

3. A clause stating:

"This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to District, Architect, and Construction Manager stating date of cancellation or reduction. Date of cancellation or reduction may not be less than thirty (30) days after date of mailing notice."

4. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to which cancellation and reduction notice will be sent, and length of notice period.
5. State that District, The State Construction Manager(s), Project Manager(s), and Architect(s) are named additional insured under all policies except Workers' Compensation Insurance and Employers' Liability Insurance and that Contractor's and Subcontractors' insurance policy shall be primary to any insurance or self-insurance maintained by District, The State Construction Manager(s) Project Manager(s), and/or Architect(s).
6. All policies shall be written on an occurrence form.

G. Contract Security - Bonds

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

1. **Performance Bond:** A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.
2. **Payment Bond:** A bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with this Contract.
3. Cost of bonds shall be included in the Bid and Contract Price.
4. All bonds related to this Project shall be in the forms set forth in these Contract Documents and shall comply with all requirements of the Contract Documents, including, without limitation, the bond forms.

XIV. WARRANTY/GUARANTEE/INDEMNITY

A. Warranty/Guarantee

The Contractor shall obtain and preserve for the benefit of the District, manufacturer's warranties on materials, fixtures, and equipment incorporated into the Work.

1. In addition to guarantees required elsewhere, Contractor shall, and hereby does guarantee and warrant all Work furnished on the job against all defects for a period of one (1) year after date of completion as defined in Public Contract Code section 7106, subdivision (c), and shall repair or replace any and all of that Work, together with any other Work, which may be displaced in so doing, that may prove defective in workmanship and/or materials

within a one (1) year period from date of completion as defined in Public Contract Code section 7107, subdivision (c), without expense whatsoever to District. In the event of failure of Contractor and/or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, Contractor and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Contractor and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

2. If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required above. If Contractor or Surety cannot be contacted or neither complies with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the above provision, proceed to make any and all corrections and/or provide attentions the District believes are necessary. The costs of correction or attention shall be charged against Contractor and Surety of the guarantees provided in this Article or elsewhere in this Contract.
3. The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District.
4. Nothing herein shall limit any other rights or remedies available to District.

B. Indemnity

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

2. The Contractor shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if the Contractor's agreement to indemnify, defend, and hold harmless the Indemnities as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnities shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances shall not otherwise affect the validity or enforceability of the Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnities, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnities, the Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.
3. In any and all claims against any of the Indemnities by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

XV. TIME

A. Notice to Proceed

1. District may give a Notice to Proceed within thirty (30) days from the date of the Notice of Award. Once Contractor has received the Notice to Proceed, Contractor shall complete the Work within the period of time indicated in the Contract Documents.
2. In the event that the District desires to postpone the giving of the Notice to Proceed beyond this 30-day period, it is expressly understood that with reasonable notice to the Contractor, the giving of the Notice to Proceed may be postponed by District. It is further expressly understood by Contractor that Contractor shall not be entitled to any claim of additional compensation as a result of the postponement of the giving of the Notice to Proceed.
3. If the Contractor believes that a postponement of the Notice to Proceed will cause a hardship to Contractor, Contractor may terminate the Contract. Contractor's termination due to District's postponement must be by written notice to District within ten (10) days after receipt by Contractor of District's notice of postponement. It is further understood by Contractor that in the event that Contractor terminates the Contract as a result of postponement by the District, the District shall only be obligated to pay Contractor for the Work that Contractor had performed at the time of notification of postponement. Should Contractor terminate the Contract as a result of a notice of postponement, District shall have the authority to award the Contract to the next lowest responsive responsible bidder.

B. Computation of Time

1. The Contractor will only be allowed a time extension for adverse weather conditions if it results in precipitation or other condition which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question, as further specified in the Special Conditions. Any extensions of time for adverse weather conditions shall be in accordance with provisions herein and in the Special Conditions. Delays due to adverse weather conditions will not be allowed for weather conditions which fall within the norm for the location and time of year of the Project as further specified in the Special Conditions. Adverse weather delays may be allowed only if number of days of adverse weather exceed these parameters and Contractor can verify that adverse weather caused delays in excess of seventy-five percent (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof. A day-for-day extension will only be allowed for those days in excess of the norm.
2. The Contractor shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Project Schedule, and to protect the Work under construction from the effects of inclement weather, all at no further cost to the District.

C. Hours of Work

1. Sufficient Forces

Contractor and Subcontractors shall continuously furnish sufficient forces to ensure the prosecution of the Work in accordance with the Contractor's submitted schedule.

2. Performance During Working Hours

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

D. Progress and Completion

1. Time of the Essence

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

2. No Commencement Without Insurance

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

E. Progress Schedule

Contractor shall within ten (10) days after the date of the Notice to Proceed provide to District and Architect a schedule in conformance with the Contract Documents.

F. Expeditious Completion

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

XVI. EXTENSIONS OF TIME - LIQUIDATED DAMAGES

A. Liquidated Damages

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

B. Excusable Delay

1. Contractor shall not be charged for liquidated damages because of any delays in completion of Work which are not the fault or negligence of Contractor or its Subcontractors, including acts of God as defined in Public Contract Code section 71 05, acts of enemy, epidemics, and quarantine restrictions. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected.
2. Contractor shall notify the District pursuant to the claims provisions in these General Conditions of any anticipated delay and its cause. Following submission of a claim, the District may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.
3. The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.
4. Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A fragment of any delay of seven (7) days or more must be provided.)

C. No Additional Compensation for Delays Within Contractor's Control

1. Contractor is aware that governmental agencies, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. Accordingly, Contractor shall include in its bid, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Thus, Contractor is not entitled to make a claim for damages or delays arising from the review of Contractor's drawings.
2. Contractor shall only be entitled to compensation for delay when the following conditions are met:
 - a. The District is responsible for the delay;
 - b. The delay is unreasonable under the circumstances involved;
 - c. The delay was not within the contemplation of District and Contractor; and
 - d. Contractor complies with the claims procedure of the Contract Documents.

XVII. CHANGES IN THE WORK

A. No Changes Without Authorization

1. There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order or a written Construction Change Directive authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's Board of Trustees has authorized the same and the cost thereof has been approved in writing by Change Order or Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order or Construction Change Directive. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.
2. Contractor shall perform immediately all work that has been authorized by a fully executed Change Order or Construction Change Directive. Contractor shall be fully responsible for any and all delays and/or expenses caused by Contractor's failure to expeditiously perform this Work.
3. Should any Change Order result in an increase in the Contract Price, the cost of that Change Order shall be agreed to, in writing, in advance by Contractor and District and be subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that Contractor proceeds with any change in Work without a Change Order executed by the District or Construction Change Directive, Contractor waives any claim of additional compensation or time for that additional work.

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

B. Architect Authority

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

C. Change Orders

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

1. A description of a change in the Work;
2. The amount of the adjustment in the Contract Price, if any; and
3. The extent of the adjustment in the Contract Time, if any.

D. Construction Change Directives

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

E. Price Request

1. Definition of Price Request

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

2. Scope of Price Request

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

F. Proposed Change Order

1. Definition of Proposed Change Order

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

2. Changes in Contract Price

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

3. Changes in Time

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

G. Format for Proposed Change Order

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

		EXTRA	CREDIT
(a)	Material (attach itemized quantity and unit cost plus sales tax)		
(b)	Labor (attach itemized hours and rates, fully encumbered)		
(c)	Equipment (attach suppliers' invoice)		
(d)	Subtotal		

(e)	If Subcontractor will perform Work, add Subcontractor's overhead and profit to portions performed by Subcontractor, not to exceed ten percent (10%) of item (d).		
(f)	Subtotal		
(g)	Overhead and Profit, not to exceed fifteen percent (15%) of item (f) if Contractor performs Work; No more than five percent (5%) if work performed by Subcontractor of Item (f)		
(h)	Subtotal		
(i)	Bond not to exceed one percent (1 %) of Item (f)		
(j)	TOTAL		
(k)	Time		

H. Change Order Certification

All Change Orders and PCO's must include the following certification by the Contractor:

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

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

I. Determination of Change Order Cost

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

1. District acceptance of a PCO;
2. By unit prices contained in Contractor's original bid;
3. By agreement between District and Contractor.

J. Deductive Change Orders

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

K. Discounts, Rebates, and Refunds

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

L. Accounting Records

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

M. Notice Required

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

N. Applicability to Subcontractors

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

O. Alteration to Change Order Language

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

XVIII. REQUEST FOR INFORMATION

1. Any Request for Information shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. The Contractor shall make suggestions and interpretations of the issue

raised by each Request for Information. A Request for Information cannot modify the Contract Price, Contract Time, or the Contract Documents.

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

XIX. PAYMENTS

A. Contract Price

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

B. Applications for Progress Payments

1. Procedure for Applications for Progress Payments

a. Application for Progress Payment

Not before the fifth (5th) day of each calendar month during the progress of the Work, Contractor shall submit to the District and the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized, if required, and supported by the following or such portion thereof as the District and/or the Architect requires:

- i. The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- ii. The amount being requested under the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- iii. The balance that will be due to each of such entities after said payment is made;
- iv. A certification that the Record Drawings and annotated Specifications are current;
- v. Itemized breakdown of work done for the purpose of requesting partial payment;
- vi. An updated construction schedule in conformance with the provisions herein;

- vii. The additions to and subtractions from the Contract Price and contract Time;
- viii. A total of the retentions held;
- ix. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;
- x. The percentage of completion of the Contractor's Work by line item;
- xi. Schedule of Values updated from the preceding Application for Payment; and
- xii. A certification by the Contractor of the following:

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

2. Prerequisites for Progress Payments

- a. First Payment Request: The following items, if applicable, must be completed before the District will accept and/or process the Contractor's first payment request:
 - i. Installation of the Project sign;
 - ii. Receipt by Architect of all submittals;
 - iii. Installation of field office;
 - iv. Installation of temporary facilities and fencing;
 - v. Schedule of Values;
 - vi. Contractor's Construction Schedule;
 - vii. Schedule of unit prices, if applicable;
 - viii. Submittal Schedule;
 - ix. Copies of necessary permits;

- x. Copies of authorizations and licenses from governing authorities;
- xi. Initial progress report;
- xii. Surveyor qualifications;
- xiii. Written acceptance of District's survey of rough grading, if applicable;
- xiv. List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;
- xv. All bonds and insurance endorsements; and
- xvi. Resumes of Contractor's project manager, and if applicable, job site secretary, record documents recorder, and job site superintendent.

b. Second Payment Request

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

c. No Waiver of Criteria

Any payments made to Contractor where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Contractor may pay its Subcontractors and suppliers. Contractor agrees that failure to submit such items may constitute a breach of contract by Contractor and may subject Contractor to termination.

C. Progress Payments

1. Payments to Contractor

Within thirty (30) days after approval of the Application for Payment, Contractor shall be paid a sum equal to ninety percent (90%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The value of the Work completed shall be Contractor's best estimate. No inaccuracy or error in said estimate shall operate to release the Contractor, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.

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

2. No Waiver

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

3. Architect's Approval of Application for Payment

The Architect will use its best efforts, within seven (7) days after receipt of the Contractor's Application for Payment, to either approve such payment or notify the Contractor in writing of the Architect's reasons for withholding approval in whole or in part as provided herein. The Architect's review of the Contractor's Application for Payment will be based on the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

- a. An evaluation of the Work for conformance with the Contract Documents,
- b. Results of subsequent tests and inspections,
- c. Minor deviations from the Contract Documents correctable prior to completion, and
- d. Specific qualifications expressed by Architect.

4. Warranty of Title

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

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

D. Decisions to Withhold Payment

1. Reasons to Withhold Payment

The District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. The District may withhold payment, in whole, or in part,

to such extent as may be necessary to protect the District from loss because of, but not limited to:

- a. Defective Work not remedied within three (3) days of written notice to Contractor;
- b. Stop Notices or other liens served upon the District as a result of the Contract;
- c. Liquidated damages assessed against the Contractor;
- d. The cost of completion of the Contract if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the completion date;
- e. Damage to the District or other contractor(s);
- f. Unsatisfactory prosecution of the Work by the Contractor;
- g. Failure to store and properly secure materials;
- h. Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, monthly progress schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;
- i. Failure of the Contractor to maintain Record Drawings;
- j. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- k. Unauthorized deviations from the Contract Documents;
- l. Failure of the Contractor to prosecute the Work in a timely manner in compliance with the Construction Schedule, established progress schedules, and/or completion dates;
- m. Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq. Or failure to comply with any other Labor Code requirements;
- n. Failure to properly maintain or clean up the Site;
- o. Payments to indemnify, defend, or hold harmless the District;
- p. Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;
- q. Failure to pay Subcontractor(s) or supplier(s) as required herein.

2. Reallocation of Withheld Amounts

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

b. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after three (3) calendar days written notice to the Contractor and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Contract Price by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract Price (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefore.

3. Payment After Cure

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

E. Subcontractor Payments

1. Payments to Subcontractors

No later than ten (10) days after receipt, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Subcontractors in a similar manner.

2. No Obligation of District for Subcontractor Payment

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

3. Joint Checks

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

XX. COMPLETION OF THE WORK

A. Completion

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

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

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

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

B. Close-Out Procedures

1. Punch List

The Contractor shall notify the Architect when Contractor considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected ("Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

2. Close-Out Requirements

a. Utility Connections

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

b. Record Drawings

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

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

(iii) Upon completion of the Work and as a condition precedent to approval of final payment, Contractor shall obtain the Inspector's approval of the corrected prints

and employ a competent draftsman to transfer the "as-built" information to the most current version of AutoCAD that is, at that time, currently utilized for Plan Check Submission by either the District, the Architect, OPSC, and/or DSA, and print a complete set of transparent sepias. When completed, Contractor shall deliver corrected sepias and diskette with AutoCAD file to the District.

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

C. Final Inspection

1. Contractor shall comply with Punch List procedures as provided herein, and maintain the presence of Project Superintendent and Project Manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Contractor demobilize its forces prior to completion of the Punch List. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Contractor and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

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

3. Final Inspection Requirements

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

(i) The Work has been completed.

(ii) All life safety items are completed and in working order.

(iii) Mechanical and electrical Work are complete, fixtures are in place, connected, and ready for tryout and test.

(iv) Electrical circuits scheduled in panels and disconnect switches labeled.

(v) Painting and special finishes complete.

(vi) Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.

(vii) Tops and bottoms of doors sealed.

- (viii) Floors waxed and polished as specified.
- (ix) Broken glass replaced and glass cleaned.
- (x) Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site.
- (xi) Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.
- (xii) Finished and decorative work shall have marks, dirt, and superfluous labels removed.
- (xiii) Final cleanup, as provided herein.

D. Final Inspection

1. Contractor shall comply with Punch List procedures as provided herein, and maintain the presence of Project Superintendent and Project Manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Contractor demobilize its forces prior to completion of the Punch List. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect shall inspect the Work and shall submit to Contractor and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.
2. Upon Contractor's completion of all items on the Punch List and any other uncompleted portions of the Work, the Work contained in the -----, the Contractor shall notify the District and Architect, who shall again inspect such Work. If the Architect finds the Work complete and acceptable under the Contract Documents, the Architect will notify Contractor, who shall then jointly submit to the Architect and the District its final Application for Payment.

E. Costs of Multiple Inspections

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

F. Partial Occupancy or Use Prior to Completion

1. District's Rights

The District may occupy or use any completed or partially completed portion of the Work at any stage. The District and the Contractor shall agree in writing to the responsibilities

assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. If District and Contractor cannot agree as to responsibilities, any disagreement(s) shall be resolved pursuant to provisions herein. When the Contractor considers a portion complete, the Contractor shall prepare and submit a Contractor's Punch List to the District as indicated herein.

2. Inspection Prior to Occupancy or Use

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

3. No Waiver

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

XXI. FINAL PAYMENT AND RETENTION

A. Final Payment

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

B. Prerequisites for Final Payment

The following conditions must be fulfilled prior to Final Payment:

1. A full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by Contractor, including a release of Stop Notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop Notice rights.
2. The Contractor shall have made all corrections to the Work which is required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.
3. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

4. Contractor must have completed all requirements set forth under "Close Out Requirements."
5. Architect shall have issued a Final Certificate of Payment.
6. The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents.
7. The Contractor shall have completed final clean up as provided herein.

C. Retention

The retention, less any amounts disputed by the District or which the District has the right to withhold pursuant to provisions herein, shall be paid after approval of the District by the Architect's Certificate of Payment, after the satisfaction of the conditions set forth herein, and after thirty-five (35) days after the acceptance of the Work and recording of the Notice of Completion by District. No interest shall be paid on any retention, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the District and the Contractor pursuant to Public Contract Code section 22300.

D. Substitution of Securities

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

XXII. UNCOVERING OF WORK

A. Uncovering Work for Required Inspections

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

B. Costs for Inspections Not Required

If a portion of the Work has been covered, which the Project Inspector or the Architect has not specifically requested to observe prior to its being covered, the District, Project Inspector, or the Architect may request to see that Work, and it shall be uncovered by the Contractor. If that Work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order, be charged to the District. If that Work is not in accordance with Contract Documents, the Contractor shall pay these costs unless the condition was caused by the District or a separate contractor, in which event the District shall be responsible for payment of such costs to the Contractor.

XXIII. NONCONFORMING WORK AND CORRECTION OF WORK

A. Nonconforming Work

1. Contractor shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the District or other Contractors caused thereby.
2. If Contractor does not remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, District may remove it and may store any material at Contractor's expense. If Contractor does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District.

B. Correction of Work

1. Correction of Rejected Work

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

2. One-Year Warranty Corrections

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

3. District's Rights if Contractor Fails to Correct

If the Contractor fails to correct nonconforming Work within a reasonable time, the District may correct it, pursuant to the applicable provisions in these General Conditions regarding the District's right to perform work.

XXIV. TERMINATION AND SUSPENSION

A. District's Right to Terminate Contractor for Cause

1. Grounds for Termination

The District, in its sole discretion, may terminate the Contract based upon the following:

- a. Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or
- b. Contractor fails to complete said Work within the time specified or any extension thereof, or
- c. Contractor persistently fails or refused to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or
- d. Contractor files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition not dismissed within sixty (60) days; or
- e. Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
- f. Contractor persistently or repeatedly refuses fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; of
- g. Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or
- h. Contractor persistently disregards laws, or ordinances, or instructions of District; or
- i. Contractor fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or
- j. Contractor or its Subcontractor(s) is/are otherwise in breach or in substantial violation of any provision of this Contract.

2. Notification of Termination

- a. Upon the occurrence at District's sole determination of any of the above conditions, District may, without prejudice to any other right or remedy, serve written notice upon Contractor and its Surety of District's termination of this Contract. This notice will contain the reasons for the termination. Unless, within three (3) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to District for the correction of

the condition(s) and/or violation(s) be made, this Contract shall cease and terminate. Upon Determination, Contractor shall not be entitled to receive any further payment until the entire Work is finished.

- b. Upon Termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to take over and perform this Contract only if Surety:
 - i. Within seven (7) days after service upon it of the notice of tender, gives District written notice of Surety's intention to take over and perform this Contract; and
 - ii. Commences performance of this Contract within seven (7) days from date of serving of its notice to District.
- c. If Surety fails to notify District or begin performance as indicated herein, District may take over the Work and execute the Work to completion by any method of may deem advisable at the expense of Contractor. Contractor and/or its Surety shall be liable to District for any excess cost or other damages the District incurs thereby. Time is of the essence in this Contract. If the District takes over the Work as herein provided, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Contractor as may be on the Site of the Work, in bonded storage, or previously paid for.

3. Effect of Termination

- a. Contractor shall, upon being ordered to do so by the District, immediately remove from the Site all or any materials and personal property belonging to Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. The Contractor and its Surety shall be liable upon the performance bond for all damages caused the District by reason of the Contractor's failure to complete the Contract.
- b. In the event that the District shall perform any portion of, or the whole of the Work, pursuant to the provisions of the General Conditions, the District shall not be liable nor account to the Contractor in any way for the time within which, or the manner in which, the Work is performed by the District or for any changes the District may make in the Work or for the money expended by the District in satisfying claims and/or suits and/or other obligations in connection with the Work.
- c. In the event that the Contract is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor.
- d. If the expense to the District to finish the Work exceeds the unpaid Contract Price, Contractor and Surety shall pay difference to District within twenty-one (21) days of District's request.

- e. The District shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Contractor under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the District, no Subcontractor shall have any claim against the District or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract. The District or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the District so elect, the Contractor shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the District may require, for the purpose of fully vesting in the District the rights and benefits of it Subcontractor under Subcontracts or other obligations or commitments. All payments due the Contractor hereunder shall be subject to a right of offset by the District for expenses and damages suffered by the District as a result of any default, acts, or omissions of the Contractor. Contractor must include this assignment provision in all of its contracts with its Subcontractors.
- f. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to District.

4. Emergency Termination of Public Contracts Act of 1949

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

Section 4410 of the Government Code states:

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

Section 4411 of the Government Code states:

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

- b. Compensation to the Contractor shall be determined at the sole discretion of District on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which

there is a separate previously submitted unit price or item on the accepted schedule of values, that price shall control. The District, at its sole discretion, may adopt the Contract Price as the reasonable value of the work done or any portion thereof.

B. Termination of Contractor for Convenience

District in its sole discretion may terminate the Contract upon three (3) days written notice to the Contractor. In case of this termination, the Contractor shall have no claims against the District except:

1. The actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and
2. Five percent (5%) of the total cost of work performed as of the date of termination, or five percent (5%) of the value of the Work yet to be performed, whichever is less. This five percent (5%) amount shall be full compensation for all Contractor's and its Subcontractor(s)' mobilization and/or demobilization costs and any anticipated loss profits resulting from termination of the Contractor for convenience.

XXV. CLAIMS AND DISPUTES

A. Definition of Claim

1. For purposes of this section, a claim means a separate demand by the Contractor for
 - a. A time extension,
 - b. Payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or
 - c. Payment of money that the District disputes is owing.

B. Claim Presentations

1. If Contractor intends to claim an increase in the Contract Price or Contract Time for any reason including, without limitation, the acts of District or its agents, Contractor shall, within ten (10) days after the event giving rise to the claim, give notice of the claim in writing and submit to the District a written statement of the damage sustained or time requested. On or before twenty (20) days after Contractor's written notice of claim, Contractor shall file with the District an itemized statement of the details and amounts of its claim for any increase in the Contract Price or Contract Time. Contractor must timely submit the Notice of Claim and the substantiating documentation for any claim. Otherwise, Contractor shall have waived and relinquished its claim against the District and Contractor's claims for compensation or an extension of time shall be forfeited and invalidated, and Contractor shall not be entitled to consideration for payment or time on account of the instant matter.

2. The attention of the Contractor is drawn to Government Code section 12650, et seq. regarding penalties for false claims.
3. Contractor shall file with the District any written claim, including the documents necessary to substantiate it, on or before the day of final payment on the Contract.
4. The Contractor shall not cause a delay of the Work during any dispute, claims definition, negotiation, mediation, or arbitration proceeding, except by written agreement by the District.
5. The Contractor shall bind all its Subcontractors, material persons, and suppliers to the provisions of this section on mediation and arbitration and will hold the District harmless against disputes and claims by Subcontractors, material persons, or suppliers.

C. Claim Resolution

In the event of a dispute between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 20104, if applicable. Pending resolution of the dispute, if the dispute is not resolved, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work, but will allow determination by the court of the State of California in the county in which the District office resides, having competent jurisdiction of the dispute, after the Project has been completed, and not before.

1. Public Works Claims of \$375,000 or Less

- a. For all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a Contractor and a local agency, the procedure set forth in Public Contract Code section 20104 et seq. shall apply:
 - (i) For claims of less than fifty thousand dollars (\$50,000), the District shall respond in writing within forty-five (45) days of receipt of the claim or may request in writing within thirty (30) days of receipt of the claim any additional documentation supporting the claim or relating to defenses or claims the District may have against the claimant.

If additional information is required, it shall be requested and provided by mutual agreement of the parties.

The District's written response to the documented claim shall be submitted to the claimant within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant to produce the additional information, whichever is greater.

- (ii) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred Seventy-five thousand dollars (\$375,000), the District shall respond in writing to all written claims within sixty (60) days of receipt of

the claim, or may request, in writing, within thirty (30) days of receipt of the claim any additional documentation supporting the claim or relating to defenses or claims the District may have against the claimant.

If additional information is required, it shall be requested and provided upon mutual agreement of the District and the claimant.

The District's written response to the claim, as further documented, shall be submitted to the claimant within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant to produce the additional information or requested documentation, whichever is greater.

- b. If the claimant disputes the District's written response, or the District fails to respond within the time prescribed, the claimant may so notify the District, in writing, either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
- c. Following the meet and confer conference, if the claim or any portion of it remains in dispute, the claimant may file a claim as provided in Chapter I (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions the running of the time within which a claim must be filed shall be tolled from the time the claimant submits its written claim until the time the claim is denied, including any period of time utilized by the meet and confer process.
- d. For any civil action filed to resolve claims filed pursuant to this section, within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
- e. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of the Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986, (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Code of Civil Procedure section 1141.10 et seq. The Civil Discovery Act of 1986, Code of Civil Procedure section 2016 et seq., shall

apply to any proceeding brought under this section consistent with rules pertaining to judicial arbitration.

- f. The District shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the Contract Documents. In any suit filed pursuant to this section, the District shall pay interest at the legal rate on any arbitration award or judgment. Interest shall begin to accrue on the date the suit is filed in a court of law.

2. Public Works Claims Over \$375,000

For all claims of over three hundred seventy-five thousand dollars (\$375,000) which arise between a Contractor and the District, the following procedure shall apply:

The parties agree to first endeavor to settle the dispute in an amicable manner by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before having recourse to arbitration or a judicial forum. The claim or dispute shall be identified in writing to the District within thirty (30) days of discovery and shall be mediated within one hundred and twenty (120) days of discovery.

- a. The parties further agree that all Contractors, Subcontractors, Subcontractors, suppliers, and material persons whose portion of the Work amounts to five thousand dollars (\$5,000) or more, and their insurers and their sureties, shall agree to mediation as the first method of dispute resolution on all claims in excess of three hundred seventy-five thousand dollars (\$375,000).

XXVI. LABOR, WAGE & HOUR, APPRENTICE, AND RELATED PROVISIONS

A. Wage Rates, Travel, and Subsistence

1. Pursuant to the provisions of article 2 (commencing at section 1770), chapter I, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file with the Facilities Department of District and copies will be made available to any interested party on request. Contractor shall obtain and post a copy of such wage rates at the job site.
2. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed under Contractor.
3. Contractor shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department Industrial Relations (hereinafter "Director"), regardless of any contractual relationship which may be alleged to exist between Contractor or any Subcontractor and such workers.

4. Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable Collective Bargaining Agreements filed with the Department of Industrial Relations in accordance with Labor Code section 1773 et seq.
5. If during the period this bid is required to remain open, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change shall not alter the wage rates in the Notice to Contractors or the Contract subsequently awarded.
6. Pursuant to labor Code section 1775, Contractor shall, as a penalty to District, forfeit the statutory amount (believed by the District to be currently fifty dollars (\$50)) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates, determined by the Director, for such work or craft in which such worker is employed for any public work done under Contract by Contractor or by any Subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.
7. Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification.
8. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by section 3093, and similar purposes.
9. Contractor shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

B. Hours of Work

1. As provided in article 3 (commencing at section 1810), chapter I, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal days work. The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by Contractor to eight (8) hours per day, and forty (40) hours during anyone week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during anyone week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

2. Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.
3. Pursuant to Labor Code section 1813, Contractor shall as a penalty to the District forfeit the statutory amount (believed by the District to be currently twenty-five dollars (\$25)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in anyone calendar day and forty (40) hours in anyone calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.
4. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.

C. Payroll Records

1. Pursuant to the provisions of section 1776 of the Labor Code, Contractor shall keep and shall cause each Subcontractor performing any portion of the Work under this Contract to 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 Contractor in connection with the Work.
2. The payroll enumerated hereunder shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:
 - a. Certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee of his/her authorized representative on request.
 - b. Certified copy of all payroll records enumerated hereunder shall be made available for inspection or furnished upon request to a representative of District, Division of Labor Standards Enforcement, and Division of Apprenticeship Standards of the Department of Industrial Relations.
 - c. A certified copy of all payroll records enumerated hereunder shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the body awarding Contract, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records reimburse the costs of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.

d. The form of certification shall be as follows:

I, _____ (Name-Print), the undersigned, am
_____ (position in business) with the
authority to act for and on behalf _____ (Name of
business and/or Contractor), certify under penalty of perjury that (a) the records or
copies thereof submitted and consisting of _____ (description,
number of pages) are the originals, or true, full, and correct copies of the originals,
which depict the payroll record(s) of actual disbursements by way of cash, check,
or whatever form to the individual or individuals named, and (b) we have complied
with the requirements of sections 1771, 1811, and 1815 for any work performed by
our employees on the Project.

Date: _____ Signature: _____

3. Each Contractor shall file a certified copy of the records enumerated hereunder with the entity that requested the records within ten (10) days after receipt of a written request.
4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded Contract or performing Contract shall not be marked or obliterated.
5. Contractor shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days, provide a notice of change of location and address.
6. In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to District, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.
7. It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

D. Apprentices

1. Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

2. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.
3. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.
4. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.
5. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.
6. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.
7. If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:
 - a. Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;
 - b. Forfeit as a penalty to District the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.
8. Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
9. Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777 .6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

E. Non-Discrimination

1. Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Contractor and Subcontractor.
2. Special requirements for Federally Assisted Construction Contracts: During the performance of this Contract, Contractor agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

F. Labor First Aid

Contractor shall maintain emergency first aid treatment for Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 D.S.C. § 651 et seq.) and the California Occupational Safety and Health Act of 1973 (8 Cal. Code of Regs., §1 et seq.).

XXVII. MISCELLANEOUS

A. Assignment of Antitrust Actions

1. Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

2. Section 4552 of the Government Code states:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

3. Section 4553 of the Government Code states:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

4. Section 4554 of the Government Code states:

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

Under this Article, "public purchasing body" is District and "bidder" is Contractor.

B. Excise Taxes

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of District. No Federal Excise Tax for such materials shall be included in any Contract Price.

C. Taxes

Contract Price is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

D. Shipments

All shipments must be F.O.B. destination to Site or sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Contract Price shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

END OF DOCUMENT

SPECIAL CONDITIONS

1. Mitigation Measures

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

2. Modernization Projects

Access to the school buildings and entry to buildings, classrooms, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with District and the onsite custodian before Work is to start. Unless agreed to otherwise in writing, only a school custodian will be allowed to unlock and lock doors in existing building(s). The custodian will be available only while school is in session. If a custodian is required to arrive before 7:00 a.m. or leave after 3:30 p.m. to accommodate Contractor's Work, the overtime wages for the custodian will be paid by the Contractor, unless, at the discretion of the District, other arrangements are made in advance.

Upon request, the District may, at its own discretion, provide a master key to the school site for the convenience of the Contractor. The Contractor agrees to pay all expenses to re-key the school site if the master key is lost or stolen or if any unauthorized party obtains a copy of the key or access to the school.

The Contractor is advised that Work is to be performed in spaces regularly scheduled for instruction. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities shall be only as arranged in advance with the District. Contractor shall provide temporary services to all facilities interrupted by Contractor's Work.

The Contractor shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.

Contractor shall maintain the confidentiality of all information, documents, programs, procedures and all other items that Contractor encounters while performing the Work. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes, without limitation, all student, parent, and employee disciplinary information and health information.

3. Weather Days

January, [11]; February [10]; March [10]; April [6]; May [3]; June [1]; July [0]; August [0]; September [1]; October [4]; November [7]; December [10].

4. **Insurance**

The limits of insurance shall not be less than:

Commercial General Liability	\$2,000,000	each occurrence
Bodily Injury Liability	\$2,000,000	each aggregate
Property Damage	\$2,000,000	each occurrence
Comprehensive Automotive Vehicle Liability	\$2,000,000	each occurrence
Bodily Injury Liability	\$2,000,000	each aggregate
Property Damage	\$2,000,000	each occurrence
Commercial Umbrella Policy	\$4,000,000	
Fire	\$2,000,000	each occurrence
Builders Risk	Issued for the value of the construction contract	

Workers Compensation and
Employer Liability

At statutory limits pursuant to state law

END OF DOCUMENT