



# LA MESA-SPRING VALLEY SCHOOLS

## LA MESA-SPRING VALLEY SCHOOL DISTRICT

### Purchasing Department

4750 Date Avenue  
La Mesa CA 91942

### BID NUMBER FB #25/26-002

<b>Districtwide Plumbing Upgrades-Phase 2</b>
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**Bid Submittal / Opening Date: May 12, 2026 at 3:00 PM**  
La Mesa-Spring Valley School District  
Business Services Department  
4750 Date Avenue  
La Mesa CA 91942

**Bid Calendar and Schedule:**

Event	Date
Advertisement Dates	Thursday, 4/16/26 and 4/23/26
Questions from Bidders Due (in writing)	Tuesday, 4/28/26 by 3:00 PM
<b>Mandatory Job Walk (addresses listed in Scope pg. 13)</b>	<b>Friday, 4/24/26 Schedule: 9 - Northmont, 9:45 - Parkway, 10:30 - Murray Manor, 11:15 - Maryland, 12 - Rolando, 1:00 - STEAM</b>
Bid Addendum Posted on District website	Tuesday, 5/05/26 by 6:00 PM
<b>Bid Opening</b>	<b>Tuesday, 5/12/26 at 3:00 PM</b>
Recommendation for Award	Tuesday, 5/12/26
Bid Protest Window	05/13/26 – 05/19/26 at 4:00 PM
Board Meeting / Award of Contract	Tuesday, 6/09/26

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**\*To be responsive to this bid, these forms need to be completed and turned in with bid.**

## NOTICE TO CONTRACTORS CALLING FOR BIDS

NOTICE IS HEREBY GIVEN that La Mesa-Spring Valley School District, of San Diego County, California, acting by and through its Governing Board, hereinafter referred to as the District, will receive up to, but not later than **3:00 o'clock PM of the 12th day of May, 2026** sealed bids for the award of contract;

### **Districtwide Plumbing Upgrades- Phase 2 FB #25/26-002**

Bids shall be received in the office of the Business Services, **Business Services Department** of the District at 4750 Date Avenue, La Mesa, California 91942, and shall be opened and publicly read aloud at the above-stated time and place.

Each bid must conform and be responsive to the contract documents, copies of which are now available on the District website, at <https://www.lmsvschools.org/purchasing-services/>. Request bid documents from Jessica Murguia, Director, Purchasing & Risk Management at [Jessica.Murguia@LMSVschools.org](mailto:Jessica.Murguia@LMSVschools.org).

Interested bidders should direct questions to Jessica Murguia, Director, Purchasing & Risk Management, at [Jessica.Murguia@LMSVschools.org](mailto:Jessica.Murguia@LMSVschools.org). Any addendums and answers to questions will be posted on the District website on the date specified under Schedule in the Special Conditions section of the bid documents.

Bids must be submitted on the Bid form provided by the District and included in the bid documents. Each bid must strictly conform with and be responsive to this Notice Calling for Bids, the Information for Bidders, and other Contract Documents. The District reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding.

Except as provided in Public Contract Code Section 5100 *et seq.* no bidder may withdraw a bid for a period of sixty (60) calendar days after the opening of the bids.

In contracts involving an expenditure in excess of \$25,000.00, the successful bidder shall file a payment bond issued by an admitted Surety approved to conduct business in the State of California approved by the District in the form set forth in the contract documents.\*

Senate Bill (SB) 854 Requirements: No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid proposed only under Labor Code section 1771.1 (a)]. No contractor or subcontractor may be awarded a contract for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Prime contractors must add the DIR Registration Number for each of their listed subcontractors to the Designation of Subcontractors list AND submit a certification of registration for their own firm and those of their listed subcontractors upon request by the District. Failure of the bidding prime contractor to list their subcontractors DIR registration Number on the Designation of Subcontractors list at the time of

bid will result in rejection of their bid as non-responsive.

Refer to the following DIR Website for further information:

[www.dir.ca.gov/Public-Works/PublicWorks.html](http://www.dir.ca.gov/Public-Works/PublicWorks.html)

The Director of Industrial Relations has determined the GENERAL PREVAILING RATE OF PER DIEM WAGES in the locality in which this work is to be performed for each craft or type of worker needed to execute the contract which will be awarded to the successful bidder, copies of which are available to any interested party on request by contacting the Director of Industrial Relations, telephone number (415) 703-4774 or at [www.dir.ca.gov](http://www.dir.ca.gov).

It shall be mandatory upon the Contractor to whom the contract is awarded, and upon any subcontractor under him, to pay not less than the said specified rates to all workers employed by them in the execution of the contract.

The class of California contractor's license(s) required in order to bid on and perform the contract for this Project is: **C-36**.

The District may have made a finding that certain brand or trade names are necessary in order to maintain conformity among its campuses, compatibility with existing systems and to streamline maintenance and parts storage. Work will be performed from **June 10, 2026 to January 4th, 2027**.

The successful bidder may be required to provide a performance bond and will be required to provide a separate payment bond, in the amount equal to 100% of the total contract amount. The forms of the bonds are set forth in the Contract Documents and all bonds must be issued by a California-admitted surety as defined in California Code of Civil Procedure Section 995.120.

Jessica Murguia  
Director, Purchasing & Risk Management  
La Mesa-Spring Valley School District  
District of San Diego County, California

**END OF DOCUMENT**

**DOCUMENT 00100**  
**INFORMATION FOR BIDDERS**

**1. Preparation of Bid Form**

The District invites bids on the **attached** form to be submitted at such time and place as is stated in the Notice to Contractors Calling for Bids. All blanks in the bid form must be appropriately filled in, and all prices must be stated in both words and figures. If a different price is stated in words than is stated in figures, the price stated in words shall be the price bid. All bids must be submitted in sealed envelopes bearing on the outside the name of the bidder, his address, and the name of the project for which the bid is submitted. It is the sole responsibility of the bidder to see that his bid is received in proper time. All bids received after the scheduled closing time for receipt of bids will be returned to the bidder unopened.

**2. Bid Security**

The bid security shall be valued at \$100,000 dollars and shall be given as a guarantee that the bidder shall execute the contract if awarded to him in conformity with the contract documents. Each bid must be submitted with the bid security required in document 00410 Bid Bond. Such security must be in one of the following forms: (1) A bidder's bond executed by an admitted surety insurer, made payable to the District. Any bond must have been issued by a California-admitted surety as defined in Code of Civil Procedure Section 995.120.

The bidder's security of the second and third lowest responsible bidders may be withheld until the contract has been finally executed. The cash, cashier's checks, and certified checks submitted by all other unsuccessful bidders shall be returned to them within 10 days after the contract is awarded, and their bidders' bonds shall be of no further effect as defined in Public Contract Code 10784.

**3. Faxed and Electronic Mail Bids**

All bids must be under sealed cover. District will not accept any bids or bid modifications submitted by facsimile or electronic mail transmission.

**4. Signature**

The bid must be signed in the name of the bidder and must bear the signature in longhand of the person or persons duly authorized to sign the bid.

**5. Modifications**

Changes in or additions to the bid form, recapitulations of the work bid upon, alternative proposals, or any other modification of the bid form which is not specifically called for in the contract documents may result in the District's rejection of the bid as not being responsive to the invitation to bid. No oral or telephonic modification of any bid submitted will be considered and a telegraphic modification may be considered only if the postmark evidences that a confirmation of the telegram duly signed by the bidder was placed in the mail prior to the opening of bids.

## **6. Erasures/Mutilation of Bid Documents**

The bid submitted must not contain any erasures, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or persons signing the bid.

Contractors should not deface or mutilate the bid documents to the extent that they may not be usable for construction purposes.

## **7. Examination of Site and Contract Documents**

Each bidder shall visit the site of the proposed work and fully acquaint himself with the conditions relating to the construction and labor so that he may fully understand the facilities, difficulties, and restrictions attending the execution of the work under the contract. Bidders shall thoroughly examine and be familiar with the drawings and specifications. The failure or omission of any bidder to receive or examine any contract documents, form, instrument, addendum, or other document or to visit the site and acquaint himself with conditions there existing shall in no way relieve any bidder from obligations with respect to his bid or to the contract. The bidder is responsible to obtain any geotechnical and/or soils report pertaining to the site of the work. Although any such report does not operate as a warranty or guarantee of site conditions, the submission of a bid shall be taken as prima facie evidence of compliance with all terms of this section.

7.1 Each bidder, by making their bid, represents that they have read and understands the Contract and Bid Documents and any and all related reports and information. After executing the Agreement, no consideration will be given to any claim of misunderstanding of the documents.

7.2 Each bidder, by making their bid, represents that they have visited the site, inspected the work conditions, and familiarized themselves with the local conditions under which the work is to be performed, including subsurface conditions. Such inspection shall specifically consider requirements for accessing the site and determining the work can be completed as required by, and as shown in, the Contract Documents.

7.3 With District's approval, including provision of insurance as required, and after scheduling access with the District, each bidder may conduct additional site investigations at the bidder's sole cost.

7.4 To participate in bidding, it is mandatory that each bidder participate in the mandatory job walk, as outlined in the bid calendar and schedule, as outlined on the front page of this document.

## **8. Withdrawal of Bids**

Any bidder may withdraw his bid either personally, by written request, or by telegraphic request confirmed in the manner specified above at any time prior to the scheduled closing time for receipt of bids.

## **9. Agreements and Bonds**

The Agreement form which the successful bidder, as Contractor, will be required to execute, and the forms and amounts of surety bonds which he will be required to furnish at the time of execution of the Agreement, are included in the contract documents and shall be carefully examined by the bidder. The required number of executed copies of the Agreement, the Performance Bond, and the Payment Bond for Public Works is as specified in the Special Conditions.

The Performance Bond, if required, must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish and which it has established.

The Payment Bond must be in the amount of 100 percent of the total amount payable. The Payment Bond must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish.

Bonds shall be in the form set forth in the contract documents.

## **10. Interpretation of Plans and Documents**

If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the drawings, specifications, or other contract documents, or other information pertaining to the site (including any available soils or geotechnical report) or finds discrepancies in, or omissions from the drawings and specifications, he is hereby required in accordance with Public Contract Code section 1104 to submit to the Architect, if applicable, or District, a written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the contract documents or other available information will be made available on the District's website. At the option of the District, all addendums may be mailed, delivered, faxed, made available for pick-up or sent via electronic mail. No oral interpretation of any provision in the contract documents will be made to any bidder. Numbers spelled out in words will take precedence over numerals / figures.

## **11. Bidders Interested in More Than One Bid and Bidders Not Qualified to Bid**

No person, firm, or corporation shall be allowed to make, or file, or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm, or corporation that has submitted a sub-proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders or making a prime proposal. No person, firm, or corporation shall be allowed to bid who has participated in the preparation of contract specifications; a bid by such a person, firm or corporation shall be determined to be unresponsive.

## **12. Award of Contract**

The District reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding. The award of the contract, if made by the District, will be to the lowest responsive and responsible bidder.

### **13. Additive and Deductive Items: Method of Determining Lowest Bid**

Pursuant to Public Contract Code section 20103.8, should this bid solicitation include additive and/or deductive items, the checked [X] method shall be used to determine the lowest bid:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items, awarded as one contract for the lowest base bid.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in the numerical order set forth in the bid form, awarded as one contract.

(c) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

If no method is checked, sub-paragraph (a) shall be used to determine the lowest bid.

Notwithstanding the method used by the District to determine the lowest responsible bidder, the District retains the right to add to or deduct from the contract any of the additive or deductive items included in the bid solicitation.

### **14. Evidence of Responsibility**

Upon the request of the District, a bidder whose bid is under consideration for the award of the contract shall submit promptly to the District satisfactory evidence showing the bidder's financial resources, his construction experience in the type of work being required by the District, and his organization available for the performance of the contract and any other required evidence of the bidder's qualifications to perform the proposed contract. The District may consider such evidence before making its decision awarding the proposed contract. Failure to submit requested evidence of a bidder's responsibility to perform the proposed contract may result in rejection of the bid.

### **15. Listing Subcontractors**

Each bidder shall submit with his sealed bid a list of the proposed subcontractors on this project as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 and following). Forms for this purpose are furnished with the contract documents.

### **16. Senate Bill (SB) 854 Requirements**

No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid proposed only under Labor Code section 1771.1 (a)]. No contractor or subcontractor may be awarded a contract for a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Prime contractors must add the DIR Registration Number for each of their listed subcontractors to the Designation of Subcontractors list AND submit a certification of registration for their own firm and those of their listed subcontractors upon request by the District. Failure of the bidding prime contractor to list their subcontractors DIR Registration

Number on the Designation of Subcontractors list at the time of bid will result in rejection of their bid as non-responsive.

### **17. Workers' Compensation**

In accordance with the provisions of section 3700 of the Labor Code, Contractor shall secure the payment of compensation to his employees. Contractor shall sign and file with District the following certificate prior to performing the work under this contract:

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

The form of such certificate is included as part of the contract documents.

### **18. Substitution of Security**

Monies withheld by the District to ensure performance under the contract may be released in accordance with Public Contract Code section 22300 and the contract documents.

### **19. Contractor's License**

If, at the time the bids are opened, the bidder is not licensed to perform the project in accordance with division 3, chapter 9 of the Business and Professions Code of the State of California (Section 7028.15) and the Notice to Contractors Calling for Bids, the bid will not be considered.

### **20. Storm Water Permit for Construction Activity**

It shall be the responsibility of the successful bidder to file a Notice of Intent and procure a State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity (Permit). The successful bidder shall be solely responsible for preparing and implementing a Stormwater Pollution Prevention Plan (SWPPP) prior to initiating work. The successful bidder shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by Permit and as required by Article 69 of the General Conditions. It shall be the responsibility of all bidders to evaluate and include in the bid the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revisions to the SWPPP. The successful bidder shall also include in his bid the cost of monitoring as required by the Permit.

Where applicable to the work of this contract, District shall make available to Contractor a copy of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity (the "Permit"). Contractor shall obtain the Permit from the District prior to bidding on this contract. District shall also provide the Contractor with a copy of the Storm Water Pollution Prevention Plan (SWPPP) at least two weeks prior to the opening of bids. Contractor shall be responsible for implementing and complying with the provisions of the Permit and the SWPPP pursuant to Article 69 of the General Conditions hereof, including requirements specified in other parts of the contract documents. It shall be the

Contractor's responsibility to evaluate and include in the bid the cost of compliance with the SWPPP and the cost of monitoring as required by the Permit.

### **21. Ethics in Bidding**

The District expects the bidders to maintain high ethical standards in engaging in the competitive bidding process. The bid amount of one bidder should not be divulged to another before the award of the subcontract or order, nor should it be used by Contractor to secure a lower proposal from another bidder on that project (bid shopping). Subcontractors or Suppliers should not request information for the Contractor regarding any sub-bid in order to submit a lower proposal on that project (bid peddling). District will consider any bidder found to be engaging in such practices to be a non-responsible bidder and may reject its bid on that ground.

### **22. Substitutions and Special Brand Names**

In accordance with Public Contract Code section 3400 "prior to or after the award of the contract", the district must provide for "submission of data substantiating a request for a substitution of 'an equal' item." Therefore, no later than thirty-five (35) days after award of the contract, if the bidder is requesting substitution of "an equal" item or product or work, the make and grade of the item, product or work which is to be substituted shall be provided to the District representative. The documentation submitted must include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item or product or work and substantiates that it is an "or equal" to the specified item or product or work. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution will reduce or increase the contract price. The documentation submitted must also include information regarding the durability and life cycle cost of the substituted item, product or work. Substantiating data shall include a signed affidavit from the Contractor stating that the substituted item or product or work is equivalent to the specified item or product or work in every way except as listed on the affidavit. Whenever possible, the same substitution information is to be included in the sealed bid submittal package. Failure to submit all the needed substantiating data, including the signed affidavit, may result in a determination that the bid is nonresponsive. **BIDDERS ARE SPECIFICALLY NOTIFIED THAT THE SUBMISSION OF THIS DOCUMENTATION IN NO WAY OBLIGATES THE DISTRICT OR IT'S REPRESENTATIVE TO REVIEW SUCH DOCUMENTATION PRIOR TO CONTRACT AWARD. FURTHERMORE, IF A PROPOSED SUBSTITUTION IS REJECTED, BIDDER SHALL BE RESPONSIBLE TO PROVIDE THE ITEM OR PRODUCT OR WORK AS ORIGINALLY SPECIFIED AT NO ADDITIONAL COST TO THE DISTRICT. DISTRICT HAS THE COMPLETE AND SOLE DISCRETION TO DETERMINE IF AN ITEM OR ARTICLE IS AN EQUAL ITEM.**

### **23. Fingerprinting**

By law it is the District's responsibility to determine whether a contractor must provide fingerprint certification. Pursuant to Education Code section 45125.2, the District considers the totality of the circumstances in order to determine if fingerprinting of employees of a contractor working on a school site is required. Factors to be considered include the length of time the contractor's employees are on school grounds, whether students are in proximity with the location where the contractor's employees are working, and whether the contractor's employees are working alone or with others. **A determination regarding whether fingerprint certification is required is contained in the special conditions.**

#### **24. Labor Compliance Program.**

**This contract is  /is not  subject to a labor compliance program,** as described in subdivision (b) of Section 1771.5 of the Labor Code. If this contract is subject to the requirements of Section 1771.7 of the Labor Code, the District is required to initiate and enforce a labor compliance program, as described in subdivision (b) of Section 1771.5 of the Labor Code. The law requires that District's labor compliance program shall include, but not be limited to, the following requirements:

- (a) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.
- (b) A pre-job conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.
- (c) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.
- (d) The District shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.
- (e) The District shall withhold contract payments when payroll records are delinquent or inadequate.
- (f) The District shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

The District shall enforce a labor compliance program. A copy of the labor compliance program as currently adopted by the District is included with these bid documents. The labor compliance program which is approved by the Director of the Department of Industrial Relations (the "Labor Compliance Program") is incorporated by reference into the Contract and it will be enforced as required by state law and regulations and the Director of the Department of Industrial Relations.

In accordance with subdivision (b)(1) of Section 1771.5 of the Labor Code, the following notice is given: Contractor and any subcontractors are required to review and comply with the provisions of the California Labor Code, Part 7, Chapter 1, beginning with Section 1720, and the regulations of the Department of Industrial Relations implementing those provisions as more fully discussed in the Contract Documents and the labor compliance program as currently adopted by the District which is included with the bid documents. These statutory and regulatory provisions contain specific requirements, for example, concerning the determination and payment of prevailing wages, retention, inspection and auditing of payroll records, use of apprentices, payment of overtime compensation, securing of workers compensation insurance, and various criminal penalties or fines which may be imposed for violations of the requirements of the chapter. Submission of a bid constitutes Contractor's representation that it has thoroughly reviewed these requirements.

**25. Disabled Veterans Participation Goals.**

This contract is  /is not  subject to **Disabled Veterans Participation Goals**, in accordance with Education Code section 17076.11, this District has a participation goal for disabled veteran business enterprises (“DVBE”) of at least 3 percent per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the District. Prior to, and as a condition precedent for final payment under any contract for such a project, the Contractor shall provide appropriate documentation to the District identifying the amount paid to disabled veteran business enterprises in conjunction with the contract, so that the District can assess its success at meeting this goal.

The Office of Small Business and DVBE Certification (OSDC), (916)-375-4940, [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus), is an information resource to assist bidders in locating Disabled Veteran Business Enterprises.

(Please note: while the OSDC may be used as a resource, the DVBE Program administered by OSDC applies to state contracts not local agency (school district) contracts.)

**26. Tobacco-Free Policy**

The Governing Board of the La Mesa-Spring Valley School District, in order to create a clean, healthy environment for students and employees, has prohibited the use of tobacco products on District Property or in District Vehicles. All District consultants, contractors and vendors shall inform their employees and agents that are performing services for the District, of the District’s objectives of a smoke free environment (Board Policy 1331, Ed Code 48901).

# Scope of Work

## **Backflow Prevention Device Installation, Replacement, and Certification** La Mesa Spring Valley School District

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### **1. Project Overview**

The La Mesa Spring Valley School District (“District”) is soliciting proposals from qualified contractors to provide all labor, materials, equipment, transportation, and services necessary to install new backflow prevention assemblies, perform optional removal and replacement of existing assemblies, and certify all backflow devices District wide.

The purpose of this project is to ensure compliance with applicable codes and regulations and to maintain the safety and integrity of the District’s potable water systems.

### **2. Project Sites**

#### **2.1 Base Bid – New Installations (42 Devices)**

The Contractor shall furnish and install a total of forty-two (42) new Zurn 975XL2 backflow prevention assemblies at the following school sites:

- Rolando Elementary School  
6925 Tower St., La Mesa 91942
- STEAM Academy  
1001 Leland St., Spring Valley, CA 91977
- Maryland Avenue Elementary School  
5400 Maryland Ave., La Mesa, CA 91942
- Murray Manor Elementary School  
8305 El Paso, St., La Mesa, CA 91942
- Northmont Elementary School  
9405 Gregory St., La Mesa, CA 91942

*(Note: Devices will be distributed across the listed sites as indicated in the project plans.)*

#### **2.2 Additive Alternate #1 – Removal and Replacement (123 Devices)**

An additive bid item is included for the removal of one hundred twenty-three (123) existing Zurn 950XL backflow devices and replacement with Zurn 975XL2 assemblies.

This work is not part of the Base Bid and will be performed only upon written authorization by the District.

The removal and replacement work will occur at the following sites:

- Avondale Elementary School (14)
- Bancroft Elementary School (5)
- Casa de Oro Elementary School (5)
- Fletcher Hills Elementary School (7)
- Highlands Elementary School (15)
- Kempton Elementary School (5)
- La Mesa Dale Elementary School (9)
- La Presa Elementary School (6)
- Lemon Avenue Elementary School (8)
- Murdock Elementary School (4)
- Rancho Elementary School (11)
- La Mesa Arts Academy (19)
- Spring Valley Academy (15)

### **3. Scope of Work**

#### **3.1 New Backflow Device Installation (Base Bid)**

The Contractor shall:

- Furnish and install Zurn 975XL2 backflow prevention assemblies as specified in the plans and product data sheets
- Install new concrete pads for each backflow assembly
- Provide and install all required piping, fittings, valves, and appurtenances necessary for a complete and operational system
- Furnish and install protective cages/enclosures for each backflow device
- Ensure all installations are level, secure, and compliant with manufacturer recommendations and applicable codes

#### **3.2 Removal and Replacement (Additive Alternate #1)**

If authorized by the District, the Contractor shall:

- Remove existing Zurn 950XL backflow devices
- Furnish and install Zurn 975XL2 replacement devices
- Modify or replace piping and appurtenances as necessary to accommodate new devices
- Restore all affected areas to equal or better condition

All removed backflow devices shall:

- Remain the property of the District
- Be palletized and delivered by the Contractor to the District Operations Center:  
3838 Conrad Drive, Spring Valley, CA 91977

### **3.3 Backflow Certification for All Devices (Additive Alternative #2)**

The Contractor shall:

- Test and certify a total of one hundred sixty-five (165) backflow prevention assemblies District-wide
- Perform all testing using a certified backflow tester in accordance with local water authority requirements
- Provide all required documentation, test reports, and certifications to the District
- Coordinate with the applicable water authority for compliance and reporting, if required

### **4. Plans and Specifications**

- Project plans and product data sheets have been provided and shall be strictly followed
- In the event of discrepancies, the Contractor shall notify the District for clarification prior to proceeding

### **5. Contractor Responsibilities**

The Contractor shall:

- Provide all labor, materials, tools, equipment, transportation, and supervision necessary to complete the work
- Coordinate all work with District staff to minimize disruption to school operations
- Maintain a clean, safe, and secure work environment at all times
- Comply with all applicable federal, state, and local codes, regulations, and standards

### **6. Work Hours and Site Coordination**

- Work shall be coordinated with the District and individual school sites
- All work shall be complete before January 4<sup>th</sup>, 2027
- Work may be required outside of regular school hours to minimize disruption to campus operations
- Contractor shall check in with the school front office upon arrival at each site

## 7. Closeout Requirements

Upon completion, the Contractor shall provide:

- Final backflow test and certification reports
- As-built documentation, if applicable
- Confirmation that all systems are fully operational
- Delivery of all removed devices to the District Operations Center

**DOCUMENT 00300  
BID FORM**

(To be executed by Bidder and submitted with bid)

**Districtwide Plumbing Upgrades-Phase 2  
FB #25/26-002**

TO: **La Mesa-Spring Valley School District**, acting by and through its Governing Board, herein called the "District":

1. Pursuant to and in compliance with your Notice to Contractors Calling for Bids and the other documents relating thereto, the undersigned bidder, having thoroughly examined and familiarize himself with the terms of the contract, the local conditions affecting the performance of the contract and the cost of the work at the place where the work is to be done, and with the drawings and specifications and other contract documents, hereby proposes and agrees to perform, within the time stipulated, the contract, including all of its component parts, and everything required to be performed, and to provide and furnish any and all of the labor, materials, tools, expendable equipment, and all utility and transportation services necessary to perform the contract and complete in a workmanlike manner all of the work required in connection with all in strict conformity with the drawings and specifications and other contract documents, including addendum(s) on file at the office of the La Mesa-Spring Valley School District, Business Services, Purchasing Department, 4750 Date Avenue, La Mesa, CA 91942 of said District per the bid amount on the pricing matrix.

**BID AWARD:** The contract award will be determined on the lowest total project bid and will be awarded as one contract. The grand total must match the sum of the extended prices from the bid form pages.

**BID PRICE GUARANTEED:** Prices quoted herein are to remain firm through June 30, 2026 or the establishment of an agreement between the parties.

**DOCUMENTS TO SUBMIT:**

A	Bid Form
B	Certification of DIR Registration
C	Bid Bond
D	Designation of Subcontractors
E	Non-collusion Affidavit
F	Workers' Compensation Certificate
G	Addendum[s] signed
H	Answers to questions signed
I	References

**BID FORM**

**Base Bid:**

The Base Bid for the La Mesa Spring Valley School District project consists of furnishing and installing a total of forty-two (42) new Zurn 975XL2 backflow prevention assemblies across multiple school sites. The work includes installation of complete, operational systems with all necessary piping, fittings, valves, concrete pads, and protective enclosures, in full compliance with applicable codes and manufacturer specifications.

The installations will be performed at the following sites:

- Rolando Elementary School
- STEAM Academy
- Maryland Avenue Elementary School
- Murray Manor Elementary School
- Northmont Elementary School

Devices will be distributed among these campuses as indicated in the project plans. The scope also requires all systems to be properly installed, secured, and ready for operation as part of the District's effort to maintain safe and compliant potable water systems.

	<b>BID PRICE (IN WRITTEN FORM)</b> Said Sum includes all applicable taxes and costs	<b>BID PRICE (IN NUMBERS)</b> Said Sum includes all applicable taxes and costs
Rolando		
STEAM		
Maryland Ave		
Murray Manor		
Northmont		
<b>TOTAL BASE BID:</b>		

**Additive Alternatives:**

The Additive Alternate #1 includes the removal and replacement of one hundred twenty-three (123) existing backflow prevention assemblies with new Zurn 975XL2 devices, contingent upon written authorization from the District. This work is not part of the Base Bid and will only proceed if approved.

Additive Alternative #2: The certification portion of the project requires the Contractor to test and certify a total of one hundred sixty-five (165) backflow prevention assemblies across the District (sites listed in scope). All testing must be performed by a certified backflow tester in accordance with applicable local water authority requirements. This work is not part of the Base Bid and will only proceed if approved.

	<b>BID PRICE (IN WRITTEN FORM)</b> Said Sum includes all applicable taxes and costs	<b>BID PRICE (IN NUMBERS)</b> Said Sum includes all applicable taxes and costs
Additive Alternative #1- Removal & Replacement		
Additive Alternative #2- Backflow Certification		

**Total Project Bid Price (Base Bid, Additive Alternatives #1 & #2, all applicable taxes and costs)**

**Price in Written Form** \_\_\_\_\_

**Price in Numbers** \_\_\_\_\_

3. It is understood that the District reserves the right to reject this bid and that this bid shall remain open and not be withdrawn for the period specified in the Notice to Contractors Calling for Bids.
4. Bidder's must have done similar work for municipalities for at least 3 years. Bidders must provide work history.
5. Bidder's must provide references for at least three (3) similar projects within the last year.
6. The required bid security is attached hereto.
7. Non-collusion affidavit is attached hereto.
8. The required list of proposed subcontractors is attached hereto.

9. It is understood and agreed that the bidder shall provide the addresses, telephone numbers, and license numbers of all listed subcontractors within one business day of bid opening or the bidder's bid may be rejected as nonresponsive.

10. It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned after the opening of the bid, and within the time this bid is required to remain open, or at any time thereafter before this bid is withdrawn, the undersigned will execute and deliver to the District a contract in the form attached hereto in accordance with the bid as accepted. The undersigned will also furnish and deliver to the District the Performance Bond and Payment Bond for Public Works as specified, all within five (5) days after receipt of notification of award. The work under the contract shall be commenced by the undersigned bidder, if awarded the contract, on the date to be stated in the District's Notice to the Contractor to Proceed, and shall be completed by the Contractor in the time specified in the contract documents.

11. Notice of acceptance or requests for additional information should be addressed to the undersigned at the address stated below:

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12. The names of all persons interested in the foregoing proposal as principals are as follows:

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(IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a copartnership, state true name of firm, also names of all individual copartners comprising the firm; if bidder or other interested person is an individual, state first and last names in full.)

13. Bidder certifies that he is licensed in accordance with the law providing for the registration of Contractors, License No. \_\_\_\_\_, Expiration Date \_\_\_\_\_, class of license \_\_\_\_\_

14. The District reserves the right to hire a certified DSA approved inspector to inspect any or all projects undertaken by the successful bidder, at any point during the term of the contract, to check for contract compliance.

If non-compliance is discovered during such an inspection, the Contractor will be responsible for all inspection fees associated with that project and all costs related to remedy the discrepancy to bring it into compliance with the contract and satisfaction of the District.

I, \_\_\_\_\_, the \_\_\_\_\_ of the bidder, hereby certify under penalty of perjury under the laws of the State of California, that all of the information submitted by the bidder in connection with this bid and all of the representations made herein are true and correct.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ County, California.

Proper Name of Bidder \_\_\_\_\_

By \_\_\_\_\_  
Signature of Bidder

**NOTE:** If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signatures of authorized officers or agents and the document shall bear the corporate seal; if bidder is a partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, his or her signature shall be placed above.

Business Address: \_\_\_\_\_

Place of Residence: \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**END OF DOCUMENT**

**CERTIFICATION OF CONTRACTOR AND  
SUBCONTRACTOR DIVISION OF INDUSTRIAL RELATIONS REGISTRATION**

(To be executed by Bidder and submitted with bid)

Pursuant to Labor Code Section 1725.5, a contractor or subcontractor must be registered with the Department of Industrial relations in order to bid on, to be listed in a bid proposal or to engage in the performance of any defined public work contract.

I \_\_\_\_\_, \_\_\_\_\_ certify that  
(Name) (Title)

\_\_\_\_\_ is currently registered as a contractor with the  
(Contractor Name)

Department of Industrial Relations (DIR):

Contractor's DIR Registration Number \_\_\_\_\_  
Expiration date June 30, 20\_\_\_\_

Contractor further acknowledges:

1. Contractor shall maintain DIR registered status for the duration of the project without a gap in registration.
2. Contractor shall note in its invitation to bid the DIR's registration requirement for all subcontractors and their subcontractors.
3. Contractor shall ensure that all subcontractors are registered at time of bid opening and maintain registered status for the duration of the project.
4. Contractor is to verify the DIR Registration Number for all subcontractors on the project within 24 hours of the bid opening.
5. Contractor may need to substitute any subcontractor with a DIR registered contractor if the listed subcontractor is unable to perform the work.

Failure to comply with any of the above may result in a determination of non-responsiveness.

I declare under penalty of perjury under California law that the foregoing is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**DOCUMENT 00410  
BID BOND**

(To be executed by Bidder and submitted with bid)

**KNOW ALL MEN BY THESE PRESENTS: THAT we, \_\_\_\_\_, as**

**Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the School District, hereinafter called the District, in the penal sum of \_\_\_\_\_ PERCENT (10%) OF THE TOTAL**

**AMOUNT OF THE BID of the Principal submitted to the said District for the work described below for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.**

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated \_\_\_\_\_, 20\_\_\_\_ for **Districtwide Plumbing Work FB #25/26-002**

NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within sixty (60) days after said opening; and, if the Principal be awarded the contract, and shall within the period specified therefore, or, if no period be specified, within five (5) days after the prescribed forms are presented to him for signature, enter into a written contract with the District, in accordance with the bid as accepted and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract and for the payment for labor and materials used for the performance of the contract, or in the event of the withdrawal of said bid within the period specified or the failure to enter into such contract and give such bonds within the time specified, if the Principal shall pay the District the difference between the amount specified in said bid and the amount for which the District may procure the required work and/or supplies, if the latter amount be in excess of the former, together with all costs incurred by the District in again calling for bids, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract on the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

In the event a suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the District in such a suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly assigned by its undersigned representative, pursuant to authority of its governing body.

PRINCIPAL \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

SURETY: \_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in Fact

(Attach Attorney-in-Fact Certificate)

**DOCUMENT 00430**  
**DESIGNATION OF SUBCONTRACTORS**

In compliance with the Subletting and Subcontracting Fair Practices Act (chapter 4 (commencing at section 4100), part 1, division 2 of the Public Contract Code of the State of California) and any amendments thereof, each bidder shall set forth below: (a) the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement to be performed under this contract or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications in an amount in excess of one half of one percent of the prime contractor's total bid and (b) the portion of the work which will be done by each subcontractor under this contract. The prime contractor shall list only one subcontractor for each such portion as is defined by the prime contractor in this bid. (c) the California contractor's license number; **and effective for all contracts awarded on or after April 1, 2015, (d) DIR Registration Number.**

If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one half of one percent of the prime contractor's total bid, he shall be deemed to have agreed that he is fully qualified to perform that portion himself, and that he shall perform that portion himself.

No prime contractor whose bid is accepted shall (a) substitute any subcontractor, (b) permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by any one other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work in excess of one half of one percent of the prime contractor's total bid as to which his original bid did not designate a subcontractor, except as authorized in the Subletting and Subcontracting Fair Practices Act. Subletting or subcontracting of any portion of the work in excess of one half of one percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the authority awarding this contract setting forth the facts constituting the emergency or necessity.

(Continued on next page)



**NON-COLLUSION DECLARATION**  
(To be executed by Bidder and submitted with bid)

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Name of Company)

the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purposes.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this:

day of \_\_\_\_\_  
City of \_\_\_\_\_, State of \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

## OFF-ROAD DIESEL-FUELED FLEET CERTIFICATION

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the  
\_\_\_\_\_ ("District") and \_\_\_\_\_  
("Contractor" or "Bidder")

Title 13 CCR sections 2449, 2449.1, and 2449.2, in compliance with Government Code sections 11346.2, subdivision (a)(3), and 11346.8, subdivision (c), applies to construction contractors who own or operate within California any vehicles with a diesel-fueled or alternative diesel fueled off-road compression-ignition engine with maximum power (max hp) of 25 horsepower (hp) or greater provided that the vehicle cannot be registered and driven safely on-road or was not designed to be driven on-road, even if it has been modified so that it can be driven safely on-road.

Section 2449(i), in relevant part, provides:

- (1) For a project involving the use of vehicles subject to this regulation, the prime contractor must obtain copies of the valid Certificate of Reported Compliance with the Regulation for In-Use Off-Road Diesel-Fueled Fleets for the fleet selected for the contract and their listed subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet.
- (2) No prime contractor or public works awarding body, as applicable, shall enter into a contract with a fleet for which it does not have a valid Certificate of Reported Compliance for the fleet and its listed subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet.
- (3) The Certificates of Reported Compliance received by the prime contractor for a project must be retained for three (3) years after that project's completion. Upon request by California Air Resources Board ("CARB"), these records must be provided to CARB within five (5) business days of the request.
- (4) Situations in which prime contractors or public works awarding bodies, as applicable, are contracting for projects that are considered emergency operations, as defined in section 2449(c)(18), are exempt from the requirements in section 2449(i)(1)-(3), but must still retain records verifying vehicles subject to the regulation that are operating on the emergency operations project are actually being operated on the project for emergency operations only. These records must include a description of the emergency, the address or a description of the specific location of the emergency, the dates on which the emergency operations were performed, and an attestation by the fleet that the vehicles are operated on the project for emergency operations only.

Section 2449(j), in relevant part, also states:

- (1) Between March 1 and June 1 of each year, a prime contractor must collect new valid Certificates of Reported Compliance for the current compliance year, as defined in section 2449(n), from all fleets that have an ongoing contract with the prime contractor as of March 1 of that year. Prime contractors must not write contracts to evade this requirement.

(2) Prime contractors shall only allow fleets with valid Certificates of Reported Compliance on the prime contractor's job sites.

(3) If the prime contractor discovers that any fleet intending to operate vehicles subject to this regulation for the prime contractor does not have a valid Certificate of Reported Compliance, as defined in section 2449(n), or if the prime contractor observes any noncompliant vehicles subject to the regulation on the prime contractor's job site, then the prime contractor must report specified information regarding the fleet to CARB within five (5) business days of such discovery.

(4) Upon request by CARB, the prime contractor must immediately disclose to CARB the name and contact information of each responsible party for all vehicles subject to this regulation operating at the job site or for the prime contractor.

(5) The prime contractor shall prominently display signage for any project where vehicles subject to this regulation will operate for eight (8) calendar days or more. The signage must be posted by the eighth calendar day from which the first vehicle operates. The signage will be in lettering larger than size 14-point type and displayed in a conspicuous place where notices to employees are customarily posted at the job site or where there is employee foot traffic. If one of the above locations is also viewable by the public, it should be posted at that location. The signage must include specified information regarding idling regulations for In-Use Off-Road Diesel-Fueled Fleets with directions on how to report observed noncompliance of the provided regulations to CARB.

I am aware of the provisions of Title 13 CCR sections 2449, 2449.1, and 2449.2, which apply to every contractor who owns or operates off-road diesel fleet vehicles in California, and I will comply with such provisions, including providing Certificate(s) of Reported Compliance for In-Use Off-Road Diesel-Fueled Fleets for the fleet selected for the contract and their listed subcontractors, if applicable, with its bid.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Bidder must attach valid Certificate(s) Reported Compliance with the Regulation for In-Use Off-Road Diesel-Fueled Fleets provided by CARB for the fleet selected for the contract and their listed subcontractors, if applicable, to this form.**

**CONTRACTOR'S CERTIFICATE REGARDING  
WORKERS' COMPENSATION**  
(To be executed by Bidder and submitted with bid)

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.

(b) By securing from the Director of Industrial Relations a certificate of consent to self insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company)

(In accordance with article 5 (commencing at section 1860), chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

**DRUG-FREE WORKPLACE CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the La Mesa-Spring Valley Schools ("District") and \_\_\_\_\_ ("Contract" or "Project").

This Drug-Free Workplace Certification form is required from the successful Bidder pursuant to Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency and public school district under California law and requires all contractors on District projects to comply with the provisions and requirements of the Drug-Free Workplace Act of 1990.

Contractor must also comply with the provisions of Health & Safety Code section 11362.3 which prohibits the consumption or possession of cannabis or cannabis products in any public place, including school grounds, and specifically on school grounds while children are present.

Contractor shall certify that it will provide a drug-free workplace by doing all of the following:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition.

b. Establishing a drug-free awareness program to inform employees about all of the following:

- (1) The dangers of drug abuse in the workplace.
- (2) The person's or organization's policy of maintaining a drug-free workplace.
- (3) The availability of drug counseling, rehabilitation, and employee-assistance programs.
- (4) The penalties that may be imposed upon employees for drug abuse violations.

c. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by section 8355(a), and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of the aforementioned Act. I acknowledge that I am aware of the provisions of and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990 and Health and Safety Code section 11362.3.

Date: \_\_\_\_\_  
 Proper Name of Contractor: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**END OF DOCUMENT**

**TOBACCO-FREE ENVIRONMENT CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the La Mesa-Spring Valley Schools ("District") and \_\_\_\_\_ ("Contractor" or "Bidder") ("Contract" or "Project").

This Tobacco-Free Environment Certification form is required from the successful Bidder. Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq., Business and Professions Code section 22950 et seq., and District Board policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school-owned vehicles and vehicles owned by others while on District property. The prohibition on smoking includes the use of any electronic smoking device that creates an aerosol or vapor, in any manner or in any form, and the use of any oral smoking device for the purpose of circumventing the prohibition of tobacco smoking. Further, Health & Safety Code section 11362.3 prohibits the smoking or use of cannabis or cannabis products in any place where smoking tobacco is prohibited. I acknowledge that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents, to use tobacco and/or smoke on the Project site.

Date: \_\_\_\_\_  
Proper Name of Contractor: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

END OF DOCUMENT

**DRUG AND ALCOHOL-FREE SCHOOLS CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the La Mesa-Spring Valley Schools (“District”) and \_\_\_\_\_ (“Contractor” or “Bidder”) (“Contract” or “Project”).

Pursuant to, without limitation, District Board policies, all District sites, including the Project site, are drug and alcohol-free schools. Possession, use, or sale of drugs and alcohol is prohibited at any time in district-owned or leased buildings, on district property, and in district vehicles unless otherwise permitted by law.

I acknowledge that I am aware of the District’s policy regarding drug and alcohol-free schools, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm’s employees, agents, subcontractors, or my firm’s subcontractors’ employees or agents, to possess, use or sell:

1. Any substance which may not lawfully be possessed, used, or sold in California.
2. Cannabis or cannabis products (Health and Safety Code, § 11362.3; 21 USC §§ 812, 844).
3. Alcohol beverages, unless approved by the Superintendent or designee for limited purposes specified in Business and Professions Code section 25608.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

DOCUMENT 00 45 46.07  
**HAZARDOUS MATERIALS CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between La Mesa-Spring Valley Schools ("District") and \_\_\_\_\_ ("Contractor" or "Bidder") ("Contract" or "Project").

1. Contractor hereby certifies that no asbestos, or asbestos-containing materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency 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, ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.

2. Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

3. Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (0.1%) asbestos shall be defined as asbestos-containing material.

4. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

5. All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing New Hazardous Material will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

6. Contractor has read and understood the document titled, "Hazardous Materials Procedures & Requirements" and shall comply with all the provisions outlined therein.

7. Contractor certifies that it is knowledgeable of, and shall comply with, all laws applicable to the Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work.

Date: \_\_\_\_\_  
Proper Name of Contractor: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

END OF DOCUMENT

DOCUMENT 00 45 46.08  
**LEAD-BASED MATERIALS CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the La Mesa-Spring Valley Schools ("District") and \_\_\_\_\_ ("Contractor" or "Bidder") ("Contract" or "Project").

This certification provides notice to the Contractor that:

- (1) Contractor's work may disturb lead-containing building materials.
- (2) Contractor shall notify the District if any work may result in the disturbance of lead-containing building materials.
- (3) Contractor shall comply with the Renovation, Repair and Painting Rule, if lead-based paint is disturbed in a six-square-foot or greater area indoors or a 20-square-foot or greater area outdoors.

**1. Lead as a Health Hazard**

Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburse when paint chips, chinks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, CONTRACTOR IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1978 are presumed to contain some lead-based paint until sampling proves otherwise.

**2. Overview of California Law**

Education Code section 32240 et seq. is known as the Lead-Safe Schools Protection Act. Under this act, the Department of Health Services is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to those regulations. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. Regulated work includes, but is not limited to, the following:

- a. Demolition or salvage of structures where lead or materials containing lead are present;
- b. Removal or encapsulation of materials containing lead;
- c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
- d. Installation of products containing lead;
- e. Lead contamination/emergency cleanup;
- f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
- g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532.1).

**Contractor shall notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials shall be coordinated through the District. A signed copy of this Certification shall be on file prior to beginning Work on the Project, along with all current insurance certificates.**

### 3. Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act

The EPA requires lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint. Pursuant to the Renovation, Repair and Painting Rule (RRP), renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with training by a EPA-accredited training provider, and fully and adequately complying with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The RRP requirements apply to all contractors who disturb lead-based paint in a six-square-foot or greater area indoors or a 20-square-foot or greater area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

### 4. Contractor's Liability

If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

**THE CONTRACTOR HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT IT:**

**1. HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY;**

**2. IS KNOWLEDGEABLE REGARDING AND WILL COMPLY WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL, OF LEAD.**

**THE UNDERSIGNED WARRANTS THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE CONTRACTOR. THE DISTRICT MAY REQUIRE PROOF OF**

SUCH AUTHORITY.

Date:

Proper Name of Contractor:

Signature:

Print Name:

Title:

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END OF DOCUMENT

**DOCUMENT 00500  
AGREEMENT**

THIS AGREEMENT, made this \_\_\_th day of \_\_\_\_\_ in the County of San Diego, State of California, by and between the **La Mesa-Spring Valley School District**, hereinafter called the District, and \_\_\_\_\_ hereinafter called the Contractor, **WITNESSETH** that the District and the Contractor for the considerations stated herein agree as follows:

**ARTICLE 1 SCOPE OF WORK.**

The Contractor shall perform within the time stipulated the contract as herein defined, and shall provide all labor, materials, tools, utility services, and transportation to complete in a workmanlike manner all of the work required in connection with the following titled project:

**Districtwide Plumbing Upgrades-Phase 2  
FB #25/26-002**

in strict compliance with the contract documents as specified in Article 5 below.

**ARTICLE 2 TIME FOR COMPLETION.**

(a) The work shall be commenced on the date stated in the District's notice to proceed, as provided in Section A of the Special Conditions. As specified in District's notice to proceed, the work shall be completed within the specified calendar days from and after the date stated in the Bid Timeline and Calendar, which shall include 10 working days for normal bad weather, taking into consideration the seasonal weather for the time when construction will be undertaken.

(b) In entering into this Agreement, Contractor acknowledges and agrees that the construction duration stipulated herein is adequate and reasonable for the size and scope of the project.

**ARTICLE 3 – PAY QUANTITIES AND UNIT PRICES.**

The District shall pay to the Contractor for all work done on the basis of final computations for all work acceptably completed according to this contract, at the unit price shown in the proposal for the quantity actually installed.

**ARTICLE 4 – INSPECTOR.**

The District reserves the right to hire a certified DSA approved inspector to inspect any or all projects undertaken by the Contractor, at any point during the term of the contract, to check for contract compliance.

If non-compliance is discovered during such an inspection, the Contractor will be responsible for all inspection fees associated with that project and all costs related to remedy the discrepancy to bring it into compliance with the contract and satisfaction of the District.

**ARTICLE 5 COMPONENT PARTS OF THE CONTRACT.**

The contract entered into by this Agreement consists of the following contract documents (referred to herein as the contract or the contract documents), all of which are component parts of the contract as if herein set out in full or attached hereto:

- Notice to Contractors Calling for Bids
- Information for Bidders
- Bid, as accepted
- Certification of Contractor and Subcontractor Division of Industrial Relations Registration
- Designation of Subcontractors
- Non-collusion Affidavit
- Agreement
- Performance Bond
- Payment Bond for Public Works
- Contractor's Certificate Regarding Workers' Compensation
- General Conditions and Special Conditions
- Questions and Answers
- Specification
- Addendum(s) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, as issued
- Drawings
- Labor Compliance Program (if applicable)

All of the above named contract documents are intended to be complementary. Work required by one of the above named contract documents and not by others shall be done as if required by all. This agreement shall supersede any prior agreement of the parties.

**ARTICLE 6 – PREVAILING WAGES.**

Contractor shall be required to pay the prevailing rate of wages in accordance with the labor code which such rates may be obtained online at <http://www.dir.ca.gov/dslr> and which must be posted at the job site.

IN WITNESS WHEREOF, this Agreement has been duly executed by the above named parties, on the day and year first above written.

**CONTRACTOR:**

**DISTRICT:**

(Company Name)

**La Mesa-Spring Valley School District**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Tina Douglas  
Assistant Superintendent, Business Services

Contractor's License No. \_\_\_\_\_

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is:

**Contractors' State License Board**  
**9821 Business Park Drive Sacramento CA 95827**  
**(916)255-3900; <http://www.cslb.ca.gov>**  
**(Business & Professions Code, section 7030)**  
 Agreement page 2 of 2

**PERFORMANCE BOND  
(100% of Contract Price)**

**(Note: Contractor must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the La Mesa-Spring Valley Schools, ("District") and \_\_\_\_\_ ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

**Districtwide Plumbing Upgrades-Phase 2 FB 25/26-002**

\_\_\_\_\_ ("Project" or "Contract") which Contract dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract.

NOW, THEREFORE, the Principal and \_\_\_\_\_ ("Surety") are held and firmly bound unto the Board of the District in the penal sum of

\_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Promptly perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

Or, at the District's sole discretion and election, the Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the District of the lowest responsible bidder, arrange for a contract between such bidder and the District and make available as Work progresses sufficient funds to pay the cost of completion less the "balance of the Contract Price," and to pay and perform all obligations of Principals under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by the District under the Contract and any modifications thereto, less the amount previously paid by the District to the Principal, less any withholdings by the District allowed under the Contract. District shall not be required or obligated to accept a tender of a completion contractor from the Surety for any or no reason. The condition of the obligation is such that, if the above bound Principal, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

Surety expressly agrees that the District may reject any contractor or subcontractor proposed by Surety to fulfill its obligations in the event of default by the Principal. Surety shall not utilize Principal in completing

the Work nor shall Surety accept a Bid from Principal for completion of the Work if the District declares the Principal to be in default and notifies Surety of the District's objection to Principal's further participation in the completion of the Work.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond. The Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond by any overpayment or underpayment by the District that is based upon estimates approved by the Architect. The Surety does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

_____	_____
Principal	Surety
_____	_____
By	By
	_____
	Name of California Agent of Surety
	_____
	Address of California Agent of Surety
	_____
	Telephone No. of California Agent of Surety

**Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

END OF DOCUMENT

**PAYMENT BOND**

**Contractor's Labor & Material Bond**

**(100% Of Contract Price)**

**(Note: Contractor must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the La Mesa-Spring Valley Schools, ("District") and \_\_\_\_\_, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

**Districtwide Plumbing Upgrades-Phase 2 FB 25/26-002**

("Project" or "Contract") which Contract dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to one hundred percent (100%) of the Contract price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the Civil Code, and division 2, part 7, of the Labor Code.

NOW, THEREFORE, the Principal and \_\_\_\_\_

\_\_\_\_\_ ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of its subcontractors, or their heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal or any of his or its subcontractors of any tier under Section 13020 of the Unemployment Insurance Code with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does

hereby waive notice of any such change, extension, alteration, or addition.  
IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Principal	Surety
By	By
	_____ Name of California Agent of Surety
	_____ Address of California Agent of Surety
	_____ Telephone No. of California Agent of Surety

**Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

END OF DOCUMENT

DOCUMENT 00 45 46.10  
**CRIMINAL BACKGROUND INVESTIGATION/  
FINGERPRINTING CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the La Mesa-Spring Valley Schools ("District") and \_\_\_\_\_ ("Contractor" or "Bidder") ("Contract" or "Project").

The undersigned does hereby certify to the District that I am a representative of the Contractor currently under contract with the District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Contractor.

Contractor certifies that it has taken at least one of the following actions (check all that apply):

Pursuant to Education Code section 45125.2(a), Contractor has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Contractor's employees, Subcontractors or suppliers and District pupils at all times; and/or

Pursuant to Education Code section 45125.2(a), Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice ("DOJ") has ascertained, or as described below, will ascertain, has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's and its subcontractors' or suppliers' employees is:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**NOTE:** If Contractor is a sole proprietor, and elects the above option, Contractor must have the above-named employee's fingerprints prepared and submitted by District for submission to the DOJ, in accordance with Education Code section 45125.1(h). No work shall commence until such determination by DOJ has been made.

Pursuant to Education Code section 45125.2(a), the District will take appropriate steps to protect the safety of any pupils that may come in contact with Contractor's employees, subcontractors or suppliers so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.2 shall not apply to Contractor under the Contract.

The Work on the Contract is either (i) at an unoccupied school site and no employee of Contractor and/or subcontractor or supplier of any tier of the Contract shall come in contact with the District pupils or (ii) if Contractor's employees or any subcontractor or supplier of any tier of the Contract interacts with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee, so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Contractor under the Contract.

The Contractor, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its Subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the DOJ has determined (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When the Contractor performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. No work shall commence until the Department of Justice ascertains that Contractor's employees and any subcontractors' employees have not been convicted of a felony as defined in Education Code Section 45122.1.

**A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto as ATTACHMENT "A;" and/or**

The Contractor is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(h) with respect to all Contractor's employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and hereby agrees to the District's preparation and submission of fingerprints such that the DOJ may determine (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work shall commence until the Department of Justice ascertains that Contractor's employees and any subcontractors' employees have not been convicted of a felony as defined in Education Code Section 45122.1.

Contractor's responsibility for background clearance extends to all of its employees, Subcontractors or suppliers, and employees of Subcontractors or suppliers coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: \_\_\_\_\_  
Proper Name of Contractor: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[CONTINUED ON NEXT PAGE]

**ATTACHMENT "A"**

**List of Employees/Subcontractors**

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

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**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

If further space is required for the list of employees/subcontractors, attach additional copies of this page.

END OF DOCUMENT

DOCUMENT 00 72 13  
**GENERAL CONDITIONS**

**1. CONTRACT TERMS AND DEFINITIONS**

**1.1 Definitions**

Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:

**1.1.1 Adverse Weather:** Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, or extreme temperature conditions in excess of the norm for the location and time of year it occurred based on the closest weather station data averaged over the past five years, (2) that is unanticipated and would cause unsafe work conditions and/or is unsuitable for scheduled work that should not be performed during inclement weather (i.e., exterior finishes), and (3) at the Project.

**1.1.2 Allowance(s):** The Allowance Item(s) identified in the Bid Form and Proposal and included in the Contract Price. Any unused portion of the Allowance will revert to the District documented by a deductive Change Order. Contractor hereby authorizes the District to execute a unilateral deductive Change Order at or near the end of the Project for all or any portion of the Allowance not allocated.

**1.1.3 Allowance Expenditure Directive:** Written authorization for expenditure of an Allowance, if any. Contractor shall not bill for or be due any portion of an Allowance unless the District has identified specific work, Contractor has submitted a price for that work or the District has proposed a price for that work, the District has accepted the cost for that work, and the District has executed an Allowance Expenditure Directive incorporating that work.

**1.1.4 Approval, Approved, and/or Accepted:** Written authorization, unless stated otherwise.

**1.1.5 Architect (or “Design Professional in General Responsible Charge”):** The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the Design Professional in General Responsible Charge as defined in DSA PR 13-02 on this Project or the Architect’s authorized representative.

**1.1.6 As-Builts:** Reproducible blue line prints of drawings to be prepared on a monthly basis pursuant to the Contract Documents, that reflect changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed since the preceding monthly submittal. See **Record Drawings**.

**1.1.7 Bidder:** A contractor who intends to provide a proposal to the District to perform the Work of this Contract.

**1.1.8 Burdened:** The labor rate for Contractor or any Subcontractor inclusive of any and all burden costs including, but not limited to, health and welfare pay, vacation and holiday pay, pension contributions, training rates, benefits of any kind, insurance of any kind, workers’ compensation, liability insurance, truck expenses, supply expenses of any kind, payroll taxes, and any other taxes of any kind.

**1.1.9 Change Order:** A written order to the Contractor authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Contract Price or Contract Time.

**1.1.10 Claim:** A Contractor Claim within the meaning of Public Contract Code sections 9204 and/or 20104 et seq.

**1.1.11 Construction Change Directive:** A written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work.

**1.1.12 Construction Manager:** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.

**1.1.13 Construction Schedule:** The progress schedule of construction of the Project as provided by Contractor and approved by District.

**1.1.14 Contract, Contract Documents:** The Contract consists exclusively of the documents evidencing the agreement of the District and Contractor, identified as the Contract Documents. The Contract Documents consist of the following documents:

- 1.1.14.1 Notice to Bidders
- 1.1.14.2 Instructions to Bidders
- 1.1.14.3 Bid Form and Proposal
- 1.1.14.4 Bid Bond
- 1.1.14.5 Designated Subcontractors List
- 1.1.14.6 Site Visit Certification (if a site visit was required)
- 1.1.14.7 Non-Collusion Declaration
- 1.1.14.8 Off-Road Diesel-Fueled Fleet Certification (if applicable)
- 1.1.14.9 Notice of Award
- 1.1.14.10 Notice to Proceed
- 1.1.14.11 Agreement
- 1.1.14.12 Escrow of Bid Documentation
- 1.1.14.13 Escrow Agreement for Security Deposits in Lieu of Retention (if applicable)
- 1.1.14.14 Performance Bond
- 1.1.14.15 Payment Bond (Contractor's Labor & Material Bond)
- 1.1.14.16 General Conditions
- 1.1.14.17 Special Conditions (if applicable)
- 1.1.14.18 Project Labor Agreement (if applicable)
- 1.1.14.19 Hazardous Materials Procedures and Requirements
- 1.1.14.20 Workers' Compensation Certification
- 1.1.14.21 Prevailing Wage Certification
- 1.1.14.22 Disabled Veteran Business Enterprise Participation Certification (if applicable)
- 1.1.14.23 Drug-Free Workplace Certification (if applicable)
- 1.1.14.24 Tobacco-Free Environment Certification (if applicable)
- 1.1.14.25 Workplace Violence Prevention Plan Certification
- 1.1.14.26 Drug and Alcohol-Free Schools Certification (if applicable)
- 1.1.14.27 Hazardous Materials Certification (if applicable)
- 1.1.14.28 Lead-Based Materials Certification (if applicable)
- 1.1.14.29 Imported Materials Certification (if applicable)
- 1.1.14.30 Criminal Background Investigation/Fingerprinting Certification
- 1.1.14.31 Roofing Project Certification (if applicable)
- 1.1.14.32 DIR Registration Verification
- 1.1.14.33 Iran Contracting Act Certification (if applicable)
- 1.1.14.34 Russia Sanctions Compliance Certification (if applicable)
- 1.1.14.35 Federal Debarment Certification (if applicable)
- 1.1.14.36 Federal Byrd Anti-Lobbying Certification (if applicable)
- 1.1.14.37 Post Bid Interview (if used)
- 1.1.14.38 All Plans, Technical Specifications, and Drawings
- 1.1.14.39 Any and all addenda to any of the above documents
- 1.1.14.40 Any and all change orders or written modifications to the above documents if approved in writing by the District

**1.1.15 Contract Price:** The total monies payable to the Contractor under the terms and conditions of the Contract Documents.

- 1.1.16 Contract Time:** The time period stated in the Agreement for the completion of the Work.
- 1.1.17 Contractor:** The person or persons identified in the Agreement as contracting to perform the Work to be done under this Contract, or the legal representative of such a person or persons.
- 1.1.18 Daily Job Report(s):** Daily Project reports prepared by the Contractor's employee(s) who are present on Site, which shall include the information required herein.
- 1.1.19 Day(s):** Unless otherwise designated, day(s) means calendar day(s).
- 1.1.20 Department of Industrial Relations (or "DIR"):** is responsible, among other things, for labor compliance monitoring and enforcement of California prevailing wage laws and regulations for public works contracts.
- 1.1.21 Design Professional in General Responsible Charge:** See definition of **Architect** above.
- 1.1.22 Dispute:** A separate demand by Contractor for a time extension, or payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or Contractor is not otherwise entitled to; or an amount of payment disputed by the District.
- 1.1.23 District:** The public agency or the school district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time,
- 1.1.23.1** Direct the Contractor to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Contractor will communicate with or provide notice to the District; and/or
  - 1.1.23.2** Direct the Construction Manager or the Architect to communicate with or direct the Contractor on matters for which the Contract Documents indicate the District will communicate with or direct the Contractor.
- 1.1.24 Drawings (or "Plans"):** The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.
- 1.1.25 DSA:** Division of the State Architect.
- 1.1.26 Force Account Directive:** A process that may be used when the District and the Contractor cannot agree on a price for a specific portion of work or before the Contractor prepares a price for a specific portion of work and whereby the Contractor performs the work as indicated herein on a time and materials basis.
- 1.1.27 Job Cost Reports:** Any and all reports or records detailing the costs associated with work performed on or related to the Project that Contractor shall maintain for the Project. Specifically, Job Cost Reports shall contain, but are not limited by or to, the following information: a description of the work performed or to be performed on the Project; quantity, if applicable, of work performed (hours, square feet, cubic yards, pounds, etc.) for the Project; Project budget; costs for the Project to date; estimated costs to complete the Project; and expected costs at completion. The Job Cost Reports shall also reflect all Contract cost codes, change orders, elements of non-conforming work, back charges, and additional services.
- 1.1.28 Labor Commissioner's Office (or "Labor Commissioner", also known as the Division of Labor Standards Enforcement ("DLSE")):** Division of the DIR responsible for

adjudicating wage claims, investigating discrimination and public works complaints, and enforcing Labor Code statutes and Industrial Welfare Commission orders.

**1.1.29 Municipal Separate Storm Sewer System (or “MS4”):** A system of conveyances used to collect and/or convey storm water, including, without limitation, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

**1.1.30 Plans:** See Drawings.

**1.1.31 Premises:** The real property owned by the District on which the Site is located.

**1.1.32 Product(s):** New material, machinery, components, equipment, fixtures and systems forming the Work, including existing materials or components required and approved by the District for reuse.

**1.1.33 Product Data:** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.

**1.1.34 Program Manager:** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Program Manager is designated for Project that is the subject of this Contract, then all references to Program Manager herein shall be read to refer to District.

**1.1.35 Project:** The planned undertaking as provided for in the Contract Documents.

**1.1.36 Project Inspector (or “Inspector”):** The individual(s) retained by the District in accordance with title 24 of the California Code of Regulations to monitor and inspect the Project.

**1.1.37 Project Labor Agreement (or “PLA”):** A prehire collective bargaining agreement in accordance with Public Contract Code section 2500 et seq. that establishes terms and conditions of employment for a specific construction project or projects and/or is an agreement described in Section 158(f) of Title 29 of the United States Code.

**1.1.38 Proposed Change Order (or “PCO”):** A written request prepared by the Contractor requesting that the District and the Architect issue a Change Order based upon a proposed change to the Work.

**1.1.39 Provide:** Shall include “provide complete in place,” that is, “furnish and install,” and “provide complete and functioning as intended in place” unless specifically stated otherwise.

**1.1.40 Qualified SWPPP Practitioners (or “QSP”):** Certified personnel that attended a State Water Resources Control Board sponsored or approved training class and passed the qualifying exam.

**1.1.41 Record Drawings:** Reproducible drawings (or Plans) prepared pursuant to the requirements of the Contract Documents that reflect all changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed upon completion of the Project. See also **As-Builts**.

**1.1.42 Request for Information (or “RFI”):** A written request prepared by the Contractor requesting that the Architect provide additional information necessary to clarify or amplify an item in the Contract Documents that the Contractor believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems that have arisen under field conditions.

**1.1.43 Request for Substitution for Specified Item:** A request by Contractor to substitute an equal or superior material, product, thing, or service for a specific material, product, thing, or service that has been designated in the Contract Documents by a specific brand or trade name.

**1.1.44 Safety Orders:** Written and/or verbal orders for construction issued by the California Division of Occupational Safety and Health (“CalOSHA”) or by the United States Occupational Safety and Health Administration (“OSHA”).

**1.1.45 Safety Plan:** Contractor’s safety plan specifically adapted for the Project. Contractor’s Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these General Conditions.

**1.1.46 Samples:** Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.

**1.1.47 Shop Drawings:** All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the Contractor, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.

**1.1.48 Site:** The Project site as shown on the Drawings.

**1.1.49 Specifications:** That portion of the Contract Documents, Division 1 through Division 49, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.

**1.1.50 State:** The State of California.

**1.1.51 Storm Water Pollution Prevention Plan (or “SWPPP”):** A document which identifies sources and activities at a particular facility that may contribute pollutants to storm water and contains specific control measures and time frames to prevent or treat such pollutants.

**1.1.52 Subcontractor:** A contractor and/or supplier who is under contract with the Contractor or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.

**1.1.53 Submittal Schedule:** The schedule of submittals as provided by Contractor and approved by District.

**1.1.54 Surety:** The person, firm, or corporation that executes as surety the Contractor’s Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.

**1.1.55 Work:** All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for the construction and completion of the Project.

## **1.2 Laws Concerning the Contract; Venue**

Contract is subject to all provisions of the Constitution and laws of California and the United States governing, controlling, or affecting District, or the property, funds, operations, or powers of District, and such provisions are by this reference made a part hereof. Any provision required by law to be included in this Contract shall be deemed to be inserted.

To the fullest extent permitted by California law, any action or proceeding that may be brought, or arise out of, in connection with or by reason of this Contract shall exclusively be litigated in the State of California and the county in which the District administration office is located shall be the venue for such litigation.

**1.3 No Oral Agreements**

No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract.

**1.4 No Assignment**

Contractor shall not assign this Contract or any part thereof including, without limitation, any Work or money to become due hereunder without the prior written consent of the District. Assignment without District's prior written consent shall be null and void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under this Contract in favor of all persons, firms, or corporations rendering services or supplying material to the extent that claims are filed pursuant to the Civil Code, Code of Civil Procedure, Government Code, Labor Code, and/or Public Contract Code, and shall also be subject to deductions for liquidated damages or withholding of payments as determined by District in accordance with this Contract. Contractor shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the District.

**1.5 Notice and Service Thereof**

**1.5.1** Any notice from one party to the other or otherwise under Contract shall be in writing and shall be dated and signed by the party giving notice or by a duly authorized representative of that party. Any notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

**1.5.1.1** If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

**1.5.1.2** If notice is given by overnight delivery service, it shall be considered delivered one (1) day after date deposited, as indicated by the delivery service.

**1.5.1.3** If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.

**1.5.1.4** If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for.

**1.5.1.5** Electronic mail may be used for convenience but is not a substitute for the notice and service requirements herein.

**1.6 No Waiver**

The failure of District in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the District, Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the District under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**1.7 Substitutions for Specified Items**

Unless the Special Conditions contain different provisions, Contractor shall not substitute different items for any items identified in the Contract Documents without prior written approval of the District.

## **1.8 Materials and Work**

**1.8.1** Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete this Contract, in a good and workmanlike manner, within the Contract Time.

**1.8.2** Unless otherwise specified, all materials shall be new and of the best quality of their respective kinds and grades as noted or specified, workmanship shall be of good quality, and Contractor shall use all diligence to inform itself fully as to the required manufacturer's instructions and to comply therewith.

**1.8.3** Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of Work and shall be stored properly and protected from the elements, theft, vandalism, or other loss or damage as required.

**1.8.4** For all materials and equipment specified or indicated in the Drawings, the Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended. Incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system, shall be furnished as though itemized here in every detail. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

**1.8.5** Contractor shall, after award of Contract by District and after relevant submittals have been reviewed, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Contractor shall, upon five (5) days' demand from District, present documentary evidence showing that orders have been placed.

**1.8.6** District reserves the right but has no obligation, in response to Contractor's neglect or failure in complying with the above instructions, to place orders for such materials and/or equipment as the District may deem advisable in order that the Work may be completed at the date specified in the Contract, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by Contractor or deducted from payment(s) to Contractor.

**1.8.7** Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver the Site to District, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract shall have any right to lien any portion of the Premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof.

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

**1.8.7.2** If the Contractor fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or a claim based on a stop payment notice has been so released, discharged, or secured, the District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs,

damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Contractor under the Contract.

**1.8.8** Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing materials or labor under any bond given by Contractor for their protection or any rights under any law permitting such protection or any rights under any law permitting such persons to look to funds due Contractor in hands of District (e.g., stop payment notices), and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

**1.8.9** Title to new materials and/or equipment for the Work of this Contract and attendant liability for its protection and safety shall remain with Contractor until incorporated in the Work of this Contract and accepted by District. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of this Contract. Should the District, in its discretion, allow the Contractor to store materials and/or equipment for the Work off-site, Contractor will store said materials and/or equipment at a bonded warehouse and with appropriate insurance coverage at no cost to District. Contractor shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to District or its authorized representative and shall, at the District's request, forward it to the District.

**1.8.10** **[RESERVED]**

**2.** **[RESERVED]**

**3.** **ARCHITECT**

**3.1** The Architect shall represent the District during the Project and will observe the progress and quality of the Work on behalf of the District. Architect shall have the authority to act on behalf of District to the extent expressly provided in the Contract Documents and to the extent determined by District. Architect shall have authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in Architect's reasonable opinion, to ensure the proper execution of the Contract.

**3.2** Architect shall, with the District and on behalf of the District, determine the amount, quality, acceptability, and fitness of all parts of the Work, and interpret the Specifications, Drawings, and shall, with the District, interpret all other Contract Documents.

**3.3** Architect shall have all authority and responsibility established by law, including title 24 of the California Code of Regulations.

**3.4** Contractor shall provide District and the Construction Manager with a copy of all written communication between Contractor and Architect at the same time as that communication is made to Architect, including, without limitation, all RFIs, correspondence, submittals, claims, and proposed change orders.

**4.** **CONSTRUCTION MANAGER**

**4.1** If a Construction Manager is used on this Project ("Construction Manager" or "CM"), the Construction Manager will provide administration of the Contract on the District's behalf. After execution of the Contract and Notice to Proceed, all correspondence and/or instructions from Contractor and/or District shall be forwarded through the Construction Manager. The Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions in connection with the Work, which shall all remain the Contractor's responsibility.

**4.2** The Construction Manager, however, will have authority to reject materials and/or workmanship not conforming to the Contract Documents, as determined by the District, the Architect, and/or the Project Inspector. The Construction Manager shall also have the authority to require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully

completed. Any decision made by the Construction Manager, in good faith, shall not give rise to any duty or responsibility of the Construction Manager to: the Contractor; any Subcontractor; the Contractor or Subcontractor's respective agents, employees; or other persons performing any of the Work. The Construction Manager shall have free access to any or all parts of Work at any time.

4.3 If the District does not use a Construction Manager on this Project, all references within the Contract Documents to Construction Manager or CM shall be read as District.

## **5. INSPECTOR, INSPECTIONS, AND TESTS**

### **5.1 Project Inspector**

**5.1.1** One or more Project Inspector(s), including special Project Inspector(s), as required, will be assigned to the Work by District, in accordance with requirements of title 24, part 1, of the California Code of Regulations, to enforce the building code and monitor compliance with Plans and Specifications for the Project previously approved by the DSA. Duties of Project Inspector(s) are specifically defined in section 4-342 of said part 1 of title 24.

**5.1.2** No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Contractor shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials, including, but not limited to, submission of form DSA 156 (or the most current version applicable at the time the Work is performed) to the Project Inspector at least forty-eight (48) hours in advance of the commencement and completion of construction of each and every aspect of the Work. Forms are available on the DSA's website at: <http://www.dgs.ca.gov/dsa/Forms.aspx>. Inspection of Work shall not relieve Contractor from an obligation to fulfill this Contract. Project Inspector(s) and the DSA are authorized to suspend work whenever the Contractor and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Contractor shall instruct its Subcontractors and employees accordingly.

**5.1.3** If Contractor and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-site, this shall only be done if it is allowable pursuant to applicable regulations and DSA approval, if the Project Inspector(s) agree to do so, and at the expense of the Contractor.

### **5.2 Tests and Inspections**

**5.2.1** Tests and Inspections shall comply with title 24, part 1, California Code of Regulations, group 1, article 5, section 4-335, and with the provisions of the Specifications.

**5.2.2** The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the District's representative and not by the Contractor. The Contractor shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection.

**5.2.3** The Contractor shall notify the District's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents, which must by terms of the Contract Documents be tested, in order that the District may arrange for the testing of same at the source of supply. This notice shall be provided, at a minimum, seventy-two (72) hours prior to the manufacture of the material that needs to be tested.

**5.2.4** Any material shipped by the Contractor from the source of supply prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated into and/or onto the Project.

**5.2.5** The District will select the testing laboratory and pay for the cost of all tests and inspections, excepting those inspections performed at Contractor's request and expense. Contractor shall reimburse the District for any and all laboratory costs or other testing costs for any

materials found to be not in compliance with the Contract Documents. At the District's discretion, District may elect to deduct laboratory or other testing costs for noncompliant materials from the Contract Price, and such deduction shall not constitute a withholding.

### **5.3 Costs for After Hours and/or Off Site Inspections**

If the Contractor performs Work outside the Inspector's regular working hours or requests the Inspector to perform inspections off Site, costs of any inspections required outside regular working hours or off Site shall be borne by the Contractor and may be invoiced to the Contractor by the District or the District may deduct those expenses from the next Progress Payment.

## **6. CONTRACTOR**

Contractor shall construct and complete, in a good and workmanlike manner, the Work for the Contract Price including any adjustment(s) to the Contract Price pursuant to provisions herein regarding changes to the Contract Price. Except as otherwise noted, Contractor shall provide and pay for all labor, materials, equipment, permits (excluding DSA), fees, licenses, facilities, transportation, taxes, bonds and insurance, and services necessary for the proper execution and completion of the Work, except as indicated herein.

### **6.1 Status of Contractor**

**6.1.1** Contractor represents and warrants that Contractor is an independent contractor or business entity that is: (i) free from the control and direction of the District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services performed, District being interested only in the results obtained. Contractor understands and agrees that it and all of its employees and its Subcontractors shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes with respect to Consultant's employees. Contractor is and shall at all times be wholly responsible for the manner in which it, its agents, and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District, or any of the District's employees or agents, and Contractor or any of Contractor's Subcontractors, agents or employees. District shall be permitted to monitor the Contractor's activities to determine compliance with the terms of this Contract.

**6.1.2** As required by law, Contractor and all Subcontractors shall be properly licensed and regulated by the Contractors State License Board, 9821 Business Park Drive, Sacramento, California 95827, <http://www.cslb.ca.gov>.

**6.1.3** As required by law, Contractor and all Subcontractors shall be properly registered as public works contractors by the Department of Industrial Relations at: <https://www.dir.ca.gov/public-works/contractor-registration.html> or current URL.

**6.1.4** Contractor represents that Contractor and all Subcontractors shall not be presently debarred, suspended, proposed for disbarment, declared ineligible or excluded pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7.

**6.1.5 [RESERVED]**

**6.1.6** Contractor represents that it has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Work required under this Contract and that no person having any such interest shall be employed by Contractor.

**6.1.7 [RESERVED]**

**6.1.8** If Contractor intends to make any change in the name or legal nature of the Contractor's entity, Contractor must first notify the District in writing prior to making any contemplated change. The District shall determine in writing if Contractor's intended change is permissible while performing this Contract.

**6.2 Project Inspection Card(s)**

Contractor shall verify that forms DSA 152 (or the current version applicable at the time the Work is performed) are issued for the Project prior to the commencement of construction.

**6.3 Contractor's Supervision**

**6.3.1** During progress of the Work, Contractor shall keep on the Premises, and at all other locations where any Work related to the Contract is being performed, an experienced and competent project manager and construction superintendent who are employees of the Contractor, to whom the District does not object and at least one of whom shall be fluent in English, written and verbal.

**6.3.2** The project manager and construction superintendent shall both speak fluently the predominant language of the Contractor's employees.

**6.3.3** Before commencing the Work herein, Contractor shall give written notice to District of the name of its project manager and construction superintendent. Neither the Contractor's project manager nor construction superintendent shall be changed except with prior written notice to District. If the Contractor's project manager and/or construction superintendent proves to be unsatisfactory to Contractor, or to District, any of the District's employees, agents, the Construction Manager, or the Architect, the unsatisfactory project manager and/or construction superintendent shall be replaced. However, Contractor shall notify District in writing before any change occurs, but no less than two (2) business days prior. Any replacement of the project manager and/or construction superintendent shall be made promptly and must be satisfactory to the District. The Contractor's project manager and construction superintendent shall each represent Contractor, and all directions given to Contractor's project manager and/or construction superintendent shall be as binding as if given to Contractor.

**6.3.4** Contractor shall give efficient supervision to Work, using its best skill and attention. Contractor shall carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and shall at once report to District, Construction Manager, and Architect any error, inconsistency, or omission that Contractor or its employees and Subcontractors may discover, in writing, with a copy to District's Project Inspector(s). The Contractor shall have responsibility for discovery of errors, inconsistencies, or omissions.

**6.4 Duty to Provide Fit Workers**

**6.4.1** Contractor and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in work assigned to that person. It shall be the responsibility of Contractor to ensure compliance with this requirement. District may require Contractor to permanently remove unfit persons from Project Site.

**6.4.2** Any person in the employ of Contractor or Subcontractor(s) whom District may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of District.

**6.4.3** The Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

**6.4.4 Fingerprinting.** Contractor shall comply with the provisions of Education Code section 45125.2 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees, its subcontractor(s), and its subcontractors' employees. Contractor shall not permit any employee to

have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District, (A) that such employee has not been convicted of a violent or serious felony, as defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). Contractor shall fully complete and perform all tasks required pursuant to the Criminal Background Investigation/ Fingerprinting Certification.

#### **6.5 Field Office**

Contractor shall provide a temporary office on the Site for the District's use exclusively, during the term of the Contract.

#### **6.6 Purchase of Materials and Equipment**

The Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays.

#### **6.7 Documents on Work**

**6.7.1** Contractor shall at all times keep on the Site, or at another location as the District may authorize in writing, one legible copy of all Contract Documents, including Addenda and Change Orders, and Titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code, all approved Drawings, Plans, Schedules, and Specifications, and all codes and documents referred to in the Specifications, and made part thereof. These documents shall be kept in good order and available to District, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all authorities having jurisdiction. Contractor shall be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the duties of Contractor, Title 24, Part 1, California Code of Regulations, section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly Titles 8 and 17. Contractor shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of Title 24.

#### **6.7.2 Daily Job Reports.**

**6.7.2.1** Contractor shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by the Contractor's employee(s) who are present on Site, and must include, at a minimum, the following information:

- 6.7.2.1.1** A brief description of all Work performed on that day.
- 6.7.2.1.2** A summary of all other pertinent events and/or occurrences on that day.
- 6.7.2.1.3** The weather conditions on that day.
- 6.7.2.1.4** A list of all Subcontractor(s) working on that day, including DIR registration numbers.
- 6.7.2.1.5** A list of each Contractor employee working on that day and the total hours worked for each employee.
- 6.7.2.1.6** A complete list of all equipment on Site that day, whether in use or not.
- 6.7.2.1.7** A complete list of all materials, supplies, and equipment delivered on that day.
- 6.7.2.1.8** A complete list of all inspections and tests performed on that day.

**6.7.2.2** Each day Contractor shall provide a copy of the previous day's Daily Job Report to the District or the Construction Manager.

#### **6.8 Preservation of Records**

Contractor shall maintain, and District shall have the right to inspect, Contractor's financial records for the Project, including, without limitation, Job Cost Reports for the Project in compliance with the criteria set forth herein. The District shall have the right to examine and audit all Daily Job Reports or other Project records of Contractor's project manager(s), project superintendent(s), and/or project

foreperson(s), all certified payroll records and/or related documents including, without limitation, Job Cost Reports, payroll, payment, timekeeping and tracking documents; all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports, and other data of the Contractor, any Subcontractor, and/or supplier, including computations and projections related to bidding, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to the District. These documents may be duplicative and/or be in addition to any Bid Documents held in escrow by the District. The Contractor shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Contract. Notwithstanding the provisions above, Contractor shall provide any records requested by any governmental agency, if available, after the time set forth above.

## **6.9            Integration of Work**

**6.9.1**            Contractor shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive or be received by work of other contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as District and/or Architect may direct.

**6.9.2**            Contractor shall make its own layout of lines and elevations and shall be responsible for the accuracy of both Contractor's and Subcontractors' work resulting therefrom.

**6.9.3**            Contractor and all Subcontractors shall take all field dimensions required in performance of the Work and shall verify all dimensions and conditions on the Site. All dimensions affecting proper fabrication and installation of all Work must be verified prior to fabrication by taking field measurements of the true conditions. If there are any discrepancies between dimensions in drawings and existing conditions which will affect the Work, Contractor shall bring such discrepancies to the attention of the District and Architect for adjustment before proceeding with the Work. In doing so, it is recognized that Contractor is not acting in the capacity of a licensed design professional, and that Contractor's examination is made in good faith to facilitate construction and does not create an affirmative responsibility of a design professional to detect errors, omissions or inconsistencies in the Contract Documents or to ascertain compliance with applicable laws, building codes or regulations. However, nothing in this provision shall abrogate Contractor's responsibilities for discovering and reporting any error, inconsistency, or omission pursuant to the Contract within the Contractor's standard of care including, without limitation, any applicable laws, ordinance, rules, or regulations. Following receipt of written notice from Contractor, the District and/or Architect shall inform Contractor what action, if any, Contractor shall take with regard to such discrepancies.

**6.9.4**            All costs caused by noncompliant, defective, or delayed Work shall be borne by Contractor, inclusive of repair work. Schedule delays resulting from unauthorized work shall be Contractor's responsibility.

**6.9.5**            Contractor shall not endanger any work performed by it or anyone else by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor except with consent of District.

## **6.10           Notifications**

**6.10.1**           Contractor shall notify the Architect and Project Inspector, in writing, of the commencement of construction of each and every aspect of the Work at least forty-eight (48) hours in advance by submitting form DSA 156 (or the most current version applicable at the time the Work is performed) to the Project Inspector. Forms are available on the DSA's website at: <http://www.dgs.ca.gov/dsa/Forms.aspx>.

**6.10.2**           Contractor shall notify the Architect and Project Inspector, in writing, of the completion of construction of each and every aspect of the Work at least forty-eight (48) hours in advance by submitting form DSA 156 (or current version) to the Project Inspector.

**6.11 Obtaining of Permits, Licenses and Registrations**

**6.11.1** Contractor shall secure and pay for all permits (except DSA), licenses, registrations, approvals and certificates necessary for prosecution of Work, including but not limited to those listed in the Special Conditions, if any, before the date of the commencement of the Work or before the permits, licenses, registrations, approvals and certificates are legally required to continue the Work without interruption. The Contractor shall obtain and pay, only when legally required, for all licenses, registrations, approvals, permits, inspections, and inspection certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract. All final permits, licenses, registrations, approvals and certificates shall be delivered to District before demand is made for final payment.

**6.11.2 General Permit For Storm Water Discharges Associated With Construction and Land Disturbance Activities.**

**6.11.2.1** Contractor acknowledges that all California school districts are obligated to develop and implement the following requirements for the discharge of storm water to surface waters from its construction and land disturbance activities pursuant to the Clean Water Act and Porter Cologne Water Quality Act. District has determined that the construction of this Project requires enrollment in the Construction Storm Water Permit. District has filed certain submittals referred to as Permit Registration Documents ("PRDS") with the Regional Water Control Board ("Storm Water Pollution Prevention Plan" or "SWPPP").

**6.11.2.2** Contractor shall comply with any District SWPPP that is approved by the District and applicable to the Project, at no additional cost to the District. Contractor shall pay any fees and any penalties that may imposed by a regulatory agency for its non-compliance with the SWPPP during the course of Work.

**6.11.2.3** Contractor shall provide a Qualified Storm Water Practitioner ("QSP") at no additional cost to the District, who shall perform on-site inspections and implement and monitor any and all SWPPP requirements applicable to the Project, including required visual observations, sampling, analysis, reporting and record keeping, including of Total Maximum Daily Loads ("TMDL") of pollutants and construction dewatering and discharge, and Best Management Practices ("BMPs").

**6.12 Royalties and Patents**

**6.12.1** Contractor shall obtain and pay, only when legally required, all royalties and license fees necessary for prosecution of Work before the earlier of the date of the commencement of the Work or the date that the license is legally required to continue the Work without interruption. Contractor shall defend suits or claims of infringement of patent, copyright, or other rights and shall hold the District, the Architect, and the Construction Manager harmless and indemnify them from loss on account thereof except when a particular design, process, or make or model of product is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a patent or copyright, the Contractor shall indemnify and defend the District, Architect and Construction Manager against any loss or damage unless the Contractor promptly informs the District of its information.

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

**6.13 Work to Comply With Applicable Laws and Regulations**

**6.13.1** Contractor shall give all notices and comply with the following specific laws, ordinances, rules, and regulations and all other applicable laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and specified, including but not limited to the appropriate statutes and administrative code sections. If Contractor observes that Drawings and Specifications are at variance therewith, or should Contractor become aware of the development of conditions not

covered by Contract Documents that may result in finished Work being at variance therewith, Contractor shall promptly notify District in writing and any changes deemed necessary by District shall be made as provided in Contract for changes in Work.

- 6.13.1.1** National Electrical Safety Code, U.S. Department of Commerce
- 6.13.1.2** National Board of Fire Underwriters' Regulations
- 6.13.1.3** International Building Code, latest addition, and the California Code of Regulations, title 24, and other amendments
- 6.13.1.4** Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- 6.13.1.5** Industrial Accident Commission's Safety Orders, State of California
- 6.13.1.6** Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes
- 6.13.1.7** Americans with Disabilities Act
- 6.13.1.8** Education Code of the State of California
- 6.13.1.9** Government Code of the State of California
- 6.13.1.10** Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies
- 6.13.1.11** Public Contract Code of the State of California
- 6.13.1.12** California Art Preservation Act
- 6.13.1.13** U.S. Copyright Act
- 6.13.1.14** U.S. Visual Artists Rights Act

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

**6.13.3** If Contractor performs any Work that it knew, or through exercise of reasonable care should have known, to be contrary to any applicable laws, ordinance, rules, or regulations, Contractor shall bear all costs arising therefrom and arising from the correction of said Work.

**6.13.4** Where Specifications or Drawings state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall, or other body or agency, Contractor shall be responsible for satisfying requirements of such bodies or agencies applicable at the time the Work is performed, and as determined by those bodies or agencies.

**6.13.5** **[RESERVED]**

**6.14** **Safety/Protection of Persons and Property**

**6.14.1** The Contractor will be solely and completely responsible for conditions of the Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours.

- 6.14.2** The wearing of hard hats will be mandatory at all times for all personnel on Site. Contractor shall supply sufficient hard hats to properly equip all employees and visitors.
- 6.14.3** Any construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the Site.
- 6.14.4** Implementation and maintenance of safety programs shall be the sole responsibility of the Contractor.
- 6.14.5** The Contractor shall furnish to the District a copy of the Contractor's safety plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.
- 6.14.6** Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and completion and final acceptance by District. All Work shall be solely at Contractor's risk with the exception of damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.
- 6.14.7** Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. Contractor shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.
- 6.14.8** Hazards Control – Contractor shall store volatile wastes in covered metal containers and remove them from the Site daily. Contractor shall prevent accumulation of wastes that create hazardous conditions. Contractor shall provide adequate ventilation during use of volatile or noxious substances.
- 6.14.9** Contractor shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to District by Contractor.
- 6.14.10** Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, Contractor shall correct such violation promptly.
- 6.14.11** Contractor shall comply with any District storm water requirements that are approved by the District and applicable to the Project, at no additional cost to the District.
- 6.14.12** In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, shall act, at its discretion, to prevent such threatened loss or injury. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- 6.14.13** All salvage materials will become the property of the Contractor and shall be removed from the Site unless otherwise called for in the Contract Documents. However, the District reserves the right to designate certain items of value that shall be turned over to the District unless otherwise directed by District.
- 6.14.14** All connections to public utilities and/or existing on-site services, including, without limitation, internet, phone and data connections, shall be made and maintained in such a manner as to not interfere with the continuing use of same by the District during the entire progress of the Work.

**6.14.15** Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, such as extreme heat, cold, rain, snow, dry winds, flooding, or dampness.

**6.14.16** Contractor shall protect and preserve the Work from all damage or accident, providing any temporary roofs, window and door coverings, boxings, or other construction as required by the Architect. The Contractor shall be responsible for existing structures, walks, roads, trees, landscaping, and/or improvements in working areas; and shall provide adequate protection therefore. If temporary removal is necessary of any of the above items, or damage occurs due to the Work, the Contractor shall replace same at his expense with same kind, quality, and size of Work or item damaged. This shall include any adjoining property of the District and others.

**6.14.17** Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations.

**6.14.18** Contractor shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of Architect, and shall not interfere with the Work or unreasonably encumber Premises or overload any structure with materials. Contractor shall enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site.

**6.14.19** Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. No verbal or physical contact with neighbors, students, and faculty, profanity, or inappropriate attire and/or logos, or behavior will be permitted. District may require Contractor to temporarily or permanently remove non-complying persons from Project Site.

**6.14.20** Contractor shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, Contractor shall have a civil engineer, registered as a professional engineer in California, replace them at no cost to District.

**6.14.21** In the event that the Contractor enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, Contractor shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification shall be approved by the District prior to the commencement of any Work on or about the adjacent property. The Contractor shall also indemnify the District as provided in the indemnification provision herein. These provisions shall be in addition to any other requirements of the owners of the adjacent property.

## **6.15 Working Evenings and Weekends**

Contractor may be required to work increased hours, evenings, and/or weekends at no additional cost to the District. Contractor shall give the District seventy-two (72) hours' notice prior to performing any evening and/or weekend work. Contractor shall perform all evening and/or weekend work only upon District's approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Contractor shall reimburse the District for any increased or additional Inspector charges as a result of Contractor's increased hours, or evening and/or weekend work.

## **6.16 Cleaning Up**

**6.16.1** The Contractor shall provide all services, labor, materials, and equipment necessary for protecting and securing the Work, all school occupants, furnishings, equipment, and building structure from damage until its completion and final acceptance by District. Dust barriers shall be provided to isolate dust and dirt from construction operations. At completion of the Work and

portions thereof, Contractor shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Contractor must erect the necessary warning signs and barricades to ensure the safety of all school occupants. The Contractor at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

**6.16.2** Contractor at all times shall keep Premises, including property immediately adjacent thereto, free from debris such as waste, rubbish (including personal rubbish of workers, e.g., food wrappers, etc.), and excess materials and equipment caused by the Work. Contractor shall not leave debris under, in, or about the Premises (or surrounding property or neighborhood), but shall promptly remove same from the Premises on a daily basis. If Contractor fails to clean up, District may do so and the cost thereof shall be charged to Contractor. If Contract is for work on an existing facility, Contractor shall also perform specific clean-up on or about the Premises upon request by the District as it deems necessary for continued operations. Contractor shall comply with all related provisions of the Specifications.

**6.16.3** If the Construction Manager, Architect, or District observes the accumulation of trash and debris, the District will give the Contractor a 24-hour written notice to mitigate the condition.

**6.16.4** Should the Contractor fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the District, the District may, at its sole discretion, then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Contract Price.

**6.17 No Relief from Obligations Based on Review by Other Persons**

**6.17.1** Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by act or omission of the District, Architect, Construction Manager, Project Inspector, or DSA or other entities having jurisdiction including, but not limited to, administration of the Contract, review of submittals, or by tests, observation, inspection, or permit/interconnection approvals.

**7. SUBCONTRACTORS**

**7.1** Contractor shall provide the District with information for all Subcontracts as indicated in the Contractor's Submittals and Schedules Section herein.

**7.2** No contractual relationship exists between the District and any Subcontractor, supplier, or sub-subcontractor by reason of this Contract.

**7.3** Contractor agrees to bind every Subcontractor by terms of this Contract as far as those terms that are applicable to Subcontractor's work including, without limitation, all labor, wage & hour, apprentice and related provisions and requirements. If Contractor shall subcontract any part of this Contract, Contractor shall be as fully responsible to District for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, including Subcontractor caused Project delays, as it is for acts and omissions of persons directly employed by Contractor. The divisions or sections of the Specifications and/or the arrangement of the drawings are not intended to control the Contractor in dividing the Work among Subcontractors or limit the work performed by any trade.

**7.4** District's consent to, or approval of, or failure to object to, any Subcontractor under this Contract shall not in any way relieve Contractor of any obligations under this Contract and no such consent shall be deemed to waive any provisions of this Contract.

**7.5** Contractor is directed to familiarize itself with sections 4100 through 4114 of the Public Contract Code of the State of California, as regards subletting and subcontracting, and to comply with all applicable requirements therein. In addition, Contractor is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein including, without

limitation, section 1775 and the Contractor's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws.

**7.6** No Contractor whose Bid is accepted shall, without consent of the awarding authority and in full compliance with section 4100 et seq. of the Public Contract Code, including, without limitation, sections 4107, 4107.5, and 4109 of the Public Contract Code, and section 1771.1 of the Labor Code, either:

**7.6.1** Substitute any person as a Subcontractor in place of the Subcontractor designated in the original Bid; or

**7.6.2** Permit any Subcontract to be assigned or transferred, or allow any portion of the Work to be performed by anyone other than the original Subcontractor listed in the Bid; or

**7.6.3** Sublet or subcontract any portion of the Work in excess of one-half of one percent (0.5%) of the Contractor's total bid as to which his original bid did not designate a Subcontractor.

**7.7** The Contractor shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.

**7.7.1** If the Contract is valued at \$1 million or more and uses, or plans to use, state bond funds, then Contractor is responsible for ensuring that first tier Subcontractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 licenses are prequalified by the District to work on the Project pursuant to Public Contract Code section 20111.6.

**7.7.2** Contractor is responsible for ensuring that all Subcontractors are properly registered as public works contractors by the Department of Industrial Relations.

**7.8** Contractor is solely responsible for settling any differences between the Contractor and its Subcontractor(s) or between Subcontractors.

**7.9** Contractor must include in all of its subcontracts the assignment provisions as indicated in the Termination section of these General Conditions.

## **8. OTHER CONTRACTS/CONTRACTORS**

**8.1** District reserves the right to let other contracts, and/or to perform work with its own forces, in connection with the Project. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Contractor's Work with the work of other contractors.

**8.2** In addition to Contractor's obligation to protect its own Work, Contractor shall protect the work of any other contractor that Contractor encounters while working on the Project.

**8.3** If any part of Contractor's Work depends for proper execution or results upon work of District or any other contractor, the Contractor shall inspect and, before proceeding with its Work, promptly report to the District in writing any defects in District's or any other contractor's work that render Contractor's Work unsuitable for proper execution and results. Contractor shall be held accountable for damages to District for District's or any other contractor's work that Contractor failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute Contractor's acceptance of all District's or any other contractor's work as fit and proper for reception of Contractor's Work, except as to defects that may develop in District's or any other contractor's work after execution of Contractor's Work and not caused by execution of Contractor's Work.

**8.4** To ensure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the District in writing any discrepancy between that executed work and the Contract Documents.

8.5 Contractor shall ascertain to its own satisfaction the scope of the Project and nature of District's or any other contracts that have been or may be awarded by District in prosecution of the Project to the end that Contractor may perform this Contract in light of the other contracts, if any.

8.6 Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Site, the Premises, or of the Project. Contractor shall not cause any unnecessary hindrance or delay to the use and/or operation(s) of the Premises and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or Premises operation is likely to cause interference with performance of Contractor's Contract, Contractor shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the District of the resolution.

## **9. DRAWINGS AND SPECIFICATIONS**

9.1 A complete list of all Drawings that form a part of the Contract is to be found as an index on the Drawings themselves, and/or may be provided to the Contractor and/or in the Table of Contents.

9.2 Materials or Work described in words that so applied have a well-known technical or trade meaning shall be deemed to refer to recognized standards, unless noted otherwise.

9.3 **Trade Name or Trade Term.** It is not the intention of this Contract to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of "trade name" or "trade term" shall be considered a sufficient notice to Contractor that it will be required to complete the work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.

9.4 The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.

9.5 Contract Documents are complementary, and what is called for by one shall be binding as if called for by all. As such, Drawings and Specifications are intended to be fully cooperative and to agree. However, if Contractor observes that Drawings and Specifications are in conflict with the Contract Documents, Contractor shall promptly notify District and Architect in writing, and any necessary changes shall be made as provided in the Contract Documents.

9.6 In the case of discrepancy or ambiguity in the Contract Documents, the order of precedence in the Agreement shall prevail. However, in the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity shall be resolved in favor of the interpretation that will provide District with the functionally complete and operable Project described in the Drawings and Specifications. In case of ambiguity, conflict, or lack of information, District will furnish clarifications with reasonable promptness.

9.7 Drawings and Specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, the laws, ordinances, rules, and regulations shall be considered as a part of the Contract within the limits specified. Contractor shall bear all expense of correcting work done contrary to said laws, ordinances, rules, and regulations.

9.8 As required by Section 4-317(c), Part 1, Title 24, CCR: "Should any existing conditions such as deterioration or non-complying construction be discovered which is not covered by the DSA-approved documents wherein the finished work will not comply with Title 24, California Code of Regulations, a construction change document, or a separate set of plans and specifications, detailing and specifying the required repair work shall be submitted to and approved by DSA before proceeding with the repair work."

### **9.9 Ownership of Drawings**

All copies of Plans, Drawings, Designs, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by District, are the property of District. They are not to be used by Contractor in other work and, with the exception of signed sets of

Contract Documents, are to be returned to District on request at completion of Work, or may be used by District as it may require without any additional costs to District. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. District hereby grants the Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings prepared for the Project in the execution of their Work under the Contract Documents.

## **10. CONTRACTOR'S SUBMITTALS AND SCHEDULES**

Contractor's submittals shall comply with the provisions and requirements of the Specifications including, without limitation Submittals.

### **10.1 Schedule of Work, Schedule of Submittals, and Schedule of Values**

**10.1.1** Within **TEN (10)** calendar days after the date of the Notice to Proceed (unless otherwise specified in the Specifications), the Contractor shall prepare and submit to the District for review, in a form supported by sufficient data to substantiate its accuracy as the District may require:

**10.1.1.1** Preliminary Schedule. A preliminary schedule of construction indicating the starting and completion dates of the various stages of the Work, including any information and following any form as may be specified in the Specifications. Once approved by District, this shall become the Construction Schedule. This schedule shall include and identify all tasks that are on the Project's critical path with a specific determination of the start and completion of each critical path task as well as all Contract milestones and each milestone's completion date(s) as may be required by the District.

**10.1.1.1.1** The District is not required to approve a preliminary schedule of construction with early completion, i.e., one that shows early completion dates for the Work and/or milestones. Contractor shall not be entitled to extra compensation if the District approves a Construction Schedule with an early completion date and Contractor completes the Project beyond the date shown in the schedule but within the Contract Time. A Construction Schedule showing the Work completed in less than the Contract Time, the time between the early completion date and the end of the Contract Time shall be Float.

**10.1.1.2** Preliminary Schedule of Values. A preliminary schedule of values for all of the Work, which must include quantities and prices of items aggregating the Contract Price and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Unless the Special Conditions contain different limits, this preliminary schedule of values shall include, at a minimum, the following information and the following structure:

**10.1.1.2.1** Divided into at least the following categories:

- 10.1.1.2.1.1** Overhead and profit;
- 10.1.1.2.1.2** Supervision;
- 10.1.1.2.1.3** General conditions;
- 10.1.1.2.1.4** Layout;
- 10.1.1.2.1.5** Mobilization;
- 10.1.1.2.1.6** Submittals;
- 10.1.1.2.1.7** Bonds and insurance;
- 10.1.1.2.1.8** Close-out/Certification documentation;
- 10.1.1.2.1.9** Demolition;
- 10.1.1.2.1.10** Installation;
- 10.1.1.2.1.11** Rough-in;
- 10.1.1.2.1.12** Finishes;
- 10.1.1.2.1.13** Testing;
- 10.1.1.2.1.14** Punchlist and District acceptance.

**10.1.1.2.2** And also divided by each of the following areas:

- 10.1.1.2.2.1** Site work;
- 10.1.1.2.2.2** By each building;
- 10.1.1.2.2.3** By each floor.

**10.1.1.2.3** The preliminary schedule of values shall not provide for values any greater than the following percentages of the Contract value:

- 10.1.1.2.3.1** Mobilization and layout combined to equal not more than 1%;
- 10.1.1.2.3.2** Submittals, samples and shop drawings combined to equal not more than 3%;
- 10.1.1.2.3.3** Bonds and insurance combined to equal not more than 2.5%.
- 10.1.1.2.3.4** Closeout documentation shall have a value in the preliminary schedule of not less than 3%.

**10.1.1.2.4** Notwithstanding any provision of the Contract Documents to the contrary, payment of the Contractor's overhead, supervision, general conditions costs, and profit, as reflected in the Cost Breakdown, shall be paid based on percentage complete, with the disbursement of Progress Payments and the Final Payment.

**10.1.1.2.5** Contractor shall certify that the preliminary schedule of values as submitted to the District is accurate and reflects the costs as developed in preparing Contractor's bid. For example, without limiting the foregoing, Contractor shall not "front-load" the preliminary schedule of values with dollar amounts greater than the value of activities performed early in the Project.

**10.1.1.2.6** The preliminary schedule of values shall be subject to the District's review and approval of the form and content thereof. In the event that the District objects to any portion of the preliminary schedule of values, the District shall notify the Contractor, in writing, of the District's objection(s) to the preliminary schedule of values. Within five (5) calendar days of the date of the District's written objection(s), Contractor shall submit a revised preliminary schedule of values to the District for review and approval. The foregoing procedure for the preparation, review and approval of the preliminary schedule of values shall continue until the District has approved the entirety of the preliminary schedule of values.

**10.1.1.2.7** Once the preliminary schedule of values is approved by the District, this shall become the Schedule of Values. The Schedule of Values shall not be thereafter modified or amended by the Contractor without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District.

**10.1.1.3** **Preliminary Schedule of Submittals.** A preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples submittals. Once approved by District, this shall become the Submittal Schedule. All submittals shall be forwarded to the District by the date indicated on the approved Submittal Schedule, unless an earlier date is necessary to maintain the Construction Schedule, in which case those submittals shall be forwarded to the District so as not to delay the Construction Schedule. Upon request by the District, Contractor shall provide an electronic copy of all submittals to the District. All submittals shall be submitted no later than ninety (90) days after the Notice to Proceed.

**10.1.1.4** **Safety Plan.** Contractor's Safety Plan specifically adapted for the Project. Contractor's Safety Plan shall comply with the following requirements:

**10.1.1.4.1** All applicable requirements of California Division of Occupational Safety and Health ("CalOSHA") and/or of the United States Occupational Safety and Health Administration ("OSHA").

**10.1.1.4.2** All applicable DSA requirements for a site safety plan including, without limitation, Chapter 33 of the California Fire Code ("CFC"). The section of the plan

addressing the requirements of Section 3303.1.1 of the CFC shall be a separate and clearly identified section for submission to DSA.

**10.1.1.4.3** All provisions regarding Project safety, including all applicable provisions in these General Conditions.

**10.1.1.4.4** Contractor's Safety Plan shall be in English and in the language(s) of the Contractor's and its Subcontractors' employees.

**10.1.1.5** **Update DIR Registration Verification.** The name, address, telephone number, facsimile number, California State Contractors License number, classification, DIR registration number and monetary value of all Subcontracts of any tier for parties furnishing labor, material, or equipment for completion of the Project.

**10.1.2** Contractor must provide all schedules both in hard copy and electronically, in a format (e.g., Microsoft Project or Primavera) approved in advance by the District.

**10.1.3** The District will review the schedules submitted and the Contractor shall make changes and corrections in the schedules as requested by the District and resubmit the schedules until approved by the District.

**10.1.4** The District shall have the right at any time to revise the schedule of values if, in the District's sole opinion, the schedule of values does not accurately reflect the value of the Work performed.

**10.1.5** All schedules must be approved by the District before Contractor can rely on them as a basis for payment.

## **10.2** **Monthly Progress Schedule(s)**

**10.2.1** Contractor shall provide Monthly Progress Schedule(s) to the District. A Monthly Progress Schedule shall update the approved Construction Schedule or the last Monthly Progress Schedule, showing all work completed and to be completed as well as updating the Registered Subcontractors List. The monthly Progress Schedule shall be sent within the timeframe requested by the District and shall be in a format acceptable to the District and contain a written narrative of the progress of work that month and any changes, delays, or events that may affect the work. The process for District approval of the Monthly Progress Schedule shall be the same as the process for approval of the Construction Schedule.

**10.2.2** Contractor shall submit Monthly Progress Schedule(s) with all payment applications.

**10.2.3** Contractor must provide all schedules both in hard copy and electronically, in a format (e.g., Microsoft Project or Primavera) approved in advance by the District.

**10.2.4** The District will review the schedules submitted and the Contractor shall make changes and corrections in the schedules as requested by the District and resubmit the schedules until approved by the District.

**10.2.5** The District shall have the right at any time to revise the schedule of values if, in the District's sole opinion, the schedule of values does not accurately reflect the value of the Work performed.

**10.2.6** All schedules must be approved by the District before Contractor can rely on them as a basis for payment.

## **10.3** **Material Safety Data Sheets (MSDS)**

Contractor is required to ensure Material Safety Data Sheets are available in a readily accessible place at the Site for any material requiring a Material Safety Data Sheet per the federal "Hazard

Communication” standard, or employees’ “right to know” law. The Contractor is also required to ensure proper labeling on substances brought onto the job site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. Two additional copies of the Material Safety Data Sheets shall also be submitted directly to the District.

#### **10.4            Submittals**

**10.4.1**            Architect’s favorable review shall neither be construed as a complete check nor relieve the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called Architect’s attention to the deviations at the time of submission and the Architect has given specific written response. “Favorable review” shall mean merely that Architect has no objection to Contractor using, upon Contractor’s own full responsibility, plan or method of Work proposed, or furnishing materials or equipment proposed.

### **11.            SITE ACCESS, CONDITIONS, AND REQUIREMENTS**

#### **11.1            Site Investigation**

Before bidding on this Work, Contractor shall make a careful investigation of the Site and thoroughly familiarize itself with the requirements of the Contract. By the act of submitting a bid for the Work included in this Contract, Contractor shall be deemed to have made a complete study and investigation, and to be familiar with and accepted the existing conditions of the Site.

Prior to commencing the Work, Contractor and the District’s representative shall survey the Site to document the condition of the Site. Contractor will record the survey in digital videotape format and provide an electronic copy to the District within fourteen (14) days of the survey. This electronic record shall serve as a basis for determining any damages caused by the Contractor during the Project. The Contractor may also document any pre-existing conditions in writing, provided that both the Contractor and the District’s representative agree on said conditions and sign a memorandum documenting the same.

#### **11.2            Soils Investigation Report**

**11.2.1**            When a soils investigation report obtained from test holes at Site or for the Project is available, that report may be available to the Contractor but shall not be a part of this Contract and shall not alleviate or excuse the Contractor’s obligation to perform its own investigation. Any information obtained from that report or any information given on Drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of this Contract, and Contractor may not rely thereon. By submitting its bid, Contractor acknowledges that it has made visual examination of Site and has made whatever tests Contractor deems appropriate to determine underground condition of soil. Although any such report is not a part of this Contract, recommendations from the report may be included in the Drawings, Specifications, or other Contract Documents. It is Contractor’s sole responsibility to thoroughly review all Contract Documents, Drawings, and Specifications.

**11.2.2**            Contractor agrees that no claim against District will be made by Contractor for damages and hereby waives any rights to damages if, during progress of Work, Contractor encounters subsurface or latent conditions at Site materially differing from those shown on Drawings or indicated in Specifications, or for unknown conditions of an unusual nature that differ materially from those ordinarily encountered in the work of the character provided for in Plans and Specifications, except as indicated in the provisions of these General Conditions regarding trenches, trenching, and/or existing utility lines.

### **11.3 Access to Work**

District and its representatives shall at all times have access to Work wherever it is in preparation or progress, including storage and fabrication. Contractor shall provide safe and proper facilities for such access so that District's representatives may perform their functions.

### **11.4 Layout and Field Engineering**

**11.4.1** All field engineering required for layout of this Work and establishing grades for earthwork operations shall be furnished by Contractor at its expense. This Work shall be done by a qualified, California-registered civil engineer approved in writing by District and Architect. Any required Record and/or As-Built Drawings of Site development shall be prepared by the approved civil engineer.

**11.4.2** The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. Contractor shall follow best practices, including but not limited to potholing to avoid utilities. District shall not be liable for any claim for allowances because of Contractor's error, failure to follow best practices, or negligence in acquainting itself with the conditions at the Site.

**11.4.3** Contractor shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Contractor shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.

### **11.5 Utilities**

Utilities shall be provided as indicated in the Specifications.

### **11.6 Sanitary Facilities**

Sanitary facilities shall be provided as indicated in the Specifications.

### **11.7 Surveys**

Contractor shall provide surveys done by a California-licensed civil engineer surveyor to determine locations of construction, grading, and site work as required to perform the Work.

### **11.8 Regional Notification Center**

The Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Contractor unless an inquiry identification number has been assigned to the Contractor or any Subcontractor and the Contractor has given the District the identification number. Any damages arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Contractor and shall not be considered for an extension of the Contract Time.

### **11.9 Existing Utility Lines**

**11.9.1** Pursuant to Government Code section 4215, District assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Site at the time of commencement of construction under this Contract with respect to any such utility facilities that are not identified in the Plans and Specifications. Contractor shall not

be assessed for liquidated damages for delay in completion of the Project caused by failure of District or the owner of a utility to provide for removal or relocation of such utility facilities.

**11.9.2** Locations of existing utilities provided by District shall not be considered exact but approximate within a reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care or costs of repair due to Contractor's failure to do so. District shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

**11.9.3** No provision herein shall be construed to preclude assessment against Contractor for any other delays in completion of the Work. Nothing in this Article shall be deemed to require District to indicate the presence of existing service laterals, appurtenances, or other utility lines, within the exception of main or trunk utility lines or whenever the presence of these utilities on the Site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Site of the construction.

**11.9.4** If Contractor, while performing Work under this Contract, discovers utility facilities not identified by District in Contract Plans and Specifications, Contractor shall immediately notify the District and the utility in writing. The cost of repair for damage to above-mentioned discovered facilities without prior written notification to the District shall be borne by the Contractor.

**11.10**      **Notification**

Contractor understands, acknowledges and agrees that the purpose for prompt notification to the District pursuant to these provisions is to allow the District to investigate the condition(s) so that the District shall have the opportunity to decide how the District desires to proceed as a result of the condition(s). Accordingly, failure of Contractor to promptly notify the District in writing, pursuant to these provisions, shall constitute Contractor's waiver of any claim for damages or delay incurred as a result of the condition(s).

**11.11**      **Hazardous Materials**

Contractor shall comply with all provisions and requirements of the Contract Documents related to hazardous materials including, without limitation, Hazardous Materials Procedures and Requirements.

**11.12**      **No Signs**

Neither the Contractor nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences trailers, offices, or elsewhere on the Site without specific prior written approval of the District.

**12.**      **TRENCHES**

**12.1**      **Trenches Greater Than Five Feet**

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

**12.2**      **Excavation Safety**

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or

trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

**12.3 No Tort Liability of District**

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

**12.4 No Excavation without Permits**

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

**12.5 Discovery of Hazardous Waste and/or Unusual Conditions**

**12.5.1** Pursuant to 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, notify the District, in writing, of any:

**12.5.1.1** Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

**12.5.1.2** Subsurface or latent physical conditions at the Site differing from those indicated.

**12.5.1.3** Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

**12.5.2** The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described herein.

**12.5.3** In the event that a dispute arises between District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law that pertain to the resolution of disputes and protests.

**13. INSURANCE AND BONDS**

**13.1 Insurance**

Unless different provisions and/or limits are indicated in the Special Conditions, all insurance required of Contractor and/or its Subcontractor(s) shall be at least as broad as the amounts and include the provisions set forth herein.

**13.1.1 Commercial General Liability and Automobile Liability Insurance**

**13.1.1.1** Contractor shall procure and maintain, during the life of this Contract, Commercial General Liability Insurance and Automobile Liability Insurance in a form at least as broad as Insurance Services (ISO) Form CG 00 01 that shall protect Contractor, its agents, representative, employees, or subcontractors, District, State, Construction Manager(s), Project Inspector(s), and Architect(s) from all claims for products and completed operations, property damage, bodily injury and personal injury, death, advertising injury, and medical payments arising from, or in connection with, the performance of the Work of the Project within the

Contract Documents at the required limits, or Contractor shall procure and maintain these coverages separately. Contractor shall procure and maintain Automobile Liability Insurance in a form at least as broad as ISO Form CA 0001 covering Code 1 (any auto) at the required limits, or Contractor shall procure and maintain these coverages separately.

**13.1.1.2** Contractor's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed five thousand dollars (\$5,000) for deductible or twenty-five thousand dollars (\$25,000) for self-insured retention, respectively, unless approved in writing by District.

**13.1.1.3** All such policies shall be written on an occurrence form.

### **13.1.2 Excess Liability Insurance**

**13.1.2.1** If Contractor's underlying policy limits are less than required, subject to the District's sole discretion, Contractor may procure and maintain, during the life of this Contract, an Excess Liability Insurance Policy to meet the policy limit requirements of the required policies in order to satisfy, in the aggregate with its underlying policy, the insurance requirements herein including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Excess Liability Insurance Policy shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until Contractor's primary and excess liability policies are exhausted.

**13.1.2.2** There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Excess Liability Insurance Policy. Any Excess Liability Insurance Policy shall be written on a following form and shall protect Contractor, District, its trustees, employees, and agents, the State, Construction Manager(s), Program Manager(s), and Architect(s) in amounts and including the provisions as set forth in the Supplementary Conditions (if any) and/or Special Conditions, and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

**13.1.3 Subcontractor(s):** Contractor shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Excess Liability Insurance (if Subcontractor elects to satisfy, in part the insurance required herein by procuring and maintaining an Excess Liability Insurance Policy) with minimum limits at least equal to the amount required of Contractor except where smaller minimum limits are permitted as set forth in the Special Conditions. For Commercial General Liability coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

### **13.1.4 Workers' Compensation and Employers' Liability Insurance**

**13.1.4.1** In accordance with provisions of section 3700 of the California Labor Code, the Contractor and every Subcontractor shall be required to secure the payment of compensation to its employees.

**13.1.4.2** Contractor shall procure and maintain, during the life of this Contract, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under this Contract, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Contractor shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employee engaged in Work under this Contract, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Contractor shall provide, or shall

cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

**13.1.4.3** The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of District for all work performed by Contractor, its employees, agents and subcontractors.

**13.1.5 Builder's Risk Insurance: Builder's Risk "All Risk" Insurance**

Contractor shall procure and maintain, during the life of this Contract, Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Project and no coinsurance penalty provisions. The cost value basis shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, rain, dust, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

**13.1.6 Pollution Liability Insurance**

**13.1.6.1** Contractor shall procure and maintain Pollution Liability Insurance in a form at least as broad as ISO Form CG 2415 that shall protect Contractor, District, State, Construction Manager(s), Project Inspector(s), and Architect(s) from all claims for bodily injury, property damage, including natural resource damage, cleanup costs, removal, storage, disposal, and/or use of the pollutant arising from operations under this Contract, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or Contractor shall procure and maintain these coverages separately. Coverage shall apply to sudden and/or gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos.

**13.1.6.2** Contractor warrants that any retroactive date applicable to coverage under the policy shall predate the effective date of the Contract and that continuous coverage will be maintained or an extended reporting or discovery period will be exercised for a period of three (3) years, beginning from the time that the Work under the Contract is completed.

**13.1.6.3** If the services involve lead-based paint or asbestos identification/ remediation, Contractor's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/ remediation, Contractor's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

**13.1.6.4** If Contractor is responsible for removing any pollutants from a site, then Contractor shall ensure that Any Auto, including owned, non-owned, and hired, is included within the above policies and at the required limits, to cover its automobile exposure from transporting the pollutants from the site to an approved disposal site. This coverage shall include the Motor Carrier Act Endorsement, MCS 90.

**13.1.7 Proof of Insurance and Other Requirements: Endorsements and Certificates**

**13.1.7.1** Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract, until Contractor and its Subcontractor(s) have procured all required insurance and Contractor has delivered in duplicate to the District complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the District has approved these documents.

**13.1.7.2** Endorsements, certificates, and insurance policies shall include the following:

**13.1.7.2.1** A clause stating the following, or other language acceptable to the District:

“This policy shall not be canceled until written notice to District, Architect, and Construction Manager stating date of the cancellation by the insurance carrier. Date of cancellation may not be less than thirty (30) days after date of mailing notice.”

**13.1.7.2.2** Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

**13.1.7.2.3** All endorsements, certificates and insurance policies shall state that District, its trustees, employees and agents, the State of California, Construction Manager(s), Program Manager(s), Inspector(s) and Architect(s) are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

**13.1.7.2.4** All endorsements shall waive any right to subrogation against any of the named additional insureds.

**13.1.7.2.5** Contractor's and Subcontractors' insurance coverage at least as broad as ISO CG 20 01 04 13 shall be primary and non-contributory to any insurance or self-insurance maintained by District, its trustees, employees and/or agents, the State of California, Construction Manager(s), Program Manager(s), Inspector(s), and/or Architect(s). This requirement shall also apply to any Excess liability policies.

**13.1.7.2.6** Contractor's insurance limit shall apply separately to each insured against whom a claim is made or suit is brought.

**13.1.7.3** No policy shall be amended, canceled or modified, and the coverage amounts shall not be reduced, until Contractor or Contractor's broker has provided written notice to District, Architect(s), and Construction Manager(s) stating date of the amendment, modification, cancellation or reduction, and a description of the change. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice.

**13.1.7.4** Insurance written on a "claims made" basis shall be retroactive to a date that coincides with or precedes Contractor's commencement of Work, including subsequent policies purchased as renewals or replacements. Said policy is to be renewed by the Contractor and all Subcontractors for a period of five (5) years following completion of the Work or termination of this Agreement. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this Agreement and will cover the Contractor and all Subcontractors for all claims made. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy from with a retroactive date prior to the effective date of this Agreement, or the start of Work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work. A copy of the claims reporting requirements must be submitted to the District for review.

**13.1.7.5** Contractor's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its Board Members, employees and/or agents, the State of California, Construction Manager(s), Program Manager(s), Inspector(s), and/or Architect(s).

**13.1.7.6** Unless otherwise stated in the Special Conditions, all of Contractor's insurance shall be with insurance companies with an A.M. Best rating of no less than **A: VII**.

**13.1.7.7** The insurance requirements set forth herein shall in no way limit the Contractor's liability arising out of or relating to the performance of the Work or related activities.

**13.1.7.8** Failure of Contractor and/or its Subcontractor(s) to comply with the insurance requirements herein shall be deemed a material breach of the Contract.

**13.1.8** Insurance Policy Limits

**13.1.8.1** Unless different limits are indicated in the Special Conditions, the limits of insurance shall not be less than the following amounts:

<b>Commercial General Liability</b>	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	\$2,000,000 per occurrence; \$4,000,000 aggregate
<b>Automobile Liability</b>	Any Auto – Combined Single Limit	\$1,000,000
<b>Workers' Compensation</b>		Statutory limits pursuant to State law
<b>Employers' Liability</b>		\$1,000,000 per accident for bodily injury or disease
<b>Builder's Risk (Course of Construction)</b>		Full replacement value for scope of Work
<b>Pollution Liability</b>		\$1,000,000 per claim; \$2,000,000 aggregate

**13.1.8.2** If Contractor normally carries insurance in an amount greater than the minimum amounts required by District, that greater amount shall become the minimum required amount of insurance for purposes of the Contract. Therefore, Contractor hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Contract.

**13.2** Contract Security - Bonds

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

**13.2.1.1** Performance Bond: A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.

**13.2.1.2** Payment Bond: A bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with this Contract.

**13.2.2** Cost of bonds shall be included in the Bid and Contract Price.

**13.2.3** All bonds related to this Project shall be in the forms set forth in these Contract Documents and shall comply with all requirements of the Contract Documents, including, without limitation, the bond forms.

**14.** WARRANTY/GUARANTEE/INDEMNITY

**14.1** Warranty/Guarantee

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

**14.1.2** In addition to guarantees required elsewhere, Contractor shall, and hereby does guarantee and warrant all Work furnished on the job against all defects for a period of **ONE (1)** year after the later of the following dates, unless a longer period is provided for in the Contract Documents:

**14.1.2.1** The acceptance by the District's governing board of the Work, subject to these General Conditions, or

**14.1.2.2** The date that commissioning for the Project, if any, was completed.

At the District's sole option, Contractor shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a **ONE (1)** year period from date of completion as defined above, unless a longer period is provided for in the Contract Documents, without expense whatsoever to District. In the event of failure of Contractor and/or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, Contractor and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Contractor and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

**14.1.3** If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of District operations, District will attempt to give the notice required above. If Contractor or Surety cannot be contacted or neither complies with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the above provision, proceed to make any and all corrections and/or provide attentions the District believes are necessary. The costs of correction or attention shall be charged against Contractor and Surety of the guarantees provided in this Article or elsewhere in this Contract.

**14.1.4** The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District.

**14.1.5** Nothing herein shall limit any other rights or remedies available to District.

## **14.2** **Indemnity and Defense**

**14.2.1** To the furthest extent permitted by California law, the Contractor shall indemnify, keep and hold harmless the District, the Architect(s), and the Construction Manager(s), their respective consultants, separate contractors, board members, officers, representatives, agents, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, injury, damages, losses, and expenses ("Claims"), including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to the performance of the Work under this Contract by the Contractor, its Subcontractors, vendors, or suppliers. However, the Contractor's indemnification and hold harmless obligation shall be reduced by the proportion of the Indemnitees' and/or Architect's liability to the extent the Claim(s) is/are caused by the active negligence or willful misconduct of the Indemnitees, and/or defects in design furnished by the Architect, as found by a court or arbitrator of competent jurisdiction. This indemnification and hold harmless obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist or arise as to any Indemnitee or other person described herein. This indemnification and hold harmless obligation includes, but is not limited to, any failure or alleged failure by Contractor to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any failure or alleged failure of Contractor's obligations regarding any stop payment notice actions or liens, including Civil Wage and Penalty Assessments and/or Orders by the DIR.

**14.2.2** To the furthest extent permitted by California law, Contractor shall also defend Indemnitees, at its own expense, including but not limited to attorneys' fees and costs, against all

Claims caused by, arising out of, resulting from, or incidental to the performance of the Work under this Contract by the Contractor, its Subcontractors, vendors, or suppliers. However, without impacting Contractor's obligation to provide an immediate and ongoing defense of Indemnitees, the Contractor's defense obligation shall be retroactively reduced by the proportion of the Indemnitees' and/or Architect's liability to the extent caused by the active negligence or willful misconduct of the Indemnitees, and/or defects in design furnished by the Architect, as found by a court or arbitrator of competent jurisdiction. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the Indemnitees. If a conflict-of-interest bars joint representation of Contractor and Indemnitees, District shall have the right to select its own counsel, subject to Contractor's reasonable right of rejection. If any Indemnitee provides its own defense due to failure to timely respond to tender of defense, rejection of tender of defense, or conflict of interest of proposed counsel, Contractor shall reimburse such Indemnitee for any expenditures. Even if the Contractor assumes the defense of the District with acceptable counsel, the District, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Contractor of any of its obligations hereunder. Contractor's defense obligation shall not be construed to negate, abridge, or otherwise reduce any right or obligation of defense that would otherwise exist as to any Indemnitee or other person described herein. Contractor's defense obligation includes, but is not limited to, any failure or alleged failure by Contractor to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any failure or alleged failure of Contractor's obligations regarding any stop payment notice actions or liens, including Civil Wage and Penalty Assessments and/or Orders by the DIR. The Contractor shall give prompt notice to the District in the event of any Claim(s).

**14.2.3** Without limitation of the provisions herein, if the Contractor's obligation to indemnify and hold harmless the Indemnitees or its obligation to defend Indemnitees as provided herein shall be determined to be void or unenforceable, in whole or in part, it is the intention of the parties that these circumstances shall not otherwise affect the validity or enforceability of the Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein. Further, the Contractor shall be and remain fully liable on its agreements and obligations herein to the fullest extent permitted by law.

**14.2.4** Pursuant to Public Contract Code section 9201, the District shall provide timely notification to Contractor of the receipt of any third-party Claim relating to this Contract. The District shall be entitled to recover its reasonable costs incurred in providing said notification.

**14.2.5** In any and all Claims against any of the Indemnitees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**14.2.6** The District may retain so much of the moneys due the Contractor as shall be considered necessary, until disposition of any such Claims or until the District, Architect(s) and Construction Manager(s) have received written agreement from the Contractor that they will unconditionally defend the District, Architect(s) and Construction Manager(s), their respective officers, agents and employees, and pay any damages due by reason of settlement or judgment.

**14.2.7** The Contractor's defense and indemnification obligations hereunder shall survive the completion of Work, the warranty/guarantee period, and the termination of the Contract.

## **15. TIME**

### **15.1 Notice to Proceed**

**15.1.1** District may issue a Notice to Proceed within ninety (90) days from the date of the Notice of Award. Once Contractor has received the Notice to Proceed, Contractor shall complete the Work within the period of time indicated in the Contract Documents.

**15.1.2** In the event that the District desires to postpone issuing the Notice to Proceed beyond ninety (90) days from the date of the Notice of Award, it is expressly understood that with reasonable notice to the Contractor, the District may postpone issuing the Notice to Proceed. It is further expressly understood by Contractor that Contractor shall not be entitled to any claim of additional compensation as a result of the postponement of the issuance of the Notice to Proceed.

**15.1.3** If the Contractor believes that a postponement of issuance of the Notice to Proceed will cause a hardship to Contractor, Contractor may terminate the Contract. Contractor's termination due to a postponement shall be by written notice to District within ten (10) days after receipt by Contractor of District's notice of postponement. It is further understood by Contractor that in the event that Contractor terminates the Contract as a result of postponement by the District, the District shall only be obligated to pay Contractor for the Work that Contractor had performed at the time of notification of postponement. Should Contractor terminate the Contract as a result of a notice of postponement, District shall have the authority to award the Contract to the next lowest responsive responsible bidder.

## **15.2** Computation of Time / Adverse Weather

**15.2.1** The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor in compliance with the time extension request procedures and only if all of the following conditions are met:

**15.2.1.1** The weather conditions constitute Adverse Weather, as defined herein;

**15.2.1.2** Contractor can verify that the Adverse Weather caused delays in excess of five (5) hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

**15.2.1.3** The Contractor's crew is dismissed as a result of the Adverse Weather;

**15.2.1.4** Said delay adversely affects the critical path in the Construction Schedule; and

**15.2.1.5** Exceeds twelve (12) days of delay per year.

**15.2.2** If the aforementioned conditions are met, a non-compensable day-for-day extension will only be allowed for those days in excess of those indicated herein.

**15.2.3** The Contractor shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the District.

**15.2.4** The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

## **15.3** Hours of Work

### **15.3.1** Sufficient Forces

Contractor and Subcontractors shall continuously furnish sufficient and competent work forces with the required levels of familiarity with the Project and skill, training and experience to ensure the prosecution of the Work in accordance with the Construction Schedule.

### **15.3.2** Performance During Working Hours

Work shall be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours

with the advance written consent of the District and approval of any required governmental agencies.

**15.3.3 No Work during State Testing**

Contractor shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the Site are taking State or Federally-required tests. The District or District's Representative will provide Contractor with a schedule of test dates concurrent with the District's issuance of the Notice to Proceed, or as soon as test dates are made available to the District.

**15.4 Progress and Completion**

**15.4.1 Time of the Essence**

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

**15.4.2 No Commencement Without Insurance or Bonds**

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

**15.5 Schedule**

Contractor shall provide to District, Construction Manager, and Architect a schedule in conformance with the Contract Documents and as required in the Notice to Proceed and the Contractor's Submittals and Schedules section of these General Conditions.

**15.6 Expeditious Completion**

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

**16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES**

**16.1 Liquidated Damages**

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

**16.2 Excusable Delay**

**16.2.1** Contractor shall not be charged for liquidated damages because of any delays in completion of the Work which are not the fault of Contractor or its Subcontractors, including adverse weather delays, strikes, acts of God as defined in Public Contract Code section 7105, acts of enemy, epidemics, and quarantine restrictions. Contractor shall, within five (5) calendar days of beginning of any delay, including a Force Majeure event, notify District in writing of causes of delay including documentation and facts explaining the delay and the direct correlation between the

cause and effect ("Notice of Delay"). District shall review the facts and extent of any delay and shall grant extension(s) of time for completing Work when, in its judgment, the findings of fact justify an extension. Extension(s) of time shall apply only to that portion of Work affected by delay and shall not apply to other portions of Work not so affected. An extension of time may only be granted if Contractor has timely submitted the Construction Schedule as required herein.

**16.2.2** Contractor's Notice of Delay and request for a time extension pursuant to subparagraph 16.2 is a condition precedent to Contractor's submittal of and/or entitlement to a claim pursuant to Article 25 of these Construction Provisions. Contractor shall notify the District pursuant to the Claims Process provisions in these General Conditions of any anticipated delay and its cause. Following submission of a claim, the District may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.

**16.2.3** In the event the Contractor requests an extension of Contract Time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. If the Contractor fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any claim for delay must include the following information as support, without limitation:

**16.2.3.1** The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

**16.2.3.2** Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. In particular, Contractor must show an actual impact to the schedule, after making a good faith effort to mitigate the delay by rescheduling the work, by providing an analysis of the schedule ("Time Impact Analysis"). Such Time Impact Analysis shall describe in detail the cause and effect of the delay and the impact on the critical dates in the Project schedule and main sequence of schedule activities to enable District to evaluate the impact of changed Work to the scheduled critical path. (This information must be provided for any portion of any delay of seven (7) days or more.) The Contractor shall be responsible for all costs associated with the preparation of Time Impact Analyses.

**16.2.4** A recovery schedule must be submitted within twenty (20) calendar days of written notification to the District of causes of delay to recover the lost time within seven (7) calendar days. As part of this submittal, the Contractor shall provide a written narrative for each revision made to recapture the lost time. If the revisions include sequence changes, the Contractor shall provide a schedule diagram comparing the original sequence to the revised sequence of work. The revisions shall not be incorporated into any schedule update until the revisions have been reviewed by District. At District's discretion, the Contractor can be required to provide Subcontractor certifications for revisions affecting said Subcontractors.

**16.2.5** Contractor must comply with requirements in subsection 16.2 for a Notice of Delay and supporting justification notwithstanding if Contractor contends the specific delay period is unknown and continuing. When submitting a Notice of Delay and supporting justification, Contractor must provide an estimated delay duration to critical path activities at the time the Notice of Delay and supporting justification is required to be submitted. Failure of the Contractor to perform in accordance with the current schedule update shall not be excused by submittal of a Notice of Delay. If Contractor contends the delaying event(s) are continuing, Contractor must update monthly the estimated delay period with supporting justification.

**16.2.6** Contractor's failure to timely submit a written Notice of Delay and/or provide the justification required in subparagraph 16.2 shall constitute Contractor's waiver of any right to later submit a Proposed Change Order or pursue a Claim on the circumstances giving rise to the request, or to later pursue any additional money or time extensions in any manner related to that

issue, regardless of the merits because the Contractor will not have satisfied a condition precedent or exhausted administrative remedies required to show entitlement to a Contract Time adjustment. Contractor acknowledges that these written notices and justification requirements are critically important to District's Work, Project management, and evaluating potential options and alternatives to implement mitigation efforts to reduce or eliminate additional Project costs and delays.

### **16.3 No Additional Compensation for Delays Within Contractor's Control**

**16.3.1** Contractor is aware that governmental agencies, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. Accordingly, Contractor shall include in its bid, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Thus, Contractor is not entitled to make a claim for damages or delays arising from the review of Contractor's drawings.

**16.3.2** Contractor shall only be entitled to compensation for delay when all of the following conditions are met:

**16.3.2.1** The District is responsible for the delay;

**16.3.2.2** The delay is unreasonable under the circumstances involved;

**16.3.2.3** The delay was not within the contemplation of the District and Contractor;

**16.3.2.4** The delay could not have been avoided or mitigated by Contractor's reasonable diligence; and

**16.3.2.5** Contractor timely complies with the claims procedure of the Contract Documents.

**16.3.3** Where an event for which District is responsible impacts the projected Completion Date, the Contractor shall provide a written mitigation plan, including a schedule diagram, which explains how (e.g., increase crew size, overtime, etc.) the impact can be mitigated. The Contractor shall also include a detailed cost breakdown of the labor, equipment, and material the Contractor would expend to mitigate District-caused time impact. The Contractor shall submit its mitigation plan to District within fourteen (14) calendar days from the date of discovery of the impact. The Contractor is responsible for the cost to prepare the mitigation plan.

**16.3.4** Where a change in the Work extends the Contract Time, Contractor may request and recover additional, actual direct costs, provided that Contractor can demonstrate such additional costs are:

**16.3.4.1** Actually incurred performing the Work;

**16.3.4.2** Not compensated by the Markup allowed; and

**16.3.4.3** Directly result from the extended Contract Time.

**16.3.5** Contractor shall comply with all required procedures, documentation and time requirements in the Contract Documents. Contractor may not seek or recover such costs using formulas (e.g. Eichleay, labor factors). No time will be granted under this Contract for cumulative effect of changes.

### **16.4 Force Majeure**

"Force Majeure" means any event or circumstance unknown at the time of contracting that is beyond the parties' control and makes performance of the contract impractical or impossible. The Party seeking to have its performance obligation(s) excused must demonstrate that there was such an insuperable interference occurring without the party's intervention as could not have been prevented by the exercise

of prudence, diligence, and care, by providing prompt notice to the other Party, including full particulars of such event, of its inability to perform its obligations due to such event, following commencement of the claiming Party's inability to so perform its obligations. To the extent satisfying these conditions, Force Majeure events include the following: acts of God, war, civil unrest, epidemic, fire, smoke, volcanic eruption, earthquake, strike, unusually severe weather, flood, or shortage of transportation facilities, lock out, or commandeering of materials, product, plant, or facilities by the government. Force Majeure shall not be based on a Party's financial inability to perform under this Agreement unless there exists extreme and unreasonable difficulty, expense, injury, or loss involved. Costs imposed by the government on sales or importation of goods or materials including, without limitation, tariffs or taxes, are not Force Majeure. A [Force Majeure](#) event does not include an act of negligence or intentional wrongdoing by a Party. Any Party claiming a Force Majeure event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Each Party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations hereunder. No obligation that arose before the Force Majeure event that could and should have been fully performed before such Force Majeure event is excused as a result of such Force Majeure event.

#### **16.5 Float or Slack in the Schedule**

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the District or the Contractor, but its use shall be determined solely by the District.

### **17. CHANGES IN THE WORK**

#### **17.1 No Changes Without Authorization**

**17.1.1** There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order or a written Construction Change Directive authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's governing board has authorized the same and the cost thereof has been approved in writing by Change Order or Construction Change Directive in advance of the changed Work being performed. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted and approved in writing in the Change Order or Construction Change Directive. Contractor shall be responsible for any costs incurred by the District for professional services and DSA fees and/or delay to the Project Schedule, if any, for DSA to review any request for changes to the DSA approved plans and specifications for the convenience of the Contractor and/or to accommodate the Contractor's means and methods. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

**17.1.2** Contractor shall perform immediately all work that has been authorized by a fully executed Change Order or Construction Change Directive. Contractor shall be fully responsible for any and all delays and/or expenses caused by Contractor's failure to expeditiously perform this Work.

**17.1.3** Should any Change Order result in an increase in the Contract Price or extend the Contract Time, the cost of or length of extension in that Change Order shall be agreed to, in writing, by the District in advance of the Work by Contractor and shall be subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that Contractor proceeds with any change in Work without a Change Order executed by the District or Construction Change Directive, Contractor waives any claim of additional compensation or time for that additional work. Under no circumstances shall Contractor be entitled to any claim of additional compensation or time not expressly requested by Contractor in a Proposed Change Order or approved by District in an executed Change Order.

**17.1.4** A Change Order or Construction Change Directive will become effective when approved by the Board, notwithstanding that Contractor has not signed it. A Change Order or Construction Change Directive will become effective without Contractor's signature provided District indicates it as a "Unilateral Change Order". Any dispute as to the adjustment in the Contract Price or Contract Time, if any, of the Unilateral Change Order shall be resolved pursuant to the Payments and Claims Process provisions herein.

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

## **17.2 Architect Authority**

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

## **17.3 Price Request**

### **17.3.1 Definition of Price Request**

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

### **17.3.2 Scope of Price Request**

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

## **17.4 Change Orders**

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

**17.4.1.1** A description of a change in the Work;

**17.4.1.2** The amount of the adjustment in the Contract Price, if any; and

**17.4.1.3** The extent of the adjustment in the Contract Time, if any.

## **17.5 Proposed Change Order**

### **17.5.1 Definition of Proposed Change Order**

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

### **17.5.2 Changes in Contract Price**

A PCO shall include breakdowns and backup documentation pursuant to the revisions herein and sufficient, in the District's judgment, to validate any change in Contract Price. In no case shall

Contractor or any of its Subcontractors be permitted to reserve rights for additional compensation for Change Order Work.

### **17.5.3 Changes in Time**

A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. The Contractor shall justify the proposed change in time by submittal of a schedule analysis that accurately shows the impact of the change on the critical path of the Construction Schedule ("Time Impact Analysis"). If Contractor fails to request a time extension in a PCO, including the Time Impact Analysis, then the Contractor is thereafter precluded from requesting, and waives any right to request, additional time and/or claim a delay. In no case shall Contractor or any of its Subcontractors be permitted to reserve rights for additional time for Change Order Work. A PCO that leaves the amount of time requested blank, or states that such time requested is "to be determined", is not permitted and shall also constitute a waiver of any right to request additional time and/or claim a delay.

### **17.5.4 Allowances**

If there is an Allowance, then Contractor shall not bill for or be due any portion of an Allowance unless the District has identified specific work, Contractor has submitted a price for that work or the District has proposed a price for that work, the District has accepted the cost for that work, and the District has executed an Allowance Expenditure Directive incorporating that work. If Allowance was included in Contract Price before mark-up ("above the line"), Allowance Expenditure Directives shall be based on Contractor's costs, without overhead and profit, for products, delivery, installation, labor, insurance, payroll, taxes, bonding and equipment rental. No mark-up for insurance, bonds, overhead and profit shall be added to the Allowance Expenditure Directive unless Allowance was included in the Contract Price after mark-up ("below the line"). Allowance will only be treated as "below the line" if shown in the Bid Documents and the Bid Documents are escrowed.

Any unused portion of the Allowance, and related mark-up if Allowance was included above the line, will revert to the District documented by a deductive Change Order. Contractor authorizes the District to execute a unilateral deductive Change Order at or near the end of the Project for all or any portion of the Allowance not allocated.

Whenever actual costs are more than the Allowance, the amount covered by the Allowance will be approved at cost (i.e., only the amount within the Allowance will be approved for payment). Contractor must follow the Change Order procedure to adjust the Contract Price for amounts in excess of the Allowance.

### **17.5.5 Unknown and/or Unforeseen Conditions**

Separate from what is provided in the Allowance, if Contractor requests an increase in Contract Price and/or Contract Time that is based at least partially on Contractor's assertion that Contractor has encountered unknown and/or unforeseen condition(s) on the Project, then Contractor shall base the PCO on provable information that, beyond a reasonable doubt and to the District's satisfaction, demonstrates that the unknown and/or unforeseen condition(s) were actually unknown and/or unforeseen and that the condition(s) were reasonably unknown and/or unforeseen. If not, the District shall deny the PCO as unsubstantiated, and the Contractor shall complete the Project without any increase in Contract Price and/or Contract Time based on that PCO.

### **17.5.6 Time to Submit Proposed Change Order**

Contractor shall submit its PCO, using Document 00 63 57 (Proposed Change Order Form), within five (5) working days of the date Contractor discovers, or reasonably should have discovered, the circumstances giving rise to the PCO, unless additional time to submit a PCO is granted in writing by the District. Time is of the essence in Contractor's submission of PCOs so that the District can promptly investigate the basis for the PCO. Accordingly, if Contractor fails to submit its PCO within this timeframe, Contractor waives, releases, and discharges any right to assert or claim any

entitlement to an adjustment of the Contract Price and/or Time based on circumstances giving rise to the PCO.

**17.5.7 Proposed Change Order Certification**

In submitting a PCO, Contractor certifies and affirms that the cost and/or time request is submitted in good faith, that the cost and/or time request is accurate and in accordance with the provisions of the Contract Documents, and the Contractor submits the cost and/or request for extension of time recognizing the significant civil penalties and treble damages which follow from making a false claim or presenting a false claim under Government Code section 12650 et seq.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Contractor's costs and expenses, direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project including, without limitation, cumulative impacts. Contractor is not entitled to separately recover amounts for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.

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**17.6 Format for Proposed Change Order**

**17.6.1** The following format shall be used as applicable by the District and the Contractor (e.g. Change Orders, PCO's, Allowance Expenditure Directives) to communicate proposed additions and deductions to the Contract, supported by attached documentation. Any spaces left blank will be deemed no change to cost or time.

	<b><u>WORK PERFORMED OTHER THAN BY CONTRACTOR</u></b>	<b><u>ADD</u></b>	<b><u>DEDUCT</u></b>
(a)	<b><u>Material</u></b> (attach suppliers' invoice or itemized quantity and unit cost plus sales tax)		
(b)	<b><u>Add Labor</u></b> (attach itemized hours and rates, fully Burdened, and specify the hourly rate for each additional labor burden, for example, payroll taxes, fringe benefits, etc.)		
(c)	<b><u>Add Equipment</u></b> (attach suppliers' invoice)		
(d)	<b><u>Subtotal</u></b>		
(e)	<b><u>Add Overhead and Profit for any and all Tiers of Subcontractor</u></b> , the total not to exceed ten percent (10%) of Item (d)		
(f)	<b><u>Subtotal</u></b>		
(g)	<b><u>Add General Conditions Cost</u></b> (if Time is Compensable) (attach supporting documentation)		
(h)	<b><u>Subtotal</u></b>		
(i)	<b><u>Add Overhead and Profit for Contractor</u></b> , not to exceed five percent (5%) of Item (h) (if applicable)		
(j)	<b><u>Subtotal</u></b>		
(k)	<b><u>Add Bond and Insurance</u></b> , not to exceed two and one-half percent (2.5%) of Item (j) (if applicable)		
(l)	<b><u>TOTAL</u></b>		
(m)	<b><u>Time</u></b> (zero unless indicated; "TBD" not permitted)	_____ <b>Calendar Days</b>	

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	<b><u>WORK PERFORMED BY CONTRACTOR</u></b>	<b><u>ADD</u></b>	<b><u>DEDUCT</u></b>
(a)	<b><u>Material</u></b> (attach itemized quantity and unit cost plus sales tax)		
(b)	<b><u>Add Labor</u></b> (attach itemized hours and rates, fully Burdened, and specify the hourly rate for each additional labor burden, for example, payroll taxes, fringe benefits, etc.)		
(c)	<b><u>Add Equipment</u></b> (attach suppliers' invoice)		
(d)	<b><u>Add General Conditions Cost</u></b> (if Time is Compensable) (attach supporting documentation)		
(e)	<b><u>Subtotal</u></b>		
(f)	<b><u>Add Overhead and Profit for Contractor</u></b> , not to exceed fifteen percent (15%) of Item (e) (if applicable)		
(g)	<b><u>Subtotal</u></b>		
(h)	<b><u>Add Bond and Insurance</u></b> , not to exceed two and one-half percent (2.5%) of Item (g) (if applicable)		
(i)	<b><u>TOTAL</u></b>		
(j)	<b><u>Time</u></b> (zero unless indicated; "TBD" not permitted)	<b>_____ Calendar Days</b>	

**17.6.2 Mandatory Use of Forms.** Contractor shall only submit PCOs by completing Document 00 63 57 (Proposed Change Order Form). Contractor acknowledges and agrees that use of this specific and consistent format is essential to District's evaluation of PCOs. Accordingly, Contractor waives, releases, and discharges any right to assert or claim any entitlement to an adjustment of the Contract Price and/or Time for any purported PCO that does not comply with Document 00 63 57 (Proposed Change Order Form).

**17.6.3 Labor.** Contractor shall be compensated for the costs of labor actually and directly utilized in the performance of the Work. Such labor costs shall be the actual cost, use of any formulas (e.g. labor factors) is not allowed, not to exceed prevailing wage rates established by the bid advertisement date or when the Contract was awarded, whichever is applicable, in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Work, fully Burdened. Labor costs shall exclude costs incurred by the Contractor in preparing estimate(s) of the costs of the change in the Work, in the maintenance of records relating to the costs of the change in the Work, coordination and assembly of materials and information relating to the change in the Work or performance thereof, or the supervision and other overhead and general conditions costs associated with the change in the Work or performance thereof, including but not limited to the cost for the job superintendent.

**17.6.4 Materials.** Contractor shall be compensated for the costs of materials necessarily and actually used or consumed in connection with the performance of the change in the Work. Costs of materials may include reasonable costs of transportation from a source closest to the Site of the Work and delivery to the Site. If discounts by material suppliers are available for materials necessarily used in the performance of the change in the Work, they shall be credited to the District. If materials necessarily used in the performance of the change in the Work are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefor shall not exceed the current wholesale price for such materials. If, in the reasonable opinion of the District, the costs asserted by the Contractor for materials in connection with any change in the Work are excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials from its supplier or vendor of the same, the costs of such materials and the District's obligation to pay for the same shall be limited to the then lowest wholesale price at which similar materials are available in the quantities required to perform the change in the Work. The District may elect to furnish materials for the change in the Work, in which event the Contractor shall not be compensated for the costs of furnishing such materials or any mark-up thereon.

**17.6.5 Equipment.** As a precondition to the District's duty to pay for Equipment rental or loading and transportation, Contractor shall provide satisfactory evidence of the actual costs of Equipment from the supplier, vendor or rental agency of same. Contractor shall be compensated for the actual cost of the necessary and direct use of Equipment in the performance of the change in the Work. Use of such Equipment in the performance of the change in the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Equipment moved by its own power shall include time required to move such Equipment to the site of the Work from the nearest available rental source of the same. If Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Equipment is used for performance of any portion of the Work other than the change in the Work. Unless prior approval in writing is obtained by the Contractor from the Architect, the Project Inspector and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. Contractor shall not be entitled to an allowance or any other compensation for Equipment or tools used in the performance of change in the Work where such Equipment or tools have a replacement value of \$500.00 or less. Equipment costs claimed by the Contractor in connection with the performance of any Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, the Project Inspector and the District, the allowable rate for the use of Equipment in connection with the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Equipment operator), and any and all other costs incurred by the Contractor incidental to the use of such Equipment.

**17.6.6 General Conditions Cost.** The phrase "General Conditions Cost" shall mean, other than expressly limited or excluded herein, the costs of Contractor during the construction phase, including but not limited to: payroll costs for project manager for Work conducted at the Site, payroll costs for the superintendent and full-time general foremen, workers not included as direct labor costs engaged in support functions (e.g., loading/unloading, clean-up), costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the Site, costs of consultants not in the direct employ of Contractor or Subcontractors, and fees for permits and licenses.

**17.6.7 Overhead and Profit.** The phrase "Overhead and Profit" shall include field and office supervisors and assistants, watchperson, use of small tools, consumable, insurance other than construction bonds and insurance required herein, general conditions costs and home office expenses.

## **17.7 Change Order Certification**

**17.7.1** All Change Orders and PCOs include the following certification by the Contractor, either in the form specifically or incorporated by this reference:

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

**17.7.1.2** It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Contractor's costs and expenses, direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project including, without limitation, cumulative impacts. Contractor is not entitled to separately recover amounts for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.

**17.7.2** Accord and Satisfaction: Contractor's execution of any Change Order shall constitute a full accord and satisfaction, and release, of all Contractor (and if applicable, Subcontractor) claims for additional time, money or other relief arising from or relating to the subject matter of the change including, without limitation, impacts of all types, cumulative impacts, inefficiency, overtime, delay and any other type of claim.

**17.7.3** **Mandatory Use of Forms.** Contractor shall only submit Change Orders by completing Document 00 63 63 (Change Order Form). Contractor acknowledges and agrees that use of this specific and consistent format is essential to District's processing of Change Orders. Accordingly, Contractor waives, releases, and discharges any right to assert or claim any entitlement to an adjustment of the Contract Price and/or Time for any change that does not comply with Document 00 63 63 (Change Order Form).

**17.8** **Determination of Change Order Cost**

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

- 17.8.1.1** District acceptance of a PCO;
- 17.8.1.2** By unit prices contained in Contractor's original bid;
- 17.8.1.3** By agreement between District and Contractor.

**17.8.2** Mark-up for overhead and profit and bonds and insurance shall be based on the net increase or decrease to the Contract Price; Contractor shall not split Change Orders to artificially increase markup and/or decrease credit.

**17.9** **Deductive Change Orders**

District reserves the right to unilaterally reduce the scope of Work or perform work with other forces or its own forces. All deductive Change Order(s) must be prepared pursuant to the provisions herein. Where a portion of the Work is deleted from the Contract, the reasonable value of the deducted work less the value of work performed shall be considered the appropriate deduction. The value submitted on the Schedule of Values shall be used to calculate the credit amount unless the bid documentation is being held in escrow as part of the Contract Documents. Unit Prices, if any, may be used in District's discretion in calculating reasonable value. If Contractor offers a proposed amount for a deductive Change Order(s), Contractor shall include a minimum of five percent (5%) total profit and overhead to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a minimum of ten percent (10%) profit and overhead to be deducted with the amount of its deducted work. Any deviation from this provision shall not be allowed.

**17.10** **Addition or Deletion of Alternate Bid Item(s)**

If the Bid Form and Proposal includes proposal(s) for Alternate Bid Item(s), during Contractor's performance of the Work, the District may elect to add or delete any such Alternate Bid Item(s) if not included in the Contract at the time of award. If the District elects to add or delete Alternate Bid Item(s) after Contract award, the cost or credit for such Alternate Bid Item(s) shall be as set forth in the Bid Form and Proposal unless the parties agree to a different price and the Contract Time shall be adjusted by the number of days allocated in the Contract Documents. If days are not allocated in the Contract Documents, the Contract Time shall be equitably adjusted.

**17.11** **Discounts, Rebates, and Refunds**

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be

allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein.

#### **17.12 Construction Change Directives**

**17.12.1** A Construction Change Directive is a written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work. The District may, as provided by law, by Construction Change Directive and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. The adjustment to the Contract Price or Time, if any, is subject to the provisions of this section regarding Changes in the Work. If all or a portion of the Project is being funded by funds requiring approval by the State Allocation Board ("SAB"), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are released by the Office of Public School Construction ("OPSC"). Any dispute as to the adjustment in the Contract Price, if any, of the Construction Change Directive or timing of payment shall be resolved pursuant to the Payments and Claims Process provisions herein.

**17.12.2** The District may issue a Construction Change Directive in the absence of agreement on the terms of a Change Order.

#### **17.13 Force Account Directives**

**17.13.1** When work, for which a definite price has not been agreed upon in advance, is to be paid for on a force account basis, all direct costs necessarily incurred and paid by the Contractor for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the District and compensation will be determined as set forth herein.

**17.13.2** The District will issue a Force Account Directive to proceed with the Work on a force account basis, and a not-to-exceed budget will be established by the District.

**17.13.3** All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to Force Account Directives. However, the District will only pay for actual costs verified in the field by the District or its authorized representative(s) on a daily basis.

**17.13.4** The Contractor shall be responsible for all cost related to the administration of Force Account Directive. The markup for overhead and profit for Contractor modifications shall be full compensation to the Contractor to administer Force Account Directive, and Contractor shall not be entitled to separately recover additional amounts for overhead and/or profit.

**17.13.5** The Contractor shall notify the District or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the force account work. Furthermore, the Contractor shall notify the District when it has consumed eighty percent (80%) of the budget, and shall not exceed the budget unless specifically authorized in writing by the District. The Contractor will not be compensated for force account work in the event that the Contractor fails to timely notify the District regarding the commencement of force account work, or exceeding the force account budget.

**17.13.6** The Contractor shall diligently proceed with the work, and on a daily basis, submit a daily force account report using Document 00 63 47 (Daily Force Account Report) no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the force account work only. The names of the individuals performing the force account work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. The District will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to the Contractor for their records. The District will not sign, nor will the Contractor receive compensation for work the District cannot verify. The Contractor will provide a weekly force account summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work.

**17.13.7** In the event the Contractor and the District reach a written agreement on a set cost for the work while the work is proceeding based on a Force Account Directive, the Contractor's signed daily force account reports shall be discontinued, and all previously signed reports shall be invalid.

**17.14 Accounting Records**

With respect to portions of the Work performed by Change Orders and Construction Change Directives, the Contractor shall keep and maintain cost-accounting records satisfactory to the District, including, without limitation, Job Cost Reports as provided in these General Conditions, which shall be available to the District on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents. Such records shall include without limitation hourly records for Labor and Equipment and itemized records of materials and Equipment used that day in connection with the performance of any Work. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District, the Architect or the Project Inspector upon request. In the event that the Contractor fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records, the District's reasonable good faith determination of the extent of adjustment to the Contract Price shall be final, conclusive, dispositive and binding upon Contractor.

**17.15 Notice Required**

If the Contractor desires to make a claim for an increase in the Contract Price, or any extension in the Contract Time for completion, it shall notify the District pursuant to the provisions herein including, without limitation, Article 25 Claims Process provisions. No claim shall be considered unless made in accordance with this subparagraph. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Contract Price or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

**17.16 Applicability to Subcontractors**

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

**17.17 Alteration to Change Order Language**

Contractor shall not alter Change Orders or reserve time in Change Orders. Change Orders altered in violation of this provision, if in conflict with the terms set forth herein, shall be construed in accordance with the terms set forth herein. Contractor shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

**17.18 Failure of Contractor to Execute Change Order**

Contractor shall be in default of the Contract if Contractor fails to execute a Change Order when the Contractor agrees with the addition and/or deletion of the Work in that Change Order.

**18. REQUEST FOR INFORMATION**

**18.1** Any Request for Information shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. The Contractor shall make suggestions and interpretations of the issue raised by each Request for Information. A Request for Information cannot modify the Contract Price, Contract Time, or the Contract Documents. Upon request by the District, Contractor shall provide an electronic copy of the Request for Information in addition to the hard copy.

**18.2** The Contractor shall be responsible for any costs incurred for professional services that District may deduct from any amounts owing to the Contractor, if a Request for Information requests an interpretation or decision of a matter where the information sought is equally available to the party

making the request. District, at its sole discretion, shall deduct from and/or invoice Contractor for all the professional services arising herein.

**19. PAYMENTS**

**19.1 Contract Price**

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

**19.2 Applications for Progress Payments**

**19.2.1 Procedure for Applications for Progress Payments**

**19.2.1.1 Application for Progress Payment**

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

**19.2.1.1.1.1** The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;

**19.2.1.1.1.2** The amount being requested under the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;

**19.2.1.1.1.3** The balance that will be due to each of such entities after said payment is made;

**19.2.1.1.1.4** A certification that the As-Built Drawings and annotated Specifications are current;

**19.2.1.1.1.5** Itemized breakdown of work done for the purpose of requesting partial payment;

**19.2.1.1.1.6** An updated and acceptable construction schedule in conformance with the provisions herein;

**19.2.1.1.1.7** The additions to and subtractions from the Contract Price and Contract Time;

**19.2.1.1.1.8** A total of the retentions held;

**19.2.1.1.1.9** Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;

**19.2.1.1.1.10** The percentage of completion of the Contractor's Work by line item;

**19.2.1.1.1.11** Schedule of Values updated from the preceding Application for Payment;

**19.2.1.1.1.12** A duly completed and executed conditional waiver and release upon progress payment compliant with Civil Code section 8132 from the Contractor and

each subcontractor of any tier and supplier to be paid from the current progress payment;

**19.2.1.1.1.13** A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 8134 from the Contractor and each subcontractor of any tier and supplier that was paid from the previous progress payment(s); and

**19.2.1.1.1.14** A certification by the Contractor of the following:

The Contractor warrants title to all Work performed as of the date of this payment application has been completed in accordance with the Contract Documents for the Project. The Contractor further warrants that all amounts have been paid for work which previous Certificates for Payment were issued and payments received and all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the District has been informed. Submission of sums which have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq.

**19.2.1.1.1.15** The Contractor shall be subject to the False Claims Act set forth in Government Code section 12650 et seq. for information provided with any Application for Progress Payment.

**19.2.1.1.1.16** All remaining certified payroll records ("CPR(s)") for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment. As indicated herein, the District shall not make any payment to Contractor until:

**19.2.1.1.1.16.1** Contractor and/or its Subcontractor(s) provide electronic CPRs directly to the DIR on no less than every thirty (30) days while Work is being performed and within thirty (30) days after the final day of Work performed on the Project for any journeyman, apprentice, worker or other employee was employed in connection with the Work, or within ten (10) days of any request by the District or the DIR to the requesting entity, and

**19.2.1.1.1.16.2** Any delay in Contractor and/or its Subcontractor(s) providing CPRs in a timely manner may directly delay the Contractor's payment.

**19.2.1.1.2** Applications received after June 20th will not be paid until the second week of July and applications received after December 12th will not be paid until the first week of January.

## **19.2.2**      **Prerequisites for Progress Payments**

**19.2.2.1** **First Payment Request:** The following items, if applicable, must be completed before the District will accept and/or process the Contractor's first payment request:

**19.2.2.1.1**      Installation of the Project sign;

**19.2.2.1.2**      Installation of field office;

**19.2.2.1.3**      Installation of temporary facilities and fencing;

**19.2.2.1.4**      Schedule of Values;

- 19.2.2.1.5 Contractor's Construction Schedule;
- 19.2.2.1.6 Schedule of unit prices, if applicable;
- 19.2.2.1.7 Submittal Schedule;
- 19.2.2.1.8 Receipt by Architect of all submittals due as of the date of the payment application;
- 19.2.2.1.9 Copies of necessary permits;
- 19.2.2.1.10 Copies of authorizations and licenses from governing authorities;
- 19.2.2.1.11 Initial progress report;
- 19.2.2.1.12 Surveyor qualifications;
- 19.2.2.1.13 Written acceptance of District's survey of rough grading, if applicable;
- 19.2.2.1.14 List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;
- 19.2.2.1.15 All bonds and insurance endorsements; and
- 19.2.2.1.16 Resumes of Contractor's project manager, and if applicable, job site secretary, record documents recorder, and job site superintendent.

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

**19.2.2.3 No Waiver of Criteria:** Any payments made to Contractor where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Contractor may pay its Subcontractors and suppliers. Contractor agrees that failure to submit such items may constitute a breach of contract by Contractor and may subject Contractor to termination.

### **19.3 Progress Payments**

#### **19.3.1 District's Approval of Application for Payment**

**19.3.1.1** Upon receipt of an Application for Payment, The District shall act in accordance with both of the following:

**19.3.1.1.1** Each Application for Payment shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the Application for Payment is a proper Application for Payment.

**19.3.1.1.2** Any Application for Payment determined not to be a proper Application for Payment suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. An Application for Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Payment is not proper. The number of days available to the District to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the District exceeds this seven-day return requirement.

**19.3.1.1.3** An Application for Payment shall be considered properly executed if funds are available for payment of the Application for Payment, and payment is not delayed due to an audit inquiry by the financial officer of the District.

**19.3.1.2** The District's review of the Contractor's Application for Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

**19.3.1.2.1** Observation of the Work for general conformance with the Contract Documents,

**19.3.1.2.2** Results of subsequent tests and inspections,

**19.3.1.2.3** Minor deviations from the Contract Documents correctable prior to completion, and

**19.3.1.2.4** Specific qualifications expressed by the Architect.

**19.3.1.3** District's approval of the certified Application for Payment shall be based on Contractor complying with all requirements for a fully complete and valid certified Application for Payment.

### **19.3.2 Payments to Contractor**

**19.3.2.1** Within thirty (30) days after approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The value of the Work completed shall be Contractor's best estimate. No inaccuracy or error in said estimate shall operate to release the Contractor, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.

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

**19.3.2.3** Default Payment Instructions. District shall make all payments to Contractor by check, payable to the legal name of Contractor stated on Contractor's Bid Form and Proposal, and mailed to the address stated on Contractor's Bid Form and Proposal.

**19.3.2.4** No Modifications Without Prior Verification; Contractor Bears All Risk. Any request to modify the payment instructions, including, without limitation, to change the recipient, address, or method of payment (e.g., electronic funds transfer), shall strictly comply with all of the following:

**19.3.2.4.1** Contractor must make a written request on Contractor's letterhead, signed by an authorized officer of Contractor. Email, text, or verbal requests shall not suffice. Contractor's written request must include bank account verification in the form of a bank letter or voided check.

**19.3.2.4.2** Following Contractor's written request, the District and an authorized officer of Contractor must verbally confirm the modification request in a real-time telephone call, using Contractor's contact information already on file.

**19.3.2.4.3** Following the real-time telephone call, the Parties must both sign a written amendment before the modification to the payment instructions takes effect.

Contractor assumes all risk of loss arising from any request to modify the payment instructions from the default payment instructions including, without limitation, risks from fraudulent, spoofed, or hacked communications.

**19.3.2.5** Additional Insurance for Modification Requests. In connection with any Contractor request to modify the payment instructions, the District may require Contractor to provide, as a condition of processing the modification, evidence of the following additional insurance:

**19.3.2.5.1** Commercial Crime Insurance, including Social Engineering Fraud coverage, with limits of not less than \$1,000,000 per occurrence.

**19.3.2.5.2** Cyber Liability Insurance, with limits of not less than \$1,000,000 per claim.

**19.3.3** **No Waiver**

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

**19.4** **Decisions to Withhold Payment**

**19.4.1** **Reasons to Withhold Payment**

The District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. The District may withhold payment, in whole, or in part, to such extent as may be necessary to protect the District from loss because of, but not limited to any of the following:

**19.4.1.1** Defective Work not remedied within **FORTY-EIGHT (48)** hours of written notice to Contractor.

**19.4.1.2** Stop Payment Notices or other liens served upon the District as a result of the Contract. Contractor agrees that the District may withhold up to 125% of the amount claimed in the Stop Payment Notice to answer the claim and to provide for the District's reasonable cost of any litigation pursuant to the stop payment notice.

**19.4.1.3** Written notice to withhold payment from Contractor by payment and/or performance bond surety(ies).

**19.4.1.4** Liquidated damages assessed against the Contractor.

**19.4.1.5** The cost of completion of the Contract if there exists a reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the completion date.

**19.4.1.6** Damage to the District or other contractor(s).

**19.4.1.7** Unsatisfactory prosecution of the Work by the Contractor.

**19.4.1.8** Failure to store and properly secure materials.

**19.4.1.9** Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a

Construction Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports.

**19.4.1.10** Failure of the Contractor to maintain As-Built Drawings.

**19.4.1.11** Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment.

**19.4.1.12** Unauthorized deviations from the Contract Documents.

**19.4.1.13** Failure of the Contractor to prosecute the Work in a timely manner in compliance with the Construction Schedule, established progress schedules, and/or completion dates.

**19.4.1.14** Failure to provide acceptable electronic certified payroll records, as required by the Labor Code, by these Contract Documents, or by written request; for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or by each Subcontractor in connection with the Work for the period of the Application for Payment or if payroll records are delinquent or inadequate.

**19.4.1.15** Failure to properly pay prevailing wages as required in Labor Code section 1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with labor compliance monitoring and enforcement by the DIR.

**19.4.1.16** Allowing an unregistered subcontractor, as described in Labor Code section 1725.5, to engage in the performance of any work under this Contract.

**19.4.1.17** Failure to comply with any applicable federal statutes and regulations regarding minimum wages, withholding, payrolls and basic records, apprentice and trainee employment requirements, equal employment opportunity requirements, Copeland Act requirements, Davis-Bacon Act and related requirements, Contract Work Hours and Safety Standards Act requirements, if applicable.

**19.4.1.18** Failure to properly maintain or clean up the Site.

**19.4.1.19** Failure to timely indemnify, defend, or hold harmless the District.

**19.4.1.20** Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits.

**19.4.1.21** Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents.

**19.4.1.22** Failure to pay any royalty, license or similar fees.

**19.4.1.23** Contractor is otherwise in breach, default, or in substantial violation of any provision of this Contract.

**19.4.1.24** Failure to perform any implementation and/or monitoring required by any SWPPP for the Project and/or the imposition of any penalties or fines therefore whether imposed on the District or Contractor.

#### **19.4.2 Reallocation of Withheld Amounts**

**19.4.2.1** District may, in its discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, District shall make such payments on behalf of Contractor. If any payment is so made by District, then that amount shall be considered a payment made under Contract by District to Contractor and District shall not be

liable to Contractor for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. District will render Contractor an accounting of funds disbursed on behalf of Contractor.

**19.4.2.2** If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after **FORTY-EIGHT (48)** hours' written notice to the Contractor and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Contract Price by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract Price (of at least one hundred fifty percent (150%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

**19.4.3 Payment After Cure**

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

**19.5 Subcontractor Payments**

**19.5.1 Payments to Subcontractors**

No later than seven (7) days after receipt, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

**19.5.2 No Obligation of District for Subcontractor Payment**

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

**19.5.3 Joint Checks**

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

**20. COMPLETION OF THE WORK**

**20.1 Completion**

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

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

**20.1.3** District, at its sole option, may accept completion of Contract and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of District,

except for minor corrective items, as distinguished from incomplete items. If Contractor fails to complete all minor corrective items within fifteen (15) days after the date of the District's acceptance of completion, District shall withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed.

**20.1.4** At the end of the 15-day period, if there are any items remaining to be corrected, District may elect to proceed as provided herein related to adjustments to Contract Price, and/or District's right to perform the Work of the Contractor.

## **20.2 Close-Out/Certification Procedures**

### **20.2.1 Punch List**

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

### **20.2.2 Close-Out/Certification Requirements**

#### **20.2.2.1 Utility Connections**

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

#### **20.2.2.2 Record Drawings and Record Specifications**

**20.2.2.2.1** Contractor shall provide exact Record Drawings of the Work ("As-Builts") and Record Specifications upon completion of the Project and as a condition precedent to approval of final payment.

**20.2.2.2.2** Contractor shall obtain the Inspector's approval of the corrected prints and employ a competent draftsman to transfer the Record Drawings information to the most current version of AutoCAD that is, at that time, currently utilized for plan check submission by either the District, the Architect, OPSC, and/or DSA, and print a complete set of transparent sepias. When completed, Contractor shall deliver to the District corrected sepias and data storage device acceptable to District with AutoCAD file.

**20.2.2.2.3** Contractor is liable and responsible for any and all inaccuracies in the Record Drawings and Record Specifications, even if inaccuracies become evident at a future date.

#### **20.2.2.3 Construction Storm Water Permit, if applicable**

Contractor shall submit to District all electronic or hard copy records required by the Construction Storm Water Permit, if applicable, within seven (7) days of Completion of the Project.

#### **20.2.2.4 Spare Parts and Maintenance Manuals:**

**20.2.2.4.1** Contractor shall provide products, spare parts, maintenance, and extra materials in quantities specified in the Specifications and in Manufacturer's recommendations.

**20.2.2.4.2** Contractor shall prepare all operation and maintenance manuals and date as indicated in the Specifications.

**20.2.2.5 Instruction of District Personnel:**

**20.2.2.5.1** Before final inspection, at agreed upon times, Contractor shall instruct District's designated personnel in operation, adjustment, and maintenance of products, equipment, and systems.

**20.2.2.5.2** For equipment requiring seasonal operation, Contractor shall perform instructions for other seasons within six months or by the change of season.

**20.2.2.5.3** Contractor shall use operation and maintenance manuals as basis for instruction. Contractor shall review contents of manual with personnel in detail to explain all aspects of operation and maintenance.

**20.2.2.5.4** Contractor shall prepare and insert additional data in Operation and Maintenance Manual when the need for such data becomes apparent during instruction.

**20.2.2.5.5** Contractor shall review contents of manual with personnel in detail to explain all aspects of operation and maintenance.

**20.2.2.6 Source Programming:** Contractor shall provide all source programming for all items in the Project.

**20.2.2.7 Verified Reports:** Contractor shall completely and accurately fill out and file forms DSA 6-C or DSA 152 (or current form), as appropriate. Refer to section 4-336 and section 4-343 of Part 1, Title 24 of the California Code of Regulations.

**20.3 Final Inspection**

**20.3.1** Contractor shall comply with Punch List procedures as provided herein and maintain the presence of a Project superintendent and project manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Contractor demobilize its forces prior to completion of the Punch List without District's prior written approval. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and District acceptance, Architect and Project Inspector will inspect the Work and shall submit to Contractor and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

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

**20.3.3 Final Inspection Requirements**

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

**20.3.3.1.1** The Work has been completed.

**20.3.3.1.2** All life safety items are completed and in working order.

**20.3.3.1.3** Mechanical and electrical Work including, without limitation, security system, data, and fire alarm, are complete and tested, fixtures are in place, connected, and ready for tryout.

**20.3.3.1.4** Electrical circuits scheduled in panels and disconnect switches labeled.

- 20.3.3.1.5** Replace filters of operating equipment.
- 20.3.3.1.6** Painting and special finishes complete.
- 20.3.3.1.7** Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.
- 20.3.3.1.8** Tops and bottoms of doors sealed.
- 20.3.3.1.9** Floors waxed and polished as specified.
- 20.3.3.1.10** Carpeted and soft surfaces vacuumed.
- 20.3.3.1.11** Broken glass replaced and interior and exterior glass and all surfaces exposed to view cleaned.
- 20.3.3.1.12** Equipment and fixtures cleaned to a sanitary condition.
- 20.3.3.1.13** Grounds cleared of Contractor's equipment, raked clean of debris, and remove waste and surplus materials, rubbish, and construction facilities from the Site and surrounding areas.
- 20.3.3.1.14** Site cleaned, paved areas swept, and clean landscaped surfaces raked.
- 20.3.3.1.15** Roofs, gutters, down spouts, and drainage systems cleaned of debris.
- 20.3.3.1.16** Work cleaned, free of stains, scratches, and other foreign matter, and damaged and broken material replaced.
- 20.3.3.1.17** Temporary labels, tape, stains, and foreign substances removed, transparent and glossy surfaces polished,
- 20.3.3.1.18** Finished and decorative work shall have marks, dirt, and superfluous labels removed.
- 20.3.3.1.19** Final cleanup, as provided herein.

**20.4 Costs of Multiple Inspections**

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

**20.5 Partial Occupancy or Use Prior to Completion**

**20.5.1 District's Rights to Occupancy**

The District may occupy or use any completed or partially completed portion of the Work at any stage, and such occupancy shall not constitute the District's Final Acceptance of any part of the Work. Neither the District's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. In the event that the District occupies or uses any completed or partially completed portion of the Work, the Contractor shall remain responsible for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents unless the Contractor requests in writing, and the District agrees, to otherwise divide those responsibilities. Any dispute as to

responsibilities shall be resolved pursuant to the Claims Process provisions herein, with the added provision that during the dispute process, the District shall have the right to occupy or use any portion of the Work that it needs or desires to use.

**20.5.2 Inspection Prior to Occupancy or Use**

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

**20.5.3 No Waiver**

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

**21. FINAL PAYMENT AND RETENTION**

**21.1 Final Payment**

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

**21.2 Prerequisites for Final Payment**

The following conditions must be fulfilled prior to Final Payment:

**21.2.1** A full release of all Stop Payment Notices served in connection with the Work shall be submitted by Contractor.

**21.2.2** A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 8136, from the Contractor and each subcontractor of any tier and supplier to be paid from the final payment.

**21.2.3** A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 8134, from the Contractor and each subcontractor of any tier and supplier that was paid from the previous progress payments.

**21.2.4** A duly completed and executed Document 00 65 19.26 (Agreement and Release of Any and All Claims) from the Contractor.

**21.2.5** The Contractor shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.

**21.2.6** Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

**21.2.7** Contractor must have completed all requirements set forth under "Close-Out/Certification Procedures," including, without limitation, submission of an approved set of complete Record Drawings.

**21.2.8** Architect shall have issued its written approval that final payment can be made.

**21.2.9** The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents, which must be approved by the District.

**21.2.10** The Contractor shall have completed final clean-up as provided herein.

**21.3** **Retention**

**21.3.1** The retention, less any amounts disputed by the District or that the District has the right to withhold pursuant to provisions herein, shall be paid:

**21.3.1.1** After approval by the Architect of the Application and Certificate of Payment,

**21.3.1.2** After the satisfaction of the conditions set forth herein, and

**21.3.1.3** After forty-five (45) days after the recording of the Notice of Completion by District.

**21.3.2** No interest shall be paid on any retention, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the District and the Contractor pursuant to Public Contract Code section 22300.

**21.4** **Substitution of Securities**

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

**22.** **UNCOVERING OF WORK**

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

**23.** **NONCONFORMING WORK AND CORRECTION OF WORK**

**23.1** **Nonconforming Work**

**23.1.1** Contractor shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the District or other Contractors caused thereby.

**23.1.2** If Contractor does not remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed **FORTY-EIGHT (48)** hours, District may remove it and may store any material at Contractor's expense. If Contractor does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Contractor.

**23.2** **Correction of Work**

**23.2.1** **Correction of Rejected Work**

Pursuant to the notice provisions herein, the Contractor shall immediately correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated,

installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

### **23.2.2 One-Year Warranty Corrections**

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

### **23.3 District's Right to Perform Work**

**23.3.1** If the Contractor should neglect to prosecute the Work properly or fail to perform any provisions of this contract, the District, after **FORTY-EIGHT (48)** hours' written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

**23.3.2** If it is found at any time, before or after completion of the Work, that Contractor has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, District may require at its option:

**23.3.2.1** That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Contractor at no additional cost to the District;

**23.3.2.2** That the District deduct from any amount due Contractor the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

**23.3.2.3** That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Contractor's nonconforming Work, in which case the District shall either issue a deductive Change Order, a Construction Change Directive, or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Contractor.

## **24. TERMINATION AND SUSPENSION**

### **24.1 District's Request for Assurances**

If District at any time reasonably believes Contractor is or may be in default under this Contract, District may in its sole discretion notify Contractor of this fact and request written assurances from Contractor of performance of Work and a written plan from Contractor to remedy any potential default under the terms this Contract that the District may advise Contractor of in writing. Contractor shall, within ten (10) calendar days of District's request, deliver a written cure plan that meets the District's requirements in its request for assurances. Contractor's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Contract sufficient to justify termination for cause.

### **24.2 District's Right to Terminate Contractor for Cause**

**24.2.1 Grounds for Termination:** The District, in its sole discretion, may terminate the Contract and/or terminate the Contractor's right to perform the work of the Contract based upon any of the following:

- 24.2.1.1** Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or
- 24.2.1.2** Contractor fails to complete said Work within the time specified or any extension thereof, or
- 24.2.1.3** Contractor persistently fails or refuses to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or
- 24.2.1.4** Contractor persistently refuses, or repeatedly fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or
- 24.2.1.5** Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or
- 24.2.1.6** Contractor persistently disregards laws, or ordinances, or instructions of District; or
- 24.2.1.7** Contractor fails to supply labor, including that of Subcontractors, that is sufficient to prosecute the Work or that can work in harmony with all other elements of labor employed or to be employed on the Work; or
- 24.2.1.8** Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract, including but not limited to a lapse in licensing or registration.

**24.2.2 Notification of Termination**

- 24.2.2.1** Upon the occurrence at District's sole determination of any of the above conditions, District may, without prejudice to any other right or remedy, serve written notice upon Contractor and its Surety of District's termination of this Contract and/or the Contractor's right to perform the work of the Contract. This notice will contain the reasons for termination. Unless, within three (3) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to District for the correction of the condition(s) and/or violation(s) be made, this Contract and/or the Contractor's right to perform the Work of the Contract shall cease and terminate. Upon termination, Contractor shall not be entitled to receive any further payment until the entire Work is finished.
- 24.2.2.2** Upon termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to take over and perform this Contract only if Surety:
  - 24.2.2.2.1** Within three (3) days after service upon it of the notice of tender, gives District written notice of Surety's intention to take over and perform this Contract; and
  - 24.2.2.2.2** Commences performance of this Contract within three (3) days from date of serving of its notice to District.
- 24.2.2.3** Surety shall not utilize Contractor in completing the Project if the District notifies Surety of the District's objection to Contractor's further participation in the completion of the Project. Surety expressly agrees that any contractor which Surety proposes to fulfill Surety's obligations is subject to District's approval. District's approval shall not be unreasonably withheld, conditioned or delayed.
- 24.2.2.4** If Surety fails to notify District or begin performance as indicated herein, District may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of Contractor and/or its Surety. Contractor and/or its Surety shall be

liable to District for any excess cost or other damages the District incurs thereby. Time is of the essence in this Contract. If the District takes over the Work as herein provided, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Contractor as may be on the Site of the Work, in bonded storage, or previously paid for.

**24.2.2.5** In the alternative, the District shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Contractor under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the District, no Subcontractor shall have any claim against the District or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract and/or the Contractor's right to perform the work of the Contract. The District or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the District so elect, the Contractor shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the District may require, for the purpose of fully vesting in the District the rights and benefits of its Subcontractor under Subcontracts or other obligations or commitments. All payments due the Contractor hereunder shall be subject to a right of offset by the District for expenses and damages suffered by the District as a result of any default, acts, or omissions of the Contractor. Contractor must include this assignment provision in all of its contracts with its Subcontractors.

**24.2.3** In the event of a termination for cause, if the expense to the District to finish the Work exceeds the unpaid Contract Price, Contractor and Surety shall pay difference to District within twenty-one (21) days of District's request.

**24.2.4** In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, effective as of the same date as the purported termination for cause, and the Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accord with Article 12 herein. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by the Contractor.

### **24.3 Termination of Contractor for Convenience**

**24.3.1** District in its sole discretion may terminate the Contract in whole or in part upon three (3) days' written notice to the Contractor.

**24.3.2** Upon notice, Contractor shall:

**24.3.2.1** Cease operations as directed by the District in the notice;

**24.3.2.2** Take necessary actions for the protection and preservation of the Work as soon as possible; and

**24.3.2.3** Terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**24.3.3** Within thirty (30) days of the notice, Contractor shall submit to the District a payment application for the actual cost for labor, materials, and services performed, including all Contractor's and Subcontractor(s)' mobilization and/or demobilization costs, that is unpaid. Contractor shall have no claims against the District except for the actual cost for labor, materials, and services performed that adequately documented through timesheets, invoices, receipts, or otherwise. District shall pay all undisputed invoice(s) for work performed until the notice of termination.

**24.3.4** If Contractor objects to the termination for convenience, including disagreement on the actual cost due Contractor, the District retains the right to all the options available to the District under a termination for cause.

#### **24.4 Effect of Termination**

**24.4.1** Contractor shall, only if ordered to do so by the District, immediately remove from the Site all or any materials and personal property belonging to Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. The District retains the right, but not the obligation, to keep and use any materials and personal property belonging to Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. The Contractor and its Surety shall be liable upon the Performance Bond for all damages caused to the District by reason of the Contractor's failure to complete the Contract.

**24.4.2** In the event that the District shall perform any portion of, or the whole of the Work, pursuant to the provisions of the General Conditions, the District shall not be liable nor account to the Contractor in any way for the time within which, or the manner in which, the Work is performed by the District or for any changes the District may make in the Work or for the money expended by the District in satisfying claims and/or suits and/or other obligations in connection with the Work.

**24.4.3** In the event that the Contract is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor or any impact or impairment of Contractor's bonding capacity.

**24.4.4** The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to District.

#### **24.5 Emergency Termination of Public Contracts Act of 1949**

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

**24.5.1.1** Section 4410 of the Government Code states:

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

**24.5.1.2** Section 4411 of the Government Code states:

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

**24.5.2** Compensation to the Contractor shall be determined at the sole discretion of District on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price shall control. The District, at its sole discretion, may adopt the Contract Price as the reasonable value of the work done or any portion thereof.

#### **24.6 Suspension of Work**

**24.6.1** District in its sole discretion may suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine upon three (3) days written notice to the Contractor.

**24.6.1.1** An adjustment may be made for changes in the cost of performance of the Work caused by any such suspension, delay or interruption. No adjustment shall be made to the extent:

**24.6.1.1.1** That performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or

**24.6.1.1.2** That an equitable adjustment is made or denied under another provision of the Contract; or

**24.6.1.1.3** That the suspension of Work was the direct or indirect result of Contractor's failure to perform any of its obligations hereunder.

**24.6.1.2** Any adjustments in cost of performance may have a fixed or percentage fee as provided in the section on Format for Proposed Change Order herein. This amount shall be full compensation for all Contractor's and its Subcontractor(s)' changes in the cost of performance of the Contract caused by any such suspension, delay or interruption.

## **25. CLAIMS PROCESS**

### **25.1 Obligation to File Claims for Disputes**

**25.1.1** Should Contractor otherwise seek extra time or compensation for any reason whatsoever, then Contractor shall first follow procedures set forth in the Contract Documents including, without limitation, Articles 15, 16 and 17, all of which are conditions precedent to submitting a Claim pursuant to Article 25. A Notice of Delay or Proposed Change Order are less formal procedures that proceed the formal claim and do not constitute a Claim. A Claim also does not include correspondence, RFIs, vouchers, invoices, progress payment applications, or other routine or authorized form of requests for progress payments in compliance with the Contract. If a dispute remains, then Contractor shall give written notice to District that expressly invokes this Article 25 within the time limits set forth herein.

**25.1.2** Contractor's sole and exclusive remedy for a Dispute is to file a written claim setting forth Contractor's position as required herein within the time limits set forth herein.

### **25.2 Duty to Perform during Claim Process**

Contractor and its subcontractors shall continue to perform its Work under the Contract including the disputed work and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement by the District.

### **25.3 Definition of Claim**

**25.3.1** Pursuant to Public Contract Code section 9204, the term "Claim" means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

**25.3.1.1** A time extension, including without limitation, for relief of damages or penalties for delay assessed by the District under the Contract;

**25.3.1.2** Payment by the District of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or to which Contractor is not otherwise entitled to; or

**25.3.1.3** An amount of payment disputed by the District.

## **25.4 Claims Presentation**

### **25.4.1 Form and Contents of Claim**

**25.4.1.1** If Contractor intends to submit a Claim for an increase in the Contract Price and/or Contract Time for any reason including, without limitation, the acts of District or its agents, Contractor shall, within thirty (30) days after the event giving rise to the Claim, give notice of the Claim ("Notice of Potential Claim") in writing specifically identifying Contractor is invoking this Article 25 Claims Presentation. The Notice of Potential Claim shall provide Contractor's preliminary request for an adjustment to the Contract Price and/or Contract Time, with a description of the grounds therefore.

**25.4.1.2** Within thirty (30) days after serving the written Notice of Potential Claim, Contractor shall provide a Claim including an itemized statement of the details and amounts of its Claim for any increase in the Contract Price of Contract Time as provided below, including a Time Impact Analysis and any and all other documentation substantiating Contractor's claimed damages:

**25.4.1.2.1** The issues, events, conditions, circumstances and/or causes giving rise to the dispute, and shall show, in detail, the cause and effect of same;

**25.4.1.2.2** Citation to provisions in the Contract Documents, statute sections, and/or case law entitling Contractor to an increase in the Contract Price or Contract Time;

**25.4.1.2.3** The pertinent dates and/or durations and actual and/or anticipated effects on the Contract Price, Contract Schedule milestones and/or Contract Time adjustments;

**25.4.1.2.4** The Time Impact Analysis of all time delays that shows actual time impact on the critical path; and

**25.4.1.2.5** The line-item costs for labor, material, and/or equipment, if applicable, for all cost impacts priced like a change order according to Article 17 and must be updated monthly as to cost and entitlement if a continuing claim.

**25.4.1.3** The Claim shall include the following certification by the Contractor:

**25.4.1.3.1** The undersigned Contractor certifies under penalty of perjury that the attached dispute is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment for which Contractor believes the District is liable; and that I am duly authorized to certify the dispute on behalf of the Contractor.

**25.4.1.3.2** Furthermore, Contractor understands that the value of the attached dispute expressly includes any and all of the Contractor's costs and expenses, direct and indirect, resulting from the Work performed on the Project, additional time required on the Project and/or resulting from delay to the Project including, without limitation, cumulative impacts. Contractor may not separately recover for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.

**25.4.2** Contractor shall bear all costs incurred in the preparation and submission of a Claim.

**25.4.3** Failure to timely submit a Claim and the requisite supporting documentation shall constitute a waiver of Contractor's claim(s) against the District and Contractor's Claim(s) for compensation or an extension of time shall be deemed waived, released, and discharged as to any entitlement for adjustment to Contract Price and/or Contract Time.

## **25.5 Claim Resolution pursuant to Public Contract Code section 9204**

The Parties may mutually agree in writing to waive the claims procedure under Public Contract Code section 9204 and proceed directly to the commencement of a civil action or binding arbitration. Absent prior mutual waiver, Contractor shall comply with the following steps:

**25.5.1 STEP 1:**

**25.5.1.1** Upon receipt of a Claim by registered or certified mail, return receipt requested, including the documents necessary to substantiate it, the District shall conduct a reasonable review of the Claim and, within a period not to exceed forty-five (45) days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and Contractor may, by mutual agreement, extend the time period to provide a written statement. If the District needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of Claim sent by registered mail or certified mail, return receipt requested, the District shall have up to three (3) days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide Contractor a written statement identifying the disputed portion and the undisputed portion.

**25.5.1.1.1** Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the District issues its written statement. Amounts not paid in a timely manner as required by this section shall bear interest at seven percent (7%) per annum.

**25.5.1.2** Upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. In this instance, District and Contractor must comply with the sections below regarding Public Contract Code section 20104, et seq. and Government Code Claim Act Claims.

**25.5.1.3** If the District fails to issue a written statement, or to otherwise meet the time requirements of this section, this shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the District's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of Contractor.

**25.5.2 STEP 2:**

**25.5.2.1** If Contractor disputes the District's written response, or if the District fails to respond to a Claim within the time prescribed, Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute. Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the District shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed.

**25.5.2.1.1.1** Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the District issues its written statement. Amounts not paid in a timely manner as required by this section shall bear interest at seven percent (7%) per annum.

**25.5.3 STEP 3:**

**25.5.3.1** Any disputed portion of the Claim, as identified by Contractor in writing, shall be submitted to nonbinding mediation, with the District and Contractor sharing the associated costs equally. The District and Contractor shall mutually agree to a mediator within ten (10)

business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this section.

**25.5.3.1.1** For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

**25.5.3.2** Unless otherwise agreed to by the District and Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code section 20104.4 to mediate after litigation has been commenced.

**25.5.4 STEP 4:**

**25.5.4.1** If mediation under this section does not resolve the parties' dispute, the District may, but does not require arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program.

**25.6 Subcontractor Pass-Through Claims**

**25.6.1** If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a District because privity of contract does not exist, the contractor may present to the District a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim.

**25.6.2** Within forty-five (45) days of receipt of this written request from a subcontractor, Contractor shall notify the subcontractor in writing as to whether the Contractor presented the Claim to the District and, if Contractor did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.

**25.6.3** The Contractor shall bind all its Subcontractors to the provisions of this section and will hold the District harmless against Claims by Subcontractors.

**25.7 Government Code Claim Act Claim**

**25.7.1** If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable Claim Resolution requirements the Contractor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Contractor's right to bring a civil action against the District.

**25.7.2** Contractor shall bear all costs incurred in the preparation, submission and administration of a Claim. Any claims presented in accordance with the Government Code must affirmatively indicate Contractor's prior compliance with the claims procedure herein of the claims asserted.

**25.7.3** For purposes of those provisions, the running of the time within which a claim pursuant to Public Contract Code section 20104.2 only must be presented to the District shall be tolled from the time the claimant submits his or her written claim until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

**25.8 Claim Resolution pursuant to Public Contract Code section 20104 et seq.**

**25.8.1** In the event of a disagreement between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve all claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between Contractor and District by those procedures set forth in Public Contract Code section 20104, et seq., to the extent applicable.

**25.8.1.1** Contractor shall file with the District any written Claim, including the documents necessary to substantiate it, upon the application for final payment.

**25.8.1.2** For claims of less than fifty thousand dollars (\$50,000), the District shall respond in writing within forty-five (45) days of receipt of the Claim or may request in writing within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim or relating to defenses or claims the District may have against the Contractor.

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

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

**25.8.1.3** For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the District shall respond in writing to all written Claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim or relating to defenses or claims the District may have against the Contractor.

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

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

**25.8.1.4** If Contractor disputes the District's written response, or the District fails to respond within the time prescribed, Contractor may so notify the District, in writing, either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

**25.8.1.5** Following the meet and confer conference, if the Claim or any portion of it remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions the running of the time within which a claim must be filed shall be tolled from the time the Contractor submits its written Claim until the time the Claim is denied, including any period of time utilized by the meet and confer process.

**25.8.1.6** For any civil action filed to resolve claims filed pursuant to this section, within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the

commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

**25.8.1.7** If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of the Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986, (article 3 (commencing with Section 2016) of chapter 3 of title 3 of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

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

**25.8.2** Contractor shall bind its Subcontractors to the provisions of this Article and will hold the District harmless against disputes by Subcontractors.

## **25.9 Claim Procedure Compliance**

**25.9.1** Failure to submit and administer claims as required in Article 25 shall waive Contractor's right to claim on any specific issues not included in a timely submitted claim. Claim(s) not raised in a timely protest and timely claim submitted under this Article 25 may not be asserted in any subsequent litigation, Government Code Claim, or legal action.

**25.9.2** District shall not be deemed to waive any provision under this Article 25, if at District's sole discretion, a claim is administered in a manner not in accord with this Article 25. Waivers or modifications of this Article 25 may only be made by a signed change order approved as to form by legal counsel for both District and Contractor; oral or implied modifications shall be ineffective.

## **25.10 Claim Resolution Non-Applicability**

**25.10.1** The procedures for dispute and claim resolutions set forth in this Article shall not apply to the following:

**25.10.1.1** Personal injury, wrongful death or property damage claims;

**25.10.1.2** Latent defect or breach of warranty or guarantee to repair;

**25.10.1.3** Stop payment notices;

**25.10.1.4** District's rights set forth in the Article on Suspension and Termination;

**25.10.1.5** Disputes arising out of labor compliance enforcement by the Department of Industrial Relations; or

**25.10.1.6** District rights and obligations as a public entity set forth in applicable statutes; provided, however, that penalties imposed against a public entity by statutes, including, but not limited to, Public Contract Code sections 20104.50 and 7107, shall be subject to the Claim Resolution requirements provided in this Article.

## **25.11 Attorney's Fees**

Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.

**26. STATE LABOR, WAGE & HOUR, APPRENTICE, AND RELATED PROVISIONS**

**26.1 Labor Compliance and Enforcement**

Since this Project is subject to labor compliance and enforcement by the Department of Industrial Relations ("DIR"), Contractor specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of Division 2, Part 7, Chapter 1, of the Labor Code and Title 8 of the California Code of Regulations, including, without limitation, the requirement that the Contractor and all Subcontractors shall timely furnish complete and accurate electronic certified payroll records directly to the DIR. The District may not issue payment if this requirement is not met.

**26.2 Wage Rates, Travel, and Subsistence**

**26.2.1** Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the District's principal office and copies will be made available to any interested party on request or available online at <http://www.dir.ca.gov/>. Contractor shall obtain and post a copy of these wage rates at the job site.

**26.2.2** Holiday and overtime work, when permitted by law, shall be paid for at the general prevailing rate of per diem wages for holiday and overtime work on file with the Director of the Department of Industrial Relations, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the District but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

**26.2.3** Contractor shall pay and shall cause to be paid each worker engaged in Work on the Project the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between Contractor or any Subcontractor and such workers.

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

**26.2.5** Pursuant to Labor Code section 1775, Contractor shall, as a penalty to District, forfeit the statutory amount up to two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates, determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Contractor or by any Subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor.

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

**26.2.7** Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by Labor Code section 3093, and similar purposes.

**26.2.8** Contractor shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Contractor shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

### **26.3 Hours of Work**

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

**26.3.2** Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of District and to the Labor Commissioner.

**26.3.3** Pursuant to Labor Code section 1813, Contractor shall as a penalty to the District forfeit the statutory amount (believed by the District to be currently twenty-five dollars (\$25)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

**26.3.4** Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.

### **26.4 Payroll Records**

**26.4.1** Contractor shall upload, and shall cause each Subcontractor performing any portion of the Work under this Contract to upload, an accurate and complete certified payroll record ("CPR") electronically using DIR's eCPR System by uploading the CPRs by electronic XML file online on no less than every thirty (30) days while Work is being performed and within thirty (30) days after the final day of Work performed on the Project at <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html> or current application and URL, showing the name, address, social security number, work classification, straight-time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work.

**26.4.1.1** If CPRs enumerated hereunder are not filed directly with the DIR by Contractor and/or its subcontractor(s), District may not make any payment or delay payment to Contractor until Contractor and/or its Subcontractor(s) provide CPRs acceptable to the DIR.

**26.4.2** All CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

**26.4.2.1** A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

**26.4.2.2** CPRs shall be made available for inspection or furnished upon request to a representative of District, Labor Commissioner, Division of Apprenticeship Standards, and/or the DIR.

**26.4.2.3** CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the District, Division of Apprenticeship Standards, or the Labor Commissioner. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.

**26.4.3** Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, or Labor Commissioner shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded Contract or performing Contract shall not be marked or obliterated.

**26.4.4** Contractor shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days, provide a notice of change of location and address.

**26.4.5** If the District seeks to obtain CPRs, Contractor shall have ten (10) days to comply following receipt of a written notice requesting the CPRs. In the event that Contractor or subcontractor fails to comply within the 10-day period, District shall notify the Labor Commissioner who may request penalties be withheld from progress payments then due. As penalty for noncompliance, Contractor or subcontractor shall forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Labor Commissioner, these penalties shall be withheld from progress payments then due. Contractor is not subject to a penalty assessment due to the failure of a subcontractor to provide CPRs.

**26.4.6** **[RESERVED]**

**26.5** **[RESERVED]**

**26.6** **Apprentices**

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

**26.6.2** Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

**26.6.3** Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she/they is employed, and shall be employed only at the work of the craft or trade to which he/she/they is registered.

**26.6.4** Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she/they is training.

**26.6.5** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft

or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

**26.6.6** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.

**26.6.7** If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

**26.6.7.1** Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;

**26.6.7.2** Forfeit as a penalty to District the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

**26.6.8** Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

**26.6.9** Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 1515 Clay Street, 19th floor, Suite 1902, Oakland, California 94612.

**26.7** **Non-Discrimination**

**26.7.1** Contractor herein agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Contractor and Subcontractor.

**26.7.2** Special requirements for Federally Assisted Construction Contracts: During the performance of this Contract, Contractor agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

**26.8** **Labor First Aid**

Contractor shall maintain emergency first aid treatment for Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) and the California Occupational Safety and Health Act of 1973 (Lab. Code, § 6300 et seq.; 8 Cal. Code of Regs., § 330 et seq.).

27. **RESERVED**

28. **MISCELLANEOUS**

**28.1** **Assignment of Antitrust Actions**

**28.1.1** Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under

Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, which assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

**28.1.2** Section 4552 of the Government Code states:

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

**28.1.3** Section 4553 of the Government Code states:

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

**28.1.4** Section 4554 of the Government Code states:

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

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

**28.2** **Excise Taxes**

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

**28.3** **Taxes**

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

**28.4** **Shipments**

Contractor is responsible for any or all damage or loss to shipments until delivered and accepted on Site, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Contract Price shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

**28.5** **Compliance with Government Reporting Requirements**

If this Contract is subject to federal or other governmental reporting requirements because of federal or other governmental financing in whole or in part for the Project of which it is part, or for any other reason, Contractor shall comply with those reporting requirements at the request of the District at no additional cost.

END OF DOCUMENT

DOCUMENT 00 73 13  
**SPECIAL CONDITIONS**

**1. Preparation of Solicitation of Subsequent Contracts**

*Insert Section 6.1.9 in the General Conditions:*

**6.1.9** Contractor's duties and services under this Contract shall not include preparing or assisting the District with any portion of the District's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the District. The District shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this Project. Contractor's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor shall cooperate with the District to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Contractor pursuant to this Contract.

**2. Project Not Subject to DSA Oversight**

This Project is not subject to DSA Oversight or Requirements. Where applicable, "Authority Having Jurisdiction" or "AHJ" shall be substituted for DSA.

**3. Mitigation Measures**

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

**4. Occupied Site**

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

**2. Keys. Upon request, the District may, at its own discretion, provide keys to the school site for the convenience of the Contractor. The Contractor agrees to pay all expenses to re-key the entire school site and all other affected District buildings if the keys are lost or stolen, or if any unauthorized party obtains a copy of the key or access to the school.**

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

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

**5. Confidentiality. Contractor shall maintain the confidentiality of all information, documents, programs, procedures and all other items that Contractor encounters while performing the Work. This requirement shall be ongoing and shall survive the expiration or**

**termination of this Contract and specifically includes, without limitation, all student, parent, and employee disciplinary information and health information.**

**6. Work during Instructional Time. By submitting its bid, Contractor acknowledges that the Project may overlap with ongoing instruction in existing facilities. If so, Contractor agrees to cooperate to the best of its ability to minimize any disruption to school operations and any use of school facilities by the public up to, and including, rescheduling specific work activities, at no additional cost to District. If Contractor cannot adequately minimize the disruption to District's satisfaction, District reserves the right to require that Contractor perform Work outside of school operation hours at no additional cost to District.**

**7. No Work during Student Testing. Contractor shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the Site are taking State or Federally-required tests.**

**5. Badge Policy for Contractors**

All Contractors doing work for the District will provide their workers with identification badges. These badges will be worn by all members of the Contractor's staff who are working in a District facility.

**8. Badges must be filled out in full and contain the following information:**

**5.1.1** Name of Contractor

**5.1.2** Name of Employee

**5.1.3** Contractor's address and phone number

**9. Badges are to be worn when the Contractor or his/her employees are on site and must be visible at all times. Contractors must inform their employees that they are required to allow District employees, the Architect, the Construction Manager, the Program Manager, or the Project Inspector to review the information on the badges upon request.**

**10. Continued failure to display identification badges as required by this policy may result in the individual being removed from the Project or assessment of fines against the Contractor.**

**6. Substitutions for Specified Items**

*Replace Section 1.7 in the General Conditions with the following provisions:*

**1.7.1** Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.

**1.7.1.1** If the material, process, or article offered by Contractor is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Specifications without any additional compensation or change order.

**1.7.1.2** This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(c); therefore, Contractor shall not be entitled to request a substitution with respect to those materials, products or services.

**1.7.2** A request for a substitution shall be submitted as follows:

1.7.2.1 Contractor shall notify the District in writing of any request for a substitution at least ten (10) days prior to bid opening as indicated in the Instructions to Bidders.

1.7.2.2 Requests for Substitutions after award of the Contract shall be submitted within thirty-five (35) days of the date of the Notice of Award.

**1.7.3 Within 35 days after the date of the Notice of Award, Contractor shall provide data substantiating a request for substitution of “an equal” item, including but not limited to the following:**

1.7.3.1 All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;

1.7.3.2 Available maintenance, repair or replacement services;

1.7.3.3 Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;

1.7.3.4 Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under Contract with the District); and

1.7.3.5 The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.

**1.7.4 No substitutions shall be made until approved, in writing, by the District. The burden of proof as to equality of any material, process, or article shall rest with Contractor. The Contractor warrants that if substitutes are approved:**

1.7.4.1 The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;

1.7.4.2 The Contractor provides the same warranties and guarantees for the substitute that would be provided for that specified;

1.7.4.3 The Contractor shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time;

1.7.4.4 The Contractor shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and

1.7.4.5 The Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Contractor agrees to execute a deductive Change Order to reflect that credit.

**1.7.5 In the event Contractor furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Contractor.**

**1.7.6 In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.**

**1.7.7 Contractor shall be responsible for any costs the District incurs for professional services, DSA fees, or delay to the Project Schedule, if applicable, while DSA reviews changes for the convenience of Contractor and/or to accommodate Contractor's means and methods. District may deduct those costs from any amounts owing to the Contractor for the review of the request for substitution, even if the request for substitution is not approved. District, at its sole discretion, shall deduct from the payments due to and/or invoice Contractor for all the professional services and/or DSA fees or delay to the Project schedule, if applicable, while DSA reviews changes for the convenience of Contractor and/or to accommodate Contractor's means and methods arising herein.**


7. **Reserved**

8. **Reserved**

9. **Reserved**

10. **Permits, Certificates, Licenses, Fees, Approvals**

11. **Payment for Permits, Certificates, Licenses, Fees, and Approvals. As required in the General Conditions, the Contractor shall secure and pay for all permits, licenses, approvals, and certificates necessary for the prosecution of the Work with the exception of the following:**

 **N/A**

With respect to the above-listed items, Contractor shall be responsible for securing such items; however, District will be responsible for payment of these charges or fees. Contractor shall notify the District of the amount due with respect to such items and to whom the amount is payable. Contractor shall provide the District with an invoice and receipt with respect to such charges or fees.

10.1 **General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities**

General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities does not apply to this Project.

11. **Reserved**

12. **As-Builts and Record Drawings**

12. **When called for by Division 1, Contractor shall submit As-Built Drawings pursuant to the Contract Documents consisting of one set of computer-aided design and drafting (“CADD”) files in the following format PDF, plus one set of As-Built Drawings on vellum or mylar.**

13. **Contractor shall submit Record Drawings pursuant to the Contract Documents consisting of one set of computer-aided design and drafting (“CADD”) files in the following format PDF, plus one set of full-sized native format Paper Record Drawings.**

13. **Reserved**

14. **Construction Manager**

The District will use a Construction Manager on the Project that is the subject of this Contract. Shaun Gabriels is the Construction Manager for this Project.

15. **Program Manager**

Shaun Gabriels is the Program Manager designated for the Project that is the subject of this Contract.

16. **Reserved**