

ATTACHMENT 1 TO CONSTRUCTION PROVISIONS

GENERAL CONDITIONS

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ARTICLE 1

GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the agreement between Owner and Contractor (hereinafter the Owner/Contractor Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to bid, instructions to bidders, notice to contractors calling for bids, Bid Proposal, Non-Collusion Affidavit, Statement of Qualifications, Bonds, Contractor's Certificate Regarding Worker's Compensation, Contractor's Drug-Free Workplace Certificate, Tobacco-Free Workplace, Criminal Background Investigation, Iran Contracting Act Certification, Good Faith Efforts to include DVBE, Subcontractors List, Verification of Certified Payroll Records, Bid Schedule, Guarantee, and the requirements contained in the Bid Documents, other documents listed in the Owner/Contractor Agreement, and Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Architect, if authorized. The Contract Documents are complementary, and each obligation of the Contractor, Subcontractors, material or equipment suppliers in any one shall be binding as if specified in all. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification.

1.1.3 THE WORK

The Work shall include all labor, materials and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include the initial obligation of any Contractor or Subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated bid documents. The "Site" refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is defined on the Notice to Contractors Calling for Bids and encompasses the totality of construction as depicted by all of the Drawings and Specifications, the work of which will be performed in accordance with the Contract Documents in whole or in part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

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

1.1.6 THE SPECIFICATIONS

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

1.1.7 THE PROJECT MANUAL

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

1.1.8 COMPLETION

"Completion" or "Completion of the Work" means that the Contract has been fully performed, that correction or completion items noted upon Architect's final inspection have been made, and that the Work has been accepted by the District's Board of Education. The Work is considered Complete upon recordation of the Notice of Completion for the Work.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 CORRELATION AND INTENT

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

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

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

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. In the event Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract Documents, Contractor shall promptly notify Architect and Owner in writing of same and shall ensure that any such violation or inconsistency shall be corrected in the manner provided hereunder prior to the construction of that portion of the Project.

1.2.1.4 Ambiguity. Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify Architect and Owner in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the

Contract Price or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.

1.2.2 ADDENDA AND DEFERRED APPROVALS

1.2.2.1 **Addenda.** Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with Title 24, California Code of Regulations, addenda shall be approved by the Division of the State Architect (DSA).

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

1.2.3 SPECIFICATION INTERPRETATION

1.2.3.1 **Titles.** The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved.

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

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

1.2.3.4 **General Conditions.** The General Conditions and Division 1 "General Requirements" are a part of each and every Section of the Specifications.

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

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

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

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

No provisions of any reference standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Owner, Contractor or Architect, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Architect, or any of Architect's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Article 4.

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

1.2.4 RULES OF DOCUMENT INTERPRETATION

- A. In the event of conflict within the Drawings, the following rules shall apply:
 - 1. General Notes, when identified as such, shall be incorporated into other portions of Drawings.
 - 2. Schedules, when identified as such, are complementary with other notes and other portions of Drawings including those identified as General Notes.
 - 3. Larger scale drawings shall take precedence over smaller scale drawings.
 - 4. Figured, derived, or numerical dimensions shall govern. At no time shall the Contractor base construction on scaled drawings.
- B. Specifications shall govern as to materials, workmanship, and installation procedures.
- C. In the case of disagreement or conflict between or within standards, Specifications, and Drawings, the more stringent, higher quality, and greater quantity of Work shall apply.
- D. In the event there is a discrepancy between the various Contract Documents, the Owner/Contractor Agreement shall control. The terms of any Supplementary Conditions shall control over the terms of the General Conditions.

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

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

ARTICLE 2

OWNER

2.1 DEFINITION

The term "Owner" means the Santa Barbara Unified School District, also referred to as "District" in the Contract Documents. The term "Owner" means the Owner or the Owner's authorized representative.

Owner may designate a Construction Manager as its authorized representative. The Construction Manager may be an employee or an outside person/entity retained by Owner. The Construction Manager shall have the authority to perform any act which may be performed by the Owner, unless the Contract Documents require performance by the Owner's governing board.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 FINANCING AND FUNDING

At the request of the Contractor, the Owner will, prior to execution of the Owner/Contractor Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

2.2.2 SITE SURVEY

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

2.2.3 SOILS

2.2.3.1 Owner Furnished Services. When required by the scope of the Project, the Owner will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required and deemed necessary by the Architect or as required by local or state codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

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

2.2.3.3 Imported Soils. No soil may be brought to the Project Site without prior approval of the District. Any imported soil must be free of asbestos, lead, toxic chemicals, heavy metals, PCB's and other hazardous materials as defined under Health & Safety Code section 25411 and 25249.8. Contractor shall demonstrate, to the District's satisfaction, that all imported soil is free of such substances. Contractor's obligations include, but are not limited to: (1) providing the District with all available information regarding the source of the imported soil material (including the results of any testing performed at the source site) and using diligent efforts to obtain such information from the supplier; (2) providing soil samples for testing at Contractor's sole expense before soils are imported; and (3) providing samples of imported soil after delivery to the Project Site for testing at Contractor's sole expense in order to verify conformance with the original samples. All testing shall be performed by a California certified laboratory approved by the District and in accordance with USEPA methods. Test results shall be accompanied by a summary of the Quality Assurance/Quality Control results. Any identified contaminants will be evaluated for risk in accordance with the DTSC's PEA Guidance Manual. The District reserves the right to observe the Contractor's sampling activities and independently sample, analyze and verify the results of any soil analysis submitted for approval. The District has the right, in its sole Discretion, to accept or reject imported soil on a case-by-case basis.

2.2.4 UTILITY SURVEY

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

2.2.5 INFORMATION

Upon the request of the Contractor, Owner will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from Owner's records. The Contractor may not rely upon the accuracy of any such information, other than that provided under Sections 2.2.2

through 2.2.4 (except that the Contractor may not rely upon and must question in writing to the Owner and the Architect any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Project, and prior experience with school projects), unless specifically stated in writing that the Contractor may rely upon the designated information.

2.2.6 EXISTING UTILITY LINES; REMOVAL, RELOCATION

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

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

2.2.6.3 Notification. If the Contractor, while performing Work under this Contract, discovers utility facilities not identified by the Owner in the Contract Documents, Contractor shall immediately notify the Owner and the utility in writing.

2.2.6.4 Underground Utility Clearance. It shall be Contractor's sole responsibility to timely notify all public and private utilities serving the Site prior to commencing Work. The Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code § 4216, et seq.

2.2.7 EASEMENTS

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

2.2.8 REASONABLE PROMPTNESS

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

2.2.9 COPIES FURNISHED

The Contractor will be furnished, free of charge, such copies of the Contract Documents as are reasonably necessary for execution of the Work, including copies of Drawings and Project Manuals.

2.2.10 DUTIES CUMULATIVE

The foregoing is in addition to other duties and responsibilities of the Owner enumerated herein, and especially those in Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

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

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

ARTICLE 3

THE CONTRACTOR

3.1 DEFINITION

The Contractor is the person or entity identified as such in the Owner/Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors shall be equally applicable to the Contractor.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 CONTRACTOR

The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. If any of the Work is performed by separate contractors retained directly by the Owner, Contractor shall be responsible for the coordination and sequencing of the Work of those separate contractors so as to avoid any impact on the Project Schedule pursuant to the requirements of Article 6. Specific duties of the Contractor shall be in accordance with Title 24 of the California Code of Regulations. Contractor shall fully comply with any and all reporting requirements of Education Code § 17309 in the manner prescribed by Title 24.

3.2.2 SITE VISIT

As a condition of entering into the Owner/Contractor Agreement, the Contractor warrants that it has made a Site visit prior to the execution of the Owner/Contractor Agreement.

3.2.3 CONTRACTOR RESPONSIBILITY

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

3.2.4 OBLIGATIONS NOT CHANGED BY ARCHITECT'S ACTIONS

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

3.2.5 TRENCHES OR EXCAVATIONS GREATER THAN FOUR FEET BELOW OF THE SURFACE

Pursuant to Public Contract Code §7104, when any excavation or trenching extends greater than four feet below the surface:

- A. The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:
 - (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

- (2) Subsurface or latent physical conditions at the site differing from those indicated.
 - (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- B. The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract.
- C. In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled Completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

3.2.6 ACCEPTANCE/APPROVAL OF WORK

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

3.3 SUPERINTENDENT

3.3.1 FULL TIME SUPERINTENDENT

The Contractor shall provide a competent, English-speaking superintendent and assistants as necessary who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

3.3.2 STAFF

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

3.3.3 RIGHT TO REMOVE

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

3.4 LABOR AND MATERIALS

3.4.1 CONTRACTOR TO PROVIDE

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

3.4.2 QUALITY

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

3.4.3 REPLACEMENT

Any Work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved and condemned by the Owner, in which case, they shall be removed and replaced by the Contractor at the Contractor's sole expense.

3.4.4 DISCIPLINE

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract in accordance with paragraph 5.5.2 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 WARRANTY

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

3.6 TAXES

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

3.7 PERMITS, FEES AND NOTICES

3.7.1 PAYMENT

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and Completion of the Work, which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). Owner shall be responsible for all testing and inspection as required by the DSA on-Site or within the distance limitations set forth in paragraph 13.5.2, unless a different mileage range is specified in any Supplementary Conditions.

3.7.2 COMPLIANCE

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

3.7.3 CONTRACT DOCUMENTS

It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with any applicable law, statute, ordinance, building codes, rule, or regulation. However, if the Contractor knew, or should have known, or observes that portions of the Contract Document are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

3.7.4 RESPONSIBILITY

If the Contractor performs Work that it knows, or should have known, is contrary to any law, statute, ordinance, building code, rule or regulation, the Contractor shall assume full responsibility for such Work and shall bear the attributable cost of correction or Project delay.

3.8 ALLOWANCES

3.8.1 CONTRACT

The Contract Price includes all allowances stated in the Contract Document. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable objection.

3.8.2 SCOPE

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

3.8.2.2 **Cost.** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, etc., as delineated in paragraph 7.7.4.

3.8.2.3 **Cost Included in Contract Price.** Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts are included in the Contract Price and not in the allowances.

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

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.9.1 REQUIREMENTS

The Contractor, promptly after execution of the Contract Documents, shall prepare and submit for the Owner's and the Architect's information a critical path method Project schedule, which includes all milestone dates including, but not limited to, DSA deferred submittals, agency approvals, utility services approvals, subcontractor bidding, buyout, preparation and submittal of Contractor's guaranteed maximum price proposal for construction of the Project, preparation of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, phasing, construction sequencing and durations, and District move-in and occupancy requirements., unless otherwise specified. The Schedule shall not exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required by Division 1 of the Specifications.

3.9.2 FAILURE TO MEET REQUIREMENTS

Failure of the Contractor to provide proper Project Schedules as required by this paragraph may, at the sole discretion of Owner, constitute grounds to withhold, in whole or in part, progress payments to the Contractor.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

3.10.1 RECORD DRAWINGS AND ANNOTATED SPECIFICATIONS

The Contractor shall maintain at the Site one (1) record copy of the Drawings, Specifications, Addenda, Change Orders, RFIs, and Architect Field Directives (if authorized) and other modifications, in good order and marked currently to show clearly all changes, revisions, and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features. In the event of a specification that allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the Record Drawings and Annotated Specifications as often as necessary to keep them current but no less often than weekly. A copy of such Record Drawings and Annotated Specifications shall be kept at the Site and available for inspection by the Owner and the Architect and will be delivered to Owner in accordance with the Schedule prepared by Contractor.

Prior to Application for Final Payment, and as a condition of Final Payment, the Contractor will provide one complete set of final Record Drawings and Annotated Specifications to the Owner, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

3.10.2 CONTRACT DOCUMENTS

The Contractor shall maintain at the Site for the Owner one copy of Titles 19 and 24 and one complete set of the Contract Documents, prevailing wage rate tables, approved Shop Drawings, Product Data, Samples, and similar required submittals. These documents shall be available to the Architect and shall be delivered to the Architect for delivery to the Owner upon Completion of the Work.

3.10.3 MATERIAL SAFETY DATA SHEETS

The Contractor shall require all employers at the Project site to exchange Material Safety Data Sheets (MSDS) and other hazardous communications with one another and to inform employees who may be affected by hazardous substances brought to the site by another employer. The Contractor shall coordinate and verify the exchange and maintain, at the Project site, a file of all applicable MSDS.

3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.11.1 SUBMITTALS DEFINED

3.11.1.1 Shop Drawings. The term "shop drawings" as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents. The Contractor shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. "Product data" as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work. As used herein, the term "manufactured" applies to standard units usually mass-produced, and "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining Work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

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

3.11.2 SUBMITTAL PROCEDURE AND REQUIREMENTS

3.11.2.1 Contractor's Responsibility. Contractor shall obtain and shall submit all required shop drawings and samples in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" ("Submittal Schedule") as required in Division 1 of the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor or subcontractor but in no event later than ninety (90) days after the execution of the Contract. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have shop drawings and samples submitted in accordance with the Schedule. Each Subcontractor shall submit all shop drawings, samples, and manufacturer's descriptive data for the review of the Owner, the Contractor, and the Architect through the Contractor. By submitting shop drawings, product data, and samples, the Contractor or submitting party (if other than Contractor) represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. At the time of submission, any deviation in the shop drawings, product data, or samples from the requirements of the Contract Documents shall be narratively described in a transmittal accompanying the submittal. However, submittals shall not be used as a means of requesting a substitution, the procedure for which is defined herein. Review by Owner and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. Contractor shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract Documents. Any submission, which in Architect's opinion is

incomplete, contains numerous errors, or has been checked only superficially will be returned unreviewed by the Architect for resubmission by the Contractor.

3.11.2.2 Shop Drawings. All shop drawings must be properly identified with the name of the Project and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents, if any. Shop drawings, for each section of the Work, shall be numbered consecutively, and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. Only shop drawings required to be submitted by the Contract Documents shall be reviewed.

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

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

3.11.2.5 Copies Required. Unless otherwise specified, each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints of each drawing, including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; wiring diagrams and controls; schedules; all seismic calculations and other calculations; and other pertinent information as required.

3.11.2.6 Owner's Property. All shop drawings and samples submitted shall become the Owner's property.

3.11.3 ARCHITECT REVIEW

3.11.3.1 Extent of Review. The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the appropriate action in compliance with the Architect's standard procedures. In reviewing shop drawings, the Architect will not verify dimensions and field conditions. The Architect will denote approval to install/construct the work by stamping shop drawings as "no exceptions taken". The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Architect's review shall neither be construed as a complete check nor relieve the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the Work, or from the necessity of furnishing any Work required by the Contract Documents, which may not be indicated on shop drawings when reviewed. Contractor and Subcontractors shall be solely responsible for any quantities, which may be shown on the shop drawings.

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

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

3.11.4 EQUIPMENT MANUALS.

Contractor shall obtain and furnish three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work. The manuals shall be arranged in proper order, indexed, and placed in three-ring binders. At the Completion of its Work, the Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to submittal of Contractor's Application for Final Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the Contractor, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the Owner through the Architect.

3.11.5 SUBSTITUTIONS

3.11.5.1 One Product Specified. Unless the Specifications state that no substitution is permitted, whenever in the Contract Documents any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction is indicated or specified by name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer, on the Substitution Request Form described in this Article, any material, process, or article, which shall be substantially equal or better in every respect to that so indicated or specified and will completely accomplish the purpose of the Contract Documents. If the Contractor requests, in the Substitution Request Form, an "or equal" substitution, the Owner, at its sole discretion, may refuse to consider the substitution unless all the products specified are no longer commercially available. If the Owner allows the substitution to be proposed, the Contractor will be invoiced by the Owner for the professional fees incurred by the Architect or Architect's consultants in reviewing the proposed substitution.

3.11.5.2 Two or More Products Specified. When two or more acceptable products are specified for an item of the Work, the choice will be up to the Contractor. Contractor shall utilize the same product throughout the Project if one of the named specified products is the basis for design the Contractor shall submit a properly completed Substitution Request Form for one of the other named products that the Contractor plans to use.

3.11.5.3 Substitution Request Form. Requests for substitutions of products, materials, or processes other than those specified must be made on the Substitution Request Form available from the Owner within sixty (60) days of the execution of the established date for the start of construction stated in the Notice to Proceed. Any Requests submitted after the thirty-five (35) days will not be considered, except as noted in paragraph 3.11.4.2 or at the sole discretion of the Owner. A Substitution Request must be accompanied by evidence as to whether or not the proposed substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related Work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to Owner; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the Contractor. The Contractor shall furnish with its request all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the Owner in determining whether the proposed substitution is acceptable. The final decision shall be the Owner's. The written approval of the Owner, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. Owner may condition its approval of the substitution upon delivery to Owner of an extended warranty or other assurances of adequate performance of the substitution. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction over approval of a requested substitution shall be on the requesting party.

3.11.5.4 List of Manufacturers and Products Required. The Subcontractor shall prepare and submit to the Contractor within thirty (30) days of execution of the Subcontract comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for Contractor's or Architect's preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data, and samples, which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the final review of the Contractor and the Architect.

3.11.6 DEFERRED APPROVALS

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

3.12 CUTTING AND PATCHING

3.12.1 SCOPE

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

3.12.2 CONSENT

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

3.12.3 STRUCTURAL MEMBERS

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

3.12.4 SUBSEQUENT REMOVAL

Permission to patch any areas or items of the Work shall not constitute a waiver of the Owner's or the Architect's right to require complete removal and replacement of the areas or items of the Work if, in the opinion of the Architect or the Owner, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents.

3.13 CLEANING UP

3.13.1 CONTRACTOR'S RESPONSIBILITY

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

3.13.2 FAILURE TO CLEANUP

If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, and the cost thereof shall be invoiced to the Contractor and deducted from the next progress payment. Each Subcontractor shall have the responsibility for the cleanup of its own Work.

3.13.3 CONSTRUCTION BUILDINGS

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

3.14 ACCESS TO WORK

The Contractor shall provide the Owner, the Architect, and the Inspector, access to the Work in preparation and progress wherever located.

3.15 ROYALTIES AND PATENTS

3.15.1 PAYMENT AND INDEMNITY

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

3.15.2 REVIEW

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

3.16 INDEMNIFICATION

3.16.1 SCOPE: CONTRACTOR

To the fullest extent permitted by law, all Work covered by the Contract Documents shall be at the risk of the Contractor alone. Contractor agrees to defend, indemnify, and hold harmless the Owner, its governing board and board members, its employees, officers, the Construction Manager, the Architect and its consultants, the State of California, all of its political subdivisions, and their employees ("Owner/Indemnitees") against any and all liabilities, judgments, claims, damages, losses, and expenses, including, but not limited to, demands arising from injuries or death to persons (Contractor's employees included), and damage to property, real or personal, arising from Work covered by the Contract Documents and performed by Contractor's employees, agents, subcontractors, material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of Owners/Indemnitees, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of Owners/Indemnitees.

Additionally, Contractor agrees to indemnify, defend, and hold harmless the Owner/Indemnitees against any and all liabilities, judgments, claims, damages, losses, and expenses resulting from any and all liens, stop notices and charges of any type, nature, kind or description which may at any time be filed or claimed against the Project site or any portion thereof, (except when such liens or stop notices are caused by Owner's default in its obligation to pay Contractor).

The coverage of the indemnification contained in this section shall include, without limitation, reasonable attorneys' and expert consultants' fees and court costs incurred by the Owner/Indemnitees in connection with any of the foregoing. Payment to Contractor by Owner shall not be a condition precedent to enforcing Owner/Indemnitees' right to indemnification. The indemnity set forth in this section shall survive the expiration or term of the Contract Documents until such time as action against Owner/Indemnitees is barred by the applicable statute of limitations.

3.16.2 SCOPE: SUBCONTRACTORS

Contractor's written contract with all Subcontractors hired pursuant to Article 5 of these General Conditions shall contain the following provision:

"To the fullest extent permitted by law, Subcontractor agrees to indemnify, defend, and hold harmless the Contractor, the Owner, its employees, officers and trustees, the Architect and its consultants, the State of California, all of its political subdivisions, and their employees ("Indemnitees") against any and all liabilities, judgments, claims, damages, losses and expenses, including, but not limited to, demands arising from injuries or death to persons (Subcontractor's employees included), and damage to property, real or personal, arising from Work covered by the Contract Documents performed by Subcontractor's employees, agents, subcontractors, material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of Indemnities, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of the Indemnities."

Additionally, Subcontractor agrees to indemnify, defend, and hold harmless the Owner/Indemnitees against any and all liabilities, judgments, claims, damages, losses, and expenses resulting from any and all liens, stop notices and charges of any type, nature, kind or description which may at any time be filed or claimed against the Project site or any portion thereof, (except when such liens or stop notices are caused by Indemnities' default in its obligation to pay Subcontractor).

The coverage of the indemnification contained in this section shall include, without limitation, reasonable attorney's and expert consultants' fees and court costs incurred by the Indemnities in connection with any of the foregoing. Payment to Subcontractor by Contractor or Owner shall not be a condition precedent to enforcing Indemnities' right to indemnification. The indemnity set forth in this section shall survive the expiration or term of the Contract Documents until such time as action against Indemnities is barred by the applicable statute of limitations."

3.17 PAYMENT FOR DEVIATIONS FROM THE CONTRACT DOCUMENTS

Fees or costs associated with the redesign or modification of the Drawings or Specifications by the Architect or the Architect's consultants as a result of deviation by the Contractor from the Contract Documents, or due to errors, faulty materials, or faulty workmanship, shall be paid to the Architect and the Architect's consultants by the Contractor.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 DEFINITION

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Owner/Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative, and shall also refer to all consultants under the Architect's direction and control.

The "Architect" shall also mean the "Project Engineer", "Owner's Representative", or other entity designated by the Owner to act on the Owner's behalf with respect to the preparation, interpretation and administration of the Contract Documents for the Work if there is no Architect assigned to the Project.

4.1.2 MODIFICATION

Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

4.1.3 TERMINATION

In the case of the termination of the Architect, the Owner may appoint an architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract Documents shall be that of the former Architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 STATUS

The Architect, together with the Construction Manager, will provide administration of the Contract as described in the Contract Documents, until final payment is due, and during the one (1) year period following the commencement of any warranties. The Architect will advise and consult with the Owner and Construction Manager. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise provided in the Owner/Architect Agreement. The Architect will have all responsibilities and power established by law including California Code of Regulations, Title 24.

4.2.2 SITE VISITS

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

4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY

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

4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Owner and the Contractor shall communicate through the Construction Manager, or other designated District representative. Where direct communication is necessary between the Owner and the Contractor, the Construction Manager shall be promptly informed, and shall receive copies of all written communications. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material or equipment suppliers shall be through the Contractor.

4.2.5 PAYMENT APPLICATIONS

Based on the Architect's observations, the Contractor's Applications for Payment, and the Inspector's approval, the Architect will review and make recommendations to the Owner regarding the amounts due the Contractor on the Certificates for Payment.

4.2.6 REJECTION OF WORK

In addition to the rights, duties, and obligations of the Inspector under this Article, the Architect may recommend to the Owner that the Owner reject Work, which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable to achieve the intent of the Contract Documents, the Architect may recommend to the Owner that the Owner require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 CHANGE ORDERS

The Architect will prepare change orders, construction change directives and, if/when authorized to do so under the terms of the Owner/Architect Agreement, issue Architect Field Directives.

4.2.8 WARRANTIES UPON COMPLETION

The Architect in conjunction with the Inspector will conduct field reviews of the Work to determine the date of Completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment when the Architect believes the Work has been completed in compliance with the requirements of the Contract Documents. The handling by the Architect of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of the Contractor or other entities, parties, or persons performing or supplying the Work.

Architect will make an inspection and, in consultation with the Inspector, prepare and submit to the Owner and Contractor a comprehensive list of minor items to be completed or corrected (Final Punch List) for Completion of the Work. Architect will conduct one (1) follow-up field review if required. The cost incurred by the Owner for further field reviews or the preparation of further punch lists by the Architect shall be invoiced to the Contractor and deducted from the final payment.

4.2.9 INTERPRETATION

The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or the Contractor. The Architect's response to such request will be made with reasonable promptness, while allowing sufficient time in the Architect's professional judgment, to permit adequate review and evaluation of request.

4.2.10 ADDITIONAL INSTRUCTIONS

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

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

4.2.10.3 *Aesthetic Effect.* The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the Contract Documents.

4.3 INSPECTOR OF RECORD

4.3.1 GENERAL

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

4.3.2 INSPECTOR'S DUTIES

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

4.3.3 INSPECTOR'S AUTHORITY TO REJECT OR STOP WORK

The Inspector shall have the authority to reject Work that does not comply with the provisions of the Contract Documents. In addition, the Inspector may stop any Work, which poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.

4.3.4 INSPECTOR'S FACILITIES

Unless otherwise specified, within seven (7) days after notice to proceed, the Contractor shall provide the Inspector with the temporary facilities as required under Division 1 of the Specifications.

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

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

- A. Services made necessary by the default of the Contractor.
- B. Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- C. Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- D. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by the Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- E. Services for evaluating and processing claims submitted by the Contractor in connection with the Work outside the established Change Order process.
- F. Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of Completion.
- G. Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 SUBCONTRACTOR

A Subcontractor is a person or entity, who has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 SUB-SUBCONTRACTOR

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.1.3 SPECIALTY CONTRACTORS

If a Subcontractor is designated as a "Specialty Contractor" as defined in § 7058 of the Business and Professions Code, all of the Work outside of that Subcontractor's specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code §§ 4100, et seq.

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

5.2.1 ASSIGNMENT OR SUBSTITUTION - CONSENT OF OWNER

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

5.2.2 GROUNDS FOR SUBSTITUTION

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

- A. When the Subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written Contract when that written Contract, based upon the general terms, Conditions, Drawings and Specifications for the Project involved or the terms of that Subcontractor's written bid, is presented to the Subcontractor by the prime Contractor;
- B. When the listed Subcontractor becomes bankrupt or insolvent;
- C. When the listed Subcontractor fails or refuses to perform his or her Subcontract;
- D. When the listed Subcontractor fails or refuses to meet the bond requirements of the prime contractor set forth in Public Contract Code § 4108.
- E. When the Contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions of Public Contract Code §4107.5, that the name of the Subcontractor was listed as the result of inadvertent clerical error;
- F. When the listed Subcontractor is not licensed pursuant to the Contractors License Law; or
- G. When the awarding authority, or its duly authorized officer, determines that the Work being performed by the listed Subcontractor is substantially unsatisfactory and not in substantial accordance with the Contract Documents, or the Subcontractor is substantially delaying or disrupting the progress of the Work.
- H. When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- I. When the awarding authority determines that a listed subcontractor is not a responsible contractor.

5.2.3 NO CHANGE IN CONTRACT. Any substitutions of Subcontractors shall not result in any increase in the Contract Price or result in the granting of any extension of time for the Completion of the Work or Project.

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

In all other cases, the Contractor must make a request in writing to the awarding authority for the substitution of a subcontractor, giving reasons therefor. The awarding authority shall mail a written notice to the listed Subcontractor

giving reasons for the proposed substitution. The listed Subcontractor shall have five (5) working days from the date of such notice within which to file with the awarding authority written objections to the substitution.

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

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

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 SUBCONTRACTOR BOUND BY TERMS OF CONTRACT DOCUMENTS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner and the Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.3.2 ELECTRICIANS

Contractor shall require that any employee or subcontractor performing work as an electrician under a C-10 license be certified to do so pursuant to certification standards established by the Division of Labor Standards Enforcement as required under existing law.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

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

5.5 SUBCONTRACTOR'S RESPONSIBILITIES

Every Subcontractor is bound to the following provisions.

5.5.1 SUBCONTRACTS

Work performed by Subcontractors shall be pursuant to a written agreement between the Contractor and each Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required under Article 12 of these General Conditions and obligates the Subcontractor to assume toward the Contractor and Architect all the obligations and responsibilities of the Contractor which the Contractor assumes toward the District and the Architect. No contractual relationship shall exist, or deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and District, in writing, elects to

assume the Subcontract. Each Subcontract shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to these General Conditions, subject to the prior rights, if any, of the Surety.

5.5.2 SUBCONTRACTOR DIR CONTRACTOR REGISTRATION

- 5.5.2.1 No Subcontractor Performance of Work Without DIR Registration. No portion of the Work is permitted to be performed by a Subcontractor unless the Subcontractor is a DIR Registered contractor. The foregoing DIR contractor registration requirement is applicable for all Subcontractors, including without limitation, lower tier Subcontractors and Subcontractors who are not identified in the Contractor's Subcontractors List.
- 5.5.2.2 Contractor Obligation to Verify Subcontractor DIR Registration Status. An affirmative and on-going obligation of the Contractor under the Contract Documents is the Contractor's verification that all Subcontractors are at all times during performance of the Work in full and strict compliance with DIR contractor registration requirements. The Contractor shall not permit or allow any Subcontractor to perform any Work without the Contractor's verification that the Subcontractor is in full and strict compliance with DIR contractor registration requirements.
- 5.5.2.3 Contractor Obligation to Request Subcontractor Substitution. If any Subcontractor identified in the Contractor's Subcontractors List submitted with the Contractor's proposal for the Work is not a DIR registered contractor at the time of opening of proposals for the Work or if a Subcontractor's DIR contractor registration lapses prior to or during a Subcontractor's performance of Work, the Contractor shall request the District's consent to substitute the Subcontractor who is not a DIR registered contractor pursuant to Labor Code §1771.1(c)(3) and/or Labor Code §1771.1(d).

5.5.3 SUPERVISION OF WORK

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

5.5.4 DISCIPLINE AND ORDER

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

5.5.5 DEFECTS DISCOVERED

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

5.5.6 SUBCONTRACTOR INFORMATION

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

5.5.7 TEMPORARY STRUCTURES

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

5.5.8 CHARGES TO SUBCONTRACTOR

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

5.5.9 FINES IMPOSED

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

5.5.10 PROJECT SIGNS

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

5.5.11 REMEDIES FOR FAILURE TO PERFORM

Without limitation of any other right or remedy available to Contractor under the Contract Documents or at law, should the Subcontractor: fail to perform its portion of the Work in a skilled and expeditious manner in accordance with the terms of the Contract Documents with sufficient labor, materials, equipment, and facilities; delay the progress of the Work or otherwise fail in any of its obligations; or should either a receiver be appointed for the Subcontractor or the Subcontractor be declared to be bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceedings or declaration is not set aside within thirty (30) days; then the Contractor, upon three (3) days notice to the Subcontractor (subject to the requirements of Public Contracts Code § 4107), may provide such labor, materials, or perform such Work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Contractor may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Contractor's own forces.

5.5.12 DISPUTES NOT TO AFFECT WORK

In the event of any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a Change Order for any Work requested of it, the Subcontractor shall continue to proceed diligently with the performance as required by the Contractor. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. The Contractor shall continue to pay the undisputed amounts called for under the Subcontract Agreement during the existence of the dispute. Any party stopping or delaying the progress of the Work because of a dispute shall be responsible in damages to the Owner, the Architect, and the Contractor for any losses suffered as a result of the delay.

5.5.13 APPLICATION FOR PAYMENT

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

5.5.14 COMPLIANCE WITH PROCEDURES

Each Subcontractor shall comply with all procedures established by the Contractor for coordination among the Owner, the Owner's consultants, Architect, Contractor, and the various Subcontractors for coordination of the Work with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction

over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

5.5.15 ON-SITE RECORD KEEPING

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

5.5.16 NON-EXCLUSIVE OBLIGATIONS

The specific requirements of Article 5 are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the other Contract Documents which are relevant to the proper performance of its portion of the Work.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

6.1.1 OWNER'S RIGHTS

The Owner reserves the right to perform Work related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. Upon the election to perform Work with its own forces or by separate contracts, the Owner shall notify the Contractor.

6.1.2 DESIGNATION AS CONTRACTOR

When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner/Contractor Agreement.

6.1.3 CONTRACTOR DUTIES

The Contractor shall have overall responsibility for coordination and scheduling of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Price deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the Owner until subsequently revised.

6.1.4 OWNER OBLIGATIONS

Unless otherwise provided in the Contract Documents, when the Owner performs Work related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Contractor under the General Conditions.

6.2 MUTUAL RESPONSIBILITY

6.2.1 DELIVERY AND STORAGE

The Contractor shall afford the Owner and separate contractors reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with the Contractor's as required by the Contract Documents.

6.2.2 NOTICE BY CONTRACTOR

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

6.2.3 COSTS INCURRED

Costs, expenses, and damages caused by delays, improperly timed activities, defective construction, or damages to another's Work shall be borne by the party responsible.

6.2.4 CORRECTION OF DAMAGE

The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 NO CHANGES WITHOUT WRITTEN AUTHORIZATION

There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order, Construction Change Directive, or Architect Field Directive. This requirement cannot be waived unless the Owner agrees to do so in writing. Owner shall not be liable for the cost of any extra Work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been authorized by and the cost thereof approved in writing by Change Order or executed Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. All Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the Owner, the Architect, the Contractor, and the DSA.

7.2 ARCHITECT FIELD DIRECTIVE

The Architect, if/when authorized by the Owner in the Owner/Architect Agreement or other writing, will have authority to order minor changes in the Work not involving any adjustment in the Contract Price, an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. An Architect Field Directive must be in writing and must be signed by the Owner and the Architect in order to be binding on the Contractor. The Contractor shall carry out such written orders promptly.

7.3 CONSTRUCTION CHANGE DIRECTIVES ("CCD")

Owner's authorized representative may determine that it is necessary, in order to prevent delays in the Work, to direct the Contractor to proceed with changes in the Work that are included in a potential Change Order, but the Change Order has not yet been approved or ratified by Owner's Governing Board. In such event, Owner's authorized representative, to the extent so authorized, may issue written instructions to the Contractor to implement and proceed with such changes (each a "Construction Change Directive"). However, in no event may the Contractor receive any payment on account of any Work performed pursuant to a Construction Change Directive until the Owner's governing board has approved or ratified the corresponding Change Order.

7.4 REQUEST FOR INFORMATION ("RFI")

7.4.1 DEFINITION

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

7.4.2 SCOPE

The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Price, Contract Time, or the Contract Documents.

7.4.3 NOTICE

Contractor shall submit an RFI within 7 days of discovering the need for clarification. If the Contractor does not timely submit the RFI, the Contractor shall be deemed to have waived its right to any adjustment in the Contract Price and/or Contract Time as related to the Work that is the subject of inquiry.

7.4.4 RESPONSE TIME

The Architect must respond to a RFI within fourteen (14) calendar days after receiving such request. If the Architect's response results in a change in the Work, then such change shall be effected by a written CO or CCD.

7.4.5 COSTS INCURRED

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

7.5 REQUEST FOR PROPOSAL ("RFP")

7.5.1 DEFINITION

An RFP is a written request prepared by the Architect asking the Contractor to submit to the Owner and the Architect an estimate of the effect of a proposed change on the Contract Price and the Contract Time.

7.5.2 SCOPE

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

7.6 CHANGE ORDERS ("CO")

7.6.1 DEFINITION

A change order (CO) is a written amendment to the Contract Documents ordering change(s) in the Work, adjustment(s) in the Contract Price and/or Contract Time, or other change(s) in the requirements of the Contract Documents. A Change Order may be unilateral if issued without approval by the Contractor or mutual if the Owner and the Contractor have both approved the Change Order. In order to be binding on the Contractor, a unilateral Change Order must be signed by the Owner and the Architect. The Contractor's approval of a unilateral Change Order shall not be required, and the Contractor must implement all changes specified in a unilateral Change Order promptly or by such time as specified therein. The Owner may, but shall not be required to, issue a unilateral Change Order in any case that the Owner and the Contractor have been unable to agree on the terms of a requested mutual Change Order. A unilateral Change Order may direct that any Work pursuant to the Change Order be performed on a time and materials, lump-sum, or unit-pricing basis.

The Contractor must proceed with changes that are within the general scope of the Contract Documents even if the changes are disputed.

On request of Owner, the Contractor shall, within ten (10) days of such request, prepare a written estimate of the effect an Owner's proposed CO will have upon the Contract Price, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO.

7.6.2 CHANGE ORDER REQUESTS

7.6.2.1 **Definition.** A change order request ("COR") is a written request prepared by the Contractor asking the Owner and the Architect for an adjustment in the Contract Price or Contract Time or for the incorporation of a proposed change to the Work. The Contractor may, among other reasons, base a Change Order Request on a claim asserted by the Contractor. All claims for an adjustment to the Contract Price or Contract Time must first be presented in the form of a COR. In the case of a claim for continuing delay, only one (1) COR is necessary.

7.6.2.2 **Notice Required.** A COR which is made in response to an RFI, Architect Field Directive or unilateral Change Order must be presented within three days of the issuance of such document, unless additional time is granted by the Owner. A COR which is based on excusable delay shall be made within seven (7) days of beginning of any such delay. A COR based on any other claim or event must be presented within ten (10) days after the occurrence of the event giving rise to the claim. Contractor must provide such notice prior to commencing any work which is the subject of the COR.

If the Contractor fails to timely present the Owner with a Change Order Request seeking to increase the Contract Time or Contract Price, the Contractor shall be deemed and construed to have waived any and all rights to any adjustment in the Contract Price and/or Contract Time on account thereof.

In no event will the Contractor be allowed to reserve its rights to assert a claim for time extension later than as required herein unless the Owner agrees in writing to allow such reservation.

7.6.2.3 **Required Detail.** A COR must set forth in reasonable detail all bases asserted by the Contractor in support of its position that it is entitled to an adjustment of the Contract Price and/or Contract Time, or that any specified adjustment of the Contract Price and/or Contract Time is not adequate.

If the COR seeks an extension of Contract Time, the COR shall detail the cost associated with the extension and effect it will have on progress of the Work and the Construction Schedule. If adverse weather conditions are the basis for a COR for additional time, such COR shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

If the COR seeks an adjustment to the Contract Price, the COR shall present the proposed cost change using the format set forth in paragraph 7.6.

7.6.2.3 Resolution of Change Orders.

Contractor and Owner shall make good-faith attempts to resolve any and all Change Order Requests that may arise during the performance of the Work of this Contract. Owner will review the Contractor's timely written Change Order Request and provide a decision within 14 days after receipt. Unless otherwise directed by the Owner in writing, the Contractor shall diligently proceed with the Work in accordance with the Owner's decision. In no event shall the Contractor be permitted to cease work during the negotiation of any COR.

If, after receiving the Owner's decision in response to the Contractor's Change Order Request, the Contractor still considers the Work required of it to be outside the requirements of the Contract Documents, it shall notify the District by submitting a written notice of potential claim within 7 days after receiving the Owner's decision, and shall submit a Claim in the form specified herein within 20 days of receiving the Owner's decision. The Contractor agrees that failure to provide written notice of potential claim within 7 days after receiving the Owner's decision and all required documentation to the District within 20 days of receiving the District's decision will result in the Contractor waiving its right to additional compensation and time pertaining to said Claim.

7.6.2.4 Disputed Changes.

If any dispute or disagreement between the Contractor and the District or the Architect regarding the characterization of any item as a Change or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, the Contractor shall promptly proceed with the performance, subject to a subsequent resolution of such dispute or disagreement in accordance with the terms of the Contract Documents.

7.7 COST OF CHANGE ORDERS

7.7.1 DETERMINATION OF COST

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

- A. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- B. Unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor;
- C. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- D. By cost of material and labor and percentage of overhead and profit. If the value is determined by this method the following requirements shall apply:

1. Daily Reports by Contractor.

- a) General: At the close of each working day, the Contractor shall submit a daily report to the Construction Manager, on forms approved by the Owner, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the Work, and for other services and expenditures when authorized concerning extra work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Inspector and the Contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain points, which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by subcontractors or others shall be submitted through the Contractor.
- b) Labor: Show names of worker, classifications, and hours worked.
- c) Materials: Describe and list quantities of materials used.
- d) Equipment: Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.
- e) Other Service and Expenditures: Describe in such detail as the Owner may require.

2. Basis for Establishing Costs.

- a) Labor: will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the extra Work cost, will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
- b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

The Owner reserves the right to approve materials and sources of supply or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the Owner.

- c) Tool and Equipment Rental. No payment will be made for the use of tools, which have a replacement value of Twenty-Five Hundred Dollars (\$2,500) or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed rental rates as established by Caltrans standards. Personnel work trucks already onsite as part of the contract work shall not be charged as part of change order work

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the extra Work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Owner than holding it at the Work Site, it shall be returned unless the Contractor elects to keep it at the Work Site at no expense to the Owner.

All equipment shall be acceptable to the Inspector, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

- d) Other Items. The Owner may authorize other items, which may be required on the extra Work. Such items include labor, services, material, and equipment, which are different in their nature from those, required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the request for payment.
- e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the request for payment is not substantiated by invoices or other documentation, the Owner may establish the cost of the item involved at the lowest price, which was current at the time of the Daily Report.
- f) Overhead. Overhead, including direct and indirect costs, shall be submitted with the COR and include: home office overhead, off-Site supervision, CO preparation/negotiation/research, time delays, project interference and disruption, additional guaranty and warranty durations, on-Site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

The following are deemed to be part of Contractor's overhead and profit and are not allowed in the Cost of the Work:

- 1. Payroll costs and other compensation of Contractor's project manager, superintendents, project engineers, officers, executives, principals, owners, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Project Site or in Contractor's principal or branch office for general administration of the Work;

F. Decrease in Contract Price.

- 1. The amount Contractor shall credit District for any change which results in a net decrease in cost will be the amount of the actual net decrease cost plus a credit for overhead and profit in accordance with the percentages listed in the formula set forth in this Article;
- 2. The amount Contractor shall credit District for any change of Work by a Subcontractor which results in a net decrease in cost will be the amount of the actual net decrease in costs plus a credit for overhead and profit in accordance with the percentages listed in the formula set forth in this Article;
- 3. The Contractor Fee for rented equipment shall be five (5) percent. No fee shall be allowed for Contractor owned equipment.
- 4. When both additions and credits are involved in any one change of Work, the adjustment in the Contractor Fee shall be calculated on the basis of the net change in accordance with this Article inclusive.

7.7.2 FORMAT FOR PROPOSED COST CHANGE

The following format shall be used as applicable by the Owner and the Contractor to communicate proposed additions and deductions to the Contract Price.

GENERAL CONTRACTOR (Work self-performed by General Contractor)			Amount
1	Labor	Attach itemized hours and rates. Rates per prevailing scale of work classifications, including Fringe Benefits.	_____
2	Labor Burden	Add Prime Contractor's actual Liability and Property Damage Ins., Worker's Comp. Ins., Social Security, Unemployment Taxes, not to exceed 30% of Item 1.	_____
3	Material	Attach actual, itemized quantity and unit cost. Excluding sales tax.	_____
4	Equipment	Attach invoices.	_____
5	Subtotal (cost only)	Subtotal of Items 1, 2, 3, & 4.	_____
6	O&P	Add Prime Contractor's Overhead & Profit, not to exceed 12% of Item 5.	_____
7	Sales Tax	Add sales tax for Item 3. Material	_____
8	Subtotal	Subtotal of Items 5, 6, & 7.	_____
SUBCONTRACTOR (Work performed by a Subcontractor)			
9	Labor	Attach itemized hours and rates. Rates per prevailing scale of work classifications, including Fringe Benefits	_____
10	Labor Burden	Add Subcontractor's actual Liability and Property Damage Ins., Worker's Comp. Ins., Social Security, Unemployment Taxes, not to exceed 30% of Item 8.	_____
11	Material	Attach actual itemized quantity and unit cost. Excluding sales tax.	_____
12	Equipment	Attach invoices.	_____
13	Subtotal (cost only)	Subtotal of Items 9, 10, 11, & 12	_____
14	O&P	Add Subcontractor's Overhead & Profit to portions performed by Subcontractor, not to exceed 12% of Item 13.	_____
15	Sales Tax	Add sales tax for Item 11. Material	_____
16	Subtotal	Subtotal of Items 13, 14, & 15.	_____
17	Prime Contractor's O&P	If any work is performed by Subcontractors, add Contractor's Overhead & Profit, not to exceed 8% of the total of Items 13 and 14.	_____
18	Subtotal	Subtotal of Items 16 & 17	_____
COMBINED TOTALS			
19	SUBTOTAL	Items 8 & 18.	_____
20	BOND	Actual Bond Cost, not to exceed 2% of Item 19.	_____
21	TOTAL	Items 19 and 20	_____

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

7.7.3 DISCOUNTS, REBATES, AND REFUNDS

For purpose 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 reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided therein.

7.7.4 ACCOUNTING RECORDS

With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

7.8 APPLICABILITY TO SUBCONTRACTORS

Any requirements under this Article 7 shall be equally applicable to COs or CCDs issued to Subcontractors by the Contractor to the same extent required of the Contractor.

ARTICLE 8

CLAIMS AND DISPUTES

8.1 DEFINITION OF CLAIM

A claim is a demand or assertion by Contractor seeking, as a matter of right: (1) adjustment or interpretation of Contract terms; (2) payment of money or damages arising from work done by, or on behalf of the Contractor pursuant to the Contract Documents and payment of which is not otherwise expressly provided for in the Contract Documents or which the Contractor believes it is entitled; (3) an extension of time; (4) other relief with respect to the terms of the Contract; or (5) an amount the payment of which is disputed by the Owner. Claims for an adjustment to the Contract Price or Contract Time must first be presented by Change Order Request. Other claims must be presented in writing as provided in this Article. A voucher, invoice, other routine request for payment, or a COR submitted by the Contractor shall not be considered a claim under the Contract.

The Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving any claims.

8.2 TIME LIMIT ON CLAIMS

Except where otherwise provided herein, claims (including those required to be made by COR) must be made within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after Contractor first recognizes the condition giving rise to the Claim, whichever is later, but no later than before the final payment is made. An additional claim made after an initial claim has been implemented by Change Order will not be considered. The failure of the Contractor to provide the required notice shall constitute an express waiver of any right to assert such claim, whether affirmatively or defensively.

Nothing in Subdivision (a) of Public Contract Code § 20104.2 shall extend the time limit or supersede the notice requirements provided in this Contract for asserting claims.

8.3 CLAIM REQUIREMENTS

The Contractor, under penalty of perjury, shall submit with the claim it and its subcontractors' certification that: (1) the Claim is made in good faith; (2) supporting data are accurate and complete to the best of the Contractor's and Subcontractor's knowledge and belief; and (3) the amount requested accurately reflects the Contract adjustment for which the Contractor believes the Owner is liable.

8.4 CLAIM FORMAT

The Contractor shall submit the claim and documentation in the following format:

- A. Cover letter and certification.
- B. List of documents relating to claim, including specifications, drawings, RFIs, schedules, or other applicable documents.
- C. Chronology of events and correspondence.
- D. Analysis of claim merit and claim cost.

8.5 RESOLUTION OF CLAIMS

8.5.1 CLAIMS OF \$375,000 OR LESS

Claims of \$375,000 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contract Code §§ 20104, et seq.

8.5.2 CLAIMS IN EXCESS OF \$375,000

Owner, in consultation with the Architect, shall review the claim and instruct the Architect take one or more of the following preliminary actions within ten (10) days of receipt of a claim: request additional supporting data from the Contractor; submit a schedule to the Contractor indicating when the Owner expects to take action; reject the claim in whole or in part, stating reasons for rejection; approve the claim; or suggest a compromise.

If the claim is resolved, the Architect will prepare or obtain appropriate documentation.

If the claim is not resolved, Contractor shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: submit additional supporting data requested by the Architect; modify the initial claim; withdraw the claim; or notify the Architect that the initial claim stands. Prior to filing a civil action, Contractor must comply with the dispute resolution procedures set forth herein.

8.6 DISPUTE RESOLUTION

8.6.1 SCOPE

These procedures apply to any disputes between the parties, including disputes regarding Contractor's performance of the Work or obligations under the Contract, disputes regarding the interpretation or requirements of the Contract, or any claims by Contractor which are not resolved by the claims resolution process described herein.

8.6.2 MEET AND CONFER CONFERENCE

Upon written request by either party, senior executives of the parties who have authority to settle the controversy shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. The meeting shall take place within ten (10) days of the written request unless otherwise mutually agreed. The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to the Contract. If the matter has not been resolved within twenty (20) days of the disputing party's notice, or if the party receiving such notice will not meet within ten (10) days, either party may initiate mediation of the controversy or claim.

8.6.3 MEDIATION

8.6.3.1 Authorization. In the event of a dispute or issue that cannot be resolved by negotiation, the Owner and the Contractor agree to attempt to resolve the matter by mediation prior to filing any civil action. Said mediation is voluntary and non-binding.

8.6.3.2 Initiation of Mediation. Either party may initiate mediation by notifying the other party or parties in writing. The notification shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the mediation.

8.6.3.3 **Selection of Mediator.** Within fourteen (14) days after initiation of mediation, the parties will meet-and-confer to select an experienced, Santa Barbara-based mediator agreeable to all parties. If the parties cannot agree on a mediator, they hereby agree to accept a mediator appointed by the Santa Barbara Superior Court.

8.6.3.4 **Time and Place of Mediation.** The mediator shall set the time of each mediation session. The mediation shall be held in Santa Barbara at a location selected by the mediator. All reasonable efforts will be made by the parties and the mediator to schedule the first session within thirty (30) days after notification of mediation.

8.6.3.5 **Identification of Matters in Dispute.** At least ten (10) days before the first scheduled mediation session, each party shall provide the mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. The mediator may require each party to supplement such information.

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

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

8.6.3.8 **Termination of Mediation.** The mediation shall be terminated: by the execution of a Settlement Agreement by the parties; by a written declaration of the mediation to the effect that further efforts at mediation are no longer worthwhile; or by a written notice of termination issued by either party.

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

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

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

ARTICLE 9

TIME

9.1 DEFINITIONS

9.1.1 CONTRACT TIME

Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work.

9.1.2 NOTICE TO PROCEED

The date of commencement of the Work is the date established in the Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

9.1.3 DAYS

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

9.2 HOURS OF WORK

9.2.1 SUFFICIENT FORCES

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

9.2.2 PERFORMANCE DURING WORKING HOURS

Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the Owner.

9.2.3 LABOR CODE APPLICATION

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

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

9.2.4 COSTS FOR AFTER HOURS INSPECTIONS

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

If the Owner allows the Contractor to do Work outside regular working hours for the Contractor's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Contractor by the Owner and deducted from the next Progress Payment.

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

9.2.5 TIME FOR COMMENCEMENT BY SUBCONTRACTORS

Unless otherwise provided in the Contract Documents, all Subcontractors shall commence their Work within two (2) consecutive business days after notice to them by the Contractor and shall prosecute their Work in accordance with the progress of the Work. Contractor shall ensure that all Subcontractors commence their Work in accordance with this provision.

9.3 PROGRESS AND COMPLETION

9.3.1 COMPLETION DEFINED

Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all correction or completion items noted upon Architect's final inspection, and the Contract has been otherwise fully performed by Contractor. Completion shall be determined by the Project Inspector and Architect, in consultation with the Owner. The Work is considered complete upon recordation of the Notice of Completion for the Work.

9.3.2 TIME OF THE ESSENCE

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

9.3.3 NO COMMENCEMENT WITHOUT INSURANCE

The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

9.3.4 EXPEDITIOUS COMPLETION

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

9.4 EXTENSIONS OF TIME

9.4.1 EXCUSABLE DELAY

The Contractor shall not be charged for liquidated damages, as set forth in the Owner/Contractor Agreement, because of any delays in Completion of the Work due to unforeseeable causes beyond the control and without the fault or the negligence of Contractor, including, but not restricted to, acts of God, acts of public enemy, acts of Government, acts of the Owner or anyone employed by it, acts of a separate contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, severe weather preventing Work as approved by Architect and Owner, or delays of Subcontractors due to such causes.

9.4.2 NOTICE BY CONTRACTOR REQUIRED

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

9.4.3 CONDITIONS FOR EXTENSION OF TIME

If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner, the Architect, an employee of either, or of a separate contractor employed by the Owner, by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Contractor's request for an adjustment to the Contract Time shall be made by Change Order Request.

ARTICLE 10

PAYMENTS AND COMPLETION

10.1 CONTRACT PRICE

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

10.2 COST BREAKDOWN

10.2.1 REQUIRED INFORMATION

On forms approved by the Owner, the Contractor shall furnish the following:

- A. A detailed breakdown of the Contract Price (Schedule of Values) for each Project or Site. The schedule of values shall include, at a minimum, separate line items for overhead & profit, general conditions, mobilization, demobilization (if mobilization is itemized), bond, LEED items if applicable, line items for major portions of Work separated by trade/type (i.e. concrete, carpentry etc.), punchlist/training and as-built drawings. Shop drawings shall be a separate line item and be assigned a minimum value of 2% of the prime contractor's contract value. All subcontractors with a contract amount over \$75,000 shall also submit a proposed schedule of values in the same format. DSA work must be separate from Public Works/City work;
- B. Throughout the duration of the Project, Contractor shall maintain a current schedule of values available for the District to review. This schedule of values shall breakdown the Contract Price into various estimated items of Work, including at a minimum, the line items set forth in 10.2.1.A above, together with the Contractor's overhead and profit. The schedule of values will be the basis for determining the value of Work performed for purposes of making payments to the Contractor.
- C. The Contractor shall not submit an application for payment without a schedule of values.

10.2.2 OWNER APPROVAL REQUIRED

The Owner shall review all submissions received in a timely manner. All submissions must be approved by the Owner before becoming the basis of any payment.

10.3 APPLICATIONS FOR PAYMENT

10.3.1 PROCEDURE

On or before the fifth (5th) day of each calendar month during the progress of the portion of the Work for which payment is being requested, the Contractor shall submit to the Architect an itemized Application for Payment using the original AIA document G702 and continuation sheet G703 as the form for 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 Architect requires:

- A. 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;
- B. The amount being requested with 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;
- C. The balance that will be due to each of such entities after said payment is made;
- D. A certification that the Record Drawings and Annotated Specifications are current;
- E. The additions to and subtractions from the Contract Price and Time;
- F. A summary of the retentions (each Application shall provide for retention of the amount due until Completion of the Work of the Contractor and final acceptance thereof by Owner);
- G. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Owner may require from time to time;
- H. The percentage of Completion of the Contractor's Work by line item; and
- I. A statement showing all payments made by the Contractor for labor and materials on account of the Work covered in the preceding Application for Payment.

10.3.2 PURCHASE OF MATERIALS AND EQUIPMENT

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

10.3.3 WARRANTY OF TITLE

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

10.4 REVIEW OF PROGRESS PAYMENT

10.4.1 ARCHITECT'S APPROVAL

The Construction Manager, in consultation with the Architect and Inspector will, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the reasons for withholding approval in whole or in part.

The review of the Contractor's Application for Payment by the Construction Manager, in consultation with the Architect and Inspector is based on the observations at the Site, input from the Inspector and Owner, and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Completion of the Work, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the review by the Construction Manager, in consultation with the Architect and Inspector will not be a representation that the Architect has:

- A. Made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work;
- B. Reviewed construction means, methods, techniques, sequences, or procedures;
- C. Reviewed copies of requisitions received from Subcontractors, material and equipment suppliers, and other data requested by the Owner to substantiate the Contractor's right to payment; or
- D. Made an examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Price.

10.4.2 CERTIFICATE FOR PAYMENT

The approval of the Contractor's Application for Payment will be in the form of a Certificate for Payment issued to the Owner, with a copy to the Contractor, for such amount as the Architect determines is properly due.

10.5 DECISIONS TO WITHHOLD PAYMENT

10.5.1 REASONS TO WITHHOLD PAYMENT

The Owner may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the Owner if, in the Owner's opinion, the representations to the Owner required for a Certificate of Payment cannot be made. The Owner may withhold payment, in whole, or in part, to such extent as may be necessary to protect the Owner from loss because of:

- A. Defective Work not remedied;
- B. Stop Notices filed, unless the Owner allows, solely at the Owner's option, the Contractor, at the Contractor's sole expense, to provide a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, and which protects the Owner against such claims;
- C. Liquidated damages assessed against the Contractor;
- D. Reasonable doubt that the Work can be completed for the unpaid balance of any Contract Price or by the Completion date;
- E. Damage to the Owner, separate contractor, or Subcontractor;
- F. Unsatisfactory prosecution of the Work by the Contractor;
- G. Failure to store and properly secure materials;
- H. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, monthly Construction Schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;
- I. Failure of the Contractor to maintain record documents;
- J. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- K. Unauthorized deviations from the Contract Documents; or
- L. Failure of the Contractor to prosecute the Work in a timely manner in compliance with the established Construction Schedule and Completion date.

10.5.2 WRITTEN REASONS FOR WITHHOLDING PROVIDED

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

10.5.3 PAYMENT AFTER CURE

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

10.6 PROGRESS PAYMENTS

10.6.1 PAYMENTS TO CONTRACTOR

Within thirty (30) days after Architect's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%), unless otherwise specified, of the value of the Work performed up to the last day of the previous month, less the aggregate of previous payments. The value of the Work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the Contractor, or any bondsman, from damages arising from such Work or from enforcing each and every provision of this Contract, and the Owner 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 Owner concerning the Work, or any portion thereof, remains uncompleted. At any time after fifty percent (50%) of the Work has been completed, if the Owner, by action of its governing body, finds that satisfactory progress is being made, the Owner may make any of the remaining payments in full for actual Work completed or may withhold any amount up to five percent (5%) thereof as the Owner may find appropriate based on the Contractor's progress.

10.6.2 PAYMENTS TO SUBCONTRACTORS

No later than seven (7) days after receipt, pursuant to Business and Professions Code § 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

10.6.3 PERCENTAGE OF COMPLETION OR PAYMENT INFORMATION

The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor, and action taken thereon by the Owner, on account of portions of the Work done by such Subcontractor.

10.6.4 NO OBLIGATION OF OWNER FOR SUBCONTRACTOR PAYMENT

The Owner 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.

10.6.5 PAYMENT TO SUPPLIERS

Payment to material or equipment suppliers shall be treated in a manner similar to that provided for Subcontractors as provided herein.

10.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE

An approved Application for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

10.6.7 JOINT CHECKS

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

10.7 COMPLETION OF THE WORK

10.7.1 CLOSE-OUT PROCEDURES AND FINAL INSPECTION

When the Contractor, with the Architect's approval, considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall give written notice to the Architect who will make an inspection and, in consultation with the Inspector, prepare and submit to the Owner and Contractor a comprehensive list of minor items to be completed or corrected (Final Punch List). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

If the Contractor fails or refuses to complete all Final Punch List items, the District may in its sole and exclusive discretion and without further notice to Contractor, elect to cause the completion of all remaining punch list items provided, however that such election by the District is in addition to and not in lieu of any other right or remedy of the District under the Contract Documents or at law. If the District elects to complete punch list items of the Work, pursuant to the foregoing, Contractor shall be responsible for all costs incurred by the District in connection herewith.

and the District may deduct such costs from the Contract Price then or thereafter due the Contractor, if these costs exceed the remaining Contract Price due to the Contractor, the Contractor and the Performance Bond Surety are liable to District for any such excess costs

Upon receipt of a written notice from Contractor stating that all items of the Final Punch List have been completed and requesting final inspection, the Owner, Inspector, Construction Manager and Architect shall make a final inspection to determine Completion. If the Owner's, Inspector, Construction Manager and Architect's final inspection discloses any item, whether or not included on the Final Punch List, is not completed in accordance with the requirements of the Contract Documents, the Contractor shall, before Owner's issuance of the Notice of Completion, complete or correct such item.

10.7.1.1 Final Completion and Acceptance. Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all correction or completion items, and the Contract has been otherwise fully performed by the Contractor. Final Completion shall be determined by the Architect and the Project Inspector upon request of the Contractor. The good faith and reasonable determination of Final Completion by the Project Inspector and the Architect shall be controlling and final. When the Work, or designated portion thereof, is determined to be complete, the Construction Manager will issue a certificate to the District, verifying that Final Completion has been achieved. The determination of Final Completion shall be submitted to the District's Board of Education for approval and for determination of Final Acceptance at the next regularly scheduled meeting.

Following Acceptance by the District's Board of Education, Owner shall prepare a Notice of Completion which shall establish the date of Completion, and which shall establish the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and all warranties. Warranties required by the Contract Documents shall commence on the date of Completion of the Work, or designated portion thereof, unless otherwise provided in the Notice of Completion. The Notice of Completion shall be submitted to the Owner and the Contractor for their written acceptance of responsibilities assigned to them in such Notice.

10.7.2 PAYMENT UPON COMPLETION

Upon Completion of the Work, or designated portion thereof, and upon application by the Contractor, the Owner shall make payment reflecting adjustment in retention, if any, for such Work, or portion thereof, as provided in the Contract Documents.

10.7.3 COSTS OF MULTIPLE INSPECTIONS

More than two (2) requests of the Owner to make inspections required for Final Completion (one final inspection and one back-check inspection) shall be considered an additional service of Architect, and all subsequent costs will be invoiced to Contractor and withheld from remaining payments.

10.8 PARTIAL OCCUPANCY OR USE

10.8.1 OWNER'S RIGHTS

The Owner may occupy or use any completed or partially completed portion of the Work at any stage. The Owner 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.

10.8.2 INSPECTION PRIOR TO OCCUPANCY OR USE

Immediately prior to such partial occupancy or use, the Owner, 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.

10.8.3 NO WAIVER

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

10.9 FINAL PAYMENT

10.9.1 FINAL APPLICATION FOR PAYMENT

When the Owner finds the Work contained in the final inspection report acceptable under the Contract Documents and, therefore, the Work fully completed, it shall so notify Contractor, who shall then submit to the Architect its final Application for Payment.

Upon receipt and approval of such final Application for Payment, the Architect shall issue a final Certificate of Payment stating that to the best of its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Architect in connection with the Work, such Work has been completed in accordance with the Contract Documents. The Owner shall thereupon inspect such Work and either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Contractor as fully complete, the Owner shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of payment from Owner, pay the amounts due Subcontractors.

10.9.2 RETAINAGE

Owner shall release and pay to the Contractor any and all Retention, less any amount(s) the Owner deems necessary to withhold as provided by the Contract Documents or applicable law, statute, ordinance, regulation, or other legal requirement, not sooner than 35 days after a Notice of Completion for the Work is recorded, but not later than 60 days after the first to occur of: (i) the Owner records a Notice of Completion for the Work; or (ii) "completion" of the Work is deemed to have occurred in accordance with Public Contract Code Section 7107. In the event the Owner releases and pays Retention to the Contractor because completion is deemed to have occurred in accordance with Public Contract Code Section 7107, the Contractor shall not thereby be deemed or construed to have been released from its obligations pursuant to the Contract Documents.

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 Owner and the Contractor pursuant to Public Contract Code § 22300.

10.9.3 PROCEDURES FOR APPLICATION FOR FINAL PROGRESS PAYMENT

The Application for Final Payment shall be accompanied by the same details as the Application for Payment, and in addition, the following conditions must be fulfilled:

- A. A full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by Contractor, including a release of Stop Notice in recordable form, together with (to the extent permitted by law) a copy of the full and final waiver of all Stop Notices or, at the Owner's option, a Stop Notice Release Bond from a surety acceptable to the Owner as defined by the Contract Documents, including a release of Stop Notice in recordable form, in connection with the Work obtained by Contractor from each person to receive a payment thereunder, which waivers of Stop Notice shall be in a form as approved by Owner.
- B. The Contractor shall have made, or caused to have been made, all corrections to the Work which are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of Owner required under the Contract.
- C. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.
- D. The Contractor shall deliver to the Owner reproducible final Record Drawings and Annotated Specifications showing the Contractor's Work, with the Contractor's certification of the accuracy of the Record Drawings and Annotated Specifications, all guarantees, and operation and maintenance instructions for equipment and apparatus.
- E. Architect shall have issued a Final Certificate of Payment.
- F. The Contractor shall have delivered to the Owner all manuals and materials required by the Contract Documents.
- G. The Contractor shall have removed, or caused to be removed, all waste materials and rubbish from and about the Site, as well as all tools, construction equipment, machinery, surplus material, scaffolding equipment, and any other similar materials of the Contractor or any subcontractor, shall

have cleaned, or caused to be cleaned, all glass surfaces, and shall have left the Work broom-clean, except as otherwise provided in the Contract Documents.

10.10 WAIVER AND RELEASE FORMS

All Applications for Payment, whether for progress payments or final payment shall include conditional or unconditional waiver and release documents, as appropriate, in the form specified by Civil Code §§ 8132, 8134, 8136, and 8138.

10.11 SUBSTITUTION OF SECURITIES

In accordance with § 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to the Contractor. Upon satisfactory Completion of the Contract, the securities shall be returned to the Contractor. Securities eligible for investment under this section shall include those listed in Government Code § 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner.

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

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

ARTICLE 11

PROTECTION OF PERSONS AND PROPERTY

11.1 SAFETY PRECAUTIONS AND PROGRAMS

11.1.1 CONTRACTOR RESPONSIBILITY

The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs, according to OSHA guidelines in connection with the performance of the Contract. Contractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

Contractor is responsible for obtaining OSHA Project Permit and shall comply with and pay any fines or penalties imposed for Contractor's violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

11.1.2 SUBCONTRACTOR RESPONSIBILITY

Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

11.1.3 COOPERATION

All Subcontractors and material or equipment suppliers shall cooperate fully with Contractor, the Owner, and all insurance carriers and loss prevention engineers.

11.1.4 ACCIDENT REPORTS

Subcontractors shall promptly report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. Contractor shall thereafter promptly report the facts in writing to the Owner and the Architect giving full details of the accident.

11.1.5 FIRST-AID SUPPLIES AT SITE

The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

11.2 SAFETY OF PERSONS AND PROPERTY

11.2.1 THE CONTRACTOR

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

- A. Employees on the Work and other persons who may be affected thereby;
- B. The Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub subcontractors; and
- C. Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

11.2.2 CONTRACTOR NOTICES

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

11.2.3 SAFETY BARRIERS AND SAFEGUARDS

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

11.2.4 USE OR STORAGE OF HAZARDOUS MATERIAL

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

11.3 PROTECTION OF WORK AND PROPERTY

11.3.1 PROTECTION FROM ELEMENTS

The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss arising in connection with operations under the Contract Documents. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner.

11.3.2 PROTECTION FOR ELEMENTS

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

11.3.3 SHORING AND STRUCTURAL LOADING

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

11.3.4 CONFORMANCE WITHIN ESTABLISHED LIMITS

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

11.3.5 SUBCONTRACTOR ENFORCEMENT OF RULES

Subcontractors shall enforce the Owner's and the Contractor's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, illegal drugs, pets, the presence of liquor, and the presence of firearms by any person at the Site.

11.3.6 SITE ACCESS

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

11.3.7 PROTECTION OF MATERIALS

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

11.4 EMERGENCIES AND ACCIDENTS

11.4.1 EMERGENCY ACTION

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be requested through a Change Order Request.

11.4.2 ACCIDENT REPORTS

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

11.5 HAZARDOUS MATERIALS

11.5.1 DISCOVERY OF HAZARDOUS MATERIALS

In the event the Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by §25249.8 of the California Health and Safety Code, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether or not such

material was generated by the Contractor or the Owner. The Work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless, the work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Contractor.

11.5.2 HAZARDOUS MATERIAL WORK LIMITATIONS

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

11.5.3 INDEMNIFICATION BY OWNER FOR HAZARDOUS MATERIAL NOT CAUSED BY CONTRACTOR

In the event the presence of hazardous materials on the Project Site is not caused by the Contractor, Owner shall pay for all costs of testing and remediation, if any, and shall compensate Contractor for any additional costs incurred or Project delay in accordance with the Change Order provisions herein. In addition, Owner shall defend, indemnify and hold harmless the Contractor and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with or arising out of, or relating to, the performance of the Work in the area affected by the hazardous material.

11.5.4 INDEMNIFICATION BY CONTRACTOR FOR HAZARDOUS MATERIAL CAUSED BY CONTRACTOR

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

11.5.5 TERMS OF HAZARDOUS MATERIAL PROVISION

The terms of this Hazardous Material provision shall survive the Completion of the Work and/or any termination of this Contract.

ARTICLE 12

INSURANCE AND BONDS

12.1 CONTRACTOR'S LIABILITY INSURANCE

12.1.1 INSURANCE REQUIREMENTS

Before the commencement of the Work, the Contractor shall purchase from and maintain insurance from a company or companies meeting one of the following criteria: (1) a company lawfully authorized to transact business in California as admitted carriers with a financial rating of at least A status or higher with a Financial Size Category (FSC) of VIII or larger as rated in the most recent edition of Best's Insurance Reports; or (2) a California approved Surplus Line carrier or carriers which have a Best rating of A or higher with a Financial Size Category (FSC) of VIII or larger. Such insurance must protect the Contractor from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- A. Claims for damages because of bodily injury, sickness, disease, or death of any person other than the Contractor's employees. This coverage shall be provided in a form at least as broad as Insurance Services Office (ISO) Form CG 0001 11188;

- B. Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;
- C. Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents; and
- D. Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work;
- E. Claims involving blanket contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and
- F. Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)

12.1.2 SUBCONTRACTOR INSURANCE REQUIREMENTS

The Contractor shall require its Subcontractors to take out and maintain similar public liability insurance and property damage insurance required herein in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy Subcontractors' obligations hereunder without prior written approval of the Owner.

12.1.3 OWNER'S INSURANCE

The Owner shall be responsible for purchasing and/or maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

12.1.4 ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS

The Contractor shall name, on any policy of insurance required under this Article, the Owner, Construction Manager, Project Inspector and the Architect and their agents and consultants as additional insureds. Subcontractors shall name the Contractor, the Owner, Construction Manager and the Architect and their agents and consultants as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. Contractor shall provide Owner with a CG 20 37 endorsement or its equivalent.

12.2 WORKERS' COMPENSATION INSURANCE

During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's Work is sublet, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the Owner certificates of insurance as required herein and in compliance with Labor Code § 3700. Workers' Compensation coverage amounts shall be as follows:

State Workers' Compensation Statutory Benefits: As required by law.

Employer's Liability: Policy limits of not less than \$1,000,000.00

12.3 BUILDER'S RISK/"ALL RISK" INSURANCE

12.3.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS

The Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon Completion of the entire Project, shall maintain Builder's Risk/"All Risk," course-of-construction insurance issued on a completed value basis of the Project, inclusive of all insurable Work included under the Contract Documents. Coverage is to provide extended coverage and insurance against vandalism, malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, earthquake, collapse, flood, wind, lightning, smoke, riot, debris removal (including demolition), and reasonable compensation for the Architect's services and expenses required as a result of such insured loss upon the entire Work which is the subject of the Contract Documents, including completed Work and Work in progress to the full insurable value thereof. Coverage shall further include items of labor and materials connected with the Work whether in or adjacent to the structure insured, materials in place or to be used as part of the permanent construction, including surplus materials, shanties, protective fences, bridges, temporary structures, miscellaneous materials and supplies incidental to the Work, and such scaffolding, staging, towers, forms, and the equipment as are not owned or rented by the Contractor, the costs of which are included in the cost of the Work. Such insurance shall include the Owner, Construction Manager and the Architect and their agents, consultants, and employees as an additional named insured and any other person with an insurable interest designated by the Owner as an additional named insured.

The Contractor shall submit to the Owner for its approval all items deemed to be uninsurable. The risk of the damage to the Work due to the perils covered by the Builder's Risk/"All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the Owner nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

12.3.2 CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE

Partial occupancy or use shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

12.4 INSURANCE COVERAGE AMOUNTS

Unless otherwise specified in the Contract Documents, the liability coverage amounts shall be as follows: Commercial General Liability Coverage: Shall be written on an occurrence as versus a claims made form with policy limits of not less than \$2,000,000.00 per occurrence and \$4,000,000.00 aggregate per project on BI (bodily injury) and PD (property damage) and include coverage for the following. General liability insurance limits for contractor and subcontractors may be subject to reduction in particular instances upon written request and written approval by District. The policy will provide not less than thirty (30) days prior written notice to the District of any material change in the insurance or cancellation or non-renewal. The District, Architect, Construction Manager and Inspector will be endorsed as an "additional insured" on Contractor's and subcontractors' policy or policies. Contractor and subcontractors shall furnish Certificates of Insurance evidencing said coverage before commencing Work on the Project. District may authorize lesser limits (but in no case lower than \$1M per occurrence and \$2M in the aggregate) in circumstances which it, in its sole discretion, deems appropriate to do so:

1. Premises - operations
2. Contractual liability
3. Products
4. Completed operations
5. Broad form PD and including X, C and U coverage
6. Personal injury
7. Owners, Contractors protective

Comprehensive Auto Liability Insurance: Shall have limits of not less than \$1,000,000.00 CSL, BI and PD, including coverage for owned, non-owned and hired autos.

Asbestos Abatement (if applicable):

1. Must be occurrence coverage versus claims made coverage.
2. \$1,000,000.00 per occurrence with not less than \$2,000,000.00 annual aggregate limits required.
3. Certificates of Insurance must specify "asbestos abatement".

12.5 FIRE INSURANCE

Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the Owner.

12.6 OTHER INSURANCE

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

12.7 PROOF OF CARRIAGE OF INSURANCE

The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance and a certified copy of insurances, authenticated by the proper office of the Insurer, have been obtained and delivered in triplicate to the Owner for approval subject to the following requirements and in the coverage amounts required by the Supplementary Conditions:

- A. Certificates and insurance policies shall include the following clause:

"This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."
- B. Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
- C. Certificates of insurance shall clearly state that the Owner, Construction Manager, Inspector and the Architect and their agents, consultants, and employees are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner.
- D. Acceptance of the Certificates of Insurance by the Owner shall not relieve or decrease the liability of the Contractor.

12.8 COMPLIANCE

In the event of the failure of the Contractor or any Subcontractor to furnish and maintain any insurance required by the Contract Documents, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Owner, Construction Manager, Project Inspector and the Architect and their agents and consultants.

12.9 WAIVER OF SUBROGATION

The Owner, Construction Manager, Project Inspector, the Architect, and the Contractor each waive (to the extent permitted by law) any right to recover against the other for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by either the Owner, or any Contractor.

The provisions of this Section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The Owner and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

12.10 PERFORMANCE AND PAYMENT BONDS

12.10.1 BOND REQUIREMENTS

Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Contractor shall apply for and furnish separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California.

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

12.10.2 SURETY QUALIFICATION

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety with a rating not lower than "A-" as rated by A.M. Best Company, Inc., or other independent rating companies, with a bonding capacity in excess of the Contract Price.

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS

If a portion of the Work is covered contrary to the Inspector's request, the Architect's request, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Inspector or the Architect, be uncovered for the Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Contract Price or Time.

13.1.2 COSTS FOR INSPECTIONS NOT REQUIRED

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

13.2 CORRECTION OF WORK

13.2.1 CORRECTION OF REJECTED WORK

The Contractor shall promptly correct the Work rejected by the Inspector or the Owner upon recommendation of the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor shall bear 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.

13.2.2 ONE-YEAR WARRANTY CORRECTIONS

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

this paragraph shall survive Acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

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

13.2.3 REMOVAL OF NONCONFORMING WORK

The Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted by the Owner.

13.2.4 OWNER'S RIGHTS IF CONTRACTOR FAILS TO CORRECT

If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with paragraph 2.4. In addition, if the Contractor does not proceed with correction of such nonconforming Work within the time fixed by written notice from the Inspector or the Owner through the Architect, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days written notice sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contractor shall be invoiced for the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.5 COST OF CORRECTING THE WORK

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

13.3 ACCEPTANCE OF NONCONFORMING WORK

If it is found at any time before or after Completion of the Work that the Contractor has varied from the Contract Documents in materials, quality, form, finish, or in the amount or value of the materials or labor used, the Architect shall make a recommendation: that all such improper Work should be removed, remade, and replaced, that all Work disturbed by these changes be made good at the Contractor's expense, and that the Owner deduct from any amount due Contractor that sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. The Architect shall determine such difference in value. The Owner, at its option, may pursue either course unless correction is required by law.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW AND VENUE

The Contract shall be governed by the law of the State of California. The Contract is entered into and shall be performed in Santa Barbara and in the event of a litigated disputed between the parties, venue shall be in the Santa Barbara County Superior Court, Anacapa Division.

14.2 SEVERABILITY

If any portion of the Contract is deemed by a court to be invalid or illegal, the remaining portions of the Contract endure with full force and effect.

14.3 SUCCESSORS AND ASSIGNS

The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

14.4 WRITTEN NOTICE

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

14.5 RIGHTS AND REMEDIES

14.5.1 DUTIES AND OBLIGATIONS CUMULATIVE

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

14.5.2 NO WAIVER

No action or failure to act by the Inspector, the Owner, the Architect or the Contractor shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

14.6 TESTS AND INSPECTIONS

14.6.1 COMPLIANCE

Tests, inspections, and approvals of portions of the Work required by the Contract Documents shall comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

14.6.2 INDEPENDENT TESTING LABORATORY

The Owner will select and pay an independent testing laboratory to conduct all tests and inspections. Selection of the materials required to be tested shall be made by the laboratory or the Owner's representative and not by the Contractor. Any costs or expenses of inspection or testing incurred outside of a fifty (50) mile radius from the Project Site or not located in a contiguous county to the Site, whichever distance is greater, shall be paid for by the Owner, invoiced by the Owner to the Contractor, and deducted from the next Progress Payment.

14.6.3 ADVANCE NOTICE TO INSPECTOR

The Contractor shall notify the Inspector a sufficient time in advance of its readiness for required observation or inspection so that the Inspector may arrange for same. The Contractor shall notify the Inspector a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector may arrange for the testing of the material at the source of supply.

14.6.4 TESTING OFF-SITE

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

14.6.5 ADDITIONAL TESTING OR INSPECTION

Notwithstanding, if the Inspector, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included in the Contract Documents, the Inspector will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in paragraph 14.6.6.

Notwithstanding, if such procedures for testing, inspection, or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and deducted from the next Progress Payment.

14.6.6 COSTS FOR PREMATURE TEST

In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice of shall be deducted from the next Progress Payment.

14.6.7 TESTS OR INSPECTIONS NOT TO DELAY WORK

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

14.7 INTEREST

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

14.8 TRENCH EXCAVATION

14.8.1 TRENCHES GREATER THAN FIVE FEET

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

14.8.2 EXCAVATION SAFETY

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a California registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. Said detailed design plan and subsequent excavating operations shall fully comply with all local, state and federal regulations. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the Owner or by the person to whom authority to accept has been delegated by the Owner.

14.8.3 NO TORT LIABILITY OF OWNER

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

14.8.4 NO EXCAVATION WITHOUT PERMITS

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

14.9 WAGE RATES, TRAVEL, AND SUBSISTENCE

14.9.1 WAGE RATES

Pursuant to the provisions of Article 2 (commencing at § 1770), Chapter 1, Part 7, Division 2, of the Labor Code, the governing board of the Owner has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public Work is to be performed for each craft,

classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file with the Clerk of the Owner's governing board, and copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at the Site.

Contractor shall comply with all requirements of the Labor Code of the State of California, regardless of whether all such requirements are set forth here. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Contractor represents that Contractor is registered to perform public work pursuant to Labor Code section 1725.5. Contractor will provide proof of its registration prior to entering into the Contract Documents.

Contractor shall post job site notices as prescribed regulation as required in Labor Code section 1771.4.

14.9.2 HOLIDAY AND OVERTIME PAY

Holiday and overtime Work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed.

14.9.3 WAGE RATES NOT AFFECTED BY SUBCONTRACTS

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

14.9.4 TRAVEL AND SUBSISTENCE

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

14.9.5 CHANGE IN PREVAILING WAGE DURING BID OR CONSTRUCTION

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

14.9.6 FORFEITURE AND PAYMENTS

Pursuant to Labor Code § 1775, the Contractor shall as a penalty to the Owner not more than two hundred dollars (\$200) for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed. The amount of the penalty shall be determined by the Labor Commissioner.

14.9.7 MINIMUM WAGE RATES

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

14.9.8 PER DIEM WAGES

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

14.9.9 POSTING OF WAGE RATES

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

14.10 RECORD OF WAGES PAID: INSPECTION

14.10.1 MAINTENANCE AND INSPECTION PAYROLL RECORDS (LABOR CODE §1776)

Contractor and each Subcontractor shall keep accurate payroll records, 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 him or her in connection with the execution of this contract. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the execution of this contract.

The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- (2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the Owner and the Division of Labor Standards Enforcement of the Department of Industrial Relations.
- (3) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either Owner or the Division of Labor Standards Enforcement. The public may not be given access to the records at the principal office of the Contractor.

Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Labor Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified herein.

Contractor and each subcontractor shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request.

Contractor shall inform Owner of the location of the verified payroll records including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

Contractor and each subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the verified payroll records. In the event that the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the Owner, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

The verified payroll records shall be furnished to the Labor Commissioner as required under Labor Code section 1771.4.

14.10.2 SUBMISSION OF PAYROLL RECORDS TO OWNER

Contractor shall furnish to Owner on a monthly basis, or more frequently if requested by Owner, in hard copy format the certified weekly payroll records, which shall be verified as provided in this Article.

14.11 APPRENTICES

14.11.1 APPRENTICE WAGES AND DEFINITIONS

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in § 3077 of the

Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing with § 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

14.11.2 APPRENTICE LABOR POOL

When the Contractor to whom the Contract is awarded by the Owner, or any Subcontractor under him or her, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the Project, for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in order to comply with this section. Every Contractor and Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

14.11.3 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS

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

14.11.4 JOURNEYMAN/APPRENTICE RATIO

The Contractor or Subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeyman, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1 to 5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

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

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

14.11.5 RATIO EXEMPTION

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

14.11.6 APPRENTICE FUND

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

14.11.7 PRIME CONTRACTOR COMPLIANCE

The responsibility of compliance with the contractual requirements for apprentices and § 1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor.

14.11.8 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE

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

14.11.9 NO BIAS

It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person except as provided in the Labor Code § 3077.

14.11.10 VIOLATION OF LABOR CODE

Contractor acknowledges that violations of the contractual provisions for apprentices in this Article and Labor Code section 1777.5 are governed by Labor Code section 1777.7, which provides, among other things, for the imposition of a civil penalty of not more than \$100 for each full calendar day of noncompliance.

14.12 ASSIGNMENT OF ANTITRUST CLAIMS

14.12.1 APPLICATION

Pursuant to Public Contract Code Section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

14.12.2 ASSIGNMENT OF CLAIM

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

14.13 STATE AUDIT

Pursuant to and in accordance with the provisions of Government Code § 10532, or any amendments thereto, all books, records, and files of the Owner, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after final payment is made under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period.

14.14 FAIR EMPLOYMENT PRACTICES

Contractor agrees that, at all times during the Project, Contractor shall comply with all state, local, and federal laws relating to non-discrimination. These laws include, but are not limited to, the Fair Employment and Housing Act (Cal. Govt. Code, Section 12900, et seq.), the regulations promulgated thereunder (Cal. Code Regs., Tit. 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Tit. 2 of the Government Code (Cal. Govt. Code, Sections 11135-11139.5), and any regulations or standards adopted by the Owner to implement such article.

Contractor will not unlawfully discriminate against, or deny the Contract's benefits to, any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status.

The Contractor shall substantially include the provisions of this Fair Employment Practices Section in every first tier subcontract and require each Subcontractor to bind each Sub-subcontractor with whom a contract exists to such provisions, so that such provisions will be binding upon every subcontractor of every tier who performs any of the Work required by this Contract.

14.15 COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services, and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to persons with disabilities. Contractor agrees not to discriminate against persons with disabilities in the provision of services, products, benefits, or activities provided in the Contract, and further agrees that any violation of this prohibition on the part of the Contractor shall constitute a material breach of the Contract.

14.16 ATTORNEYS' FEES

In any legal action arising out of the Project or the Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including expert witness fees.

ARTICLE 15

TERMINATION OR SUSPENSION OF THE CONTRACT

15.1 TERMINATION BY THE CONTRACTOR FOR CAUSE

15.1.1 GROUNDS FOR TERMINATION

The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, for only the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction;
2. an act of government, such as a declaration of national emergency, making material unavailable;
3. if repeated suspensions, delays, or interruptions by the Owner for Owner's convenience constitute in the aggregate more than 100 percent (100%) of the total number of days scheduled for Completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less; or
4. the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence of financing or funding as required by the Contract Documents.

15.1.2 NOTICE OF TERMINATION

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

15.1.3 NOTICE OF TERMINATION - OWNER FAULT

If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, Subcontractor, Sub-Subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon written notice of seven (7) additional days to the Owner, terminate the Contract and recover from the Owner payment for Work executed and for reasonable costs verified by the Architect with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages.

15.2 TERMINATION BY THE OWNER FOR CAUSE

15.2.1 GROUNDS FOR TERMINATION

The Owner may terminate the Contract if the Contractor:

- A. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- B. fails to make payment to Subcontractors for materials or labor in accordance with Business and Professions Code § 10262;
- C. persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- D. otherwise is in substantial breach of a provision of the Contract Documents.

15.2.2 NOTIFICATION OF TERMINATION

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

- A. take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- B. accept assignment of subcontracts; and
- C. complete the Work by whatever reasonable method the Owner may deem expedient.

15.2.3 PAYMENTS WITHHELD

If the Owner terminates the Contract for cause, the Contractor shall not be entitled to receive further payment until the Work is complete.

15.2.4 PAYMENTS UPON COMPLETION

If the unpaid balance of the Contract Price exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor, or Owner, as the case may be, shall be certified by the Architect upon application. This payment obligation shall survive Completion of the Contract.

15.3 TERMINATION OR SUSPENSION BY THE OWNER FOR CONVENIENCE

15.3.1 SUSPENSION BY OWNER

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

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

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

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

15.4 TERMINATION DUE TO DISCOVERY OF UNKNOWN OR CHANGED CONDITIONS

The Owner reserves the right to terminate this Contract should the Owner determine not to proceed because of the discovery of any condition described in Article 4.5.5 or Article 10.5. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

15.5 MUTUAL TERMINATION FOR CONVENIENCE

The Contractor and the Owner may mutually agree to terminate this Contract for convenience. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

END OF GENERAL CONDITIONS