section 17210, *et seq.*, Construction of School Buildings). The Contractor shall examine the Contract Documents for compliance with these Codes and Regulations and shall promptly notify the District and the Architect of any discrepancies.
- B. All construction and materials of this contract shall be in full accordance with the latest rules and regulations and requirements of the California Building Code (2001 Edition) and the requirements of Titles 19 and 24 and other applicable provisions of the California Code of Regulations (California Administrative Code) unless otherwise specified in the General Requirements (Division 1), CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Public Utilities Commission of the State of California, State Fire Marshal, the latest rules of the National Fire Protection Association, the Department of Public Health of the City and County of San Francisco, State and National laws and regulations, and of any other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by the Contractor and any and all persons, firms and corporations employed by or under it. Authorized persons may at any time enter upon any part of the Work to ascertain whether such laws, ordinances, regulations or orders are being complied with. No additional costs will be paid or extensions of time granted as a result of such compliance. Each of the above-referenced provisions is incorporated by reference as if fully set forth herein.

- C. The Contractor shall maintain in his project office a current copy of Titles 19 and 24 of the California Code of Regulations at all times during construction on this Project. Whenever the Drawings and Specifications require higher standards than are required by the regulations, the Drawings and Specifications shall govern. Whenever the Drawings and Specifications require something which will violate the regulations, the regulations shall govern.
- D. The Contractor shall comply with all air pollution control rules, regulations, ordinances, and statutes which apply to any work performed pursuant to the Contract, including any air pollution control rules, regulations, ordinances, and statutes specified in Section 11017 of the Government Code. Unless otherwise provided in the Contract Documents, material to be disposed of shall not be burned.
- E. The Contractor shall comply with all rules, regulations, ordinances, and statutes which apply to water pollution, including Section 7-1.G of the State specifications.
- F. The Contractor shall be responsible for the installation of noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise is subject to the control of the Environmental Protection Agency's Noise Control Program (Part 204 of title 40, Code of Federal Regulations). If school is in session at any point during the progress of the Project, and, in the District's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all such Work around normal school hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall Contractor have a right to receive additional compensation or an extension to the Contract Time as a result of any such rescheduling or the making of such other arrangements. These controls shall be implemented during site preparation and construction.
- G. The Contractor shall be fully and solely responsible for maintaining and upkeeping all areas of the Work and Project Premises, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust in general as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, the Contractor shall take specific care to avoid deposits of airborne dust or other elements that may accumulate on top of equipment, on walls, on floors, furniture and/or any other permanent or movable items. Prior to the commencement of any Work, the Contractor shall determine the probabilities of creating such an environment and provide all of the necessary protective equipment and/or items to contain the dust or airborne elements under a complete and secured control. Such protection devices, systems or methods shall be in accordance with the regulations set forth by the EPA and OSHA, and other applicable State and/or Federal regulations. Additionally, the Contractor shall be the sole party responsible to clean up and remove any and all deposits of dust and other elements. Damages and/or any liability derived from the Contractor's failure to comply with these requirements shall be exclusively the cost of the Contractor, including, without limitation, any and all penalties that may be incurred for violations of local, state and/or federal regulations, and any amounts expended by the District to pay such damages shall be due and payable to the District on demand. The District may also retain or withhold any amounts expended hereunder from progress payments otherwise due Contractor in accordance with Paragraph 9.05 hereof. Contractor shall protect all of the District's property, fixed or movable, and shall replace any damaged item or part thereof and professionally clean any and all items that might become covered or partially covered to any degree by dust or other airborne elements. If school is in session at any point during the progress of the Project, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all such Work around normal school hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall Contractor have a right to receive additional compensation or an extension to the Contract Time as a result of any such rescheduling or the making of such other arrangements.
- H. In the event that the Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of this Contract, the District shall so notify the Contractor and the Contractor shall be obligated to take immediate action. Should the Contractor fail to respond with

immediate and responsive action and not later than twenty-four (24) hours from the District's notification, the District shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred in connection with such actions shall be the sole responsibility of, and be borne by. The District may also retain or withhold any amounts expended hereunder from progress payments otherwise due Contractor in accordance with Paragraph 9.05 hereof.

13.02 SUCCESSORS AND ASSIGNS

- A. The Contractor shall constantly give its personal attention to the faithful prosecution of the Work. It shall keep the Work under its personal control and shall not assign by power of attorney or otherwise, nor subcontract the whole or any part thereof, except as herein provided and in accordance with the California Contractors Subletting laws.
- B. All transactions with subcontractors will be made through the Contractor, and no subcontractor shall relieve the Contractor of any of its liabilities or obligations under the Contract.
- C. When any subcontractor fails to prosecute a portion of the Work in a manner satisfactory to the District representative, the Contractor shall remove such subcontractor immediately upon written request of the District, and shall request approval of a new subcontractor to perform the Work pursuant to California Public Contract Code Section 4107, at no added cost to the District.
- D. The Contract shall not be assigned except upon the approval of the District.

13.03 WRITTEN NOTICE

- A. The addresses given in the Agreement are hereby designated as the legal address of the Contractor and the District, but any such address may be changed at any time by notice in writing, delivered to the other party. The delivery at such legal address or the depositing in any post office or post office box regularly maintained by the United States Postal Service, in a paid wrapper, directed to the other party at such address, of any drawing, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon that party.

13.04 RIGHTS AND REMEDIES

- A. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- B. Except as otherwise specifically provided herein, no action or failure to act by the District or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.05 TESTS AND INSPECTIONS

- A. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory, and special inspector, and shall bear all related costs of tests, inspections and approvals other than Special Inspections in accordance with the Uniform Building Code or the applicable state law or regulation which shall be performed at the expense of the District. The Contractor shall give the District, independent testing laboratory, and special inspectors a minimum of forty-eight (48) hours notice, excluding weekends and District holidays, of when and where tests and inspections are to be made so the District may observe such procedures. Tests and testing laboratories shall conform to California Code of Regulations Title 24, Part 1, Section 4-335.
 - 1. Where certain testing and inspection requirements are stipulated in the various portions of the Contract

- Documents to be performed at the expense of the District, the District will retain the services of testing agencies or consultants to perform such tests or inspections and render such services as may be required to verify that the Work fulfills the requirements and intent of the Contract Documents. Such services will be performed in a manner consistent with the requirements of the District and the various agencies having jurisdiction over the Work and in accordance with reasonable standards of architectural and engineering practice.
2. The District reserves the right to modify the scope of, or to reallocate, any of the testing and inspection services specified in the various Sections of the Contract Documents to be performed by a testing agency or consultant retained by the District in connection with the Work.
 3. The Contractor shall bear the cost of special inspections or observations if additional such inspections or observations are occasioned by the Contractor's unexcused delay, or as a result of work that is rejected and corrected.
 4. **Testing Laboratory:** The District, with the approval of the Architect or registered engineer, shall select a qualified person or testing laboratory as the testing agency to conduct the test. Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency or the District's representative and not by the Contractor.
 5. **Testing Reports:** The testing laboratory shall report the results of all tests in writing and shall furnish the number of copies of the report ordered by the District. The reports shall state that the tests were made under the responsible charge of a testing engineer holding a license to practice civil engineering in the State of California; that the material was tested in accordance with the provisions of the Specifications; and that the material tested either passed or failed to pass the test. The District will send one copy of each test report to the Contractor and will distribute copies to the Architect, the Inspector and others required. For tests shown to be required on the "Testing & Inspection Sheet" issued by the Division of the State Architect (DSA), a copy will also be mailed to DSA, referencing the Project File Number and the DSA manager assigned supervision over the Project.
 6. **Certification of Non-Tested Materials:** If a material is not required to be tested, the Architect, the Inspector or the District may require the Contractor to furnish a certificate bearing the official and legal signature of the supplier with each delivery of such material, which certificate shall state that the material complies with the Specifications.
 7. **Tested Materials on Hand:** The Contractor shall have in storage on the Project site at all times sufficient quantity of the tested and approved materials so that the progress of the Work will not be delayed because of lack thereof. The Contractor shall not use any material which is required to be tested, nor any material of which tests are being made, until the test reports have been delivered as hereinbefore specified, and said reports show that the material under test conforms to the provisions of the Contract Documents and has been approved by the Architect and the District.
- B. If the District or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included herein, the District will order the performance of such services by qualified independent testing agencies, or consultants as may reasonably be required. The District shall bear such costs except as otherwise provided herein.
- C. If such procedures for testing, inspection or approval reveal failure of the portion of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the District representatives' and consultants' services and expenses.
1. If the District's observation of any inspection or testing undertaken pursuant to Paragraph 13.05 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply with (a) the requirements of the Contract Documents or, (b) with respect to the performance of the Work, with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the District will have the authority to order inspection and testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as it

may consider necessary or advisable.

2. The Contractor shall bear all costs thereof, including reimbursement to District for the District representatives' and consultants' additional services, if any are required, made necessary thereby. However, neither the District's authority to act under Paragraph 13.05 nor any decision made by the District's representative in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the District to the Contractor, any Subcontractor, or any of their agents or employees, or any other person performing any of the Work.
- D. Neither observation by the District nor inspections, tests, or approvals by the District's representatives shall relieve the Contractor from the Contractor's obligation to assure that the Work conforms to the requirements of the Contract Documents.
 - E. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor.
 - F. If the District representatives are to observe tests, inspections or approvals required by the Contract Documents, the District shall do so promptly and, where practicable, at the normal place of testing. If the testing location is outside the nine (9) county Bay Area, the Contractor shall bear the travel-related costs, including transportation, lodging, meals, long-distance telephone calls and facsimile transmittals, and associated expenses of the District.
 - G. The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the District. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.
 1. The District reserves the right to charge to the Contractor any additional cost of inspection or test when material or workmanship is not ready at the time specified or when re-inspection or re-test is necessitated by prior rejection or unexcused delay.
 - H. All materials, equipment, and workmanship used in the work of Project shall be subject to inspection and special inspection or testing at all times during Construction and/or manufacture in accordance with California Code of Regulations Title 24, Part 1, Section 4-333(c) and 4-335.
 - I. Duties Of The Inspector: The inspector shall act under the direction of the Architect and the City College of San Francisco or the School District's authorized representative. The general duties of the Inspector in fulfilling his or her responsibilities shall be in accordance with Sections 4-333, 4-336, 4-337 and 4-342 of the California Code of Regulations, Part 1 of Title 24. Inspector to be approved by the Division of the State Architect.

13.06 CONFLICT OF INTEREST

- A. Contractor understands the following and certifies that it does not know of any facts which constitute a violation:
 1. Contractor hereby certifies that no current Board member or employee of the City College of San Francisco, and no one who has been a Board member or who has been employed by the City College of San Francisco within the past two years, has participated in bidding, selling or promoting this contract. Furthermore, Contractor certifies that no such current or former Board member or employee has an ownership interest in this contract, nor shall any such current or former Board member or employee derive any compensation, directly or indirectly, from this contract. Contractor understands that any violation of this provision of the contract shall make the agreement voidable by the District.
 2. Government Code of the State of California, Section 87100 et. seq. regarding Public officials; state and local; financial interest:
- B. No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

13.07. SUPERVISION BY THE DIVISION OF THE STATE ARCHITECT

- A. The District shall notify the Division of the State Architect (ORS) of the start of construction as required by California Code of Regulations, Title 24, Part 1, Section 4-331, and by California Education Code Sections 17310 and 17311.
- B. As required by California Code of Regulations, Title 24, Part 1, section 4-334, during construction, reconstruction, repair, alteration of or addition to any school building, the ORS shall make such inspection as in its judgment is necessary or proper for enforcement of the act and the protection of the safety of the pupils, the teachers and the public. If at any time as the work progresses and prior to the issuance of the final approval, it shall be found by the DSA that modifications or changes are necessary to secure safety, orders shall be issued by the DSA for such modifications or changes.

13.08 MONITORING PREVAILING WAGES

The District reserves the right to monitor Prevailing Wages in the work force in accordance with the rights given the District by the Labor Code and the Contractor agrees to cooperate with the District at no additional cost to the District.

13.09 ASBESTOS MATERIALS

- A. No materials containing asbestos shall be used or installed in the work on District contracts unless the Contractor has prior written approval from the manager of the District's Asbestos Control Program.

13.10 ASBESTOS ABATEMENT

- A. No construction or demolition operations as required by the Contract Documents shall simultaneously operate in the proximity of an asbestos work area or affect in any way the asbestos abatement work, including air fiber levels. The Contractor will be fully responsible for any costs associated with delays and/or additional testing directly or indirectly resulting from such interferences. All air samples above the specified criteria of 0.01 f/cc outside asbestos work areas will be required to be analyzed by transmission electron microscopy (TEM) at the Contractor's expense.

13.11 SCHOOL FACILITIES UNDER CONSTRUCTION OR RENOVATION; USE OF LEAD PAINT, PLUMBING, ETC. PROHIBITED

- A. New School facilities under construction, or school facilities undergoing a modernization or renovation program, shall not utilize lead-based paint, lead plumbing and solders, or other potential sources of lead contamination (added by stats. 1992, c. 1317 (A.B.1659) 2. of General Education Code Provisions.

13.12 NOTIFICATION OF SURETY COMPANIES:

The surety companies shall familiarize themselves with all provisions and conditions of the Contract. It is understood and agreed that the surety or sureties waive the right of special notification of any modifications or alterations, omissions or reductions, extra or additional work, extensions of time, or any other act or acts by the District or its authorized agents under the terms of the Contract; and failure to so notify the surety companies of such changes shall in no way relieve the surety or sureties of their obligations under this Contract. The surety expressly waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

13.13 FALSE CLAIMS:

- A. California Penal Code section 72, provides that any person who presents for payment with intent to defraud any district board or officer, any false or fraudulent claim, bill, account, voucher, or writing, is punishable by fines not exceeding ten thousand dollars (\$10,000.00) and/or imprisonment in the state prison.

- B. Government Code sections 12650, et seq., pertains to civil penalties that may be recovered from persons (including corporations, etc.) for presenting a false claim for payment or approval, presents a false record or statement to get a false claim paid or approved, or other acts, to any officer or employee of any political subdivision of the State of California. Any person or corporation violating the provisions of Government Code sections 12650, et seq., shall be liable for three times the amount of the damages of the political subdivision, plus a civil penalty, plus costs.
- C. All Claims by Contractor, shall include the following certification, properly completed and executed by Contractor or an officer of Contractor:
 - I, _____, BEING THE _____ (MUST BE AN OFFICER) OF _____ (CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE DISTRICT IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND/OR OTHER SEVERE LEGAL CONSEQUENCES.
- D. Submission of a Claim, in conformance with all of these requirements of this Contract, and rejection of all or part of said Claim by District, is a condition precedent to any action by Contractor against District, including but not limited to, the filing of a lawsuit or making demand for arbitration, if arbitration is expressly provided for in this Contract.

13.14 LANDS AND RIGHTS OF WAY:

- A. The District shall provide the lands, rights of way, and easements upon which the work under this Contract is to be done, and such other lands as may be designated on the Contract drawings for the use of the Contractor, and the Contractor shall confine Contractor's operations to within these limits.
- B. The Contractor shall provide, at Contractor's own expense, any additional land and access thereto that may be required for temporary construction facilities or storage of materials.

13.15 LIABILITY OF DISTRICT OFFICIALS:

- A. Neither the District, nor its officers, employees, agents, or representatives of the District, nor any of them, shall be responsible for any liability arising under this Contract, except such obligations as are specifically set forth herein.

13.16 CONTRACTOR NOT AN AGENT OF THE DISTRICT:

- A. The right of general supervision shall not make the Contractor an agent of the District, and the liability of the Contractor for all damages to persons or to public or private property arising from the performance of the work shall not be lessened because of such general supervision.

13.17 THIRD-PARTY CLAIMS:

- A. The Contractor shall be responsible for all third-party claims, and for costs or injuries incurred by a third party which result from the operations of the Contractor, or its performance under the Contract.

13.18 ASSIGNMENT OF ANTITRUST ACTIONS:

- A. Pursuant to Section 4552 of the Government Code of the State of California, the following provisions shall be a part of this Contract:
- B. 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. Sec. 15), or under Cartwright Act (Chapter 2, commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the contractor without further acknowledgement by the parties.

13.19 MISCELLANEOUS PROVISIONS:

- A. This Contract shall bind and inure to the heirs, devisees, assignees, and successors in interest of Contractor, and to the successors in interest of District, in the same manner as if such parties had been expressly named herein.
- B. This Contract shall be governed by the laws of the State of California.
- C. If any one or more of the provisions contained in the Contract should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
- D. This Contract constitutes the full and complete understanding of the parties, and supersedes any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may only be modified by a written instrument signed by both parties.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.01 TERMINATION BY THE DISTRICT FOR CAUSE

- A. The District may terminate the Contract if the Contractor:
 - 1. refuses or fails to supply enough properly skilled workers or proper materials; or
 - 2. fails in any other respect to prosecute the work with the diligence specified in the Contract; or
 - 3. refuses or fails to comply with the laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
 - 4. fails to make prompt payments to subcontractors or for labor or materials; or
 - 5. otherwise is guilty of substantial breach of a provision of the Contract Documents; or
 - 6. If the Contractor commences a voluntary action under any chapter of the United States Bankruptcy Code as now or hereafter in effect or if the Contractor takes any equivalent or similar action by filing a petition or otherwise under any other Federal or State law in effect at such time relating to bankruptcy or insolvency; or
 - 7. If a petition is filed against the Contractor under any chapter of the United States Bankruptcy Code as now or hereafter in effect at the time of filing or if a petition is filed seeking any such equivalent or similar relief against the Contractor under any other Federal or State law in effect at the time relating to bankruptcy or insolvency and such petition or filing is not dismissed within 60 days after being filed; or
 - 8. If the Contractor makes a general assignment for the benefit of creditors; or
 - 9. If a trustee, receiver, custodian or agent of the Contractor is appointed under applicable law or under

contract whose appointment of authority to take charge of property of the Contractor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the Contractor's creditors; or

10. If the Contractor admits in writing an inability to pay its debts generally as they become due.

- B. 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 seven days' written notice, terminate employment of the Contractor and may:
 - 1. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
 - 2. accept assignment of subcontracts pursuant to Paragraph 5.03; and
 - 3. finish the Work by whatever reasonable method the District may deem expedient.
- C. When the District terminates the Contract for one of the reasons stated in Article 14 of these General Conditions, the Contractor shall not be entitled to receive further payment until the Work is finished.
- D. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the District representatives' services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor and/or the Surety shall pay the difference to the District. The amount to be paid to the Contractor or District, as the case may be, upon application, shall be an obligation for payment that shall survive termination of the Contract.
- E. When the District terminates the Contract pursuant to Paragraph 14.01, the District may initiate procedures to declare the Contractor a nonresponsible bidder for a period of two to five years thereafter.

14.02 SUSPENSION BY THE DISTRICT FOR CONVENIENCE

- A. 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.
- B. An adjustment shall be made for increases in the cost of performance of the Contract caused by suspension, delay or interruption. No adjustment shall be made to the extent:
 - 1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
 - 2. that an equitable adjustment is made or denied under another provision of this Contract.

14.03 TERMINATION BY THE DISTRICT FOR CONVENIENCE

- A. The District may terminate the performance of Work under this Contract in accordance with this clause in whole, or from time to time in part, whenever the District shall determine that such termination is in the best interest of the District. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective.
- B. After receipt of a Notice of Termination, and except as otherwise directed by the District, the Contractor shall:
 - 1. Stop Work under the contract on the date and to the extent specified in the notice of termination;
 - 2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the contract which is not terminated;
 - 3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination;
 - 4. Assign to the District, in the manner, at the times, and to the extent directed by the District, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated. The District

- shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the District, in writing, to the extent it may require. Its approval or ratification shall be final for all the purposes of this clause;
 6. Transfer title to the District, and deliver in the manner, at the times, and to the extent, if any, directed by the District, (a) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination, and (b) the completed or partially completed drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the District;
 7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the District directs or authorizes, any property of the types previously referred to herein, but the Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed and at a price or prices approved by the District. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the District to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this contract or paid in such other manner as the District may direct;
 8. Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and
 9. Take such action as may be necessary, or as the District may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the District has or may acquire an interest.
- C. After receipt of a Notice of Termination, the Contractor shall submit to the District its termination claim, in the form and with the certification the District prescribes. Such claim shall be submitted promptly but in no event later than six (6) months from the effective date of termination unless one or more extensions in writing are granted by the District upon request of the Contractor made in writing within such six month period or authorized extension. However, if the District determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such six month period or extension. If the Contractor fails to submit its termination claim within the time allowed, the District may determine, on the basis of information available to the District, the amount, if any, due to the Contractor because of the termination. The District shall then pay to the Contractor the amount so determined.
- D. Subject to the previous provisions, the Contractor and the District may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial termination of Work under this Paragraph. The amount or amounts may include a reasonable allowance for profit on Work done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of Work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing following, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the District to agree upon the whole amount to be paid to the Contractor because of the termination of Work under this Paragraph, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this Subparagraph.
- E. If the Contractor and the District fail to agree, as the previous subparagraph provides, on the whole amount to be paid to the Contractor because of the termination of Work hereunder, the District shall determine, on the basis of information available to the District, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:
1. For all Contract Work performed before effective date of the Notice of Termination, the total (without duplication of any items) of:
 - a. The cost of such Work;

- b. The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as previously provided. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Contractor before the effective date of the Notice of Termination. These amounts shall be included in the cost on account of which payment is made for the cost of Work previously provided; and
 - c. A sum, as profit on the cost of the Work as previously provided, that the District determines to be fair and reasonable. But, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed, and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- 2. The reasonable cost of the preservation and protection of property incurred as previously provided. The total sum to be paid to the Contractor shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. Except for normal spoilage, and except to the extent that the District shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the District, of property which is destroyed, lost, stolen, or damaged, to the extent that it is undeliverable to the District, or to a buyer as previously provided.
- F. The Contractor shall have the right to dispute as provided hereinafter in the Subparagraph entitled "Remedies," from any determination the District makes under the previous subparagraphs. But, if the Contractor has failed to submit its claim within the time provided and has failed to request extension of such time, it shall have no such right of appeal. In any case where the District has determined the amount owed, the District shall pay to the Contractor the following:
 - 1. if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the District or;
 - 2. if a "Remedies" proceeding is initiated, the amount finally determined in such "Remedies" proceeding.
- G. In arriving at the amount due the Contractor under this clause there shall be deducted:
 - 1. all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract;
 - 2. any claim which the District may have against the Contractor in connection with this Contract; and
 - 3. the agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by the Contractor or sold, under the provisions of this clause, and not otherwise recovered by or credited to the District.
- H. If the termination hereunder be partial, before the settlement of the terminated portion of this Contract, the Contractor may file with the District a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the notice of termination). Such equitable adjustment as may be agreed upon shall be made in the price or prices. Nothing contained herein shall limit the right of the District and the Contractor to agree upon the amount or amounts to be paid to the continued portion of the contract when the contract does not contain an established contract price for the continued portion.
- I. Remedies: All claims, counter-claims, disputes and other matters in question between the District and the Contractor arising out of or relating to this Contract or its breach will be decided in a court of competent jurisdiction within the State of California.
- J. The Contractor understands and agrees that the forgoing termination of Contract for convenience provisions shall be interpreted and enforced pursuant to cases interpreting and enforcing similar provisions in federal procurement contracts.

END OF DOCUMENT