

AGREEMENT FOR CONSTRUCTION SERVICES

This Agreement for Construction Services is made effective as of _____, 2023, by and between the _____ (“District”), a public school district organized and existing pursuant to the laws of the State of California, and _____, (“Contractor”), a _____. The District and the Contractor may hereinafter be referred to individually as “Party” and collectively as the “Parties.”

Section 1. Project. The Parties have entered into the Contract with respect to the following public works construction project of the District (“Project”): _____

Section 2. Component Parts of Contract. The entire agreement between the District and the Contractor includes and by this reference incorporates in full all of the documents described in this Section (collectively the “Contract Documents” and, as a whole, the “Contract”). The Contract Documents are intended to be complementary and form an integrated and binding whole. Contractor shall perform the work required by any one of the Contract Documents, even if that work is not referenced in any other Contract Document, as if that work is required by each and every Contract Document. The Contract Documents include:

- (i) Scope of Work, attached hereto as Exhibit A;
- (ii) Master Schedule; attached hereto as Exhibit B;
- (iii) All plans, drawings, and specifications for the Project, including, without limitation, attachments thereto and any and all approved shop-drawing submittals (“Plans and Specifications”);
- (iv) General Provisions of the Contract;
- (v) Any and **all** Change Orders and other duly-approved modifications to the Contract Documents; and
- (vi) Each of the documents listed below, if checked:
 - Addenda Nos. _____
 - Responses to Bidder Clarification Requests Nos. _____

Section 3. Scope of Work. The Contractor shall, at its own cost and expense, furnish all construction and other services (including, but not limited to, all labor, materials, tools, equipment, services, administration, supervision, and incidental and customary work) necessary and appropriate to fully and adequately complete the Project in strict accordance with the Contract Documents (“Work”). Should any detail or dimension be inadvertently omitted from the Plans and Specifications, it shall be the Contractor's responsibility to request from the Architect the required details or information and to perform the Work in conformance therewith so that, upon completion of the Work, it will be acceptable and ready for use by the District.

Section 4. Completion of Work. Time is of the essence with respect to completion of the Project. The Contract requires the exact and full performance of the Work by the Contractor. The District shall provide notice to the Contractor specifying the date upon which the Contractor is to commence the Work (“Notice to Proceed”). Unless the time for performance is extended pursuant to

the terms of the Contract, the Contractor shall complete all of the Work by the date specified in the Master Schedule. The Contractor acknowledges and agrees that: (i) it shall perform the Work in strict conformance with all schedule(s) or project milestone(s) set forth in the Master Schedule; and (ii) the Master Schedule is subject to revision depending on actual conditions in the field and other factors, and as otherwise provided by the Contract. The Contractor must perform the Work in full compliance with the Master Schedule, including, without limitation, as it may be revised in accordance with the Contract, without additional compensation except as may be permitted pursuant to the Contract Documents.

Section 5. Certification of Contractor's License. In entering into the Contract, the Contractor hereby certifies that as of the date of execution of the Contract, the Contractor possesses a current Class ____ contractor's license issued by the Contractors State License Board of the State of California, which license the Contractor represents and warrants is appropriate for the Contractor, in conjunction with any listed subcontractor(s), to perform the Work in accordance with California law.

Section 6. Payment to Contractor. In exchange for the full and satisfactory performance of the Work, the District shall pay to the Contractor the total, all-inclusive amount of _____ ("Contract Amount"). The Contract Amount shall be subject to adjustment as provided in the Contract Documents through authorized Change Orders approved by the District. Payments to the Contractor shall be made as the Work progresses ("Progress Payments") based upon Applications/Requests for Payment and subject to retention of five percent (5%).

Section 7. District Representative. The authorized representative of the District for all purposes related to the Contract ("District Representative") shall be _____, who may be reached at _____. With respect to the matters within the authority of the District Representative, the Contractor shall not accept instructions or direction from any person purporting to represent the District other than the District Representative or his or her designee. Notwithstanding the foregoing, the Superintendent of the District and the Assistant Superintendent of Business Services and Support for the District shall have authority to act on behalf of the District for all purposes of the Contract, including, among other situations, if the District Representative is not available on a timely basis.

Section 8. Insurance. The Contractor shall purchase and maintain, during the performance of the Work under this Contract, insurance in amounts as set forth below:

- (i) Commercial General Liability: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate for bodily injury, personal injury, and property damage. Coverage for Commercial General Liability.
- (ii) Automobile Liability: \$1,000,000.00 per occurrence for bodily injury and property damage. At all times during the performance of the work under this Contract, the Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned, and hired vehicles.
- (iii) Workers' Compensation/Employer's Liability: \$1,000,000.00 per occurrence for

employer's liability. The Contractor shall provide, during the life of this contract, workers' compensation liability in compliance with applicable statutory requirements. Employer's Liability and Workers' Compensation shall apply for all employees engaged in Work under this Contract, on or at the site of the project, and, in case of any sublet work, the Contractor shall require the subcontractor similarly to provide Employer's Liability and Workers' Compensation insurance for all the latter's employees.

Section 9. Notices. All notices, demands, and other communications required or given pursuant to the Contract must be in writing, duly addressed as indicated below, and given by: (i) personal delivery (signature on delivery receipt requested); (ii) registered or certified mail (postage prepaid and return receipt requested); or (iii) U.P.S., FedEx or other reliable private express delivery (delivery charge prepaid and signature on electronic or other delivery receipt requested). Such notices, demands, or communications shall be deemed given, served or received: (i) upon delivery if personally served or sent by facsimile (or as of 9:00 a.m. on the next subsequent day that is not a Saturday, Sunday, federal or State of California ("State") holiday, or District furlough day); or (ii) only upon actual receipt if given or sent by any other approved manner specified above. Any party to the Contract may change its below-specified name, address, or person to whom attention should be directed by giving notice as specified in this Section. Notices, demands, and other communications within the purview of this Section shall be duly addressed and sent as follows:

To the District:

Attn: _____

To the Contractor:

Attn: _____

Notwithstanding anything in the Contract to the contrary, in the event of any emergency or urgent situation, the Contractor must make reasonable attempts to contact the District Representative by telephone and shall follow up such telephone contact with written confirmation. Telephone numbers for "after hours" communications are:

District Representative: _____

Contractor Representative: _____

The Contractor shall notify the District within five (5) business days of any change in its address, facsimile number, or telephone number(s), and failure of Contractor to provide such notification shall be deemed a material breach of the Contract.

Pursuant to Public Contract Code Section 9201, the District will timely notify the Contractor of any third-party claim relating to the Contract by mailing notice of receipt of such claim within ten (10) calendar days. Public Contract Code Section 9201 provides that the District shall be entitled to its reasonable costs incurred in providing this notice to the Contractor.

Section 10. Prevailing Wages. Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the contract as determined by the Director of the Department of Industrial Relations. Copies of the schedules of rates so determined by the Director of the Department of Industrial Relations are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations.

The following are hereby referenced and made a part of this Agreement and Contractor stipulates to the provisions contained therein.

1. Division 2, Part 7, Chapter 1 of the Labor Code (Section 1720 et seq.)
2. California Code of Regulations, Title 8, Chapter 8, Subchapters 3 through 6 (Section 16000 et seq.)

Section 11. Attorney's Fees. In the event of any action or other proceeding to enforce the Contract and/or to resolve any dispute between the Parties related thereto, each Party shall be responsible for paying its own costs and expenses incurred in connection with such action or proceeding, including, without limitation, attorneys' fees and expenses.

Section 12. Entire Agreement. The Contract constitutes the entire agreement of the Parties with respect to the performance of the Work by the Contractor and supersedes all prior communications, negotiations, understandings and agreements related to the Work. The Contract may be modified only by a writing duly approved and signed by both Parties. Any provision, printed or otherwise, contained in any acknowledgment of the Contract or purchase order or invoice related to the Contract that is inconsistent with, different from, or in addition to the terms and conditions contained in the Contract or any documents specifically referenced and incorporated herein, shall have no force or effect.

Section 13. Assignment. Contractor shall not assign, sublet or by any other means transfer the Contract or any obligation, right, title or interest herein, including right to payments hereunder, without the prior written consent of District. The Contract shall be binding on any authorized assignee, sublessee, transferee or other successor to the Contractor. If Contractor attempts, without District permission, to assign, sublet or by any other means transfer the Contract or any obligation, right, title or interest herein, the District may, at its option, terminate the Contract and shall thereafter be relieved from any and all obligations to Contractor and any purported assignee, sublessee or transferee.

Section 14. Counterparts. The Contract may be executed in counterparts, each of which shall constitute an original and all of which shall constitute but one and the same instrument.

Section 15. Due Authority. Each individual that signs the Contract on behalf of a Party thereby represents and warrants that he or she has been authorized by appropriate action of such Party to sign, and thereby bind such Party to, the Contract.

In Witness Whereof, the duly-authorized representatives of the Parties have executed the Contract, as evidenced by their signatures below.

_____ (“District”)

_____ (“Contractor”)

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

Board Approved: [Date]

GENERAL PROVISIONS

PART 1. ADMINISTRATIVE.

Section 1.1 Definitions. Each capitalized term that is defined in any of the Contract Documents shall have such meaning for purposes of all of the Contract Documents, despite not being defined in any other of the Contract Documents.

Section 1.2 Authority of District Representative. The District Representative shall have the authority for general supervision and control of the Work and the Project. The District Representative has the authority to determine the amount, quality, acceptability, and fitness of all parts of the Work, and to decide all questions pertaining to the Work, except to the extent that the Architect is responsible for answering such questions. The District Representative shall have authority to stop any or all of the Work whenever, in the District Representative's opinion, the Project or the Work is not being executed in accordance with applicable requirements or in a proper manner.

Section 1.3 District's Inspector. The District may contract with a DSA-approved inspector and one or more specialty inspectors (each an "Inspector") to observe and review some or all of the Work, and who will act as representatives of the District. Such observation and review by any Inspector shall not, in any way, relieve the Contractor from responsibility for full compliance with all of the terms and conditions of the Contract, nor be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable supervision as required herein. The Inspectors are not authorized to make changes in the drawings or specifications, and no observation, review, or approval of work and/or methods by any Inspector shall be deemed or construed to relieve the Contractor of responsibility for the correction of any subsequently discovered defects.

Section 1.4 Extra Services of District Inspector and/or Architect. The Contractor and/or its surety, if applicable, shall reimburse the District in the event the District incurs any costs or expenses for services of the District Inspector and/or the Architect in connection with: (i) enforcement of any guaranty or warranty for any portion of the Work; (ii) correction of defects or poor-quality workmanship in the Work; and/or (iii) completion of the Work by the surety or, if applicable, the District. The Contractor or its surety, if applicable, shall reimburse any such undisputed amounts to the District with reasonable promptness, but in no event later than sixty (60) days after request from the District.

Section 1.5 Separate Contracts. The District reserves the right to award any other contract(s) in connection with the Project for work and/or services not included in the Contractor's scope of work, and the work to be completed pursuant to such contract(s) may proceed simultaneously with the execution of the Work by the Contractor. The Contractor shall coordinate its operations with those of all other contractors on the Project. The Contractor shall cooperate with the District and other contractors with respect to all aspects of the overall work necessary to complete the Project, including storage of equipment and materials. The Contractor and its subcontractors shall remain informed of the progress and the detail work of other contractors and shall immediately notify the District Representative of any reasonably apparent lack of progress or defective workmanship on the part of other contractors, as such delay or such defective workmanship may interfere with the completion of the Work. Failure of the Contractor to remain informed of the progress of work on the Project and/or failure to give notice of any reasonably apparent

lack of progress or defective workmanship by others shall be deemed to be acceptance by the Contractor of that work as being satisfactory for proper coordination with the Work and to be a waiver by the Contractor of any delays arising from that work by others.

Section 1.6 Ownership of Contract Documents. All copies of any Contract Documents, including Plans and Specifications, exclusively prepared for the Work and the Project are and shall remain the property of the District. For all documents provided for herein, the Contractor shall not use or allow the use of the Contract Documents or any portion or provision thereof in connection with any work other than the Work. With the exception of one set of the signed Contract and other Contract Documents to be retained in the Contractor's records if desired by the Contractor, all copies of all Contract Documents are to be returned to the District upon completion and acceptance of the Work. The provision of this Section shall not apply to any plans and/or drawings prepared by Contractor if said plans and/or drawings was not prepared solely for the Project.

PART 2. CONTRACTOR'S PERFORMANCE.

Section 2.1 Independent Contractor Status. The Contractor shall, for all purposes of the Contract, be deemed to be an independent contractor. The Contractor shall not be deemed or construed to be an officer, employee, agent, consultant or representative of the District for any purpose related to the Work or the Project, except to the extent expressly authorized in writing by the District.

Section 2.2 Standard of Performance. The Contractor represents and warrants that it has the professional skill, knowledge and experience necessary to perform and complete the Work within the time required pursuant to the Contract. The Contractor shall apply such skill, knowledge and experience in the completion of the Project, at a minimum level at least equal to that expected generally of professionals employed in construction of public schools within the State. The Contractor shall perform and complete the Work in accordance with standards not less than established by applicable laws, rules and regulations, industry and trade association standards, manufacturers' recommendations, and, if any, community or area standards. The Contractor represents and warrants that all of its employees and subcontractors shall have sufficient skill, knowledge and experience to perform the Work that will be assigned to them.

Section 2.3 Licenses. The Contractor represents and warrants that it currently has, and that it shall maintain until completion and acceptance of the Project, all licenses, permits, qualifications and approvals of whatever nature as are legally required to permit the Contractor to perform the Work required pursuant to the Contract and to complete the Project.

Section 2.4 Solicitation of Contract. The Contractor hereby represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor or its subcontractor(s), to solicit or secure the Contract on behalf of the Contractor. The Contractor also hereby represents and warrants that it has not paid, and has not agreed to pay, any company or person, other than a bona fide employee working solely for the Contractor or its subcontractor(s), any fee, commission, percentage, brokerage gift or other consideration that is or was contingent upon the award of the Contract to the Contractor. Breach or violation of these representations and warranties shall result in

the District having the right to terminate the Contract without further obligation or liability to the Contractor.

Section 2.5 Conflict of Interest. The Contractor represents and warrants that, for the term of the Contract, it shall not accept, encourage or solicit from any Governing Board member, officer or employee of the District any funds or act(s) that may result in a direct financial interest in the Contract or any present or anticipated material benefit arising from the Contract.

Section 2.6 Project Records. The Contractor shall maintain all documents, books, papers, accounting records, computer files, and other information related to the Project and performance of the Work ("Project Records"), including, but not limited to, the Contract, the Plans and Specifications, Change Orders, submittals, cut-sheets, requests for information, daily reports, correspondence, permits, insurance policies, Certificates of Insurance, testing and inspection reports, the costs of administering the Contract, and safety records. The Contractor shall keep such accurate and comprehensive Project Records as are: (i) necessary for proper administration and performance of the Work; and (ii) required by law or the Contract. All Project Records, as applicable, shall be maintained in accordance with generally-accepted accounting principles. In accordance with Government Code Section 8546.7, the State has the right to examine, review, audit and/or copy the Project Records during the three-year period following final payment to the Contractor pursuant to the Contract. In addition, the District, DSA, SAB and OPSC each hereby has the right to examine, review, audit and/or copy the Project Records during the four-year period following final payment to the Contractor pursuant to the Contract. Therefore, the Contractor shall make the Project Records available at its offices at all reasonable times during the performance of the Work and for four (4) years from the date of final completion or filing of a Notice of Completion for the Project, whichever is later. However, if any audit is commenced within such four (4) year period, the Contractor shall make the Project Records available at all reasonable times until proceedings related to such audit are complete and all statutes of limitation related thereto have expired. In the event the District notifies the Contractor that federal funds have been used in connection with the Project, the Contractor shall retain and make available the Project Records for such longer period as may be required by federal law.

PART 3. EMPLOYEES AND SUBCONTRACTORS.

Section 3.1 Job Superintendent. The Contractor shall have present on the Project Site at all times during the course of the Work an experienced and competent superintendent and any necessary assistants, all satisfactory to the District, who shall supervise the Work and the Contractor's employees and subcontractors on the Project. The job superintendent shall not be changed except with the written consent of the District, unless the Contractor determines that the job superintendent's performance is unsatisfactory or in the event the job superintendent is no longer employed by the Contractor. If the District determines that the performance of any job superintendent or assistant is not, for any reason, not satisfactory, the Contractor must promptly replace the job superintendent or assistant with someone reasonably acceptable to the District. The Contractor shall not thereafter suffer or permit any such person to perform any of the Work or to be present on or at the Project Site. The job superintendent shall represent the Contractor and all instructions given to the job superintendent shall be as binding on the Contractor as if given to the owner(s) or other primary representative(s) of the Contractor. Upon request of the District, the Contractor shall confirm in writing to the District any oral instructions given to the Contractor through its job superintendent.

Section 3.2 Contractor's Employees. The employees of the Contractor shall at all times be under the Contractor's exclusive direction and control on the Project. The Contractor shall pay all wages, salaries, and other amounts due to such personnel in connection with their performance of the Work, as required by law. Contractor shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, federal and state income tax withholdings, unemployment insurance, and workers' compensation insurance. The Contractor shall employ only competent workers for execution of the Work and shall not employ any person who is unfit or unskilled in the work assigned to him or her. Work labor performed at the project site will be required to meet the Qualified Work Force Law of the State of California. The Contractor shall at all times enforce strict discipline and good order among its employees and any and all subcontractors' employees performing any portions of the Work. The Contractor shall supervise and control its employees and all subcontractors' employees performing any portions of the Work to ensure adequate performance and discipline. The Contractor shall immediately remove from the Project and Project Site any person, regardless of whether employed by the Contractor or any subcontractor, who is determined by the District to be uncooperative, incompetent, or a threat to the safety of persons or the Work, or who fails or refuses to perform the Work in a manner acceptable to the District. The Contractor shall not thereafter suffer or permit any such person to perform any of the Work or to be present on or at the Project Site.

Section 3.3 Prohibition Against Unlawful Discrimination. The Contractor represents and warrants that it is an equal opportunity employer and it shall not discriminate in violation of any applicable federal, State, or other law, rule, regulation, or governmental requirement, including, but not limited to discrimination against any employee or applicant for employment on account of such person's race, religion, color, national origin, ancestry, sex or age. The Contractor must apply such policy of non-discrimination in connection with all activities related to initial employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination of Contractor's employees or any subcontractors.

Section 3.4 Subletting and Subcontracting Fair Practices Act. The Contractor shall comply with all provisions of the "Subletting and Subcontracting Fair Practices Act" set forth at Public Contract Code Section 4100 et. seq. The Contractor shall not subcontract any portion of the Work except as indicated in its Bid Proposal Form. If the Contractor failed in its Bid Proposal Form to identify a subcontractor for any portion of the Work in excess of one-half of one percent of its total bid, or if the Contractor identified more than one subcontractor for the same portion of work to be performed under the Contract, the Contractor agrees that it is fully qualified to perform, and the Contractor shall perform, that portion of the Work with its own forces, not by using any subcontractor(s).

Section 3.5 Responsibility for Subcontractors. The Contractor shall be responsible for any and all acts, errors and omissions of its subcontractors performing any work or services in connection with the Project. The Contractor shall also be responsible for ensuring that all portions of the Work performed by its subcontractors conform with all requirements of the Contract Documents and applicable law. The Contractor shall immediately remove from the Project and Project Site any subcontractor that the District determines is uncooperative, incompetent, or a threat to the safety of persons or the Work, or that fails or refuses to perform the Work in a manner acceptable to the District. The Contractor shall not thereafter suffer or permit any such subcontractor or any of its employees to perform any of the Work or to be present on or at the Project Site.

Section 3.6 Subcontractor Insurance. The Contractor shall ensure and verify that its subcontractors obtain and maintain all necessary liability and other insurance as required pursuant to the Contract Documents and/or by law.

Section 3.7 Procedures to Prevent Contact with Students.

Subsection 3.7.1 Significance of Requirements. If applicable, the District has determined that persons assigned to the Work or who otherwise will be present at, on or in the vicinity of the Project Site on account of the Work may have more than “limited contact” with minor-aged students.

Subsection 3.7.2 Employee Background Checks. The Contractor, consistent with Education Code Section 45125.1, shall require and be responsible for ensuring that each person who will be at, on or in the vicinity of the Project Site on account of the Work shall comply with all California Department of Justice guidelines and requirements relating to fingerprinting and criminal-history background checks. The Contractor shall certify in writing to the District, using the “Employee Background Check Certification” form, which is one of the Required Contract Forms, that no person assigned to the Work or who otherwise will be present at or on the Project Site has been convicted of any serious or violent felonies (as described in Education Code Section 45122.1). The Contractor must attach to the executed Employee Background Check Certification form a list of all persons to whom the certification applies. The Contractor shall prohibit and prevent each and every person who will be at, on or in the vicinity of the Project Site on account of the Work (including not only all persons assigned to the Work directly by the Contractor, but also all persons assigned to the Work by any subcontractor, material man, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work) from being present at, on or in the vicinity of the Project Site unless and until the Contractor provides the required certification including such person to the District.

Subsection 3.7.3 Responsibility for Subcontractor Compliance. The Contractor shall require in each of its subcontracts that, if the subcontractor will assign any person to the Work or otherwise will cause or permit any person to be present at or on the Project Site, the subcontractor must cooperate in regard to, and fully comply with, the requirements of this Section 3.7. The Contractor may on that basis delegate responsibility for compliance with this Section 3.7 to any such subcontractor; however, the Contractor at all times retains full responsibility and/or liability for such compliance or lack thereof.

Subsection 3.7.4 Alternatives to Background Checks. Upon request of the Contractor with respect to any particular situation and/or duration of time, the District in its sole discretion may consent to the Contractor implementing measures intended to protect the District’s minor-aged students, which measures would be in lieu of the Contractor complying with Subsections 3.7.2 and 3.7.3 herein. Subject to District approval, such alternative measures might include, but are not necessarily limited to: (i) installing a physical barrier to limit contact between students and the employees and other representatives of the Contractor, subcontractors, and others present on or at the Project Site on account of the Work; (ii) providing for the continuous supervision and monitoring of such employees, representatives and others by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice; or (iii) providing for the surveillance of such employees, representatives and others by a District employee. The Contractor must implement any such approved alternative measures at no additional cost to the District, and the Contractor shall be responsible for ensuring compliance with such

alternative measures by or with respect to all persons assigned to the Work or who otherwise will be present at, on or in the vicinity of the Project Site on account of the Work.

Subsection 3.7.5 Consequences of Non-Compliance with Requirements. Due to the possible adverse consequences of contact with students and other minor-aged individuals, any failure by the Contractor to ensure compliance with the requirements of this Section 3.7 shall be deemed and construed to constitute a material breach of the Contract, upon which the District, in its sole discretion, may immediately terminate the Contract without any further compensation to Contractor and/or pursue all other rights and remedies it may have against the Contractor pursuant to law or the Contract.

PART 4. PLANS AND SPECIFICATIONS.

Section 4.1 Errors, Inconsistencies, and/or Omissions in Contract Documents. The Contractor shall carefully study and compare all of the Contract Documents and requirements therein, and be adequately familiar with the same as the Work commences and progresses. The Contractor shall immediately, upon discovery, inform the District Representative in writing of any error, inconsistency, omission, or other discrepancy in the Contract Documents. The District will notify the architect for the Project (“Architect”) of any such error, inconsistency, omission, or discrepancy. The Architect shall promptly investigate and/or verify the same. Unless and until authorized by the District, any of the Work affected by any such error, inconsistency, or omission that is performed by Contractor shall be at the Contractor’s risk and/or cost.

Section 4.2 Conflict Between Drawings and Specifications. In the event of any conflict between the requirements of the Drawings contained in the Plans and Specifications and the specifications set forth in the Contract Documents, the Drawings shall govern with respect to matters of quantity, and the Specifications shall govern with respect to matters of quality. In the event of any conflict within such Drawings involving quantities, or within such Specifications involving qualities, the Contractor shall furnish the greater quantity and/or the higher quality, unless otherwise directed by the District Representative and/or Architect.

Section 4.3 Titles and Headings in Contract Documents. The titles and/or headings of the sections, divisions and paragraphs set forth in the technical specifications, if any, are provided for convenience only and shall not be deemed or construed as a correct or complete segregation of the several units of material and labor. No responsibility, either direct or implied, will be assumed by the District for errors, omissions or duplications by the Contractor or its subcontractors, resulting from actual or alleged error in the arrangement or order of the provisions set forth in the Contract Documents.

Section 4.4 Shop Drawings.

Subsection 4.4.1 Advance Approval Required. The Contractor must, in accordance with the procedures set forth in this Section, submit for the approval of the Architect all shop and setting drawings, samples, and other submittals (each a “Shop Drawing”) required pursuant to the Contract Documents or that are requested by the Architect. If the Contractor completes any portion of the Work included in or affected by the subject matter of any Shop Drawing prior to receipt of the Architect’s approval of such Shop Drawing, all such Work shall be at Contractor’s own risk.

Subsection 4.4.2 Timely Submittal. The Contractor must submit each and all Shop Drawings in a timely manner, with adequate consideration given to construction scheduling requirements so as to allow ample time for checking, correcting, resubmitting and rechecking of any Shop Drawing by the Architect.

Subsection 4.4.3 Review and Approval in Advance by the Contractor. The Contractor must review each Shop Drawing prior to submittal to the Architect, including, without limitation, for conformance with all requirements of the Contract Documents. All Shop Drawings submitted for approval by the Architect must be marked with the name of the Project and be numbered consecutively

Subsection 4.4.4 Identifying Variations from Contract Requirements. If, for any reason, any Shop Drawing varies from the requirements of the Contract Documents, the Contractor must specifically identify the variation, by "clouding" or other method that makes the variation apparent, and the Contractor must explain such variation in the letter of transmittal. Absent the Contractor so identifying and explaining a variation from the requirements of the Contract Documents, the Contractor shall not be relieved of the responsibility for performance of the Work in accordance with the Contract Documents, regardless of the fact that the Architect may have approved the applicable Shop Drawing. Provided Contractor follows the procedures herein, approval by the Architect of the variation shall authorize Contractor to build as per the approved show drawing.

PART 5. WORK AND SITE CONDITIONS.

Section 5.1 Work Permits and Licenses. The Contractor shall obtain, at its own expense, all permits and licenses of a temporary nature necessary for the performance of the Work at Contractor's facility, including, but not limited to, any required business licenses, construction permit(s), Cal-OSHA safety-related permits, and/or storm water permit(s) if applicable. The Contractor shall procure and pay for all licenses required in its trade classification by any city, county, or the State, as necessary to perform Contractor's Work.

Section 5.2 Building Permits and Utility Connections. Notwithstanding Section 5.1 of these General Provisions, the District shall procure and pay for all building permits required by local building officials and for connection to public utilities, to the extent required by law or obtained by the District in its discretion.

Section 5.3 Construction Schedule. During the preconstruction meeting shown on the Master Schedule, the Contractor shall submit to the District Representative for review a schedule for completion of the Work and all major components thereof, which shall include the "critical path" for such Work and shall be consistent with the Work of any other contractors on the Project and the Master Schedule. If the District Representative, for cause, determines that the schedule submitted by the Contractor is unreasonable or inconsistent with the Master Schedule, the District Representative shall submit, in writing, a request for the Contractor to revise and resubmit Contractor's construction schedule based upon feedback from the District Representative. Upon acceptance of the construction schedule by the District Representative, the construction schedule shall be incorporated into the Master Schedule. The Contractor shall ensure that its employees and subcontractors are aware of and comply with the approved Master Schedule. Acceptance of a construction schedule by the District Representative shall not be construed as verifying or approving the

logic or feasibility of the schedule. The Contractor shall at all times comply with the Master Schedule. In the event the Work falls behind schedule, the Contractor shall, within five (5) business days of any written request by the District, prepare and provide to the District a recovery schedule indicating the actions to be taken and the Work to be performed. Any float in the Master Schedule shall be for the benefit of the Project, as determined by the District Representative, not for the benefit of the Contractor, any other prime contractor, or any of their subcontractors.

Section 5.4 Manpower Requirements. At any time during the period for completion of the Work, the District may determine in its reasonable discretion that the Contractor or any of its subcontractors is not employing sufficient manpower on the Work to reasonably complete the Work or any component thereof within the time scheduled therefor. In such event, within 5 business days of any written request by the District, the Contractor shall provide such additional manpower, or shall ensure that the subcontractor provides such additional manpower, as the parties mutually agree upon as reasonable and necessary to timely complete the Work. Any failure by the Contractor or subcontractor to comply with the terms of this provision shall constitute grounds for termination of the Contractor and/or the subcontractor. As an alternative to termination, the District, in its sole discretion, may determine to supplement the work-force of the Contractor or the subcontractor in order to ensure timely completion of the Work. If the parties mutually agree to the cost(s) incurred by the District herein, then the cost(s) shall be deducted from amounts due to the Contractor pursuant to the Contract, and no such action by the District shall be deemed or construed to constitute interference by the District with the Contract or the Contractor's right to perform the Work. Provided however, if the parties cannot agree on the cost(s) incurred by the District, then the District may withhold any disputed amounts pending resolution by the parties as provided for in Part 12 of the General Conditions.

Section 5.5 Liquidated Damages. Time is of the essence with respect to the Contract and completion of the Work. The Parties acknowledge and agree that the District will suffer damages if Contractor does not complete the Work within the time provided pursuant to the Contract. Because it is impractical and infeasible to determine the actual amount of damages the District will incur, in accordance with Government Code Section 53069.85, the Contractor shall pay to the District liquidated damages at the rate of \$150.00 for each and every calendar day or portion thereof if not a full day, that the Work remains uncompleted and not accepted by the District after the time provided pursuant to the Contract, as such time may be modified in accordance with the Contract ("Liquidated Damages"). Liquidated Damages shall constitute the exclusive compensation to the District for Contractor's delay or delay caused by its subcontractors, suppliers, et. cetera, in completion of the Work and shall not be construed as a penalty or forfeiture of any other right or remedy under the Contract or law. In the event Contractor fails to pay any such Liquidated Damages, the District may deduct such amount(s) from any payments due (or that may become due) to Contractor pursuant to the Contract. Nothing in this Section shall be deemed or construed to preclude the District from exercising its rights to take over the Work and/or for recovering damages caused by defective and/or non-conforming Work performed by Contractor, as provided by the Contract or applicable law, attributable to any breach or default by the Contractor of its obligations pursuant to the Contract.

Section 5.6 Extension of Time. Subject to the other provisions of this Section, District shall extend the time for completion of the Work, by such number of days mutually agreed upon by the parties, in the event Contractor's progress on the Work is delayed as a result of: (i) an unreasonable act or omission

of the District, not contemplated by the District and the Contractor; (ii) an act or omission of any other prime contractor, or the prime contractor's respective lower-tier subcontractor(s), supplier(s), or materialmen, on the Project not consistent with the Contract Documents; (iii) Changes in the Work required by the District for reasons other than those caused by, or the fault of, the Contractor; (iv) strike or lockout not instigated by the Contractor or an affected subcontractor; (v) unusual and severe interruption in interstate or intrastate, but not local or regional, transportation; (vi) unusual and severe interruption in the availability of materials and supplies necessary for Contractor's work; (vii) earthquake, flood or other unavoidable casualty that is not the fault of Contractor or a result of Contractor's actions or work; (viii) public health emergencies effecting industry-wide availability of materials and/or labor; or (ix) any other cause determined by the District to justify an extension of time. As a condition precedent to the District's obligation to grant any such extension of time, the Contractor must provide written notice of the delay to the District within 5 business days of when the Contractor has knowledge of the delay. No extension of time shall be granted for a delay occurring more than five days prior to when the notice of delay is submitted in writing to the District. In the case of a continuing cause of delay, only one notice shall be necessary, but the Contractor must apprise the District on a regular basis (not less than once per week) as to the status of the delay and, also, at such time as the cause of the delay has been resolved and the affected portion of the Work has resumed. The purpose of the notice requirements of this Section are to ensure that the District has an opportunity at the earliest possible time to mitigate and resolve delays in the Project.

Section 5.7 Workmanship and Materials. The Contractor shall employ nothing less than good quality workmanship in performing the Work. All materials, equipment and other items incorporated into the Work shall be of good quality and, unless specified otherwise, shall be new. The Contractor shall, upon request, provide satisfactory evidence as to the type and quality of materials used in connection with the Work. If the Contractor determines that the materials delivered to the Project Site do not represent a good quality product, it shall advise the District Representative, and shall remedy the deficient quality as quickly as possible with the shortest delay, if any, to the Work on the Project, unless otherwise instructed by the District Representative.

Section 5.8 Substitutions of Materials and Equipment. The Contractor shall use and/or incorporate into the Work on the Project all materials and equipment as are specified in the Contract Documents, except upon approval by the District Representative or Architect of the substitution of "equal" materials or equipment. No substitutions shall be accepted unless and until the Contractor requests and receives permission in writing from the District Representative or Architect. All requests for substitution shall be made concurrently to the District, the District Representative and the Architect. In connection with any such request, the Contractor shall present complete details of the "equal" item, with specific explanations of the characteristics of the details that differ from the specifications. An approval by the District or the Architect, via an approved change order or an approved submittal, shall constitute a modification to the terms of the Agreement and prevail over the applicable material or equipment specified in the Contract Documents.

Section 5.9 Contractor's Title to Materials. Neither the Contractor nor any subcontractor on the Project shall purchase materials, equipment, supplies or other items for use on, or incorporation into, the Work subject to any chattel mortgage or under a conditional sale or other agreement pursuant to which an interest is retained by the seller. The Contractor represents and warrants that it shall have good, free and clear title to all materials, equipment, supplies or other items for which the Contractor accepts any payment

from the District.

Section 5.10 Tests and Inspections. Materials, fabrication, and erection shall be tested and inspected as required by Title 21 of the California Code of Regulations and when required by the District Representative or Inspector. The cost of all such tests and inspections shall be paid by the District, except that the Contractor shall reimburse the District for (or compensation to the Contractor shall be reduced by an amount equal to) the costs of retests or re-inspections of Construction, materials, equipment and other components of the Work that prove to be defective, inadequate, or inconsistent with the requirements of the Contract Documents.

Section 5.11 Materials Testing. The Contractor shall deliver to the District Representative upon request, without charge to the District, and properly marked for identification purposes, all material test samples or specimens that are required pursuant to the Contract Documents. The Contractor shall pay all costs incurred in preparing, wrapping, protecting, transporting and/or mailing of required samples or specimens.

Section 5.12 Inspection of Manufactured Items. The Contractor must ensure that the District shall at all reasonable times have access to all places where materials, equipment, machinery, or other items for incorporation into the Work are being manufactured, produced, or fabricated for use on or incorporation into the Project. The District shall be permitted such access as will allow a determination whether such materials, equipment, machinery or other items are being manufactured in strict accordance with the Contract Documents.

Section 5.13 Surveys. The District, if reasonably required, will establish the boundary lines of the Project Site and all easements thereon. The Contractor shall preserve all existing bench marks and property or survey stakes, markers, or monuments as they exist in the field. The Contractor shall be responsible for the disturbance, removal, or covering of any such bench marks, stakes, markers or monuments, and shall reimburse to the District (or compensation to the Contractor shall be reduced by the amount of) the actual cost and expenses incurred in restoring or replacing the same. Only a licensed Land Surveyor or registered Civil Engineer of the State shall be employed for any revision to the established boundary lines and easements.

Section 5.14 Access to Work. The District, including, without limitation, the Architect, District Representative and Inspector, shall at all times and for any purpose have unrestricted access to the Work on the Project, including any areas used by the Contractor or its subcontractor(s). Each public authority with jurisdiction over the Project shall at all times have unrestricted access to the Work on the Project, including any areas used by the Contractor or its subcontractor(s), for purposes within that public authority's jurisdiction. The Contractor shall not impede or frustrate any access to or inspection of the Work, including inspection of the materials and the workmanship used in connection with the Work. The Contractor shall take all reasonable steps to facilitate any such access or inspection of the Work, including providing any equipment or other accommodations necessary or convenient for such access or inspection.

Section 5.15 Testing and Inspection of Work. Testing and inspection of portions or elements of the Work, or of materials, equipment or other items to be incorporated into the Work, will be required pursuant to the Contract Documents, Inspector's instructions, applicable laws, ordinances and regulations,

or by public authorities. The Contractor shall give the Inspector written notice of its readiness for any such testing or inspection at least 48 hours prior to when the inspection is scheduled to occur. If the inspection is to be conducted by a public authority or person other than the Inspector, the notice to the Inspector shall also specify the date and time at which such inspection is to occur. If the Contractor, without prior approval, covers or renders inaccessible the portion or element of the Work, or the material, equipment or other item, that is to be tested or inspected, the Contractor, at its own expense and upon request of the Inspector, shall remove or demolish all portions of the Work as are necessary to facilitate such testing or inspection. The Contractor must give notice of any cancellation of a scheduled inspection at least 24 hours prior to when the inspection is scheduled to occur.

Section 5.16 Protection of Work. The Contractor and its subcontractor(s) shall protect the Work and any portions of the Project affected thereby from harm and are responsible under all circumstances for the conditions thereof until final acceptance of the Project by the District. The Contractor and its subcontractor(s) shall protect adjacent property from injury or damage arising out of Contractor's performance of the Work on the Project and shall repair or pay the cost of repairing any such damage or injury that occurs. Contractor's duty to protect the work shall cease upon receipt of a notice of intent to terminate this Contract by the District or if, through no fault of Contractor, Contractor's Work is suspended and Contractor is no longer authorized to access the Project Site.

Section 5.17 Protection of Project Site. The Contractor shall protect all structures, walks, pipelines, utilities, trees, shrubbery, furniture, and all other items on and in the vicinity of the Project Site that may possibly be damaged or otherwise adversely affected during the performance of the Work.

Section 5.18 Damages to Other Contractors. In the event any other contractor or subcontractor working on the Project incurs damage(s) as a result of any act or omission of the Contractor or its subcontractor(s) that is unreasonable or not consistent with the Contract Documents, the Contractor shall make good-faith efforts to effect a settlement with the other contractor. If no such settlement is reached, and if any party commences an action or other proceeding against the District related thereto, the Contractor shall indemnify, defend and hold-harmless the District in accordance with Section 8.15 of these General Provisions.

Section 5.19 Cleanup and Storage. The Contractor shall ensure that the area of the Project Site in which the Work occurs is at all times, including nights and weekends, free of loose or accessible waste, materials, tools and equipment. The Contractor shall maintain the area of the Work and the Project, including grounds and sidewalks, in a safe, neat, and clean manner that will cause the least inconvenience to the District and, as applicable, the general public, school staff, and students. The Contractor shall comply with all instructions from the District Representative with respect to conditions at the Project Site, including, without limitation, instructions regarding removal of rubbish and debris generated by, and any unnecessary materials, tools, equipment or temporary structures owned or used by, the Contractor or its subcontractors. In the event the Contractor fails to comply with any such instruction, the District Representative may, after providing Contractor with two (2) business day notice, arrange for removal and the Contractor shall pay to the District (or the Contractor's compensation shall be reduced by the amount of) the actual costs of such removal. Storage of materials on the Project Site shall be under the supervision of the District Representative, but at the expense, if any, of the Contractor.

Section 5.20 Safety. Contractor shall perform and maintain the Work so as to avoid injury or damage to any person, including, without limitation, District employees, students, visitors and others, or to any property. In carrying out the Work, the Contractor and its employees and subcontractors shall at all times be in compliance with all applicable local, State and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Required safety precautions may include, but are not necessarily limited to: (i) adequate life protection and lifesaving equipment; (ii) adequate illumination for underground and night operations; (iii) instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices; (iv) equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (v) adequate facilities for the proper inspection and maintenance of all safety measures. The Contractor shall take steps to ensure compliance with all safety measures applicable in particular operations or kinds of work, including sufficient safeguards, such as railings, temporary walks, lights, et. cetera, as are necessary to prevent injuries or damage to any person or property. Contractor shall be responsible in the event of any such injury or damage resulted from any unsafe or unprotected condition on the Project that the Contractor is hereby required to protect against. The Contractor shall conduct such clean-ups of the area of the Work, including grounds and sidewalks, as are necessary to maintain the safety of the area of the Work, but in any event not less than once daily. In the event of an emergency in which life or property are endangered, the Contractor shall take all reasonable actions to safeguard such life or property. The Contractor shall require that the job superintendent or others immediately call “911” each time a medical emergency occurs on or at the Project Site.

Section 5.21 Loss and Damage. Until such time as the Work is fully complete and accepted by the District, the Contractor shall be responsible for all losses and/or repair of all damages that may arise from or be a result of: (i) the nature of the Work agreed to herein; (ii) the action of the elements or environment; or (iii) any unforeseen difficulties that may arise or be encountered during the process of completing the Work. However, provided that the Work has been constructed in strict accordance with the Contract Documents, the Contractor shall only be responsible for damage proximately caused by Acts of God (as defined in Public Contract Code Section 7105) up to a maximum of five percent (5%) of the Contract Amount. In the event any such Act of God proximately causes damages in excess of five percent (5%) of the Contract Amount, the District may, in its sole discretion, terminate the Contract effective three (3) days following written notice to Contractor. Furthermore, Contractor shall not be responsible for any losses and/or repair any damage that arises after a notice of intent to terminate is received from the District or if, through no fault of Contractor, the Project is suspended and Contractor is denied access to the Project Site.

Section 5.22 Regional Notification Center. If the Work involves any trenching, boring, tunneling, digging or other excavation, the Contractor shall be solely responsible and liable for compliance with all applicable requirements of Government Code Sections 4216 through 4216.9, and with all requirements of the Contractors State License Board relating to such Government Code provisions. The Contractor must, as required, obtain from the Regional Notification Center an Underground Service Alert identification number and must provide such identification number to the District. Prior to it expiring, the Contractor must contact the Regional Notification Center for any necessary revalidation of the identification number.

Section 5.23 Utility Removal, Relocation and Protection. In accordance with Government Code Section 4215, the District shall compensate the Contractor if the Plans and Specifications fail to identify any utility main- and trunk-lines on the Project Site and such failure results in additional costs to the Contractor related to: (i) locating and repairing damage to underground utility facilities not caused by the failure of the Contractor to exercise reasonable care; (ii) removing or relocating underground utility facilities not indicated in the Plans and Specifications with reasonable accuracy; and (iii) equipment necessarily idled during such work. The Contractor shall not be assessed Liquidated Damages for the delay caused by the failure of District or the owner of the utility to provide for removal or relocation of such utility facilities. The Contractor shall immediately provide written notice to the District if, during the course of the Work, the Contractor discovers utility facilities not identified in the Plans and Specifications.

Section 5.24 Trench Excavation. This Section shall apply to the Contract only if the Contract Amount exceeds twenty-five thousand dollars (\$25,000) and the Work requires or involves excavation of any trench or trenches five (5) feet or more in depth. The Contractor, in conformance with Labor Code Section 6705 and other applicable law, and prior to any such excavation, shall submit to the District for review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. The plan must be prepared by a registered civil or structural engineer and if the plan varies from the requirements of applicable Cal-OSHA Construction Safety Orders, the Contractor must obtain Cal-OSHA approval of the plan. Nothing in this Section, and no District or other approval of any plan prepared pursuant to this Section, shall relieve the Contractor of any responsibility, or result in District liability for hazards resulting from excavations performed by the Contractor.

Section 5.25 Subsurface Conditions. In accordance with Public Contract Code Section 7104, if the Work involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, provide written notice to the District of any: (i) material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the Project Site differing from those indicated by information about the Project Site made available to bidders prior to the deadline for submitting bids; or (iii) unknown physical conditions at the Project Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Contract. Upon receiving said notice from the Contractor or from any other prime contractor(s) or subcontractor(s) working at the Project Site, the District shall promptly investigate any such reported condition and, if warranted, shall issue a Change Order to the Contractor for any extra work or cost not covered by the Contract that resulted from the differing subsurface condition. In the event of any dispute between the District and the Contractor related to any such condition, the Contractor shall continue with the Work and shall not be excused from completing the Work within the time required pursuant to the Contract Documents; however, 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 Parties.

Section 5.26 Asbestos or Other Hazardous Materials. In the event the Contractor encounters on the Project Site any material that Contractor reasonably believes to be asbestos, polychlorinated biphenyl (PCB), any material listed by the federal or State EPA or federal or State health agencies as a hazardous

material, or any other material defined as being hazardous under federal or State laws, rules or regulations (“Hazardous Material”) that has not been rendered harmless, Contractor shall immediately stop all Work in the area affected and report the condition to the District in writing. The Contractor shall resume the Work only if it is determined that no Hazardous Material is present or that such Hazardous Material has been rendered harmless. The District shall not require that the Contractor perform any Work relating to Hazardous Material without the Contractor’s consent.

Section 5.27 Non-Asbestos-Containing Materials Certification. Prior to commencing the Work, the Contractor shall execute and submit to the District the Non-Asbestos-Containing Materials Certification Form included within the Contract Documents for the Project.

Section 5.28 Lead-Containing Materials Notice and Certification. Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et. seq.) and other applicable law, no lead-containing or lead-based paint, plumbing or solders, or other potential sources of lead contamination, shall be used in connection with the construction of the Project, and only trained and State-certified inspectors/assessors, monitors, designers, supervisors and workers may provide lead-related construction services. Prior to commencing the Work, the Contractor shall execute and submit to the District the Lead-Containing Materials Notice and Certification form for purposes of acknowledging Contractor's awareness and understanding of these requirements.

Section 5.29 Inspection of Completed Work. In addition to any testing and inspection required by the Contract Documents, the Inspector may require special inspection of any portion of the Work already completed as to which there is a reasonable question as to whether it was completed in accordance with the requirements of the Contract Documents. In such event, the Contractor shall remove or un-do all portions of the Work as are necessary to facilitate inspection of the questioned portion of the Work. If the questioned portion of the Work is found not to conform with the Contract Documents, the Contractor shall pay all costs of the re-examination and correction of the Work, including repair or replacement of previously completed Work that was removed or un-done to permit the inspection. If the questioned Work is found to conform with the Contract Documents, the District shall pay the cost of the re-examination and any repair or replacement of previously completed Work that was removed or un-done to permit the inspection.

Section 5.33 Correction of Work Before Final Payment. The Contractor shall promptly remove from the Project and the Project Site all materials, equipment or other items that, as determined by the Inspector, fail to conform to the requirements of the Contract Documents, regardless of whether such materials have already been incorporated into the Work. The Contractor shall, at its own expense, promptly replace any such materials, equipment or items with conforming materials, equipment or items, and shall thereafter repair the Work and/or execute the remaining Work in conformance with the Contract Documents. In addition, the Contractor shall bear all costs and expenses of replacing or repairing the work of other contractors or subcontractor(s) that is destroyed or damaged in the course of removing or replacing any non-conforming materials, equipment or other items that were incorporated into the Work. The District shall have no obligation to issue the Final Payment to the Contractor unless and until the Contractor satisfies the requirements of this Section.

Section 5.31 Use of Completed Portions. The District shall have the right at any time to take possession of and use any completed or partially completed portions of the Work, regardless of whether the

entire Work is complete. In no event shall such possession and use by the District be construed as, or deemed to be, acceptance by the District of portions of the Work that is not complete or that has not been completed in accordance with the Contract Documents. In the event such possession and use delays or increases the cost to the Contractor of completing the remaining Work, the Contractor may submit a claim to the District Representative for additional compensation or extension of time, or both. In addition, if the District opts to take possession and/or use any completed or partially completed portions of the Work, then the warranty period, as provided for in Section 5.32 below shall be construed to commence as of the date of possession and/or use by the District as to that portion of the completed or partially completed Work.

Section 5.32 Guarantee.

Subsection 5.32.1 General. In addition to any manufacturer or other guarantees required by the Contract Documents, the Contractor hereby guarantees that all Work performed pursuant to the Contract shall be of good quality and conform to all requirements of the Contract Documents, and that the Work shall be free from defective, faulty and/or non-conforming workmanship, materials, equipment and other items. Contractor agrees that it shall repair, replace or correct any such defective, faulty or non-conforming Work that appears or is discovered during the one (1) year period after the date of final acceptance of the Project by the District (or the period of time specified elsewhere in the Contract Documents or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later). Provided however, should this Contract be terminated prior to completion of the Work by Contractor, then the 1-year warranty period shall commence as of the date a notice of intent to terminate is received by Contractor and shall only apply to portions of the Work completed by Contractor. The provisions of this Section shall not be construed to limit the guarantee on items for which the Contract Documents specify a longer guarantee or on items for which the manufacturer provides a longer guarantee period, and the Contractor shall be responsible for any latent defects in the Work for the period applicable to latent acts or omissions specified in Section 7030 of the Business and Professions Code.

Subsection 5.32.2 Performance of Guarantee Work. Within seven (7) days after written notice from the District of any such defect, fault and/or non-conformance, the Contractor shall, at its sole cost and expense, commence and perform with due diligence all Work necessary to repair, replace or correct such defect, fault and/or non-conformance so that the requirements of the Contract Documents are met.

Notwithstanding the foregoing, the Contractor shall immediately upon notice from the District undertake any necessary repair, replacement or correction in the event of an emergency or a dangerous condition, when necessary, to prevent an interruption in the District's operations, or when necessary, to prevent injuries to persons and/or damage to property.

Subsection 5.32.3 Collateral Damage. In complying with its guarantee obligation, the Contractor shall, at its sole cost and expense, repair, replace or correct any portions of the Project (including work of other contractors and subcontractor(s)) damaged by any defect, fault or non-conformance in the Work, or that become damaged in the course of repair, replacement or correction of defective, faulty or non-conforming Work.

Subsection 5.32.4 Extension of Guarantee Period. With respect to any of the Work that is repaired, replaced, or corrected during the applicable term of this guarantee, the guarantee and the Contractor's obligation hereunder shall be extended for an additional six-month period, commencing with the date of acceptance of the repaired, replaced or corrected Work.

Subsection 5.32.5 Guarantees for Benefit of District. Any and all warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the District, regardless of whether or not such warranties and guarantees have been transferred or assigned to the District by separate agreement, and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the District.

Subsection 5.32.6 Contractor Failure to Perform. In the event the Contractor fails to perform, or fails to timely perform, any necessary repair, replacement or correction to the reasonable satisfaction of the District, the District, upon five (5) business days written notice to Contractor, shall have the right, at the Contractor's sole cost and expense, to repair, replace or correct any defective, faulty or non-conforming Work together with any portion of the Project damaged thereby or by the repair, replacement or correction thereof. The Contractor or, if applicable, its surety, shall reimburse the District for all costs and expenses that the District incurs in connection with any such repair, replacement or correction by the District or in connection with enforcing the provisions of this Section.

PART 6. CHANGES IN THE WORK.

Section 6.1 District Instructions. In giving instructions related to performance of the Work, the Contractor shall comply with instructions of the District Representative related to minor changes in the Work not involving extra cost and not inconsistent with the purpose of the Work, and there shall be no additional compensation to the Contractor therefor.

Section 6.2 District Authority. For purposes of the Contract, any significant alteration, deviation, or change in the scope, method of performance, nature of materials or price of the Work or the Project, or any other matter materially affecting the performance or nature of the Work or the Project shall be referred to as a "Change in the Work". The District shall have the right to require a Change in the Work, without thereby invalidating the Contract.

Section 6.3 Change Orders. Any request for a Change in the Work that involves an adjustment of the Contract Amount or a modification of the time for performance of the Work or portion thereof shall be set forth in a written order for the Change in the Work (each a "Change Order"). Each Party shall propose Change Orders for Changes in the Work that it requests. Any and all modifications of the time for performance of the Work attributable to a Change in the Work must be set forth in the associated Change Order and not left for later determination. No Change Order shall become effective, and the District shall have no liability related thereto for payment or otherwise, unless and until approved and signed by the District and the Contractor. Except as expressly provided in the Change Order, all work pursuant to a Change Order shall be performed in accordance with the terms and conditions of the Contract. In the event of an emergency endangering life or property, notwithstanding the foregoing, the Contractor may rely on the District's oral requests for additional work, which if affecting the Contract Amount and/or time for

performance of the Work will be adjusted accordingly by the District.

Section 6.4 Valuation of Change Orders. The Parties shall determine and set forth in an applicable Change Order the fair and reasonable value of each Change in the Work, which will be added to or deducted from the amount of the Contract Amount. The Contractor shall, upon request of the District, provide all information required by the District to substantiate the value of a Change in the Work. No time extension shall be granted in conjunction with any Change Order unless the approved Change Order expressly sets forth such adjustment. The valuation of a Change Order shall be determined in one or more of the following ways: (i) by estimate and acceptance in a lump sum amount; (ii) by unit prices specified in the Contract or as agreed to by the Parties; or (iii) by a percentage of Contractor's cost and a fixed fee, in which case the Contractor shall keep detailed records of the net cost of labor and materials. The District Representative shall certify the amount of each Change Order that does not provide for a fixed lump-sum amount. In the event the Parties are unable to agree on a Change Order valuation method or amount, the Contractor nonetheless shall proceed with any Change in the Work required by the District. In such event, the Contractor shall keep detailed records of the net cost of labor and materials, together with vouchers. Pending final determination of value, payment on account of a Change in the Work shall be made based upon the District Representative's estimate of the value of the Change In the Work, including, if applicable, a reasonable allowance for overhead and profit due to the Contractor.

Section 6.5 Change Orders Specify Full and Final Compensation. Except as expressly set forth in any particular Change Order, each Change Order shall be deemed and construed to include all change(s) required pursuant to the Change Order, including, without limitation, any and all extensions of time and overhead, acceleration costs, profit, general conditions costs, expenses, and other direct and indirect costs and expenses of such work and/or changes. In addition, each Change Order shall be deemed and construed to include all necessary adjustments attributable to cumulative impacts of that and any and all preceding Change Orders, whether such impacts relate to scheduling, productivity or other matters. By signing a Change Order, the Contractor shall be deemed and construed to have waived any and all claims and rights to any adjustments to the Contract Amount and/or time for performance of the Work other than as are set forth in the Change Order, and the Contractor may not thereafter attempt to hold the District responsible for any interference, delay, acceleration, or other effect on the Work and/or additional costs attributable to the change(s) required pursuant to the Change Order.

PART 7. CONTRACTOR COMPENSATION.

Section 7.1 Application for Payment. The Contractor shall submit to the District Representative, on or before the 1st day of each month, an itemized application for payment for the portion of the Work completed during the prior month ("Progress Payment Application"). The Progress Payment Application shall be in a format approved by the District. The Contractor may call upon the Inspector for assistance in preparing any Progress Payment Application and, prior to submittal to the District Representative, shall permit the Inspector to review the Progress Payment Application. The Contractor shall certify in the Progress Payment Application that the portion of the Work for which payment is requested has been satisfactorily completed and/or that any materials specified in the Progress Payment Application not already incorporated into the Project are stored where indicated. Each Progress Payment Application must identify: (i) the portion and amount of Work completed since the last Progress Payment Application; and (ii) the portion of the requested payment amount attributable to each subcontractor, material supplier,

and other entity that is entitled to a portion of the payment amount. Each Progress Payment Application shall be accompanied by an updated construction schedule illustrating the actual Work completed to date in relation to the approved construction schedule. If there is a discrepancy between the actual Work completed and the Work required pursuant to the construction schedule (i.e., the Work is either ahead of schedule or behind schedule), the Contractor shall include a detailed explanation of such discrepancy with the Progress Payment Application. Payment to the Contractor shall not be deemed to be acceptance, acquiescence or waiver by the District of any of its rights with respect to any such discrepancy or any deficiency in the Work. The Contractor shall support each Progress Payment Application with such information as reasonably will be necessary for the District Representative to verify the requested payment amount. Payment to the Contractor may be delayed if the Contractor fails to submit complete and accurate information in support of its Progress Payment Applications.

Section 7.2 Verification of Payment Application. The District Representative and/or Architect shall review each Progress Payment Application and, as soon as practicable, but not later than seven days after receipt of a Progress Payment Application, shall: (i) certify that the Progress Payment Application is correct in all aspects and should be paid by the District; (ii) recommend to the District that it reject the Progress Payment Application as not proper, stating the reason(s) why rejection is appropriate; or (iii) require that the Contractor provide additional information that the District Representative reasonably determines is necessary to verify any requested payment amount. In the event the District rejects the Progress Payment Application, the Contractor may resubmit the Progress Payment Application with additional or new information establishing why payment should be made despite the reason(s) set forth in the District's initial rejection.

Section 7.3 Progress Payments. The District shall pay the undisputed amount of any Progress Payment Application, less any amounts that may be withheld or retained pursuant to the Contract or law, within thirty (30) days of receipt thereof and in accordance with Public Contract Code Section 20104.50. If the District has requested additional information in support of a Progress Payment Application, the time for payment pursuant to that Progress Payment Application shall be extended by the number of days required for the Contractor to provide the requested information but reduced by the number of days the District exceeds the 7-day return requirement described in Section 7.2 of these General Provisions. The District shall pay interest, at the rate set forth in Code of Civil Procedure Section 685.010(a), on any amount not paid within the time required by Public Contract Code Section 20104.50 and the Contract, provided that such amount is not subject to dispute or a request for additional information.

Section 7.4 Retention. Unless the District has made a finding that the Project is substantially complex, as provided in Public Contract Code Section 7201, the District shall retain five percent of the amount to be paid to the Contractor pursuant to each approved Progress Payment Application ("Retention"), and the total amount of Retention shall not exceed five percent of the Contract Amount. However, if the District made such finding, the District shall withhold ten percent of each approved Progress Payment as Retention, and, in such event, the total amount of Retention shall not exceed ten percent of the Contract Amount. The District shall release the Retention to the Contractor ("Final Payment") as provided in Section 7.9 of these General Provisions. In the event of any dispute between the District and the Contractor, the District, as provided by Public Contract Code Section 7107, may withhold from the Final Payment an amount not exceeding one-hundred and fifty percent (150%) of the amount in dispute.

Section 7.5 Ownership of Work. As security for partial, progress, or other payments, title to the portion of the Work for which such payments are made shall pass to the District at the time of payment. The Contractor shall retain title to all new materials and equipment until incorporated into the Work. However, all Work shall be at the Contractor's risk exclusively until final completion and acceptance of the Project by the District. To the extent that title has not previously been vested in the District by reason of any such payments, full title shall pass to the District upon delivery of the completed Work as specified in the Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, and other encumbrances. The Contractor promises and agrees that it shall not pledge, hypothecate, or otherwise encumber the Work, materials or other items hereby subject to transfer of title in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Any such transfer of title shall not imply acceptance by the District, shall not relieve the Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for, any loss of or damage to the Work, materials or other items on the Project.

Section 7.6 Securities In Lieu of Retention. Upon request to the District, the Contractor shall be permitted, in accordance with Public Contract Code Section 22300, to substitute securities in lieu of the Retention withheld by the District in order to ensure Contractor's performance under the Contract. Alternatively, the Contractor may request that the District pay any Retention earned by Contractor directly to an escrow agent who shall, as directed by the Contractor, invest the Retention in securities. Any escrow agreement shall be substantially in the form set forth in, and any securities invested or substituted in lieu of Retention shall be of the type permitted pursuant to, Public Contract Code Section 22300. The Contractor shall be responsible for all costs (including, without limitation, the District's costs) attributable to any investment or substitution of securities in lieu of Retention and/or any costs incurred in connection with establishing and maintaining an escrow account.

Section 7.7 Deductions for Uncorrected Work. The District may determine, in its sole discretion, not to correct all or any portion of the Work or Project that is damaged or that was not completed in accordance with the Contract and, in such event, if applicable, an equitable deduction from the Contract Amount shall be made therefor.

Section 7.8 Other Withholdings. In addition to the Retention, the District may withhold from the Final Payment or from amounts payable pursuant to any approved Progress Payment Application all amounts necessary to protect District from any loss or liability that has or might result from: (i) Liquidated Damages; (ii) the costs to the District of performing any obligation of Contractor related to the Work that Contractor has failed to timely perform or has performed inadequately; (iii) failure of Contractor to timely correct defective Work; (iv) any stop payment notice(s) related to the Work; (v) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount or prior to any scheduled completion date; (vi) unsatisfactory progress, execution or performance of the Work; (vii) unauthorized deviations from the Contract; (viii) failure of the Contractor to maintain or timely submit proper and sufficient documentation as required by the Contract or by the District during performance of the Work; (ix) erroneous or false estimates by the Contractor of the value of the Work performed; (x) expenses, losses or damages incurred by the District for which Contractor is liable pursuant to the Contract; (xi) damage caused by the Contractor or its Work to the Project or to the work of any other prime contractor or subcontractor performing work on the Project; and (xii) any other sums that the District is entitled to withhold or recover from Contractor pursuant to law or the Contract. The failure by the District to withhold any such amount

from any payment, or from a particular payment, to Contractor shall not constitute a waiver of the District's right to such amount.

Section 7.9 Final Payment. The Inspector shall provide written certification to the District when, as determined by the Inspector, the Contractor has satisfactorily completed the Work and all other obligations pursuant to the Contract Documents. The Inspector shall indicate in the certificate, based on actual measurements, the whole amount and value of the Work accomplished by the Contractor and that all "punch list" items have been satisfactorily completed. The District shall thereafter inspect the Work and determine whether all of the Work has been completed in accordance with the terms of the Contract Documents. Not sooner than 35 days, and not later than sixty (60) days, after acceptance of the Work, the District shall issue the Final Payment to the Contractor, subject to withholding of disputed or other amounts as permitted by applicable law and/or the Contract Documents. The District, within fifteen (15) days after acceptance of the Work, shall cause a Notice of Completion for the Work to be filed in the office of County Recorder's office where the project is located.

Section 7.10 Waiver and Release. Notwithstanding any other provision of the Contract, as a condition precedent for each payment to the Contractor hereunder: (i) the Contractor must complete, sign and submit to the District a conditional waiver and release in accordance with, and in substantially the form set forth in, Civil Code Section 8132, for the full amount of the payment; (ii) the Contractor must complete, sign, and submit to the District an unconditional waiver and release, in substantially the form set forth in Civil Code Section 8134, for all amounts previously paid to the Contractor and for which the Contractor has not already subcontracted an unconditional waiver; and (iii) a completed and signed unconditional waiver and release, in substantially the form set forth in Civil Code Section 8134, for each subcontractor, materials supplier and other entity that has been paid by the Contractor, but that has not already submitted an unconditional waiver and release for all such payment amounts. In addition, the District may require that the Contractor submit to the District an affidavit to the effect that such releases account for all the labor and material used in connection with the Work for which a stop payment notice could be filed. In the event any subcontractor, materials supplier, or other entity or person refuses to provide a release in full, the Contractor may provide the District with a bond satisfactory to the District to indemnify the District against any stop payment notice that may be filed by such entity or person. If any stop payment notice remains unsatisfied after the District has made the Final Payment to the Contractor, the Contractor shall pay to the District all amounts, if any, that the District may be compelled to pay in discharging such stop payment notice, together with the District's costs and expenses related thereto, including attorneys' fees and costs.

Section 7.11 Claims for Extra Cost. If the Contractor claims that instructions related to the Work resulted in costs to the Contractor that were not contemplated and are not included within the Contract Amount, the Contractor shall give written notice thereof to the District Representative within a reasonable time, but not in excess of five days after the receipt of such instructions. In the event of any such claim, except in an emergency in which life or property is endangered, the Contractor shall not commence execution of the portion of the Work that is affected by such claim unless and until directed to do so by the District. In the event the District Representative determines that any such claim is valid, the Contract Amount shall be adjusted as provided for a Change in the Work. The Contractor shall bear the risk, cost and expense of any Change in the Work undertaken without prior approval of the District.

Section 7.12 Claims for Extra Cost Due to Increase in Material Costs. The Contractor may

make a claim for additional cost provided Contractor is able to provide reasonable proof evidencing an increase in the cost of material due to an industry-wide sudden increase in the prices or shortages of building materials or component equipment necessary for the completion of Contractor's Work.

Section 7.13 Delay Damages. The Contractor shall not claim or be entitled to receive any compensation or damages because any portion of the Project at any time has not progressed or is not sufficiently complete for Contractor to timely proceed or continue with any portion of the Work, except where such delay is the result of an unreasonable act not caused by Contractor. Notwithstanding the foregoing, the Contractor shall not claim or be entitled to compensation for any such otherwise compensable delay in the event of a concurrent delay resulting from acts or omissions of the Contractor or its subcontractors or suppliers. In addition, where a concurrent delay exists, Contractor shall not be responsible for any Liquidated Damages or any other delay damages arising during the period of the ongoing concurrent delay.

PART 8. INSURANCE AND INDEMNIFICATION.

Section 8.1 General Liability Insurance. Prior to commencing the Work, the Contractor must have in effect, and the Contractor must maintain in effect at all times as required by this Section, a policy of broad-form commercial general liability insurance ("General Liability Policy"), written on an "occurrence" basis, covering claims for bodily injury, including death, property damage, and consequential damages that may arise out of or result from Contractor's performance of the Contract or from actions taken in connection with the Work, whether such actions are taken by Contractor, by any subcontractor of Contractor, or any person directly or indirectly employed by any of them. Not as a limitation on the foregoing, the General Liability Policy must provide coverage for both the ongoing and completed operations of the Contractor, and for the indemnification obligations assumed by the Contractor pursuant to the Contract Documents. The General Liability Policy must apply specifically to the Project and the Contract, by means of either endorsement or a separate "following form" excess policy. The Contractor must keep the General Liability Policy in full force and effect for at least one year after the date of Final Payment to the Contractor to ensure that coverage for products-completed operations remains in effect at least for such one-year period.

Section 8.2 Vehicle Liability Insurance. Prior to commencing the Work, the Contractor must have in effect, and the Contractor must maintain in effect at all times prior to final completion and acceptance of the Work, a policy of vehicle liability insurance, written on an occurrence basis, providing coverage for all motor vehicles (whether owned, leased, rented, or borrowed) that are driven or used in connection with the Work ("Vehicle Liability Policy"). The Vehicle Liability Policy must, by separate endorsement, name the District as an additional insured and must include a standard waiver of the insurer's rights of subrogation against the District. The Vehicle Liability Policy must apply specifically to the Project and the Contract, by means of endorsement or separate "following form" excess policy.

Section 8.3 Workers' Compensation Insurance. In accordance with Labor Code Sections 1860 and 1861, and concurrently with execution and delivery of the Contract, the Contractor shall execute and deliver to the District the Workers' Compensation Certification form included within the Contract Documents whereby the Contractor acknowledges its responsibility to secure workers' compensation insurance in compliance with Labor Code Section 3700 et. seq. Prior to commencing the Work, the

Contractor must have in effect, and the Contractor must maintain in effect at all times prior to full and final completion of the Work, a policy of workers' compensation insurance in compliance with Section 3700 of the Labor Code and other applicable provisions of law ("Workers' Compensation Policy"). Not less than five days prior to commencing the Work, the Contractor must provide to the District such Certificates of Insurance as evidence that the Contractor has such insurance coverage in effect.

Section 8.4 Contractor Insurance is Primary. The coverages provided by each of the General Liability Policy, the Vehicle Liability Policy, and the Workers' Compensation Policy shall be primary and not contributing with respect to any insurance or self-insurance programs covering the District and/or any of the District Agents.

Section 8.5 Insurer Standards. The General Liability Policy and the Vehicle Liability Policy must be issued by an insurer that is authorized to do business in this State and that has, as determined by the A.M. Best Company, a "Financial Strength Rating" of not less than "A-" (A minus), a "Ratings Outlook," if assigned, of either stable or positive, and a "Financial Size Category" of not less than VII. If a "Ratings Outlook" has been assigned to any such insurer that is not either stable or positive, the District may consider the insurer's Rating's Outlook and all other relevant factors in determining whether the insurer is satisfactory, and, if the District reasonably determines that there may be a significant risk in accepting any insurance policy issued or to be issued by such insurer, then, upon request of the District, the Contractor must obtain such insurance policy through another insurer that satisfies the standards set forth in this Section.

Section 8.6 Additional Insureds. The General Liability Policy and the Vehicle Liability Policy each must name or be endorsed to name the District as an additional insured. Each endorsement specifying any additional insured must be ISO Form CG 20 10 07 04 and 20 37 07 04 or an equivalent endorsement reasonably acceptable to the District. Each additional insured endorsement shall include a "primary insurance clause" stating to the effect that: "The insurance afforded by this policy for the benefit of the additional insureds shall be primary insurance, and any insurance maintained by the additional insureds shall be excess and non-contributory with the insurance provided hereunder." The coverage provided to the additional insureds must be at least as broad as the coverage provided to the Contractor and may not contain any additional exclusionary language or limitations applicable only to the additional insureds.

Section 8.7 Cross-Liability and Waivers of Subrogation. The General Liability Policy and the Vehicle Liability Policy must: (i) be endorsed with a cross-liability endorsement (separation of insureds) and include a waiver of the Insurer's rights of subrogation against each person or entity that is an additional insured or loss payee. The Workers' Compensation Policy must be endorsed to include a waiver of the insurer's rights of subrogation against the District. A waiver of subrogation shall be effective with respect to each applicable person or entity regardless of whether the person or entity: (i) has a right to indemnification; (ii) has an obligation to indemnify any other person or entity; (iii) paid any premium for the applicable insurance; or (iv) has an insurable interest in any property. The Contractor shall indemnify, defend and hold-harmless the District, in accordance with Section 8.14 of these General Provisions, with respect to any and all subrogation claims arising from any of the General Liability Policy, the Vehicle Liability Policy, the Builder's All-Risk Policy (if applicable), or the Workers' Compensation Policy.

Section 8.8 Premiums, Deductibles and Self-Insured Retentions. The Contractor shall be

solely responsible and liable for paying any and all premiums and other costs incurred in obtaining and maintaining the General Liability Policy, the Vehicle Liability Policy, and the Workers' Compensation Policy, including, without limitation, any and all renewal premiums. Each Certificate of Insurance (defined in Section 8.9 of these General Provisions) that evidences any such insurance policy must specify any and all deductibles applicable to the policy. The Contractor shall be solely responsible and liable for any and all such deductibles and self-insured retentions. Contractor's indemnification and other obligations pursuant to Section 8.14 of these General Provisions shall apply with respect to any and all claims arising from such premiums, deductibles and/or self-insured retentions.

Section 8.9 Evidence of Coverage. Within five days after award of the Contract to the Contractor, or prior to commencing the Work, whichever is later, the Contractor must provide to the District, for each of the General Liability Policy, the Vehicle Liability Policy, and the Workers' Compensation Policy, a certificate of insurance evidencing that such insurance is in effect (each a "Certificate of Insurance"), together with any and all endorsements to such policies required pursuant to this Part 8 of these General Provisions. Each Certificate of Insurance must: (i) be executed by a duly-authorized officer, agent or other representative of the insurer; (ii) include an original handwritten signature of the insurer's representative, not a stamped or printed signature; and (iii) must certify the names of the insured, any additional insureds, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance. The Contractor must provide to the District an updated Certificate of Insurance for each renewal of any such insurance policy not less than thirty days prior to any expiration of the policy. Each renewal and replacement of any such policy that, as permitted by this Part 8 of these General Provisions, is written on a "claims made" basis must have a retroactive date that is prior to the date the Contractor was initially required to have such insurance policy in effect pursuant to this Part 8. If any Certificate of Insurance associated with any of the General Liability Policy, the Vehicle Liability Policy, or the Workers' Compensation Policy sets forth language to the effect that it "does not amend, extend or alter the coverage" of the insurance policy, or that the coverage available pursuant to the policy "is subject to all of the terms, exclusions, and conditions of the policy," then, notwithstanding Section 8.11 of these General Provisions, the Contractor, prior to commencing the Work, must provide to the District a certified copy of such insurance policy and all associated endorsements, riders, et. cetera.

Section 8.10 Mandatory Notice from Insurer of Change in Coverage. Each of the General Liability Policy, the Vehicle Liability Policy, and Workers' Compensation Policy, and each associated Certificate of Insurance, must require or be endorsed to require that the insurer notify the District not less than thirty days prior to any cancellation, termination, reduction in coverage, or expiration without renewal of such policy, or, in the case of any cancellation for non-payment of premium, not less than ten days prior to cancellation. Language in any such insurance policy or Certificate of Insurance to the effect that the insurer shall "endeavor" to provide such notice, or to the effect "that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives," shall not be acceptable.

Section 8.11 District Review and Approval of Insurance Policies. Within ten days of a request from the District, the Contractor must provide to the District a certified copy of any of the General Liability Policy, the Vehicle Liability Policy, and/or the Workers' Compensation Policy as requested by the District, together with any and all associated Certificates of Insurance, endorsements, riders, et. cetera. Each of such insurance policies and associated other documents shall be subject to review and approval by the District in regard to compliance with the requirements of this Part 8 of these General Provisions. No such review

by the District, and no failure by the District to undertake any such review, shall be deemed or construed to be an assumption of liability by the District or to constitute a waiver of any non-compliance by the Contractor with the requirements of this Part 8 of these General Provisions.

Section 8.12 Subcontractor Insurance. The Contractor must require in its subcontracts applicable to the Work that each subcontractor obtain and maintain insurance coverage in compliance with all of the preceding requirements of this Part 8 of these General Provisions. The Contractor shall be responsible for ensuring that any and all subcontractors have such insurance in effect and for providing all documentation of the subcontractors' insurance coverage (i.e., copies of insurance policies and Certificates of Insurance) to the District within the time(s) required by this Part 8 of these General Provisions. The Contractor shall indemnify, defend and hold-harmless the District, in accordance with Section 8.14 of these General Provisions, with respect to any and all claims, demands, actions, costs, expenses and other liabilities arising from the failure of any subcontractor to have in effect the insurance required pursuant to this Part 8 of these General Provisions.

Section 8.13 Waiver of Claims. Each of the District and the Contractor hereby waives any and all rights it may have against the other pursuant to the Contract to the extent the waiving party is compensated for claims, damages or other liabilities by any of the insurance required pursuant to this Part 8 of these General Provisions. The Contractor shall require that in its subcontracts applicable to the Work that each subcontractor waive any and all rights it may have against the District in connection with the Work to the extent the subcontractor is compensated for claims, damages or other liabilities by any of the insurance required pursuant to this Part 8 of these General Provisions. The Contractor shall indemnify, defend and hold-harmless the District, in accordance with Section 8.14 of these General Provisions, with respect to any and all claims, demands, actions, costs, expenses and other liabilities arising from the failure of any subcontractor to provide the waiver as required pursuant to this Section.

Section 8.14 Indemnification. The Contractor shall indemnify, defend, and hold-harmless the District against and from any and all claims, demands, actions, damages, losses, costs, expenses (including, without limitation, reasonable attorneys' fees), and other liabilities of whatever nature that arise from or in connection with the performance of the Contract or of the Work by Contractor or its officers, agents, employees or subcontractors. The Contractor shall reimburse the District for all damages, expenses and losses incurred by the District as a consequence of any claim, demand, action or other proceeding that is within the scope of the foregoing provision of this Section, including, without limitation, any and all disputes between Contractor and any of its subcontractors. However, the Contractor shall not be liable or responsible pursuant to this Section to the extent any claim, demand, action, damage, loss, cost, expense or other liability is attributable to the active negligence, sole negligence or willful misconduct of the District or any District's agent(s), in which event the District and the Contractor shall be liable on a comparative basis. The requirements of this Section shall be in addition to any other indemnification provisions contained in the Contract Documents and shall survive termination of the Contract. Any and all obligations set forth in the Contract Documents requiring that the Contractor indemnify, defend and hold-harmless the District (including, without limitation, this Section) shall be deemed and construed as an obligation to indemnify, defend and hold-harmless the District, the District agent(s), and each of them.

Section 8.15 Subcontractor Indemnification. The Contractor shall require that in its subcontracts applicable to the Work that each subcontractor indemnify, defend and hold-harmless the

District in connection with the Work to the extent provided in Section 8.14 of these General Provisions. The Contractor shall indemnify, defend and hold-harmless the District, in accordance with Section 8.15 of these General Provisions, with respect to any failure of any subcontractor to indemnify, defend and hold-harmless the District as required pursuant to this Section.

PART 9. BOND REQUIREMENTS.

Section 9.1 Payment Bond. Within ten (10) days after receipt of the fully-executed Contract, the Contractor must deliver to the District a payment bond in the form included in the Contract Documents, which shall have been duly executed by the Contractor and a Qualified Surety (defined in Section 9.3 of these General Provisions). The payment bond must have a penal sum equal to one hundred percent (100%) of the Contract Amount, and shall be exclusive of any obligation under the performance bond required pursuant to Section 9.2 of these General Provisions. The District shall not be required to issue any payment whatsoever to the Contractor pursuant to the Contract unless and until the District has received and approved such payment bond.

Section 9.2 Performance Bond. Within ten (10) days after receipt of the fully-executed Contract, the Contractor shall deliver to the District a performance bond in the form included in the Contract Documents, which shall have been duly executed by the Contractor and a Qualified Surety. The performance bond must have a penal sum equal to one hundred percent (100%) of the Contract Amount, and shall be exclusive of any obligation under the payment bond required pursuant to Section 9.1 of these General Provisions. The District shall not be required to issue any payment whatsoever to the Contractor pursuant to the Contract unless and until the District has received and approved such performance bond.

Section 9.3 Surety Qualifications. The payment and performance bonds required pursuant to Sections 9.1 and 9.2, respectively, of these General Provisions each must have been executed and issued by a surety that satisfies the requirements of this Section. The surety must be an “admitted surety insurer” as defined in California Code of Civil Procedure Section 995.120. In order to ensure that the surety is an “admitted surety insurer,” the bidder or Contractor must attach to such bonds either of the following documents as required by California Code of Civil Procedure Section 995.311: (i) a copy of information printed from the website of the California Department of Insurance confirming that the surety is an admitted surety insurer; or (ii) a certificate from the _____ County Clerk confirming that the surety is an admitted surety insurer. The surety that issues the performance bond must have a current A.M. Best Company “financial strength rating” of not less than “A” and a “financial size category” of not less than “VIII.” A surety that meets the requirements of this Section shall be deemed to be a “Qualified Surety” for purposes of the Contract. If either or both of the payment bond or performance bond submitted by the Contractor was not executed and issued by a Qualified Surety, the Contractor, within 48 hours of notice from the District Representative and prior to commencing the Work, must submit a replacement bond or bonds that satisfy the requirements of this Section, and if the Contractor fails to submit such replacement bond(s), the Contractor shall be deemed in material breach of the Contract. The foregoing requirement to provide a replacement payment or performance bond shall also be applicable in the event the surety, during the course of construction of the Project, loses its status as an “admitted surety insurer” as defined in Code of Civil Procedure Section 995.120.

Section 9.4 Increase in Bond Penal Sum. In the event the Contract Amount is increased in accordance with the Contract, the Contractor, upon request of the District, shall promptly cause the amount of the payment and performance bonds to be correspondingly increased and shall promptly deliver satisfactory evidence thereof to the District. If the Contractor fails to provide to the District any bond required pursuant to the Contract, the District, in its sole discretion, may terminate the Contract for cause.

Section 9.5 Sufficiency of Bonds. If, in the reasonable opinion of the District, either or both of the payment bond or performance bond required pursuant to this Part 9 of these General Provisions, or the surety issuing either or both of such bonds, is or becomes insufficient or unsatisfactory, the Contractor shall renew or replace such bond within 48 hours of notice from the District Representative, and any failure by the Contractor to do so shall be deemed a material breach of the Contract.

PART 10. SUSPENSION OR TERMINATION.

Section 10.1 Suspension of Work by District. The District, in its sole discretion, may at any time suspend performance of the Work and/or the Project by giving written notice to Contractor, and the suspension shall be effective upon receipt of such notice by the Contractor. Upon receipt of such notice, the Contractor shall immediately commence the process of suspending the Work, making safe any work in progress but otherwise taking steps to cease further progress on the Project. The District, consistent with the provisions of the Contract, shall pay the Contractor for all Work adequately performed up to the effective date of such suspension and for work reasonably required to eliminate safety hazards. Contractor shall provide the District with a reasonable estimate of when Contractor can resume work on the Project within twenty calendar days following written notice from the District to further proceed with Work on the Project.

Section 10.2 Termination for Convenience. The District, in its sole discretion, and without need for cause, may at any time terminate the Contract, or any portion thereof, by giving written notice to Contractor, and such termination shall be effective upon receipt of such notice by the Contractor. Upon receipt of such notice, the Contractor shall immediately commence the process of terminating the Work, making safe any work in progress but otherwise taking reasonable steps to cease further progress on the Project. The District, consistent with the provisions of the Contract, shall pay Contractor for all Work adequately performed up to the effective date of the termination for convenience as for work reasonably required to eliminate safety hazards. In the event of a termination for convenience, the Contractor shall only be entitled to any profits, overhead or general conditions costs for any portion of the Work that was performed prior to termination or to compensation for costs related to discontinuing the Work. Notwithstanding a termination pursuant to this Section, the Contractor and its surety shall continue to be responsible and liable, in accordance with the Contract Documents and applicable law for any and all defects in quality, damage to property, injury to any person, and other matters arising from the Work performed and portion completed by Contractor prior to the termination.

Section 10.3 Termination for Cause.

Subsection 10.3.1 Events of Default. Each of the following events shall be deemed a default by the Contractor of its obligations pursuant to the Contract (each an "Event of Default"):

- (i) Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor's insolvency;
- (ii) as reasonably determined by the District, the Contractor refuses or fails to provide a sufficient number of properly skilled workmen or the proper materials or supplies as are necessary for timely and/or proper completion of the Work;
- (iii) Contractor fails to promptly pay subcontractors for undisputed material or labor;
- (iv) Contractor fails to comply with any laws, ordinances, or instructions of the District applicable to the District; and
- (v) Contractor or its subcontractors otherwise fail to comply with any material provision of the Contract.

Subsection 10.3.2 Opportunity to Cure. If an Event of Default occurs, the District may serve notice on the Contractor and its surety(ies) describing the unsatisfactory condition or violation that constitutes a default by the Contractor ("Notice of Default"). The Contractor shall have five (5) business days after service of any such Notice of Default to cure the Event of Default specified in the Notice of Default or to make arrangements satisfactory to the District for cure of the Event of Default. Notwithstanding the foregoing, in the case of an Event of Default pursuant to clause (i) of Subsection 10.3.1 of these General Provisions, the Contractor shall have thirty days to cure or make arrangements satisfactory to the District for cure of the Event of Default.

Subsection 10.3.3 District Remedies for Failure to Cure. Upon failure of the Contractor to cure or make satisfactory arrangements for cure of an Event of Default in accordance with Subsection 10.3.2 of these General Provisions, the District may, at its option: (i) take such action as, in the District's opinion, is necessary to correct or cure the Event of Default and deduct the cost thereof from any amounts due or to become due to Contractor pursuant to the Contract; (ii) proceed to terminate the Contract, or any portion thereof; or (iii) take such other action as is permitted by the Contract or applicable law. In the event the District elects to terminate the Contract or any portion thereof, the District shall schedule and conduct a hearing on the matter, and the Contractor shall be permitted to attend and present evidence at such hearing to support a determination by the District that it should not terminate the Contract. The hearing shall be conducted by the Governing Board, which shall render a final decision. Alternatively, such hearing may be conducted by the District's Assistant Superintendent of Business Services or his designee, who shall make a recommendation to the Governing Board. Unless specified otherwise therein, a decision by the Governing Board shall be effective immediately. Notwithstanding a termination pursuant to this Section, the Contractor and its surety shall continue to be responsible and liable, in accordance with the Contract Documents and applicable law for any and all defects in quality, damage to property, injury to any person, and other matters arising from the Work performed prior to the termination.

Subsection 10.3.4 Effect of Termination for Cause. In the event of any termination for cause pursuant to this Section 10.3, the District shall be entitled to withhold and retain from any payment due to the Contractor all amounts necessary to offset any costs, expenses (including, but not limited to, attorneys' fees), losses and/or damages incurred by the District as a result of the termination for cause. If

the remaining amounts potentially payable to the Contractor pursuant to the Contract are insufficient to offset such costs, expenses, losses and/or damages, the Contractor and/or its performance bond surety shall reimburse the District for the uncompensated balance of such costs, expenses, losses and/or damages, including, without limitation, any uncompensated costs to complete the Work. The District's rights pursuant to the Contract are in addition to, and not in lieu of, any other rights or remedies available to the District in the event of a termination for cause. In addition, the following provisions shall also apply in the event of any termination for cause pursuant to this Section 10.3:

- (i) The Contractor shall not be entitled to further compensation until satisfactory completion and acceptance by the District of all of the Work.
- (ii) The District shall give written notice of a termination pursuant to this Section 10.3 to both the Contractor and the Contractor's performance-bond surety. The surety shall thereafter have the right to take over and perform the Contract, provided, however, that, if the surety does not, within seven (7) calendar days after service of the notice of termination, notify the District that the surety intends to take over and perform the Contract, or if the surety does not commence performance of the Contract within fifteen days after providing such notice to the District, the District may take over and complete the Work by any means the District may deem appropriate, for the account of and at the expense of the Contractor, and the Contractor and its surety shall be liable to the District for costs thereby incurred by the District in excess of any remaining portion of the Contract Amount that otherwise would be payable to the Contractor.
- (iii) In the event the District takes over the Work, the District may, without liability for doing so, (1) take possession of the Work and the Project Site; (2) take possession of all materials, tools, equipment and appliances located at the Project Site and use them in connection with completion of the Project; (3) procure, upon such terms and in such manner as it may determine appropriate, services required to complete the Work; (4) require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of the Contract; and (5) complete the affected portion(s) of the Project by whatever means and methods the District may deem to be in its best interests, including, but not limited to, calling upon Contractor's surety to complete the Work or to issue payment(s) to the District or its replacement contractor(s).
- (iv) In the event the District takes over and satisfactorily completes the Work, if the unpaid balance of the Contract Amount exceeds the cost to the District of satisfactorily completing the Work, including, without limitation, compensation for any additional architectural, managerial or administrative services needed as a result of the Contractor's default, such excess shall be paid to the Contractor after satisfactory completion and acceptance of the Work by the District less any amounts attributable to any stop payment notices and amounts withheld by the District in accordance with applicable law or the Contract. If the cost to the District of satisfactorily completing the Work is greater than the unpaid balance of the Contract Amount, the Contractor, or its surety, shall pay the undisputed difference to the District within thirty days of

notice from the District. In addition, the District may pursue any other recourse or remedies against the Contractor and/or its surety, which are available pursuant to law or the Contract.

Section 10.4 Termination by Contractor. Subject to the other provisions of this Section, the Contractor may stop the Work or initiate termination of the Contract by giving written notice to the District Representative if, through no fault of the Contractor or its employees, subcontractors or suppliers: (i) all work on the Project ceases for a period exceeding thirty (30) days pursuant to an order or direction of any court or government entity, other than the District, with jurisdiction over any portion of the Project; (ii) the District Representative arbitrarily fails, within thirty (30) days of receipt from Contractor of a Progress Payment Application, to issue a certificate for payment for any undisputed amount(s) due to Contractor; or (iii) the District fails, within sixty (60) days of receipt from the District Representative of a certificate of payment therefor, to pay to the Contractor any undisputed amount specified in such certificate of payment. Upon receipt of any such notice from the Contractor, the District shall have fifteen days to cure or make other arrangements for cure of the matter as are acceptable to the Contractor. If the District fails within the required time period to cure or make such acceptable arrangements for cure of the matter, the Contractor may stop the Work or terminate the Contract by giving additional written notice to the District, which notice shall be effective immediately upon receipt by the District. In the event the Contractor stops the Work or terminates the Contract in pursuant to either subdivision (ii) or (iii) of the first sentence of this Section, the District shall be liable to the Contractor for any losses thereby reasonably incurred by the Contractor; provided that the Contractor shall not be entitled to recover any lost or foregone profits attributable to the portions of the Work not satisfactorily completed by the Contractor prior to stoppage of the Work or termination of the Contract.

PART 11. LAWS AND OTHER REQUIREMENTS.

Section 11.1 Liability for Non-Compliance with Laws. The Contractor at all times during the execution of the Work shall be and shall remain fully informed of all local, State and federal laws, ordinances, rules, regulations or other requirements that may in any manner affect those engaged or employed to perform any of the Work or the materials used in performing the Work, or that may in any way affect the performance of the Work. In addition, the Contractor at all times during the execution of the Work shall be and shall remain fully informed of all rules, regulations, orders and other requirements of any public or private entity with jurisdiction over the Work. In performing the Work, the Contractor shall comply with, and give notices required pursuant to, all laws, ordinances, rules, regulations and other requirements applicable to the Work as drawn and specified. The Contractor shall be liable for any violation of a law, ordinance, rule, regulation or other requirement in connection with performance of the Work. If the Contractor observes that the drawings and specifications are at a variance with any applicable law, ordinance, rule, regulation or other requirement, Contractor shall promptly notify the District Representative in writing. The Contractor shall bear all liability and costs, including any fines, arising from performance of any Work that the Contractor knew or reasonably should have known was contrary to any applicable law, ordinance, rule, regulation or other requirement, and the Contractor failed to notify the District Representative of the same a sufficient time in advance of performing the Work to permit the District to investigate and resolve the discrepancy.

Section 11.2 Applicable Regulations. The performance of the Work, including all construction and the materials and equipment used or incorporated into the Work, shall, not as a limitation, conform to all applicable requirements of the regulatory provisions specified in this Section. Each of such specified regulatory provisions, as those may be amended from time to time, is hereby incorporated as an operative part of the Plans and Specifications, and Contractor shall maintain a current copy of each at the Project Site. In the event of any conflict between the requirements of the various specified regulatory provisions, or in the event of any conflict between the requirements of the specified regulatory provisions and the requirements of any other applicable provision of law, the most authoritative requirements shall govern and nothing in the Contract Documents shall be construed to permit work that does not conform with such requirements. The Contractor shall not be entitled to additional compensation for any Changes in the Work necessary to ensure compliance with the requirements of the specified regulatory provisions, and the cost of any such Changes in the Work shall be deemed to be encompassed within the Contract Amount. The specified regulations are as follows:

- (i) Title 8 California Code of Regulations (Industrial Relations), Chapter 4 (Division of Industrial Safety), Subchapter 4 (Construction Safety Orders), commencing with Section 1500.
- (ii) Title 19 California Code of Regulations (Public Safety), Division 1 (State Fire Marshal), commencing with Section 1.00.
- (iii) Title 21 California Code of Regulations (Public Works), Division 1 (Department of General Services), Chapter 1 (Office of the State Architect), Subchapter 1 (Safety of Construction of Public Schools), commencing with Section 1.
- (iv) Title 24 California Code of Regulations (the California Building Standards Code).

Section 11.3 Provisions Deemed Inserted. Each and every provision or clause required by law to be inserted in the Contract are hereby deemed to have been inserted, and the Contract shall be interpreted and enforced as though such provisions and clauses are expressly set forth herein. If, through mistake or otherwise, any required provision is not inserted or is not correctly inserted, then upon written request of either the District or the Contractor, the Contract shall be amended to make the insertion or correction. Any and all references in the Contract to laws, ordinances, rules, regulations or other requirements shall be deemed and construed to include all amendments, replacements and enactments thereto that are in effect as of the date of the Contract, as well as any later amendments thereto that do not materially or substantially alter the rights or obligations of the Parties.

Section 11.4 Equal Opportunity Employer. The Contractor represents and warrants that it is an equal opportunity employer and that it shall not, in connection with the Work, discriminate against any employee or applicant for employment in violation of any applicable federal, State, or local law, including, without limitation, on the basis of such person's race, religion, color, national origin, ancestry, sex or age. Such policy of non-discrimination shall apply to all activities related to recruitment advertising, recruitment, initial employment, promotion, demotion, transfer, and layoff or termination.

Section 11.5 [Section Not Used.]

Section 11.6 Tobacco-Free Facility. All properties and facilities owned, leased or operated by the District, including the Project, are tobacco-free work places. It is strictly forbidden while on or in any District-controlled property or facility, including the Project, to smoke, chew or otherwise use tobacco products. Any employee of the Contractor or its subcontractors found in violation of these requirements will be required to permanently leave District premises and the Contractor shall not thereafter re-employ such person on the Project or permit such person on the Project Site. The Contractor shall include this provision in all contracts with subcontractors and others performing any of the Work or providing labor, materials or services related to the Work, and each shall provide a copy of this provision to its employees on the Project.

Section 11.7 Drug-Free Facility. All properties and facilities owned, leased or operated by the District, including the Project, are drug-free work places. It is strictly forbidden while on or in any District-controlled property or facility to: (i) engage in the unlawful manufacture, dispensation, possession or use, including being under the influence, of any controlled substance; (ii) possess or use any alcoholic beverage; or (iii) use any illegal substance which may cause significant impairment of normal abilities. Any employee of the Contractor or its subcontractors found in violation of these requirements will be required to permanently leave District premises and the Contractor shall not thereafter re-employ such person on the Project or permit such person on the Project Site. The Contractor shall include this provision in all contracts with subcontractors and others performing any of the Work or providing labor, materials or services related to the Work, and each, as well as the Contractor, shall provide a copy of this provision to its employees on the Project.

Section 11.8 Compliance with Labor Code Requirements. The Project is a “public works project” as defined in Section 1720 of the California Labor Code (“Labor Code”) and, therefore, Part 7, Chapter 1, of the Labor Code is applicable to the Project. The Contractor must be, and shall be deemed and construed to be, aware of and understand the requirements of Labor Code Sections 1720 et. seq., and 1770 et. seq., and Title 8 of the California Code of Regulations, Section 16000 et. seq. (collectively, “Labor Laws”) which require the payment of prevailing wage rates and the performance of other acts in connection with public works projects. The Contractor acknowledges that, in applicable circumstances and as provided by Senate Bill (“SB”) 854 (Stats. 2014, Ch. 28), the Project is subject to compliance monitoring and enforcement by the DIR. In any event, the Contractor, at no additional cost to the District, must comply with any and all applicable Labor Law requirements, including, without limitation, requirements for payment of Prevailing Wages, maintenance, inspection and submittal of payroll records, notice and posting requirements, et. cetera. The Contractor must ensure that any and all subcontractors working under the Contractor comply with the Labor Laws and other public works requirements. The Contractor, at no additional cost to the District, must cooperate with the DIR, and the District in connection with Labor Law compliance matters. A contractor or subcontractor that has been debarred in accordance with the Labor Code, including, without limitation, pursuant to Sections 1777.1 or 1777.7, is not eligible to bid on, perform, or contract to perform any portion of the Work. Wage rates for the Work shall be in accordance with the general prevailing rates of per-diem wages determined by the DIR pursuant to Labor Code Section 1770. Wage rates shall conform to those on file at the District’s principal office and posted at the Project Site. The District will withhold payment to the Contractor necessary to satisfy civil wage and penalty assessment issued by the Labor Commissioner. The following Labor Code sections are by this reference incorporated into and are a fully operative part of the Contract, and Contractor shall be solely responsible for compliance therewith:

- (i) Section 1735: Anti-Discrimination Requirements;
- (ii) Section 1775: Penalty for Prevailing Wage Rate Violations;
- (iii) Section 1776: Payroll Records;
- (iv) Sections 1777.5, 1777 .6, and 1777.7: Apprenticeship Requirements;
- (v) Sections 1810 through 1812: Working Hour Restrictions;
- (vi) Sections 1813 and 1814: Penalty for Failure to Pay Overtime; and
- (vii) Section 1815: Overtime Pay.

Section 11.9 Requirements for Payroll Records. The Contractor must comply with all applicable provisions of Labor Code Section 1776, which relates to preparing and maintaining accurate payroll records, and submitting or making such payroll records available for review and copying by the District, the DIR's Division of Labor Standards Enforcement, and Division of Apprenticeship Standards. The payroll records must be certified, maintained at the principal offices of the Contractor, and submitted or made available as required by Labor Code Section 1776. The Contractor must inform the District of the location at which the payroll records are located, including the street address, city and county, and must, within five working days, provide a notice of any change of location and address. If the Contractor or any subcontractor fails to timely comply with requests for certified payroll records, it shall forfeit, as a penalty to the District, \$100 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, and, in addition to penalties as provided by law, may be subject to debarment pursuant to Labor Code Section 1771.1. Timely provision by the Contractor of certified payroll records also shall be a condition precedent to the District's obligation to make any subsequent progress, final, Retention, or other payments to the Contractor pursuant to the Contract.

Section 11.10 Registration with DIR. On and after March 1, 2015, no contractor or subcontractor may submit a bid for any work on a public works project, and on and after April 1, 2015, no contractor or subcontractor may be awarded a contract for work on a public works project or perform any work on a public works project, unless the contractor or subcontractor is then-currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725 .5. If applicable to the Contract, then, prior to entering into the Contract, the District will confirm that the Contractor is duly registered with the DIR. Notwithstanding anything to the contrary, if at any time during the performance of the Work, the Contractor or any of its subcontractors is not duly registered pursuant to Labor Code Section 1725.5 (including, without limitation, if the DIR revokes the registration), the District may cancel the Contract and/or replace the Contractor or subcontractor with a contractor or subcontractor that is duly registered pursuant to Labor Code Section 1725.5.

Section 11.11 Penalties for Violations of Labor Laws. In accordance with Section 1775 of the Labor Code, the Contractor shall forfeit, as a penalty to the District, not more than \$200 and, subject to limited exceptions, not less than certain amounts specified by law, for each calendar day, or portion thereof, for each worker paid less than prevailing wage rates as determined by the director of the DIR. The Contractor shall pay to each worker the difference between such stipulated prevailing wage rate and the

amount paid to the worker for each calendar day or portion thereof for which the worker was paid less than the applicable prevailing wage rates.

Section 11.12 Assignment of Anti-Trust Claims. In accordance with Public Contract Code Section 7103.5, the Contractor, in entering into the Contract, hereby offers and agrees to assign to the District all rights, title, and interest in and to all causes of action Contractor may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. Such assignment shall be made and become effective at the time the District tender's final payment to the Contractor, without further acknowledgment by the Parties.

PART12. DISPUTE RESOLUTION.

Section 12.1 Governing Law and Venue. The Contract and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Any arbitration, litigation or other proceeding arising out of the Contract shall be commenced and conducted only in the County where the Project is located.

Section 12.2 Mediation and Arbitration. The provisions of Part 3, Chapter 1, Article LS (commencing with Section 20104) of the Public Contract Code ("Dispute Resolution Provisions") shall apply to all public works claims of \$375,000 or less arising or resulting from the Contract. The Dispute Resolution Provisions are incorporated herein by this reference. The Dispute Resolution Provisions require that any such claim be in writing and supported by adequate documentation of the basis for the claim. The District shall respond to any such claim as required pursuant to the Dispute Resolution Provisions, and the Parties may be required to mediate and arbitrate the claim(s).

Section 12.3 Costs and Expenses. The Parties shall, initially, equally bear the cost of any arbitration, litigation or other proceeding arising from or related to the Work or the Contract; however, the prevailing party in any such proceeding shall be entitled to recover such initial costs, in addition to other costs as specified herein, as an item of damage and/or recoverable cost.

Section 12.4 Continuation of Work. Notwithstanding anything in the Contract Documents to the contrary, in the event of any dispute between the District and the Contractor, or any dispute between the Contractor and any subcontractor or other third party, the Contractor shall not be permitted to cease performance of the Work, but the Contractor shall have the right to pursue all other remedies permitted pursuant to the Contract and applicable law. A violation of this provision by the Contractor shall constitute a material breach of the Contract.

EXHIBIT A – SCOPE OF WORK

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EXHIBIT B – MASTER SCHEDULE

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