

Mt. Empire Unified School District

DESCANSO ELEMENTARY FRONT  
OFFICE RELOCATION

**ATTACHMENT 11**  
**GENERAL CONDITIONS**

## GENERAL CONDITIONS

### ARTICLE 1    DEFINITIONS

1.    Action of the Governing Board is a vote of a majority of the District's governing board.
2.    Approval means written authorization through action of the governing board unless specific delegation of approval authority is delegated to a District representative.
3.    As shown, as indicated, as detailed refers to drawings accompanying this specification.
4.    Contract, Contract Documents includes all contract documents to wit: Notice inviting Bids, Instructions to Bidders, Bid Form, Designation of Subcontractors, Performance Bond, Payment Bond, Certificates of Insurance, Insurance Policies, General Conditions, Special Conditions, if any, Drawings, Plans, Specifications, the Agreement and all modifications, addenda, and amendments thereto.
5.    Contractor, District and Architect are those mentioned as such in the Agreement. They are treated throughout the contract as if they are of singular number and neuter gender.
6.    Locality in which the work is performed means the county in which the public work is done.
7.    Project is the planned undertaking as provided for in the contract documents by District and Contractor.
8.    Provide shall include "provide complete in place", that is, "furnish & install".
9.    Safety Orders are those issued by the Division of Industrial Safety an OSHA Safety and Health Standards for construction.
10.    Standards, Rules and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified.
11.    Subcontractor, as used herein, includes those having direct contract with Contractor and one who furnishes material worked to a special design according to plans, drawings, and specifications for this work, but does not include one who merely furnishes material not so worked.
12.    Surety is the person, firm, or corporation that executes as surety the Contractor's Performance Bond and Payment Bond.
13.    Work of the Contractor or subcontractor includes labor or materials (including, without installation, equipment and appliances) or both, incorporated in, or to be incorporated in the construction covered by the complete Contract.
14.    Workers include laborer, worker or mechanic.

### ARTICLE 2    LAWS CONCERNING THE DISTRICT A PART HEREOF

Contract is subject to all provision of the Constitution of Laws of California governing, controlling or effecting District, or the property, funds operations, or powers of District, and such provisions are by his reference made a part hereof and of Contract.

### ARTICLE 3    SITE INVESTIGATION

Before bidding on this work, Contractor shall make a careful investigation of the site and thoroughly familiarize himself with the requirement of the Contract. By the act of submitting a bid for the work included in this Contract, Contractor shall be deemed to have made such study and investigation and that Contractor is familiar with and accepts the conditions of the site.

**ARTICLE 4 STATUS OF CONTRACTOR**

Contractor is and shall at all times be deemed to be an independent Contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this contract. 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 agents or employees. Contractor assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its agents and employees shall not be entitled to any rights or privileges of District employees. District shall be permitted to monitor the activities to determine compliance with the terms of this Contract. Contractor and subcontractors are required by law to be licensed and regulated by the Contractors State License Board.

**ARTICLE 5 CONTRACTOR’S SUPERVISION**

A. During progress of the work, Contractor shall keep on the premises (including both the site and the plant) a superintendent satisfactory to District. Before commencing the work herein, Contractor shall give written notice to District of the name and a Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of District, unless a superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify District in writing. Superintendent shall represent Contractor and all directions given to Superintendent shall be as binding as if given to Contractor.

B. The Contractor shall verify all indicated dimensions before ordering materials or equipment, or before performing work. The Contractor shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect at once. Upon commencement of any item of work, the Contractor shall be responsible for dimensions related to such item of work and shall make any corrections necessary to make work properly fit at no additional cost to District. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to subcontractors or agents.

C. Omissions from the drawings or specifications, or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or mis-described work, but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

**ARTICLE 6 SUBCONTRACTORS**

A. Contractor agrees to bind every subcontractor by terms of Contract as far as such terms are applicable to subcontractor’s work. 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, as it is for acts and omissions of persons directly employed by Contractor. Nothing contained in the contract documents shall create any contractual relation between any subcontractor and District, nor shall this Contract be construed to be for the benefit of any subcontractor. The Contractor shall be responsible for the coordination of the trades, subcontractors and materialmen engaged upon his work.

**ARTICLE 7 DISTRICT'S INSPECTOR**

If applicable, one or more Inspector(s), including special Inspectors, as required, will be employed by District in accordance with requirements of Title 24 of the California Code of Regulations and will be assigned to the work. Duties of an Inspector are specifically defined in Section 4-342 of Title 24. No work shall be carried on except with the knowledge and under the inspection of said Inspector(s). He shall have free access to any or all parts of work at any time. The District will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by the Contractor outside of the normal eight (8) hour day shall constitute an authorization from the Contractor to the District to provide inspection and testing as required outside of the normal eight (8) hour day. Contractor shall reimburse District for inspection and testing outside the normal eight-hour day or for any retests caused by the Contractor.

**ARTICLE 8 ASSIGNMENT OF ANTITRUST ACTIONS**

A. Pursuant to Government Code ' 4551, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. ' 15) or under the Cartwright Act (Chapter 2 [commencing with ' 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with ' 4550) of Division 5 of Title 1 of the Government Code, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

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

**ARTICLE 9 OTHER CONTRACTS**

A. District reserves the right to let other contracts in connection with this work. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate its work with theirs.

B. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at the Project site. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on Project. If simultaneous execution of any Contract for Project is likely to cause interference with performance of some other contract or contracts, District shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously.

## **ARTICLE 10 OCCUPANCY**

District reserves the right to occupy portions of the Project at any time before completion, and such occupancy shall constitute final acceptance of that portion only to the extent that the Contractor will not be subject to performing work or repairs caused by the District's use of the occupied areas. Such occupancy shall not extend the date specified for completion of the work. The Contractor will be required to complete punch list items documented by District, Architect, Inspector and Contractor prior to final payment.

## **ARTICLE 11 DISTRICT'S RIGHT TO DO WORK**

Should the Contractor, at any time during the process of construction, fail or refuse to furnish enough materials or workmen to properly execute the work, unless prohibited from so doing through the action of District, Architect, or other authorized official agencies, District, after giving ten (10) days written notice to Contractor may, without prejudice to any other rights he may have, proceed to furnish the materials and/or workmen necessary to proceed with or complete the work, and may deduct the cost thereof, together with reasonable expenses arising from such procedure, from any amounts then due or which may thereafter become due to Contractor.

## **ARTICLE 12 DISTRICT'S RIGHT TO TERMINATE CONTRACT**

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

- (1) Issuance of an order of a court or other public authority having jurisdiction; or (2) An act of government, such as a declaration of national emergency.

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

## **ARTICLE 13 TERMINATION BY THE DISTRICT FOR CAUSE**

A. **Grounds for Termination.** The District may terminate the Contractor and/or this Contract for the following reasons:

- (1) Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- (2) Persistently or repeatedly is absent, without excuse, from the job site;
- (3) Fails to make payment to subcontractors, suppliers, materialmen, etc;
- (4) Persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- (5) Otherwise is in substantial breach of a provision of the Contract Documents.

B. **Notification of Termination.** When any of the above reasons exist, the District may, without prejudice to any other rights or remedies of the District and after giving the Contractor and the Contractor's

surety, if any, written notice of seven (7) days, terminate the Contract and may, subject to any prior rights of the surety:

- (1) Take possession of the Project and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- (2) Accept assignment of Subcontracts. Contractor acknowledges and agrees that if the District (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the District which the District has chosen to accept; and
- (3) Complete the Work by any reasonable method the District may deem expedient, including contracting with a replacement contractor or contractors.

C. **Payments Withheld.** If the District terminates the Contract for one of the reasons stated in Paragraph 14.A, the Contractor shall not be entitled to receive further payment until the Work is complete. All costs associated with the termination and completion of the Project shall be the responsibility of the Contractor and/or its surety.

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

E. **Remedies Other Than Termination.** If a default occurs, the District may, without prejudice to any other right or remedy, including, without limitation, its right to terminate the Contract pursuant to Article 14, do any of the following:

- (1) Permit the Contractor to continue under this Contract, but make good such deficiencies or complete the Contract by whatever method the District may deem expedient, and the cost and expense thereof shall be deducted from the Contract Price or paid by the Contractor to the District on demand;
- (2) If the workmanship performed by the Contractor is faulty or defective materials are provided, erected or installed, then the District may order the Contractor to remove the faulty workmanship or defective materials and to replace the same with work or materials that conform to the Contract Documents, in which event the Contractor, at its sole costs and expense, shall proceed in accordance with the District's order and complete the same within the time period given by the District in its notice to the Contractor; or
- (3) Initiate procedures to declare the Contractor a non-responsible bidder for a period of two to five years thereafter.

All amounts expended by the District in connection with the exercise of its rights hereunder shall accrue interest from the date expended until paid to the District at the maximum legal rate. The District may retain or withhold any such amounts from the Contract Price. If the Contractor is ordered to replace any faulty workmanship or defective materials pursuant to Paragraph (b) above, the Contractor shall replace the same with new work or materials approved by the Architect and the District, and, at its own cost, shall repair

or replace, in a manner and to the extent the Architect and the District shall direct, all work or material that is damaged, injured or destroyed by the removal of said faulty workmanship or defective material, or by the replacement of the same with acceptable work or materials. In no event shall anything in this Paragraph be deemed to constitute a waiver by the District of any other rights or remedies that it may have at law or in equity, it being acknowledged and agreed by the Contractor that the remedies set forth in this Paragraph are in addition to, and not in lieu of, any other rights or remedies that the District may have at law or in equity.

#### **ARTICLE 14 TERMINATION OF CONTRACT BY DISTRICT (CONTRACTOR NOT AT FAULT)**

A. **Termination for Convenience.** District may terminate the Contract upon fifteen (15) calendar days of written notice to the Contractor and use any reasonable method the District deems expedient to complete the project, including contracting with replacement contractor or contractors, if it is found that reasons beyond the control of either the District or Contractor make it impossible or against the District's interest to complete the work. In such a case, the Contractor shall have no claims against the District except: (1) the actual cost for labor, materials, and services performed which may be documented through timesheets, invoices, receipts, or otherwise, and (2) ten percent (10%) profit and overhead, and (3) five percent (5%) termination cost of the total of items (1) and (2). Contractor acknowledges and agrees that if the District (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the District which the District has chosen to accept.

B. **Non-Appropriation of Funds/ Insufficient Funds.** In the event that sufficient funds are not appropriated to complete the Project or the District determines that sufficient funds are not available to complete the Project, District may terminate or suspend the completion of the Project at any time by giving written notice to the Contractor. In the event that the District exercises this option, the District shall pay for any and all work and materials completed or delivered onto the site for which value is received, and the value of any and all work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials paid for shall include a factor of fifteen percent (15%) for the Contractor's overhead and profit and there shall be no other costs or expenses paid to Contractor. All work, materials and orders paid for pursuant to this provision shall become the property of the District. District may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as District may determine. Adjustment shall be made for increases in the cost of performance of the Agreement caused by suspense, delay or interruption.

#### **ARTICLE 15 CONTRACT SECURITY - BONDS**

Contractor shall furnish a surety bond in an amount equal to one hundred percent (100 %) of Contract price as security for faithful performance of this Contract and shall furnish a separate 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 furnishing materials in connection with this Contract. Aforementioned bonds shall be in the form set forth in these contract documents.

#### **ARTICLE 16 SUBSTITUTION OF SECURITIES**

Pursuant to the requirements of Public Contract Code Section 22300, upon Contractor's request, District will make payment to Contractor of any funds withheld from payments under this Contract if Contractor deposits with the District or in escrow with a California or federally chartered bank acceptable to District, securities eligible for the investment of State Funds under Government Code Section 16430 or bank or savings and loan certificates of deposit interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the public agency.

## ARTICLE 17 INSURANCE REQUIREMENTS

A. Before the commencement of the Work, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A status as rated in the most recent edition of Best's Insurance Reports or as amended by the Supplementary General Conditions, such insurance as will protect the District from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims for damages because of bodily injury, sickness, disease, or death of any person District would require indemnification and coverage for employee claim;
- (2) Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;
- (3) Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
- (4) Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work;
- (5) Claims involving contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and
- (6) Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)
- (7) Claims involving sudden or accidental discharge of contaminants or pollutants.

B. **Subcontractor Insurance Requirements.** The Contractor shall require its Subcontractors to take out and maintain similar public liability insurance and property damage insurance required under Article 18.A in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy the requirements of Article 18.A without prior written approval of the District.

C. **Additional Named Insured Endorsement Requirements.** The Contractor shall name, on any policy of insurance required under Article 18.A, the District, Architect, Inspector, the State of California, their officers, employees, agents and independent contractors as additional named insureds. Subcontractors shall name the Contractor, the District, Architect, Inspector, the State of California, their officers, employees, agents and independent contractors as additional named insureds. The Additional named Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional named insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional named insureds have other insurance which is applicable to the loss, such other



insurance shall be on an excess or contingent basis. The insurance provided by the Contractor pursuant to 18.A must be designated in the policy as primary to any insurance obtained by the District. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

**D. Specific Insurance Requirements.** Contractor shall take out and maintain and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain:

- (1) Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than \$1,000,000.00 or Commercial General Liability Insurance (including automobile insurance) which provides limits of not less than:

(a)	Per occurrence (combined single limit)	\$1,000,000.00
(b)	Project Specific Aggregate (for this project only)	\$1,000,000.00
(c)	Products and Completed Operations	\$1,000,000.00
(2)	(d) Personal and Advertising Injury Limit	\$1,000,000.00

**Insurance Covering Special Hazards**

The following Special hazards shall be covered by riders mentioned public liability insurance or property damage policies of insurance, in amounts as follows: or riders to above insurance policy or

(a)	Automotive and truck where operated in amounts	\$1,000,000.00
(c)	Explosion, Collapse and Underground (XCU) coverage	\$1,000,000.00
(b)	Material Hoist where used in amounts	\$1,000,000.00

**E. Workers' Compensation Insurance.** During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's Work is subcontracted, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the District certificates of insurance as required under Article 18.I and in compliance with Labor Code ' 3700.

**F. Builder's Risk/ "All Risk" Insurance.** The Contractor, during the progress of the Work and until final acceptance of the Work by District upon completion of the entire Contract, shall maintain Builder's Risk, Course of Construction or similar first party property coverage issued on a replacement cost value basis consistent with the total replacement cost of all insurable Work and the Project included within the Contract Documents. Coverage is to insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, sonic boom, earthquake, flood, collapse, wind, lightning, smoke and riot. The coverage must include debris removal, demolition, increased costs due to enforcement of building ordinance and law in the repair and replacement of damage 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 which is the subject of the Contract Documents, including completed Work and Work in progress, to the full insurable value thereof. Such insurance shall include the District and the Architect as additional named insureds, and any other person with an insurable interest as designated by the District.

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

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

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

**I. Proof of Insurance.** The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance and certificates have been obtained and delivered in duplicate to the District for approval subject to the following requirements:

(1) Certificates and insurance policies shall include the following clause:

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

(2) Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.

(3) Certificates of insurance shall clearly state that the District and the Architect are named as additional named insured's under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by District.

(4) The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the District.

**J. Compliance.** In the event of the failure of any contractor to furnish and maintain any insurance required by this Article, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the District and the Architect.

**K. Waiver of Subrogation.** Contractor waives (to the extent permitted by law) any right to recover against the District for damages to the Work, any part thereof, or any and all claims arising by reason

of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the District.

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

## **ARTICLE 18 PERFORMANCE AND PAYMENT BONDS**

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

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

B. **Surety Qualifications.** Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure ' 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.

C. **Alternate Surety Qualifications.** If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with ' 995.660 of the California Code of Civil Procedure and proof of such is provided to the District.

## **ARTICLE 19 DRAWINGS AND SPECIFICATIONS**

A. Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.

B. Materials or work described in words which so applied has a well known technical or trade meaning shall be deemed to refer to such recognized standards.

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

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

E. Figured dimensions on drawings shall govern but work not dimensioned shall be as directed. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large scale details shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials, workmanship, and installations procedures. Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, Contractor shall promptly notify the District in writing, and any necessary changes shall be adjusted as provided in Article 46 entitled "Changes and Extra Work." The specification calling for the higher quality material or workmanship shall prevail.

F. Specifications and accompanying drawings are intended to delineate and describe the Project and its component parts to such a degree as to enable skilled and competent contractors to intelligently bid upon the work, and to carry said work to a successful conclusion.

G. 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, said laws, ordinances, rules, and regulations shall be considered as a part of said Contract within the limits specified. The Contractor shall bear all expenses of correcting work done contrary to said laws, ordinances, rules, and regulations if the Contractor knew or should have known that the work as performed is contrary to said laws, ordinances, rules, and regulations and if the Contractor performed same (1) without first consulting the Architect for further instructions regarding said work or (2) disregarded the Architect's instructions regarding said work.

H. Questions regarding interpretation of drawings and specifications shall be clarified by the Architect. Should the Contractor commence work or any part thereof without seeking clarification, Contractor waives any claim for extra work or damages as a result of any ambiguity, conflict, or lack of information.

I. Contractor will be furnished, free of charge, bid sets of permitted documents and specifications. Contractor is to provide reproducible drawings and all additional copies which he requires for his operations at his own expense. He shall maintain an accurate record of all copies made and shall return or otherwise account for all copies at the end of the Project.

## **ARTICLE 20 OWNERSHIP OF DRAWINGS**

Pursuant to Education Code section 17316, all plans, drawings, designs, specifications, and other incidental architectural and engineering work or materials and other contract documents and copies thereof furnished by District are its property. They are not to be used in other work and, with the exception of signed sets of the Contract, are to be returned to the District on request at completion of work.

## **ARTICLE 21 TESTS AND INSPECTIONS**

A. Tests and inspections will comply with California Code of Regulations Title 21, Chapter 4 and Section 42, and Title 24, Chapter 4, Part I.

B. If Contract, District's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection at least two (2) working days prior to being tested or covered up. If inspection is by authority other than District, Contractor shall inform District of date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by District shall be promptly made and, where practicable, at source of supply. If any work should be covered up without approval or consent of District, it must, if required by District, be uncovered for examination and satisfactorily reconstructed at Contractor's expense in compliance with contract. Costs of tests of any materials found to be not in compliance with contract shall be paid for by Contractor. Other costs for tests and inspection of materials shall be paid by District.

C. Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency, or District's representative, and not by Contractor.

D. Contractor shall notify District, a sufficient time in advance, of manufacture of materials to be supplied by him under contract, which must by terms of contract be tested, in order that District may arrange for testing of same at source of supply. Any materials shipped by Contractor from source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated in work without prior approval of District and subsequent testing and inspection.

E. Re-examination of questioned work may be ordered by District and, if so ordered, work must be uncovered by Contractor. If such work be found in accordance with contract documents, District shall pay costs of re-examination and replacement. If such work be found not in accordance with contract documents, Contractor shall pay such costs.

F. The District will pay costs for all tests and inspections and shall be reimbursed by the Contractor for such costs under the following conditions:

- (1) When such costs are stipulated in the provisions of the Contract documents to be borne by the Contractor;
- (2) When a material is tested or inspected and fails to meet the requirements of the specifications and/or drawings;
- (3) When the source of the material is changed after the original test or inspection has been made and approved.

G. If, in the opinion of the District, subsequent delivery of a tested material seems inferior to, or differs from, the original, said material shall be retested upon written order from the District and, should the material fail to meet the requirements of the specifications and/or drawings, the Contractor shall pay all costs of such tests, but where the material does pass the requirements, the District will pay the cost.

H. All tests and inspections specified for each material shall be made in accordance with the detailed specifications for tests or inspections of the material as specified.

I. If a material is not required to be tested, the District may require the Contractor to furnish a certificate bearing the official and legal signature of the supplier, with each delivery of such material, stating that the material complies with the specifications.

## ARTICLE 22 STATE AUDIT

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

## ARTICLE 23 PREFERENCE FOR MATERIALS AND SUBSTITUTIONS

A. **One Product Specified.** Unless the plans and specifications state that no substitution is permitted, whenever the Contract Documents indicate any specific article, device, equipment, product, material, fixture, patented process, form, method, construction or any specific name, make, trade name, or catalog number, with or without the words “or equal”, such specification shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired shall be deemed to be followed by the words “or equal”.

B. **Request for Substitution.** Bidder may, unless otherwise stated, offer any material, process, article, etc., which shall be materially equal or better in every respect to that so indicated or specified (“Specified Item”) and will completely accomplish the purpose of the Contract Document. If bidder desires to offer a substitution for a Specified Item, such bidder must make a request in writing on District’s Substitution Request form (Request Form) and submit the completed Request Form with their bid. The Request Form must be accompanied by evidence as to whether the proposed substitution:

- (1) Is equal in quality service ability to the Specified Item;
- (2) Will entail no changes in detail, construction and scheduling of related work;
- (3) Will be acceptable in consideration of the required design and artistic effect;
- (4) Will provide no cost disadvantage to District;
- (5) Will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and
- (6) Will require no change of the construction schedule.

In completing the Request Form, bidder must state with respect to each requested substitution whether bidder will agree to provide the Specified Item in the event that District denies bidder’s request for substitution of a Specified Item. In the event that bidder does not agree in the Request Form to provide the Specified Item and the District denies the requested substitution, the bidder’s bid shall be considered nonresponsive and the District may award the contract to the next lowest bidder or in its sole discretion release all bidders. In the event that bidder has agreed in the Request Form to provide the Specified Item and the District denies bidder’s requested substitution for a Specified Item, bidder shall execute the Agreement and provide the Specified Item without any additional cost or charges to the District, and if bidder fails to execute the Agreement with the Specified Item(s), bidder’s bid bond will be a forfeited.

After the bids are opened, the apparent lowest bidder shall provide within five days of opening such bids, any and all drawings, specification, samples, performance data, calculations, and other information as may be required to assist the Architect and the District in determining whether the proposed substitution is acceptable. The burden of establishing these facts shall be upon the bidder.

After the District's receipt of such evidence by bidder, District will make its final decision as to whether the bidder's request for substitution for any Specified Items will be granted. The decision as to whether a proposed request for substitution is equal to a Specified Item shall be the sole discretion of District. Any request for substitution which is granted by the District shall be documented and processed through a Change Order. The District may condition its approval of any substitution upon delivery to District of an extended warranty or other assurances of adequate performance of the substitution. Any and all risks of delay due to DSA, or any other governmental agency having jurisdiction shall be on the bidder.

#### **ARTICLE 24 SAMPLES**

A. Contractor shall furnish for approval, within thirty-five (35) days following award of Contract, all samples as required in specifications together with catalogs and supporting data required by District. This provision shall not authorize any extension of time for performance of this Contract. District shall review such samples, as to conformance with design concept of work and for compliance with information given in contract documents and approve or disapprove same within ten (10) working days from receipt of same.

B. Unless specified otherwise, sampling, preparation of samples and tests shall be in accordance with the latest standards of the American Society for Testing and Materials.

C. Samples of materials and/or articles shall, upon demand of District, be submitted for tests or examinations and consideration before incorporation of same in work is started. Contractor shall be solely responsible for delays due to samples not being submitted in time to allow for tests. Acceptance or rejection will be expressed in writing. Work shall be equal to approved samples in every respect. Samples which are of value after testing will remain the property of Contractor.

#### **ARTICLE 25 PROGRESS SCHEDULE**

A.

If applicable or requested by the District, within ten (10) calendar days after being awarded the contract, Contractor shall submit a progress schedule for District's approval. The schedule should indicate the beginning and completion of all phases of construction and shall use the "critical path method" (commonly called CPM) for the value reporting, planning and scheduling, of all work required under the contract documents. The scheduling is necessary for the District's adequate monitoring of the progress of the work and should be prepared in accordance with the time frame described in the Agreement. The District may disapprove such a schedule and require modification to it if, in the opinion of the District, adherence to the progress schedule will not cause the work to be completed in accordance with the Agreement.

B. The Contractor, if requested by the District, shall provide revised schedules within ten (10) days if, at any time, District, considers the completion date to be in jeopardy because of "activities behind schedule." The additional schedule shall include a new arrow or precedence diagram and schedule reports conforming to the requirements above, designed to show how the Contractor intends to accomplish the work to meet the completion date. The form and method employed by the Contractor shall be the same as for the original initial schedule. The Contractor shall modify any portions of the schedule that become infeasible because of "activities behind schedule" or for any other valid reason. An activity that cannot be completed by its original latest completion date shall be deemed to be behind schedule.

#### **ARTICLE 26 MATERIALS AND WORK**

A. All materials will be furnished by the District using its authority under the CMAS schedule. Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for any additional materials required to complete project, as well as labor, tools, equipment, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.

B. Unless otherwise specified, all materials shall be new and shall be of the respective kinds and grades as noted or specified.

C. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required. Contractor shall be entirely responsible for damages or loss by weather or other causes to materials or work under this Contract.

D. Contractor shall, after award of Contract by District, place orders for any additional materials and/or equipment as specified so that delivery of same may be made without delays to the work. Contractor shall, upon demand from the District, furnish to the District documentary evidence showing that orders have been placed.

E. No material, supplies, or equipment for work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by it, to District 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 this Contract shall have any right to place a lien upon the premises or any improvement or appurtenance thereof, except that Contractor may install metering devices or other equipment of a utility company or political subdivision, title to which is commonly retained by the utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to its owner.

F. For all material and equipment specified or indicated in the Specifications, the Contractor shall provide all labor, any additional materials required to complete project that are not currently being furnished by the District using its authority under the CMAS Schedule, equipment, and services necessary for complete assemblies and complete working systems. Incidental items not indicated on the Specifications, 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.

## **ARTICLE 27 OBTAINING OF PERMITS, LICENSES AND EASEMENTS**

Permits, licenses, and certificates necessary for prosecution of work shall be secured and paid for by Contractor, unless otherwise specified. All such permits, licenses, and certificates shall be delivered to District before demand is made for the certificates of final payment. Contractor shall, and shall require subcontractors to, maintain Contractor's licenses in effect as required by law.

## **ARTICLE 28 ACCESS TO WORK**



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

#### **ARTICLE 29 SANITARY FACILITIES**

If applicable, Contractor shall provide sanitary temporary facilities in no fewer numbers than required by law.

#### **ARTICLE 30 CLEANING UP**

Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment caused by the work. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises. Upon completion of work, Contractor shall clean interior and exterior of building, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration; Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and remove temporary fencing, barricades, planking, sanitary facilities and similar temporary facilities from site. If Contractor fails to clean up, District may do so and the cost thereof shall be charged to Contractor.

#### **ARTICLE 31 GUARANTEE**

A. In addition to guarantees required elsewhere, Contractor shall, and hereby does guarantee all work furnished on the job against all defects for a period of one year after date of acceptance of work by District and shall repair or replace any and all such work, together with any other work, which may be displaced in so doing that may prove defective in workmanship and/or materials within one year period from date of acceptance without expense whatsoever to District, ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects to Contractor and Surety with reasonable promptness. Contractor shall notify District upon completion of such repairs or replacement.

B. Contractor Warrants that the WORK (which includes any equipment furnished by Contractor as a part of the materials) shall: (a) Be free from defects in workmanship and material; (b) Be free from defects in any design performed by Contractor; (c) Be new, and conform and perform to the requirements stated in the Specifications, and where detail requirements are not so stated, shall conform to applicable industry standards; and (d) Be suitable for the use stated in the Specifications.

C. The warranty period for discovery of DEFECTIVE WORK shall commence on the date stamped on the Notice of Completion verifying County registration and continue for the period set forth in the Specifications or for one year if not so specified. If, during the warranty period, the WORK is not available for use due to DEFECTIVE WORK, such time of unavailability shall not be counted as part of the warranty period. The warranty period for corrected DEFECTIVE WORK shall continue for a duration equivalent to the original warranty period.

#### **ARTICLE 32 DUTY TO PROVIDE FIT WORKERS**

A. Contractor and Subcontractors shall at all times enforce strict discipline and good order among their employees and shall not employ on any person not skilled in the work assigned to such person. It shall be the responsibility of Contractor to ensure compliance with this Article.

B. Any person in the employ of the Contractor or subcontractors whom District may deem unfit shall be excluded from the work site and shall not again be employed on it except with written consent of District. As used in this Article, “unfit” means any person who the District concludes is either not, or improperly, skilled for the task assigned to that person, who fails to comply with the requirements of this Article, or who creates safety hazards which jeopardize other persons and/or property.

C. Contractor shall take all reasonable steps necessary to insure that any employees of Contractor or any of its subcontractors' employees do not use, consume, or work under the influence of any alcohol or illegal drugs while on the Project. Contractor shall further prevent any of its employees or its subcontractors' employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the Project. Likewise, Contractor shall preclude any of its employees or subcontractor’s employees from bringing any animal onto the Project.

### **ARTICLE 33 FINGERPRINTING**

If applicable, Contractor shall comply with all provisions of either Education Code Section 45125.1 or 45125.2. Pursuant to Education Code 45125.1, Contractor shall conduct criminal background checks of all employees of Contractor assigned to the District, and shall certify that no employees who have been convicted of serious or violent felonies, as specified in Education Code Section 45125.1, will have contact with pupils, by utilizing the certification set forth in the bid documents. As part of such certification, Contractor must provide the District with a list of all employees providing services pursuant to this Agreement, and designate which sites such employees will be assigned. In performing the services set forth in this Agreement, Contractor shall not utilize any employees who are not included on the above- referenced list. At District’s sole discretion, District may make a finding, as authorized under Education Code Section 45125.1, that Contractor’s employees will have only “limited contact” with pupils. Contractor’s failure to comply with this law shall be considered a material breach of this Agreement upon where this Agreement may be terminated, at District’s sole discretion, without any further compensation to Contractor.

Pursuant to Section 45125.2 Contractor shall ensure the safety of pupils by the installation of a physical barrier at the worksite and by continual supervision and monitoring of all these employees by an employee of Contractor whom the Department of Justice has ascertained has not been convicted of a serious or violent felony, as defined in Education Code Section 45125.2 (c).

### **ARTICLE 34 WAGE RATES, TRAVEL AND SUBSISTENCE**

A. **Wage Rates.** Pursuant to the provisions of Article 2 (commencing at § 1720), Chapter 1, Part 7, Division 2, of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public Work is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations (“Director”). These rates are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

Any worker employed to perform work on the Project and such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

B. **Holiday and Overtime Pay.** Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.

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

D. **Per Diem Wages.** The Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project per diem wages including employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1.

E. **Forfeiture and Payments.** Pursuant to Labor Code §1775 and the District's Labor Compliance Program, the Contractor shall forfeit to the District, not more than Fifty Dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Contractor or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and (2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations. Further details regarding the enforcement of paying prevailing wage rates, reporting violations, withholding contract payments, forfeitures and hearing to review withholding of contract payments are set forth in the District's Labor Compliance Program.

## ARTICLE 35 PAYROLL RECORDS

A. Pursuant to §1776 of the Labor Code, each Contractor and Subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.

B. All payroll records shall be certified and submitted to the District with each application for payment, but shall not be submitted less than once per month. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor

Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs of the preparation by the Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

C. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.

D. The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 days after receipt of a written request.

E. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the Subcontractor(s) performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number.

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

G. The Contractor or Subcontractor(s) shall have 10 days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or Subcontractor(s) shall, as a penalty to the District, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. The Contractor is not subject to a penalty due to the failure of a Subcontractor to comply with this section.

The responsibility for compliance with this Article and the District's Labor Compliance Program shall rest upon the Contractor.

## **ARTICLE 36 WITHHOLDING OF CONTRACT PAYMENTS & PENALTIES**

The District may withhold or delay contract payments to the Contractor and/or any Subcontractor if:

- (1) The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
- (2) The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or

- (3) The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
- (4) The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- (5) The Contractor or Subcontractor(s) fail to comply with the District's Labor Compliance Program; or
- (6) The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing labor on public works projects.

Any withholding of contract payments and penalties are set forth in the District's Labor Compliance Program.

## ARTICLE 37 APPRENTICES

A. **Apprentice Wages and Definitions.** All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the Work of the craft or trade to which he or she is registered. Only apprentices, as defined in §3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with §3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training or in accordance with the rules and regulations of the California Apprenticeship Council.

B. **Employment of Apprentices.** Contractor agrees to comply with the requirements of Labor Code §1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code §1777.5 and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project site for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor. The Contractor or Subcontractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code §1777.5.

C. **Submission of Contract Information.** Prior to commencing work on the Project, the Contractor and Subcontractors shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted

to the District if requested. Within 60 days after concluding work on the Project, the Contractor and Subcontractors shall submit to the District, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.

D. **Apprentice Fund.** The Contractor or any Subcontractor under him or her, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing his or her bid for the Contract.

E. **Prime Contractor Compliance.** The responsibility of compliance with Article 13 and §1777.5 of the Labor Code for all apprentice able occupations is with the Prime Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Article or Labor Code §1777.5 shall be subject to the penalties set forth in Labor Code §1777.7 and the District's Labor Compliance Program.

## **ARTICLE 38 PROTECTION OF PERSONS AND PROPERTY**

A. The 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 protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk, with the exception of damage to the work caused by "acts of God" as defined in Government Code Section 4151(b). Contractor's liability for any injury or damage proximately caused by any "act of God" shall be limited to five percent (5%) of the Contract price pursuant to Government Code Section 4150.

B. Contractor shall take, and require subcontractor to take, all necessary precautions for safety of workers on the work 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. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by District or Architect or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and 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. Contractor shall designate a responsible member of its organization on the work, 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. 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, such violation shall be corrected promptly.

C. In an emergency affecting safety of life, of work, or of adjoining property, Contractor, without special instruction or authorization from Architect or District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by Architect or District. District will not hold Contractor liable for damages proximately caused by Contractor's actions if such actions were reasonably necessary to prevent loss of life or injury to person or

damage to work or adjoining property. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.

D. Contractor shall provide such heat, cooling, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.

E. 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. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.

F. Contractor shall (unless waived by the District in writing):

(1) When performing new construction on existing sites, become informed and take into specific account the maturity of the students on the site; and perform work which may interfere with school routine before or after school hours, enclose working area with a substantial barricade, and arrange work to cause a minimum amount of inconvenience and danger to students and faculty in their regular school activities. The Contractor shall comply with specifications and directives of the District regarding the timing of certain construction activities in order to avoid unnecessary interference with school functioning.

(2) Provide substantial barricades around any shrubs or trees indicated to be preserved.

(3) Deliver materials to building area over route designated by Architect of District.

(4) Take preventive measures to eliminate objectionable dust.

(5) 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; and enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking and require that all workers comply with all regulations while on construction site.

(6) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer and all maps and records required therefrom shall be filed with county and local authorities, at no cost to the District. All filing and plan check fees shall be paid by Contractor.

## **ARTICLE 39 NON-DISCRIMINATION**

In the performance of the terms of this Contract, Contractor agrees that it will not engage in nor permit such subcontractor as it may employ to engage in unlawful discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

## **ARTICLE 40 COST BREAKDOWN AND PERIODICAL ESTIMATES**

- A. If applicable, Contractor shall furnish on forms approved by District:  
(1) Within ten (10) days of award of Contract a detailed estimate giving complete breakdown of Contract price for each Project or site; and (2) A periodical itemized estimate of work done for purpose of making partial payments thereon. (3) Within ten (10) days of request of District, a schedule of estimated monthly payments which shall be due Contractor under Contract.
- B. Values employed in making up any of these schedules will be used only for determining basis of partial payments and will not be considered as fixing a basis for additions to or deductions from Contract price.
- C. Contractor shall include in any breakdown or estimate the cost of final Project record documents, guarantees, warranties, O & M Manuals, photographs, etc.

## ARTICLE 41 CLAIMS PROCEDURES & REQUIREMENTS

### A. Procedures and Requirements Applicable to all claims.

- (1) Definition of Claim: A “Claim” means a separate demand by the Contractor for (1) time extension, (2) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (3) amount the payment of which is disputed by the District.
- (2) Filing Claim is Not Basis To Discontinue Work: The Contractor shall promptly comply with Work under the Contract or Work requested by the District even though a written claim has been filed. The Contractor and the District shall make good faith efforts to resolve any and all claims that may arise during the performance of the Work covered by this contract.
- (3) Claim Notification: The Contractor shall within seven (7) calendar days after the claim arises, submit a notification, in writing, with the District stating clearly the basis for the claim. If the notification is not submitted within seven (7) days after the claim arises, the Contractor shall be deemed to have waived all right to assert the claim and the claim shall be denied. Claims submitted after the final payment date shall also be considered null and void by the District. All claims shall be reviewed pursuant to Article 43.
- (4) Formal Claim Submission: If the Contractor does not concur with the District’s decision regarding the Claim Notification, the Contractor will issue a formal Claim Appeal within fourteen (14) days of receipt of the District’s decision and all detailed information in support of the Claim Appeal within thirty (30) days. All appeals shall be submitted before final payment. If the Claim Appeal is not submitted within fourteen (14) calendar days and detailed information within thirty (30) days, the Contractor shall be deemed to have waived its right to assert the Claim and the Claim shall be denied. Contractor’s failure to submit any detailed information which is in the possession of Contractor shall render such information inadmissible by Contractor at trial or arbitration.
- (5) Appeal Claim Format: The Contractor shall provide all written detailed documentation which supports the claim, including but not limited to: arguments,



justifications, cost, estimates, schedule analysis and detailed documentation. The format of the Claim Appeal shall be as follows:

- a. Cover letter.
- b. Summary of factual basis of claim and amount of claim.
- c. Summary of the basis of the claim, including the specific clause and section under the Contract under which the claim is made.
- d. Documents relating to the claim, including:
  - (i) Specifications
  - (ii) Drawings
  - (iii) Clarifications (RFI's)
  - (iv) Other relevant information
  - (v) Analysis of claim merit.
  - (vi) Analysis of claim cost.
  - (vii) For claims relating to time extensions, an analysis and supporting documentation evidencing any effect upon the critical path.
  - (viii) Certification.
  - (ix) Chronology of events and related correspondence.
  - (x) Daily reports and logs.

(6) Certification: The Contractor (and subcontractors, if applicable) shall submit with the claim a certification under penalty of perjury:

- a. That the Contractor has reviewed the claim and that such claim is made in good faith;
- b. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief;
- c. The amount requested accurately reflects the amount of compensation for which the Contractor believes the District is liable.
- d. That the Contractor is familiar with Government Code Sections 12650 et seq. and Penal Code Section 72 and that false claims can lead to substantial fines and/or imprisonment.

(7) Signature of Certification: If the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(8) Mandatory Claim Appeal Procedure: The Contractor's Claim Appeal shall be denied if it fails to provide the written basis of the claim and certification as set forth herein.

(9) District May Request Additional Information: Within thirty (30) days of receipt of the Claim Appeal and the information under this Article, the District may request in writing any additional documentation supporting the claim or documentation relating to defenses to the claim which the District may assert.

**B. Binding Arbitration of Individual Claim Issues.** At the District's sole option, the District may submit individual disputes, or claims, to binding arbitration and Contractor agrees to the resolution determined for each individual dispute by Arbitrator, including resolution of time and delays. If binding arbitration is utilized, such resolution is a full and final resolution of the particular claim or dispute. Under

no circumstances may the Contractor stop work, rescind its contract or otherwise slow the progress of Work during resolution of individual claims in binding Arbitration.

**C. Resolution of Disputes in Court of Competent Jurisdiction.** If claims are not resolved under the procedure set forth and pursuant to Article 44.B, such claim or controversy shall be submitted to a court in the county of competent jurisdiction after the Project has been completed, and not before.

**D. Warranties, Guarantees and Obligations.** The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the General Conditions and amendments thereto; and all of the rights and remedies available to District and Architect thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

## **ARTICLE 42 PAYMENTS TO CONTRACTOR**

A. Unless otherwise specified, each month within thirty (30) days after receipt of approved periodic estimate for partial payment, there shall be paid to Contractor a sum equal to ninety percent (90%) of value of work performed and of materials delivered on the ground or stock subject to or under the control of District and unused up to the last day of the previous month, less aggregate previous payments. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and filed before the fifth (5th) day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or surety from any damages arising from such work or from enforcing each and every provision of this Contract, and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment for work performed so long as any lawful or proper direction concerning work, or any portion thereof, given by District or Architect has not been complied with by Contractor.

B. Before payment is made hereunder, the District will review the request for progress payment with District and Inspector for verification that the work for which payment is requested has been performed in accordance with the Terms of the Contract.

C. District and Inspector shall sign the request for payment as verification that the work has been performed. It is understood moreover, that signature of the Inspector and Architect shall not be conclusive upon District, but merely advisory.

D. Upon request by the District, Contractor shall provide lien releases or partial lien releases for payments previously made. Contractor shall not be entitled to any payment for WORK performed if Contractor has not complied with any lawful direction from the District or has failed to provide lien releases as requested.

E. Prior to final payment, Contractor and each Subcontractor shall certify that the Project does not contain any asbestos containing materials.

F. After completion of the WORK, Contractor shall make a demand for final payment. The demand for final payment shall identify all disputed and undisputed amounts due under the CONTACT and,

all claims for compensation under or arising out of this CONTRACT. The Contractor's negotiation of the payment of the final amount shall constitute a waiver of all amounts due under the CONTRACT and all claims against District under or arising out of this CONTRACT except those identified by Contractor in writing, and unsettled before Contractor's negotiation of final payment. The final payment, if unencumbered, shall be made no sooner than thirty-five (35) calendar days after recordation of the Notice of Completion by the County Registrar. Acceptance will be made only by ACTION OF THE GOVERNING BOARD.

G. No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the WORK.

**ARTICLE 43 CHANGES AND EXTRA WORK**

A. District may, as provided by law and without affecting the validity of this Contract, order changes, modifications, deletions and extra work by issuance of written change orders from time to time during the progress of the Project, Contract sum being adjusted accordingly. All such work shall be executed under conditions of original Contract except that any claim for an extension of time caused thereby shall be adjusted at time of ordering such change.

B. In giving instructions, Architect shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with purposes of the building. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order from District, authorized by action of the Governing Board and no claim for addition to Contract sum shall be valid unless so ordered.

C. The following format shall be used as applicable by the District and the Contractor to communicate proposed additions and deductions to the Contract:

	<u>EXTRA</u>	<u>CREDIT</u>
(a) Material (attach itemized quantity and unit cost plus sales tax)		
(b) Labor (attach itemized hours and rates)	_____	_____
(c) Equipment (attach invoices)		_____
(d) Subtotal		_____
(e) If Subcontractor performed Work, add Subcontractor's overhead and profit to portions performed by Sub-contractor, not to exceed fifteen percent (15%) of item (d).		_____
		_____

(f) Liability and Property Damage Insurance, Worker's, Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed as follows: FICA @ 6.2%- with a wage ceiling of \$84,900; Medicare @ 1.45%- no wage ceiling; FUTA @ .8%- with a wage EXTRA ceiling of \$7,000; ETT and SUI @ 2.3%- with a wage ceiling of \$7,000; Workers' Compensation @ 5.94%; Liability and Property Damage @ 2.5%. Total not-to-exceed is 19.19%. *(Note: Modifications to these percentages will be evaluated and possibly modified only on a caseby-case basis and only after proper proof of alternate percentages are documented and approved in advance. In addition, as wage ceilings are met, those corresponding percentages must drop from the "burden" calculations).*

(g) Subtotal \_\_\_\_\_

CREDIT

(h) Subtotal \_\_\_\_\_

(i) Bond not to exceed two percent (2%) of Item (g) \_\_\_\_\_

(j) TOTAL \_\_\_\_\_

(k) Time \_\_\_\_\_

D. If the Contractor should claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation obligates the District to pay additional compensation to the Contractor or to grant an extension of time for the compensation of the Contract, or constitutes a waiver of any provision in the Contract, Contractor shall notify the District, in writing, of such claim within ten (10) calendar days from the date Contractor has actual or constructive notice of the factual basis supporting the claim. The Contractor's failure to notify the District within such ten (10) calendar day period shall be deemed a waiver and relinquishment of such a claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Article.

E. If Contractor does not remove such work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) calendar days time thereafter, District may, upon ten (10) calendar

days written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

#### **ARTICLE 44 COMPLETION**

The work may only be accepted as complete by action of the Governing Board.

#### **ARTICLE 45 ADJUSTMENTS TO CONTRACT PRICE**

A. 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 ten (10) days written notice to Contractor and without prejudice to any other remedy it may have, make good such deficiencies.

B. 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 injured or not done in accordance with Contract provisions, an equitable reduction in Contract price shall be made therefore.

#### **ARTICLE 46 CORRECTION OF WORK**

A. Should it be considered necessary or advisable by the Owner at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out the same, the Contractor shall on request promptly furnish all necessary facilities, labor and materials. If such work is found to be defective in any respect due to fault of the Contractor or his subcontractor, he shall defray all expenses of such examinations and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the additional cost of labor and material necessarily involved in the examination and replacement shall be allowed the Contractor.

B. Contractor shall promptly remove from premises all work identified by District as failing to conform to Contract, whether incorporated or not. Contractor shall promptly replace and re-execute its own work to comply with entrant documents without additional expense to District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

C. If Contractor does not remove such work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) days time thereafter, District may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

#### **ARTICLE 47 EXTENSION OF TIME - LIQUIDATED DAMAGES**

A. The 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. It is expressly understood that time is of the essence and that the Contractor must complete the Project within the time specified in the Agreement. Contractor shall be assessed the sum of Five Hundred Dollars (\$500.00) per calendar day as liquidated damages for each and every day the work required under this contract remains unfinished past the time for completion, as set forth in the Agreement, and any extensions of time granted by the District to the Contractor under the terms of the contract documents and pursuant to Section 53069.85 of the Government Code. For purposes of this Article, the work shall be considered "complete" in accordance with the provisions of Article 47, "COMPLETION", except that the work may be considered

complete without formal acceptance by the Governing Board so long as the board, at its next regularly scheduled meeting, accepts the work.

**B.** Contractor shall not be charged for liquidated damages, as set forth above, because of any delays in completion of work which are not the fault or negligence of Contractor, including but not restricted to: acts of God, acts of public enemy, acts of Government, fires, floods, epidemics and quarantine restrictions. Contractor shall, within ten (10) calendar days of beginning of any such delay (unless District grants in writing a further period of time to file such notice prior to date of final settlement of the Contract), notify District in writing of causes of delay; thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. The District's finding of fact thereon shall be final and conclusive on the parties hereto. Extensions 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.

#### **ARTICLE 48 PAYMENTS WITHHELD**

**A.** In addition to amount which District may retain under Article 47 entitled "COMPLETION" and Article 45 entitled "PAYMENTS TO CONTRACTOR", District may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:

- (1) Payments which may be past due and payable for just claims against Contractor or any subcontractors, or against and about the performance of work on the Project under this Contract, including, without limitation, payments made pursuant to the Article 45 entitled "PAYMENTS BY CONTRACTOR";
- (2) The cost of defective work which Contractor has not remedied;
- (3) Liquidated damages assessed against Contractor;
- (4) Penalties for violation of labor laws;
- (5) The cost of materials ordered by the District pursuant to the Article 28 entitled "MATERIALS AND WORK";
- (6) The cost of completion of this Contract if there is reasonable doubt that this Contract can be completed for the balance then unpaid to Contractor;
- (7) Site clean-up as provided in Article 32 entitled "CLEANING UP".
- (8) Amount necessary to satisfy any and all liens against District. Contractor shall provide release of all liens prior to final payment.
- (9) Damages to another Contractor.
- (10) Payments to indemnify, defend, or hold harmless the District.
- (11) Any payments due to the District including but not limited to payments for failed tests, utilities or imperfections.

**B.** If the Contractor, at its own expense, removes the reason for withholding, then payment shall be made for amount withheld.

**C.** District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, District shall make such payments on behalf of Contractor. If any payment is so made by District, then such amount shall be considered as a payment made under Contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith.

Such payments may be made without prior judicial determination of claim or obligation. District will render Contractor an accounting of such funds disbursed on behalf of Contractor.

D. As an alternative to payment of such claims or obligations, District, in its sole discretion, may reduce the total Contract price as provided in Article 48 entitled "ADJUSTMENTS TO CONTRACT PRICE."

E. Payment by the District shall be without prejudice to any other action by the District to recover damages.

#### **ARTICLE 49 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 bid price.

#### **ARTICLE 50 TAXES**

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

#### **ARTICLE 51 NO ASSIGNMENT**

Contractor shall not assign this Contract or any part thereof.

#### **ARTICLE 52 NOTICE AND SERVICE THEREOF**

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

(1) If notice is given to District, by personal delivery thereof to District or by depositing same in United States mail, enclosed in a sealed envelope addressed to District, and sent by registered or certified mail with postage prepaid; (2) If notice is given to Contractor by personal delivery thereof to said Contractor or to Contractor's superintendent at site of Project, or by depositing same in United States mail, enclosed in a sealed envelope addressed to said Contractor at its regular place of business or at such address as may have been established for the conduct of work under this Contract, and sent by registered or certified mail with postage prepaid; (3) If notice is given to surety or other person by personal delivery to such surety or other person or by depositing same in United States mail, enclosed in a sealed envelope, addressed to such surety or person at the address of such surety or person last communicated by surety or other person to party giving notice, and sent by registered or certified mail with postage prepaid.

## **ARTICLE 53 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.

## **ARTICLE 54 HAZARDOUS MATERIALS**

In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the District and Architect in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the District and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the District and Contractor, or in accordance with final determination by the Architect.

## **ARTICLE 55 DISTRICT'S RIGHT TO CARRY OUT THE WORK**

If Contractor defaults or neglects to carry out the work in accordance with the contract documents or fails to perform any provision of this Contract, the owner may, after ten (10) calendar days' written notice to Contractor and without prejudice to any other remedy he may have, made good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due Contractor the cost of correcting such deficiencies, including the cost of the Architect's additional service made necessary by such default, neglect or failure. If the payments then or thereafter due Contractor are not sufficient to cover such amount, then Contractor shall pay the difference to the Owner within ten (10) calendar days.

## **ARTICLE 56 INDEMNIFICATION**

A. Contractor agrees to and does hereby defend, indemnify and hold harmless District, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors from every claim or demand made, and every liability, loss, damage, expense or attorneys fees of any nature whatsoever, which may be incurred by reason of:

(a) Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the District.

(b) Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Contractor or any person, firm or corporation employed by Contractor, either directly or by independent contract, including all damages or injury to, loss (including theft), or loss of use of, any property, sustained by any person, firm or corporation, including the District, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage



occurs either on or off District property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the District.

(c) Any dispute between Contractor and Contractor's subcontractors/supplies/sureties, including, but not limited to, any failure or alleged failure of the Contractor (or any person hired or employed directly or indirectly by the Contractor) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

B. Contractor, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

## **ARTICLE 57 NON-UTILIZATION OF ASBESTOS MATERIAL**

### **NO ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS SHALL BE USED IN THIS CONSTRUCTION OR IN ANY TOOLS, DEVICES, CLOTHING, OR EQUIPMENT USED TO EFFECT THIS CONSTRUCTION.**

Asbestos and/or asbestos-containing products shall be defined as all items containing, but not limited to, chrysolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (1%) asbestos shall be defined as asbestos-containing material. All work or materials found to contain asbestos or work or material installed with asbestos-containing equipment will be immediately rejected and this work will be removed at no additional cost to the District.

## **ARTICLE 58 LIEN RELEASES**

Contractor shall, at its own cost, defend, indemnify and hold harmless the District, its officers, agents, employees, assigns, and successors in interest, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, and costs including attorney's fees and expenses, or any of them, arising from or attributable to a lien or stop notice filed and/or severed in connection with the work.

## **ARTICLE 59 ALLOCATION OF COSTS**

Contractor acknowledges that the projected cost of construction is potentially subject to change due to unanticipated increases in construction costs. In the event of an increase in costs, Contractor may be subject to an increase of up to ten percent (10%). In the event of any decrease in costs, the District shall allocate a fair and reasonable portion of the savings for purposes of reducing the Contractor's costs. In considering such costs, the District shall utilize the Engineering-News Record Building Cost Index history ("BCI") applicable as of the date bids are awarded. As a result, it is agreed that the Contractor shall be liable for its share of cost increases that exceed the BCI applicable the date bids are awarded which is presently contemplated by the District in the Allocation of Costs set forth in Section 13.13 of the General Conditions. For example, if the Project is built in 2005 and awarded in 2004, then the total accumulated differential between the 2004 BCI and the 2005 BCI percentage will be factored into the estimated cost per square foot of the Project. [i.e.  $((\text{BCI applicable at the time of construction} - 4102) / 4102) * \text{Per Square Foot Cost} = \text{Adjustment to Square Foot Cost}$ . Note that this number can be a negative number which adjusts price either up or down.] Notwithstanding any of the foregoing the District shall not be liable to the extent any increased

costs are the result of any unreasonable failure by the Contractor to anticipate costs of labor, materials and supplies or timing in which materials are ordered.