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GENERAL CONDITIONS (51 PAGES)

*If the following items are not returned at the time of the bid opening, the bidder will be declared nonresponsive
+Items which successful bidder must submit after the award
NOTICE CALLING FOR BIDS

District: SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT

Project: BID NO. 2034: Avery Slope

Bid Deadline: 2:00 P.M., June 4, 2015

Mailing Address & Place of Bid Receipt:
South Orange County Community College District
Health Sciences Building, 3rd Floor, Room HS-357
Purchasing & Facilities Planning Department
28000 Marguerite Parkway
Mission Viejo, CA 92692

NOTICE IS HEREBY GIVEN that the South Orange County Community College District, of Orange County, California, acting by and through its Governing Board, hereinafter referred to as "DISTRICT," will receive up to, but not later than, the above-stated time, sealed bids for the award of a contract for the above Project.

Project’s Preliminary Cost Estimate: Avery Slope, $50,000

Complete description, specifications and general conditions may be viewed at the Office of the Director of Facilities Planning and Purchasing Department at the above address, telephone (949) 582-4678 or previewed and downloaded on-line at www.socccd.edu at the Bids link.

There will be a mandatory job walk and conference at 9:00am on Thursday, May 21, 2015 starting at the Avery Entrance to Saddleback College, Mission Viejo. Any bidder who arrives late and fails to attend the entire pre bid conference shall be deemed a non-responsive bidder and will have his bid returned unopened.

In accordance with the provisions of California Business and Professions Code Section 7028.15 and Public Contract Code Section 3300, the DISTRICT requires that the bidder possess the following classification of contractor’s license at the time the bid is submitted: Class License A. Any bidder not so licensed at the time of the bid opening will be rejected as non-responsive.

Time is of the essence. Failure to complete the work within the time set forth in the bid documents will result in the imposition of liquidated damages for each day of delay in the amount set forth in the Information for Bidders.

Each bid shall be accompanied by a bid security in the form of cash, a certified or cashier’s check or bid bond in an amount not less than ten percent (10%) of the total bid price, payable to the DISTRICT. In the event the successful bidder fails to enter into the contract and execute the required documents, the bid security shall be forfeited. The successful bidder shall furnish a satisfactory Performance Bond and a Payment Bond in amounts not less than one hundred percent (100%) of the total bid price.

The DISTRICT reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding process.
The California Department of Industrial Relations has determined the general prevailing rates of per diem wages for the locality in which the work is to be performed for the Project. Copies of these wage rate determinations, entitled Prevailing Wage Scale, are maintained at the DISTRICT office and are available at the following website: www.dir.ca.gov. It shall be mandatory upon the successful bidder to whom the contract is awarded, and upon any subcontractor listed, to pay not less than the said specified rates to all workers employed by them for the Project. These requirements will be enforced through our Labor Compliance consulting firm.

No bidder may withdraw any bid for a period of ninety (90) calendar days after the date set for the opening of bids.

The general prevailing rate of per diem wages is based upon a working day of eight (8) hours. The rate for holiday and overtime work shall be at least time and one-half.

Pursuant to Section 22300 of the Public Contract Code, the Agreement will contain provisions permitting the successful bidder to substitute securities for any monies withheld by the DISTRICT to ensure performance under the Agreement or permitting payment of retention earned directly into escrow.

Prequalification is a requirement for bidding this project. Prequalification documents will be distributed at the mandatory job walk and conference.

Questions regarding this RFQ & P may be directed to Jim Rogers via email at jrogers39@saddleback.edu.

Brandye K. D’Lena
Executive Director
Facilities Planning & Purchasing

PUBLISH: OC REGISTER

May 12, 2015

&

May 19, 2015
INFORMATION FOR BIDDERS

WARNING:
READ THIS DOCUMENT CAREFULLY. DO NOT ASSUME
THAT IT IS THE SAME AS OTHER SIMILAR DOCUMENTS
YOU MAY HAVE SEEN, EVEN IF FROM THE SAME DISTRICT.

1. Preparation of Bid Form. Bids shall be submitted on the prescribed Bid Form, completed in full. All bid items and statements shall be properly and legibly filled out. Numbers shall be stated both in words and in figures where so indicated, and where there is a conflict in the words and the figures, the words shall control over the numbers. The signatures of all persons shall be in longhand and in ink. Prices, wording and notations must be in ink or typewritten.

2. Form and Delivery of Bids. The bid must conform and be responsive to all Project Documents and shall be made on the Bid Form provided, and the complete bid, together with any and all additional materials as required, shall be enclosed in a sealed envelope, addressed and hand delivered or mailed to the DISTRICT at:

South Orange County Community College District
Health Science Building, 3rd Floor
28000 Marguerite Parkway
Mission Viejo, CA, 92692

and must be received on or before the bid deadline (Public Contract Code Section 20112). The envelope shall be plainly marked in the upper left hand corner with the bidder's name, the Project designation and the date and time for the opening of bids. **It is the bidder's sole responsibility to ensure that its bid is received prior to the bid deadline.** In accordance with Government Code Section 53068, any bid received after the scheduled closing time for receipt of bids shall be returned to the bidder unopened. At the time and place set forth for the opening of bids, the sealed bids will be opened and publicly read aloud. However, if prequalification of bidders is required pursuant to Public Contract Code Section 20111.5 only those sealed bids received from prequalified bidders shall be opened and publicly read aloud.

3. Bid Security. Each bid shall be accompanied by a bid security in the form of cash, a certified or cashier's check or bid bond in the amount of not less than ten percent (10%) of the total bid price payable to the DISTRICT and shall be given as a guarantee that the bidder, if awarded the contract, will execute the Agreement within ten (10) working days after notice of award of the contract, and will furnish, on the prescribed forms, a satisfactory Faithful Performance Bond in an amount not less than one hundred percent (100%) of the total bid price and separate Payment (labor and material) Bond in an amount not less than one hundred percent (100%) of the total bid price, furnish certificates and endorsements evidencing that the required insurance is in effect, the Workers’ Compensation Certificate, Drug-Free Work Place Certification, the Criminal Records Check Certification, Contractor’s Certificate Regarding Non-Asbestos Containing Materials, and the Disabled Veteran Business Enterprises Certification, if applicable, all within ten (10) working days of the notice of award of the contract or as otherwise requested in writing by the DISTRICT. It is understood and agreed that should bidder fail or refuse to return these documents as required by the DISTRICT, the bid security shall be forfeited to the DISTRICT. If the Bidder elects to furnish a bid bond as its Bid Security, the Bidder shall use the bid bond form included in the Project Documents.

4. Signature. Any signature required on Project Documents must be signed in the name of the bidder and must bear the signature of the person or persons duly authorized to sign these documents. Where indicated, if
bidder is a corporation, the legal name of the corporation shall first be set forth, together with two signatures: one from among the chairman of the board, president or vice president and one from among the secretary, chief financial officer, or treasurer. Alternatively, the signature of other authorized officers or agents may be affixed, if duly authorized by the corporation. Such documents shall include the title of such signatories below the signature and shall bear the corporate seal. Where indicated, in the event that the bidder is a joint venture or partnership, there shall be submitted with the bid certifications signed by authorized officers of each of the parties to the joint venture or partnership, naming the individual who shall sign all necessary documents for the joint venture or partnership and, should the joint venture or partnership be the successful bidder, who shall act in all matters relative to the Project for the joint venture or partnership. If bidder is an individual, his/her signature shall be placed on such documents.

5. Modifications. Changes in or additions to any of the bid documents, summary of the work bid upon, alternative proposals, or any other modifications which are not specifically called for by the DISTRICT may result in the DISTRICT’S rejection of the bid as being nonresponsive. No oral, telephonic, facsimile or electronic modification of any of the bid documents will be considered.

6. Erasures, Inconsistent or Illegible Bids. The bid submitted must not contain any erasures, interlineations, or other corrections unless each such correction is authenticated by affixing the initials of the person(s) signing the bid in the margin immediately adjacent to the correction. In the event of inconsistency between words and numbers in the bid, words shall control numbers. In the event that DISTRICT determines that any bid is unintelligible, illegible or ambiguous, the DISTRICT may reject such bid as being nonresponsive.

7. Examination of Site and Project Documents. At its own expense and prior to submitting its bid, each bidder shall examine all documents relating to the Project; visit the site and determine the local conditions which may in any way affect the performance of the work, including the general prevailing rates of per diem wages and other relevant cost factors; familiarize itself with all Federal, State and Local laws, ordinances, rules, regulations and codes affecting the performance of the work, including the cost of permits and licenses required for the work; make such surveys and investigations, including investigation of subsurface or latent physical conditions at the site or where work is to be performed, as it may deem necessary for performance of the work at its bid price; determine the character, quality, and quantities of the work to be performed and the materials and equipment to be provided; and correlate its observations, investigations, and determinations with all requirements of the Project. The Project Documents show and describe the existing conditions as they are believed to have been used in the design of the work and are only provided as information for the bidder. The DISTRICT is not making any warranties regarding said information. The DISTRICT shall not be liable for any loss sustained by the successful bidder resulting from any variance between the conditions and design data given in the Project Documents and the actual conditions revealed during the bidder's pre-bid examination or during the progress of the work. Bidder agrees that the submission of a bid shall be incontrovertible evidence that the bidder has complied with all the requirements of this provision of the Information for Bidders.

8. Withdrawal of Bids. Any bid may be withdrawn, either personally or by written request signed by the bidder, at any time prior to the scheduled closing time for receipt of bids. The bid security for a bid withdrawn prior to the scheduled closing time for receipt of bids, in accordance with this paragraph, shall be returned. No bidder may withdraw any bid for a period of ninety (90) calendar days after the date set for the opening of bids.

9. Agreement and Bonds. The Agreement which the successful bidder will be required to execute and the payment bond required in accordance with Civil Code Section 3247, are included in the Project Documents. The payment bond shall be in the amount not less than one hundred percent (100%) of the amount of the contract in accordance with Civil Code Section 3248. The successful bidder will also be required to furnish a separate faithful performance bond in the amount of one hundred percent (100%) of the contract and in the form included in the Project
10. **Interpretation of Project Documents.** If any bidder is in doubt as to the true meaning of any part of the Project Documents, or finds discrepancies in, or omissions from the Project Documents, a written request for an interpretation or correction thereof must be submitted to the DISTRICT no later than four (4) days before bid deadline. No requests shall be considered after this time. The bidder submitting the written request shall be responsible for its prompt delivery. Any interpretation or correction of the Project Documents will be made solely at DISTRICT’s discretion and only by written addendum duly issued by the DISTRICT, and a copy of such addendum will be hand delivered or mailed or faxed to each bidder known to have received a set of the Project Documents. No person is authorized to make any oral interpretation of any provision in the Project Documents, nor shall any oral interpretation of Project Documents be binding on the DISTRICT. If there are discrepancies of any kind in the Project Documents, the interpretation of the DISTRICT shall prevail. Submittal of a bid without a request for clarification shall be incontrovertible evidence that the bidder has determined that the project documents are acceptable and sufficient for bidding and completing the work; that bidder is capable of reading, following and completing the work in accordance with the project documents; and that bidder agrees that the project can and will be completed according to the DISTRICT’s timelines and according to the progress schedule to be submitted by the successful bidder incorporating the DISTRICT’s timelines for completion of the project.

11. **Bidders Interested in More Than One Bid.** No person, firm or corporation shall be allowed to make, or file, or be interested in more than one bid for the same work unless alternate bids are specifically called for by the DISTRICT. A person, firm, or corporation that has submitted a sub-proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a proposal or quoting prices to other bidders or submitting a bid on the Project.

12. **Award of Contract.** The DISTRICT reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding process. The award of the contract, if made by the DISTRICT, will be by action of the Governing Board and to the lowest responsive and responsible bidder. If two identical low bids are received from responsive and responsible bidders, the DISTRICT will determine which bid will be accepted pursuant to Public Contract Code Section 20117. In the event an award of the contract is made to a bidder, and such bidder fails or refuses to execute the Agreement and provide the required documents within fifteen (15) working days after the notice of award of the contract to bidder, the DISTRICT may award the contract to the next lowest responsive and responsible bidder or reject all bidders.

13. **Alternate Bids.** If alternate bids are called for, the DISTRICT will award the contract to the lowest responsive and responsible bidder based on the lowest total of the bid prices on the base contract without consideration of the prices on the additive or deductive items.

14. **Competency of Bidders.** In selecting the lowest responsive and responsible bidder, consideration will be given not only to the financial standing but also to the general competency of the bidder for the performance of the Project. By submitting a bid, each bidder agrees that the DISTRICT, in determining the successful bidder and its eligibility for the award, may consider the bidder’s experience and facilities, conduct and performance under other contracts, financial condition, reputation in the industry, and other factors which could affect the bidder’s performance of the Project. To this end, each bid shall be supported by a statement of the bidder’s experience on the form entitled “INFORMATION REQUIRED OF BIDDER.”

The DISTRICT may also consider the qualifications and experience of subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the work. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by the DISTRICT. In this regard, the DISTRICT may conduct such investigations.
as the DISTRICT deems necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications and financial ability of the bidder, proposed subcontractors, and other persons and organizations to do the work to the DISTRICT’s satisfaction within the prescribed time. The DISTRICT reserves the right to reject the bid of any bidder who does not pass any such evaluation to the satisfaction of the DISTRICT.

15. **Bidder's Prequalification.** Only Bid Proposals submitted by Prequalified Bidders will be considered. A Bid Proposal submitted by a Bidder who is not prequalified will be deemed a non-responsive Bid Proposal and will be rejected by the District. A Bidder who has not completed the Prequalification Application and has not been deemed a "Qualified Bidder" must complete the Prequalification Application and submit the Prequalification Application to the District (via the Construction Manager) by the date and in the manner set forth in the Prequalification Application. The failure to submit a completed Prequalification Application on or prior to such date will render the Bid Proposal of the Bidder untimely submitting a completed Prequalification Application to be non-responsive and rejected. If the District determines that any information provided by a Bidder in the Prequalification Application is false or misleading, or is incomplete so as to be false or misleading, the District may reject the Bid Proposal submitted by such Bidder as being non-responsive.

16. **Listing Subcontractors.** Each bidder shall submit, on the form furnished with the Project Documents, a list of the proposed subcontractors on this Project as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100, et seq.). If alternate bids are called for and the bidder intends to use different or additional subcontractors, a separate list of subcontractors must be submitted for each such alternate bid. If the bidder fails to specify a subcontractor for any portion of the work in excess of one half (1/2) of one percent (1%) of the bidder’s total bid, the bidder agrees that he/she is fully qualified to perform that work and agrees to perform that portion of the work. Violation of this requirement (including the procurement of a subcontractor for the Project if no subcontractor is specified) can result in the DISTRICT invoking the remedies of Public Contract Code Sections 4110 and 4111.

17. **Bid Protest.** Any bidder may file a bid protest. The District must be informed of any intent of a bid protest within three (3) business days of bid opening. An e-mail address shall be provided and by filing the protest, protesting bidder consents to receipt of e-mail notices for purposes of the protest and protest related questions and protest appeal, if applicable. A formal protest must be submitted in writing to the District’s office, before 4:00 p.m. of the fifth (5th) business day following the opening of Bidder’s Envelopes. The bid protest must set forth, in detail, all grounds for the bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and credible evidence. Any bid protest not conforming to the foregoing shall be rejected by the District without recourse. The protest must include the name, address, and the telephone number of the person representing the protesting party.

Provided that the bid protest is filed in strict conformity with the foregoing, the District’s Executive Director of Facilities Planning & Purchasing shall review and evaluate the basis of the bid protest and make a determination. Once the bid protest is received, the apparent lowest responsible bidder will be notified of the protest and the evidence presented. If appropriate, the apparent low bidder will be given an opportunity to rebut the evidence and present evidence that the apparent low bidder should be allowed to perform the Work. If deemed appropriate by the District, an informal hearing will be held. District will issue a written decision within fifteen (15) calendar days of receipt of the protest, unless factors beyond the District’s reasonable control prevent such resolution. The decision on the bid protest will be copied to all parties involved in the protest.

If the determination is unacceptable to the bid protestor, the bid protestor will notify the District’s Executive Director within three (3) business days of receiving the determination that they require a reconsideration. The Vice Chancellor, Business Services shall review and evaluate the basis of the bid protest and make a secondary determination and issue
a written response to the appeal, or if appropriate, appoint a Hearing Officer to conduct a hearing and issue a written decision. The written decision of the Vice Chancellor, Business Services, or the Hearing Officer shall be rendered with fifteen (15) calendar days and shall state the basis for the decision. This determination will be final and not subject to appeal or reconsideration by the District.

The District reserves the right to proceed to award the Project and commence construction pending an Appeal. If there is State funding or a critical completion deadline, the District may choose to shorten the time limits set forth in this Section of written notice is provided to the protesting party. E-mailed notice with a written confirmation sent by First Class mail shall be sufficient to constitute written notice. If there is no written response to a written notice shortening time, the District may proceed with the award.

The procedure and time limits set forth in this paragraph are mandatory and are Bidder’s sole and exclusive remedy in the event of a Bid protest. Bidder’s failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings. A Bidder may not rely on a protest submitted from another Bidder, but must timely pursue its own protest.

18. Insurance and Workers’ Compensation. The successful bidder shall be required to furnish certificates and endorsements evidencing that the required insurance is in effect. DISTRICT may request that such certificates and endorsements are completed on DISTRICT provided forms. In accordance with the provisions of Section 3700 of the Labor Code, the successful bidder shall secure the payment of compensation to all employees. The successful bidder who has been awarded the contract shall sign and file with DISTRICT prior to performing the work, the Workers’ Compensation Certificate included as a part of the Project Documents. Labor Code Section 1861.

19. Contractor's License. If, at the time and date of the contract execution, bidder is not properly licensed to perform the Project in accordance with Division 3, Chapter 9, of the Business and Professions Code and the Project Documents, such bid will be rejected as nonresponsive. (Public Contract Code Section 3300) Pursuant to Business and Professions Code Section 7028.15, no payment shall be made for work or materials under the contract unless and until the Registrar of Contractors verifies to the DISTRICT that the bidder was properly licensed at the time the bid was submitted. Any bidder not so licensed is subject to penalties under the law and the contract will be considered void and DISTRICT shall have the right to bring an action against the unlicensed bidder awarded the contract for recovery of all compensation paid under the contract. (Business and Professions Code Section 7031(b)) If the license classification specified hereinafter is that of a “specialty contractor” as defined in Section 7058 of the Business and Professions Code, the specialty contractor awarded the contract for this work shall construct a majority of the work, in accordance with the provisions of Business and Professions Code Section 7059. The bidder may not use the contractor license of a third party for this bid.

20. Anti-Discrimination. In connection with all work performed under this Project, there shall be no unlawful discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, marital status, physical disability, mental disability, or medical condition. The successful bidder agrees to comply with applicable Federal and State laws including, but not limited to, the California Fair Employment and Housing Act, beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the successful bidder agrees to require like compliance by any subcontractors employed on the Project by such bidder.

21. Hold Harmless and Indemnification. The successful bidder awarded the contract will be required to indemnify and hold harmless the DISTRICT, its Governing Board, officers, agents, and employees as set forth in the Agreement.

22. Substitutions. Should the bidder wish to request any substitution for the materials, process, service, or equipment specified, the bidder shall be required to comply with Article 30 of the General Conditions.
23. **Surety Qualifications for Bonds.** Bidders shall ensure all surety companies have a minimum rating of "A-VIII," as rated by the current edition of Best's Key Rating Guide, published by A.M. Best Company, Oldwick, New Jersey 08858. Only California admitted surety insurers will be acceptable for the issuance of bonds. (Code of Civil Procedure Section 995.311) DISTRICT shall verify the status of the surety by one of the following ways: (1) printing out information from the website of the California Department of Insurance confirming the surety is an admitted surety insurer and attaching it to the bond, or (2) obtaining a certificate from the county clerk for the county in which the DISTRICT is located that confirms the surety is an admitted surety insurer and attaching it to the bond. Any admitted surety insurer who cannot satisfy the minimum rating specified above, but who satisfies the following requirements set forth in Code of Civil Procedure Section 995.660 shall be accepted and approved for the issuance of bonds:

(a) There must be on file in the office of the county clerk, for the county in which the DISTRICT is located, an unrevoked appointment, power of attorney, bylaws, or other instrument, duly certified by the proper authority and attested by the seal of the insurer authorizing the person who executed the bond to do so for and on behalf of the insurer within ten (10) calendar days of the insurer’s receipt of a request to submit such document from the DISTRICT, and an original or certified copy of the document must be submitted to the DISTRICT.

(b) A certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner must be submitted to the DISTRICT within ten (10) calendar days of the insurer’s receipt of a request to submit such document from the DISTRICT.

(c) A certificate from the clerk of the county that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, and in the event it has, whether renewed authority has been granted must be submitted to DISTRICT within ten (10) calendar days of the insurer’s receipt of a request to submit such document from the DISTRICT.

(d) Copies of the insurer’s most recent annual statement and quarterly statement filed with the California Department of Insurance must be submitted to the DISTRICT within ten (10) calendar days of the insurer’s receipt of a request to submit the statements.

24. **Liquidated Damages.** All work must be completed within the time limits set forth in the Project Documents. It is agreed that damages for the failure to complete the Project described herein within the time limits required are impossible to ascertain. Should the work not be completed within the specified time for completion, the successful bidder awarded the contract shall be liable for liquidated damages, payable to the DISTRICT, in an amount of One thousand Dollars ($1000) for each consecutive calendar day of delay in completion. Such damages shall be deducted from any payments due or to become due to the successful bidder. Government Code Section 53069.85, Civil Code Section 1671.

25. **Drug-Free Workplace Certification.** Pursuant to Government Code Sections 8350, et seq., the successful bidder will be required to execute a Drug-Free Workplace Certification upon execution of the Agreement. The bidder will be required to take positive measures outlined in the certification in order to ensure the presence of a drug-free workplace. Failure to abide with the conditions set forth in the Drug-Free Workplace Act could result in penalties including termination of the Agreement or suspension of payment thereunder.

26. **Non-collusion Affidavit.** In accordance with the provisions of Section 7106 of the Public Contract Code, each bid must be accompanied by a non-collusion affidavit properly notarized.

27. **Escrow Agreement.** Public Contract Code Section 22300 permits the substitution of securities for any monies withheld by a public agency to ensure performance under a contract. At the request and expense of the successful bidder awarded the contract, securities equivalent to the amount withheld as retention shall be deposited...
with the DISTRICT, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to the successful bidder. The DISTRICT retains the sole discretion to approve the bank selected by the successful bidder to serve as escrow agent. Upon satisfactory completion of the contract, the securities shall be returned to the successful bidder. Securities eligible for investment shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit. The successful bidder shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

In the alternative, under Section 22300, the successful bidder may request DISTRICT to make payment of earned retentions directly to the escrow agent at the expense of the successful bidder. Also at the successful bidder’s expense, the successful bidder may direct investment of the payments into securities, and the successful bidder shall receive interest earned on such investment upon the same conditions as provided for securities deposited by successful bidder. Upon satisfactory completion of the contract, successful bidder shall receive from the escrow agent all securities, interest and payments received by escrow agent from DISTRICT pursuant to the terms of Section 22300.

The successful bidder who elects to receive interest on monies withheld in retention by the DISTRICT shall, at the request of any subcontractor performing more than five percent (5%) of the successful bidder’s total bid, make that option available to the subcontractor regarding any monies withheld in retention by the successful bidder from the subcontractor. If the successful bidder elects to receive interest on any monies withheld in retention by the DISTRICT, then the subcontractor shall receive the identical rate of interest received by the successful bidder on any retention monies withheld from the subcontractor by the successful bidder, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the successful bidder elects to substitute securities in lieu of retention, then, by mutual consent of the successful bidder and subcontractor, the subcontractor may substitute securities in exchange for the release of monies held in retention by the successful bidder. Public Contract Code Section 22300(d)(1).

The successful bidder wishing to utilize Public Contract Code Section 22300 and enter into an Escrow Agreement shall complete and execute the form Escrow Agreement included in the Project Documents and submit it to the DISTRICT.

28. Change Orders. All change order requests must be submitted in the form set forth in the Project Documents and pursuant to Article 60 of the General Conditions. The amount of allowable charges submitted pursuant to a change order shall be limited to the charges allowed under Article 60 of the General Conditions. Indirect, consequential and incidental costs, project management costs, extended home office and field office overhead, administrative costs and profit and other charges not specifically authorized under Article 60 of the General Conditions will not be allowed.

29. Tobacco-Free Policy. The successful bidder shall agree to enforce a tobacco-free work site.

30. Lead. Pursuant to the Lead-Safe Schools Protection Act (Education Code Sections 32240, et seq.) and other applicable law, the successful bidder shall not use lead-based paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or the modernization or renovation of any existing school facility.

31. The number of executed copies of the Agreement, the Faithful Performance Bond, and the Payment Bond required is TWO (2).

32. Prevailing Wage. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) and awarded (awarded on or after April 1, 2015) unless registered with
the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
Name of Bidder: ________________________________________________

To: South Orange County Community College District, acting by and through its Governing Board, herein called the "DISTRICT."

1. The undersigned Bidder, having become familiarized with all the following documents including but not limited to the Notice Calling for Bids, Information for Bidders, Bid Form, Bid Security, Designation of Subcontractors Form, Information Required of Bidder, all prequalification forms pursuant to Public Contract Code Section 20111.5, if any, Non-collusion Affidavit, Workers’ Compensation Certificate, Faithful Performance Bond, Payment Bond, Agreement, Escrow Agreement, Drug-Free Workplace Certification, Criminal Records Check Certification, Change Order Forms, Shop Drawing Transmittal Form, all insurance requirements, Guarantee forms, Contractor’s Certificate Regarding Non-Asbestos Containing Materials, Disabled Veteran Business Enterprises Certification, if applicable, General Conditions and Supplemental Conditions, if any, Special Conditions, if any, drawings, specifications, and all modifications, addenda and amendments, if any (hereinafter Project Documents), the local conditions affecting the performance of the work and the cost of the work at the place where the work is to be done, hereby proposes and agrees to be bound by all the terms and conditions of the Project Documents and agrees to perform, within the time stipulated, the work, including all of its component parts, and everything required to be performed, and to provide and furnish and pay for any and all of the labor, materials, tools, expendable equipment, and all applicable taxes, utility and transportation services necessary to perform the work and complete in a good workmanlike manner all of the work required in accordance with laws, codes, regulations, ordinances and any other legal requirements governing the work, in connection with the following:

   Project: Avery Slope, Saddleback College
   Project No.: Bid No. 2034

all in strict conformity with the Project Documents, including Addenda Nos. ___, ___, ____ and _____. on file at the office of the Director of Facilities Planning and Purchasing of said DISTRICT for the following sums:

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<th>Handwritten</th>
<th>Numeric</th>
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<tbody>
<tr>
<td>BASE BID</td>
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<tr>
<td>$_________________________/100</td>
<td>$_____________</td>
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<td>ALLOWANCE: Refer to Supplemental Conditions</td>
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<tr>
<td>$ Fifteen thousand and no xx/100________________________________________</td>
<td>$_____________</td>
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<tr>
<td>BID TOTAL (INCLUDING ALLOWANCE)</td>
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<tr>
<td>$__________________________</td>
<td>$_____________</td>
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</table>
Each individual bid term shall be determined from visiting the work site, reviewing the drawings and specifications and all portions of the Project Documents, and shall include all items necessary to complete the work, including the assumption of all obligations, duties, and responsibilities necessary to the successful completion of the Project, and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the work, and the furnishing of tools, equipment, supplies, transportation, facilities, labor, superintendence, and services required to perform and complete the work, all as per the requirements of the Project Documents, whether or not expressly listed or designated.

2. It is understood that the DISTRICT reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding process. Bidder agrees that this bid shall remain open and not be withdrawn for the period specified in the Information for Bidders.

3. The required bid security is attached.

4. The required list(s) of proposed subcontractors is attached hereto, and the undersigned represents and warrants that such list(s) is complete and in compliance with the Subletting and Subcontracting Fair Practices Act. Public Contract Code Sections 4100, et seq.

5. It is understood and agreed that if written notice of the award of a contract is mailed, faxed, or delivered to the bidder, the bidder will execute and deliver to the DISTRICT the Agreement and will also furnish and deliver to the DISTRICT the Faithful Performance Bond and a separate Payment Bond as specified, and certificates and endorsements of insurance, the Workers’ Compensation Certificate, Drug-Free Work Place Certification, the Criminal Records Check Certification, Contractor’s Certificate Regarding Non-Asbestos Containing Materials, and the Disabled Veteran Business Enterprises Certification, if applicable, within 10 working days of the notice of award of the contract, or as otherwise requested in writing by the DISTRICT. It is understood that should bidder fail or refuse to return these documents as required by the DISTRICT, the bid security shall be forfeited to the DISTRICT. The bidder further agrees that the work shall be commenced by the bidder, if awarded the contract, on or before the fifth day after receiving the DISTRICT’s Notice to Proceed, and shall be completed by the bidder in the time specified by the DISTRICT.

6. Communications conveying notice of award of the contract, requests for additional information or other correspondence should be addressed to the bidder at the address stated below.

7. The name(s) of all persons interested in the bid as principals are as follows:

8. In submitting this bid, the bidder offers and agrees that if the bid is accepted, it will assign to 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. Section 15) or under the Cartwright Act (Business & Professions Code Section 16700, et seq.) arising from purchases of goods, materials, or services by the bidder for sale to the DISTRICT pursuant to the bid. Such assignment shall be made and become effective at the time the DISTRICT tenders final payment under the contract. (Public Contract Code Section 7103.5; Government Code Section 4450, 4451 and 4552).

9. The undersigned hereby warrants that the bidder has an appropriate license, License No. ________________, Class License A, at the time of the bid opening, that such license entitles bidder to provide the work, that such license will be in full force and effect throughout the duration of performance of this Project. Bidder
shall be nonresponsive if the Bidder is not licensed as required by the DISTRICT at the time of the bid opening. Any and all subcontractors to be employed by the undersigned shall have appropriate licenses at the time of the bid opening.

10. The bidder hereby certifies that it is, and at all times during the performance of work hereunder shall be, in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and the bidder shall indemnify, hold harmless and defend the DISTRICT against any and all actions, proceedings, penalties or claims arising out of the bidder's failure to comply strictly with the IRCA.

11. It is understood and agreed that if requested by the DISTRICT, the bidder shall furnish a notarized financial statement, references, and other information required by the DISTRICT sufficiently comprehensive to permit an appraisal of bidder's ability to perform the Project.

12. The undersigned hereby warrants that all work, except work of a maintenance period, shall be completed within 45 consecutive calendar days from the date specified on the Notice to Proceed issued by the District. Time is of the essence. The undersigned agrees that failure to complete the work within the time set forth herein will result in the imposition of liquidated damages for each consecutive calendar day of delay in the amount of One thousand dollars ($1000.00) (Government Code Section 53069.85)

13. The required non-collusion declaration is attached as required by Public Contract Code Section 7106. Bidder understands and agrees that failure to submit a completed form could render the bidder nonresponsive.

14. It is understood and agreed that all change order requests must be submitted in the form set forth in the Project Documents and pursuant to Article 60 of the General Conditions. The amount of allowable charges submitted pursuant to a change order shall be limited to the charges allowed under Article 60 of the General Conditions. Indirect, consequential and incidental costs, project management costs, extended home office and field office overhead, administrative costs and profit and other charges not specifically authorized under Article 60 of the General Conditions will not be allowed.

15. The Information Required of Bidder form has been fully completed and is attached hereto.
The undersigned hereby declares that all of the representations of this bid are made under penalty of perjury under the laws of the State of California.

**Individual**

Name: ____________________________

Signed by: ____________________________

Print Name: ____________________________

Date: ____________________________

Business Address: ____________________________

Telephone: ____________________________

*******************************************************************************

**Partnership**

Name: ____________________________

Signed by: ____________________________

Print Name: ____________________________

Date: ____________________________

Business Address: ____________________________

Telephone: ____________________________

*******************************************************************************

**Corporation**

Name: ____________________________
(a _______ Corporation\(^1\))

Business Address: ______________________________________________

________________________________________________________________

Telephone:_____________________________________________________

Signed by:____________________, President, Date: ______________

Print Name:____________________ President

Signed by:____________________, Secretary, Date: ______________

Print Name:____________________ Secretary

[Seal]

\(^1\) A corporation awarded the contract shall furnish evidence of its corporate existence and evidence that the officer signing the Agreement and bonds is duly authorized to do so.
Joint Venturer

Name: ____________________________________________

Signed by: ________________________________, Joint Venturer

Print Name: ____________________________________________

Date: ____________________________________________

Business Address_____________________________________

_____________________________________________________

Telephone: ____________________________________________

Other Parties to  If an individual: ____________________________________________

Joint Venture: (Name)

Signed by: ________________________________

Print Name: ____________________________________________

Date: ____________________________________________

Doing Business as: ____________________________________________

Business Address: ____________________________________________

_____________________________________________________

Telephone: ____________________________________________
If a Partnership: ________________________________

(Name)

Signed by: ________________________________, Partner

Print Name: ________________________________

Date: ________________________________

Business Address: ________________________________

Telephone: ________________________________

If a Corporation: ________________________________

(a Corporation)

Signed By: ________________________________ Date: _____________

Print Name: ________________________________

Title: ________________________________

Date: ________________________________

Business Address: ________________________________

Telephone: ________________________________
A notary public or other office completing this certificate verifies only the identity of the individual who signed
the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that
document.

KNOW ALL PERSONS BY THESE PRESENT, that we____________________________

__________________
as Principal, and ___________________________ as Surety, a California admitted surety insurer, are
held and firmly bound unto the ___South Orange County Community College District, hereinafter called the
DISTRICT, in the sum of ________ PERCENT (____%) OF THE TOTAL AMOUNT OF THE BID of the Principal
submitted to the said DISTRICT for the work described below for the payment of which sum in lawful money of the
United States, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, administrators,
successors and assigns.

The condition of this obligation is such that whereas the Principal has submitted the accompanying bid dated
, 200__, for

________________________

________________________

NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the
opening of the same, or, if no period be specified, within sixty (60) days after said opening; and if the Principal is
awarded the contract, and shall within the period specified therefore, or, if no period be specified, within 10 working
days after the notice of award of the contract, or as otherwise requested in writing by the DISTRICT, enter into a
written contract with the DISTRICT, in accordance with the bid as accepted and give bonds with good and sufficient
surety or sureties, as may be required for the faithful performance and proper fulfillment of such contract and for the
payment for labor and materials used for the performance of the contract, furnish certificates and endorsements
evidencing the required insurance is in effect and furnish and deliver to the DISTRICT the Workers’ Compensation
Certificate, Drug-Free Work Place Certification, the Criminal Records Check Certification, Contractor’s Certificate
Regarding Non-Asbestos Containing Materials, and the Disabled Veteran Business Enterprises Certification, if
applicable, then the above obligation shall be void and of no effect, otherwise the bond amount shall be forfeited to
the DISTRICT.

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

In the event suit is brought upon this bond by the DISTRICT and judgment is recovered, the Surety shall pay
all costs incurred by the DISTRICT in such suit, including reasonable attorney's fees to be fixed by the court.
IN WITNESS HEREOF, the parties have executed this bond under their several seals this ___ day of ____, 200__, the name and corporate seal of each corporate party being hereto affixed and duly signed by its undersigned authorized representative.

(Corporate Seal of Principal, if Corporation)

Principal (Proper Name of Bidder)

By: ____________________________

Signature

______________________________

Print Name

______________________________

Title
Surety

By: ________________________________
Signature

______________________________
Print Name

______________________________
Title

______________________________
Address

______________________________
Telephone No.

______________________________
Facsimile No.
DESIGNATION OF SUBCONTRACTORS

In compliance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et. seq.) and any amendments thereof, each bidder shall set forth below: (a) the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the bidder (prime contractor) in or about the construction of the work or improvement to be performed under this contract or a subcontractor licensed by the State of California who, under subcontract to the bidder (prime contractor), specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications in an amount in excess of one-half of one percent of the bidder's (prime contractor's) total bid and (b) the portion of the work which will be done by each subcontractor. The bidder (prime contractor) shall list only one subcontractor for each such portion as is defined by the bidder (prime contractor) in this bid.

If a bidder (prime contractor) fails to specify a subcontractor or if a bidder (prime contractor) specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of one percent of the bidder's (prime contractor's) total bid, bidder shall be deemed to have agreed that bidder is fully qualified to perform that portion, and that bidder alone shall perform that portion. Violation of this requirement (including the procurement of a subcontractor for the Project if no subcontractor is specified) can result in the DISTRICT invoking the remedies of Public Contract Code Sections 4110 and 4111.

No bidder (prime contractor) whose bid is accepted shall (a) substitute any subcontractor, (b) permit any subcontractor to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work in excess of one-half of one percent of the bidder's (prime contractor's) total bid as to which the original bid did not designate a subcontractor, except as authorized in the Subletting and Subcontracting Fair Practices Act. Subletting or subcontracting of any portion of the work in excess of one-half of one percent of the bidder's (prime contractor's) total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, only after a finding reduced to writing as a public record of the DISTRICT awarding this contract setting forth the facts constituting the emergency or necessity.
### Avery Slope at Saddleback College
**Project No.: Bid No. 2034**

<table>
<thead>
<tr>
<th>Type of Trade, Labor or Service</th>
<th>Name &amp; License # of Subcontractor, License Expiration Date (Indicate if a Disabled Veteran Business Enterprise)</th>
<th>Complete Address (Name of City is not sufficient) and Telephone No.</th>
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Bidder agrees that within twenty-four (24) hours of the bid opening, Bidder shall provide the DISTRICT with the license number (if applicable), expiration date of license, complete address and telephone numbers of each listed subcontractor if such information is not available at the time of the bid opening.
Dated: ______________________  

Name of Bidder: ________________________________________________________________

By: ____________________________  
(Signature of Bidder)

Print Name: ____________________________

Address: ________________________________________________________________

Telephone: ____________________________

FAX: ____________________________
INFORMATION REQUIRED OF BIDDER

The Bidder shall furnish all the following information. Bidder shall carefully read and answer all questions to ensure completeness and accuracy. Failure to comply with this requirement may cause rejection of the bid. Additional sheets may be attached if necessary. "You" or "your" as used herein refers to the bidder and any of its owners, officers, directors, shareholders, principals, responsible managing officer (RMO) or responsible managing employee (RME). DISTRICT has discretion to request additional information depending on the Project.

1. Bidder name and address (Post Office Box Number not sufficient):

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

2. Telephone: ___________________ Fax No.: ___________________

Electronic Mail: ___________________

3. Individual _____ Partnership _________ Corporation __________ Joint Venture _________ (check one)

4. Bidder’s License No. __________________________

Name of License holder __________________________

5. Have you ever been licensed under a different name or different license number?

Yes ___ No ___ If “Yes,” give name and license number.

________________________________________________________________________

6. Names and titles of all your owners, officers, principals, responsible managing officers and responsible managing employees:

________________________________________________________________________

     Name     Title

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
(7) Number of years as a contractor in this type of construction work: _______________________

(8) Person who inspected work site:

Name and Title: ________________________________________________________________

Date of Inspection: _____________________________________________________________

(9) How many years experience have you had in school construction work?

(a) as a general contractor? ______________________________________________________

(b) as a subcontractor? _________________________________________________________

(10) How many years experience have you had in public construction work?

(a) as a general contractor? ______________________________________________________

(b) as a subcontractor? _________________________________________________________

(11) Have you ever been terminated from a school or any public construction project prior to the completion of the project? Yes ______ No ________ If the answer is “Yes,” give dates, names and addresses of school/public agency and details.

____________________________________________________________________________

____________________________________________________________________________

(12) Have you ever been barred from bidding on any school or public construction project? Yes ____ No ___

If the answer is “Yes,” give dates, names and addresses of school/public agency and details.

____________________________________________________________________________

____________________________________________________________________________

(13) Have you ever defaulted on any school or public construction project that resulted in a claim to a surety? Yes ______ No __________ If the answer is “Yes,” give dates, names and addresses of school/public agency and details.

____________________________________________________________________________

____________________________________________________________________________

(14) Have you been assessed damages (i.e., liquidated damages) for any public construction project in the past ten (10) years? Yes ________ No __________ If the answer is “Yes,” give dates, names, and addresses of public agency and details.
(15) Have you ever brought any claim(s) against a public agency? Yes No If the answer is “Yes,” please explain in detail name of public agency, nature of the claim and outcome.

(16) Have you ever failed to complete a school or public construction project in the last ten (10) years? Yes No If the answer is “Yes,” provide name of public agency and details.

(17) Have you been in litigation or arbitration or dispute of any kind on a question or questions relating to a public construction project during the past ten (10) years? Yes No If the answer is “Yes,” provide name of public agency and details.

(18) List the names, addresses and telephone numbers of three Architects or Engineers whose jobs you have worked on in the past five (5) years.

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(19) Do you now or have you ever had any direct or indirect business, financial or other connection with any officer, employee or consultant of the DISTRICT or Architect?

Yes No If so, please elaborate.
(20) List at least five (5) of your most recent school construction projects.

(1)________________________________________________________

(2)________________________________________________________

(3)________________________________________________________

(4)________________________________________________________

(5)________________________________________________________

(21) Are you currently under contract for another project? Yes ________ No ________ If the answer is “Yes,” please provide the following information:

(a) Project Number 1:

Name of Project: ____________________________________________

Detailed Description: _________________________________________

Name of Project Owner: _______________________________________

Contract Amount: _____________________________________________

Completion Date: _____________________________________________

(b) Project Number 2:

Name of Project: ____________________________________________

Detailed Description: _________________________________________

Name of Project Owner: _______________________________________

Contract Amount: _____________________________________________

Completion Date: _____________________________________________

(c) Project Number 3:
Name of Project: ____________________________________________

Detailed Description: ________________________________________

Name of Project Owner: ______________________________________

Contract Amount: ____________________________________________

Completion Date: ____________________________________________

(d) Project Number 4:

Name of Project: ____________________________________________

Detailed Description: ________________________________________

Name of Project Owner: ______________________________________

Contract Amount: ____________________________________________

Completion Date: ____________________________________________

(e) Project Number 5:

Name of Project: ____________________________________________

Detailed Description: ________________________________________

Name of Project Owner: ______________________________________

Contract Amount: ____________________________________________

Completion Date: ____________________________________________

(22) Are there projects not listed above that will be undertaken during the duration of DISTRICT’s Project? Yes ______ No _________ If the answer is “Yes,” please provide the following information:

(a) Project Number 1:
Name of Project: ____________________________________________

Detailed Description: ______________________________________

Name of Project Owner: ______________________________________

Contract Amount: __________________________________________

Completion Date: __________________________________________

(b) Project Number 2:

Name of Project: ____________________________________________

Detailed Description: ______________________________________

Name of Project Owner: ______________________________________

Contract Amount: __________________________________________

Completion Date: __________________________________________

(c) Project Number 3:

Name of Project: ____________________________________________

Detailed Description: ______________________________________

Name of Project Owner: ______________________________________

Contract Amount: __________________________________________

Completion Date: __________________________________________

(d) Project Number 4:

Name of Project: ____________________________________________

Detailed Description: ______________________________________
Name of Project Owner: ________________________________

Contract Amount: ____________________________________

Completion Date: ____________________________________

(e) Project Number 5:

Name of Project: ____________________________________

Detailed Description: __________________________________

Name of Project Owner: ________________________________

Contract Amount: ____________________________________

Completion Date: ____________________________________

(23) Additional information required: _______________________

List of References - Public construction projects of similar nature in a school/community college/university within the last five (5) years. DISTRICT has discretion to require more than five (5) references.

1. Name: ____________________________________________
   ________________________________________________

   Address and Telephone: ______________________________
   ________________________________

   Contact Person: ________________________________

   Description of Project: ______________________________

   Dates of commencement and completion of Project: __________________

   Contract Amount: ____________________________________

   ________________________________________________
Architect: ____________________________________________________________

Architect’s Address and Telephone: _______________________________________

__________________________________________________________

DSA or public agency inspector: _________________________________________

Address and Telephone: ____________________________

__________________________________________________________

Contact Person: _________________________________________________

Description of Project: _____________________________________________

__________________________________________________________

Dates of commencement and completion of Project: _______________________

__________________________________________________________

Contract Amount: _________________________________________________

Architect: ________________________________________________________

Architect’s Address and Telephone: _____________________________________

__________________________________________________________

DSA or public agency inspector: _________________________________________

Address and Telephone: ____________________________

__________________________________________________________

3. Name: _________________________________________________________

Address and Telephone: ____________________________

__________________________________________________________

Contact Person: _________________________________________________

Description of Project: _____________________________________________

__________________________________________________________
Dates of commencement and completion of Project: ________________________________

__________________________________________________________

Contract Amount: ________________________________

Architect: ________________________________

Architect’s Address and Telephone: ________________________________

__________________________________________________________

DSA or public agency inspector: ________________________________

Address and Telephone: ________________________________

__________________________________________________________

4. Name: ________________________________

Address and Telephone: ________________________________

__________________________________________________________

Contact Person: ________________________________

Description of Project: ________________________________

Dates of commencement and completion of Project: ________________________________

__________________________________________________________

Contract Amount: ________________________________

Architect: ________________________________

Architect’s Address and Telephone: ________________________________

__________________________________________________________

DSA or public agency inspector: ________________________________

Address and Telephone: ________________________________

__________________________________________________________

5. Name: ________________________________

Address and Telephone: ________________________________
Contact Person: ________________________________

Description of Project: ________________________________

Dates of commencement and completion of Project: ________________________________

Contract Amount: ________________________________

Architect: ________________________________

Architect’s Address and Telephone: ________________________________

DSA or public agency inspector: ________________________________

Address and Telephone: ________________________________

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing responses to the Information Required of Bidder are true and correct.

______________________________
Signature

______________________________
Print Name

______________________________
Title

______________________________
Date

Note: DISTRICT may wish to expand the scope of the “Information Required of Bidder” form and include additional questions.
NONCOLLUSION DECLARATION

(Public Contract Code Section 7106)

The undersigned declares:

I am the ___________________ of ________________________, the party making the foregoing bid.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on ____________[date], at ___________[city], _____________[state].

________________________________________
Signature

________________________________________
Print Name
WORKERS' COMPENSATION CERTIFICATE

Labor Code Section 3700.

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

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

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

(c) For any county, city, city and county, municipal corporation, public district, public agency or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702."

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

____________________________________
Name of the Contractor

By: __________________________________
Signature

____________________________________
Print Name

____________________________________
Title

____________________________________
Date

(In accordance with Article 5 [commencing at Section 1860], Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under the contract.)
PAYMENT BOND (CALIFORNIA PUBLIC WORK)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the South Orange County Community College District (sometimes referred to hereinafter as “DISTRICT”) has awarded to ________________________________ (hereinafter designated as the “CONTRACTOR” or “Principal”), an agreement for the work described as follows: ________________________________ (hereinafter referred to as the “Public Work”); and

WHEREAS, said CONTRACTOR is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code Section 3247;

NOW, THEREFORE, We, ________________________________, the undersigned CONTRACTOR, as Principal; and ________________________________, a corporation organized and existing under the laws of the State of ________________, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the South Orange County Community College District and to any and all persons, companies, or corporations entitled to file stop notices under California Civil Code Section 3181, or any person, company, or corporation entitled to make a claim on this bond, in the sum of ____________________ Dollars ($_____________), said sum being not less than one hundred percent (100%) of the total amount payable by said DISTRICT under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code Section 3181; or fail to pay for any materials, provisions, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys’ fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Sections 3247 et seq.

This bond shall inure to the benefit of any person named in Civil Code Section 3181 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, or specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the DISTRICT and the CONTRACTOR or on the part of any DISTRICT named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code Sections 3247 et seq.
3110 and 3112, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this____________ day of ____________, 20___.

PRINCIPAL/CONTRACTOR:

________________________________________

By: ______________________________________

SURETY:

________________________________________

By: ______________________________________

Attorney-in-Fact
IMPORTANT:  THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety’s name must also appear on the Treasury Department’s most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)   (Name and Address of agent or representative for service for service of process in California)

________________________________________________________________________   _______________________________________________________________________

________________________________________________________________________   _______________________________________________________________________

Telephone: ___________________________   Telephone: ___________________________

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )
COUNTY OF ) ss.

On ____________________________, before me, _____________________________, personally appeared ____________________________, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of the ____________________________ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_________________________________________________________ (SEAL)

Notary Public in and for said State

Commission expires: ___________________________

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.
CONTRACT PERFORMANCE BOND (CALIFORNIA PUBLIC WORK)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the South Orange County Community College District (sometimes referred to hereinafter as “DISTRICT”) has awarded to ____________________________________ (hereinafter designated as the “CONTRACTOR” or “Principal”), an agreement for the work described as follows:

____________________________________ (hereinafter referred to as the “Public Work”); and

WHEREAS, the work to be performed by the CONTRACTOR is more particularly set forth in that certain contract for said Public Work dated ________________ ________, (hereinafter referred to as the “Contract”), which Contract is incorporated herein by this reference; and

WHEREAS, the CONTRACTOR is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we, ______________________________________, the undersigned CONTRACTOR, as Principal, and ________________________________, a corporation organized and existing under the laws of the State of _____________, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the South Orange County Community College District in the sum of _______________________ Dollars ($_______________), said sum being not less than one hundred percent (100%) of the total amount payable by said DISTRICT under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded CONTRACTOR, his or her heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the DISTRICT, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the DISTRICT that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

As a condition precedent to the satisfactory completion of the contract, the above obligation shall hold good for a period of One (1) year(s) after the acceptance of the work by DISTRICT, during which time if Contractor/Principal shall fail to make full, complete, and satisfactory repair and replacements and totally protect the DISTRICT from loss or damage made evident during the period of One (1) year(s) from the date of completion of the work, and resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum

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thereof shall remain in full force and effect. The obligation of Surety hereunder shall continue so long as any obligation of Contractor remains.

Whenever Principal shall be, and is declared by the DISTRICT to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by DISTRICT as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at DISTRICT’s sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by DISTRICT of the lowest responsible bidder, arrange for a contract between such bidder and the DISTRICT and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the “balance of the Contract price” (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term “balance of the Contract price,” as used in this paragraph, shall mean the total amount payable to Principal by the DISTRICT under the Contract and any modifications thereto, less the amount previously paid by the DISTRICT to the Principal, less any withholdings by the DISTRICT allowed under the Contract.

Surety expressly agrees that the DISTRICT may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by DISTRICT, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the DISTRICT and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

CONTRACTOR and Surety agree that if the DISTRICT is required to engage the services of an attorney in connection with enforcement of the bond, CONTRACTOR and Surety shall pay DISTRICT’s reasonable attorneys’ fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the DISTRICT and judgment is recovered, the Surety shall pay all costs incurred by the DISTRICT in such suit, including reasonable attorneys’ fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of ____________, 20___.

PRINCIPAL/CONTRACTOR:

________________________________________

By: __________________________________________

SURETY:

________________________________________
By: 

Attorney-in-Fact

The rate of premium on this bond is ______________________________ per thousand.

The total amount of premium charged: $__________________________ (This must be filled in by a corporate surety).
IMPORTANT:  THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety’s name must also appear on the Treasury Department’s most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)  (Name and Address of agent or representative for service for service of process in California)

__________________________________________________________  __________________________

Telephone: ___________________________  Telephone: ___________________________

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  )
COUNTY OF  ) ss.

On ____________________________, before me, ____________________________, personally appeared ____________________________, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of the ____________________________ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

__________________________________________________________  (SEAL)

Notary Public in and for said State

Commission expires: ___________________________

NOTE:  A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.
AGREEMENT – CONSTRUCTION SERVICES, PROJECT NAME, COLLEGE NAME

THIS AGREEMENT, dated the ______ day of _____________, 20____, in the County of Orange, State of California, is by and between South Orange County Community College District, (hereinafter referred to as "DISTRICT"), and _______________________________, (hereinafter referred to as "CONTRACTOR").

The DISTRICT and the CONTRACTOR, for the consideration stated herein, agree as follows:

1. CONTRACTOR agrees to complete the Project known as _______________________________, according to all the terms and conditions set forth in the Project Documents, including but not limited to the Notice Calling For Bids, Information for Bidders, Bid Form, Bid Security, Designation of Subcontractors, Information Required of Bidder, all prequalification forms submitted pursuant to Public Contract Code Section 20111.5, if any, Non-collusion Affidavit, Workers' Compensation Certificate, Faithful Performance Bond, Payment Bond, Escrow Agreement, if applicable, Drug-Free Workplace Certification, Change Orders, Shop Drawing Transmittals, Insurance Certificates and Endorsements, Guarantees, Contractor's Certificate Regarding Non-Asbestos Containing Materials, Disabled Veteran Business Enterprises Certification, if applicable, General Conditions, Supplemental Conditions, if any, Special Conditions, if any, Drawings, Specifications, and all modifications, addenda and amendments thereto by this reference incorporated herein. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

2. CONTRACTOR shall perform within the time set forth in Paragraph 4 of this Agreement everything required to be performed, and shall provide, furnish and pay for all the labor, materials, necessary tools, expendable equipment, and all taxes, utility and transportation services required for construction of the Project. All of said work shall be performed and completed in a good workmanlike manner in strict accordance with the drawings, specifications and all provisions of this Agreement as hereinabove defined and in accordance with applicable laws, codes, regulations, ordinances and any other legal requirements governing the Project. The CONTRACTOR shall be liable to the DISTRICT for any damages arising as a result of a failure to fully comply with this obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of the Architect, Engineer, Inspector, Division of State Architect, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the requirements of the Project Documents, and unless the CONTRACTOR protests at the time of such alleged prevention that the act or omission is preventing the CONTRACTOR from fully complying with the Project Documents. Such protest shall not be effective unless reduced to writing and filed with the DISTRICT within three (3) working days of the date of occurrence of the act or omission preventing the CONTRACTOR from fully complying with the Project Documents.

3. DISTRICT shall pay to the CONTRACTOR, as full consideration for the faithful performance of this Agreement, subject to any additions or deductions as provided in the Project Documents, the sum of _______________________________, Dollars ($_________).  

4. The work shall be commenced on or before the ____________(____) day after receiving the DISTRICT'S Notice to Proceed and shall be completed within ____________(____) consecutive calendar days from the date specified in the Notice to Proceed.

5. Time is of the essence. If the work is not completed in accordance with Paragraph 4 above, it is understood that the DISTRICT will suffer damage. It being impractical and infeasible to determine the amount of actual damage, in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to DISTRICT as fixed and liquidated damages, and not as a penalty, the sum of _______________________________.
Dollars($_________________) for each calendar day of delay until work is completed and accepted. Time extensions may be granted by the DISTRICT as provided in Article 6 of the General Conditions. Liquidated damages shall be imposed as set forth in Article 6 of the General Conditions.

6. Termination for Cause or Non-appropriation. In the event CONTRACTOR defaults in the performance of the Agreement as set forth in General Conditions Article 13(a) or if there is a non-appropriation of funds or insufficient funds as set forth in General Conditions Article 13(d), then this Agreement shall terminate or be suspended as set forth in General Conditions Article 13.

Termination for Convenience. DISTRICT has discretion to terminate this Agreement at any time and require CONTRACTOR to cease all work on the Project by providing CONTRACTOR written notice of termination specifying the desired date of termination. Upon receipt of written notice from DISTRICT of such termination for DISTRICT’s convenience, CONTRACTOR shall:

(i) Cease operations as directed by DISTRICT in the notice;

(ii) Take any actions necessary, or that DISTRICT may direct, for the protection and preservation of the work; and

(iii) Not terminate any insurance provisions required by the Project Documents.

In case of such termination for DISTRICT’s convenience, CONTRACTOR shall be entitled to receive payment from DISTRICT for work satisfactorily executed and for proven loss with respect to materials, equipment, and tools, including overhead and profit for that portion of the work completed. In the case of Termination for Convenience, DISTRICT shall have the right to accept assignment of subcontractors. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the DISTRICT.

7. Hold Harmless and Indemnification. To the fullest extent permitted by law, the CONTRACTOR, at the CONTRACTOR’s sole cost and expense, agrees to fully defend, indemnify and hold harmless, the DISTRICT, including but not limited to any of its governing board members, officers, employees, Construction Manager, Architect, and all other Agents and Representatives, from and against any and all claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, anticipated losses of revenues, and expenses, including any fees of accountants, attorneys or other professionals, arising out of, in connection with, resulting from or related to, or claimed to be arising out of, in connection with, resulting from or related to any act or omission by the CONTRACTOR or any of its officers, agents, employees, subcontractors, sub-subcontractors, any person performing any of the work pursuant to a direct or indirect contract with the CONTRACTOR or individual entities comprising the CONTRACTOR, in connection with or relating to, or claimed to be in connection with or relating to the work, this Agreement, or the Project, including but not limited to any costs or liabilities arising out of or in connection with:

(a) failure to comply with any applicable law, statute, code, ordinance, regulation, permit or orders;
(b) any misrepresentation, misstatement or omission with respect to any statement made in the Project Documents or any document furnished by the CONTRACTOR in connection therewith;
(c) any breach of duty, obligation or requirement under the Project Documents;
(d) any failure to coordinate the work of other contractors;
(e) any failure to provide notice to any party as required under the Project Documents;
(f) any failure to act in such a manner as to protect the DISTRICT and the Project from loss, cost, expense or liability; or
(g) any failure to protect the property of any utility company or property owner.

This indemnity shall survive termination of the contract or final payment thereunder. This indemnity is in addition to any other rights or remedies which the DISTRICT may have under the law or under the Project Documents. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, the DISTRICT may in its sole discretion reserve, retain or apply any monies due to the CONTRACTOR under the Project Documents for the purpose of resolving such claims; provided, however, that the DISTRICT may release such funds if the CONTRACTOR provides the DISTRICT with reasonable assurance of protection of the DISTRICT’s interests. The DISTRICT shall in its sole discretion determine whether such assurances are reasonable.

8. CONTRACTOR shall take out, prior to commencing the work, and maintain, during the life of this Agreement, and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain the insurance coverages set forth below and in Articles 16, 17, 18 and 19 of the General Conditions. CONTRACTOR agrees to provide all evidences of coverage required by DISTRICT including certificates of insurance and endorsements.

Public Liability Insurance for injuries including accidental death, to any one person in an amount not less than $2,000,000

Subcontractors of every tier $1,000,000

and

Subject to the same limit for each person on account of one accident, in an amount not less than $2,000,000

Subcontractors of every tier $1,000,000

Property Damage Insurance in an amount not less than $2,000,000

Subcontractors of every tier $1,000,000

Course of Construction Insurance without exclusion or limitation in an amount not less than $2,000,000

Excess Liability Insurance (Contractor only) $2,000,000

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

Automotive and truck where operated in amounts as above

Material hoist where used in amounts as above
Waiver of Subrogation

Contractor waives (to the extent permitted by law) any right to recover against the District, and its respective elected officials, officers, employees, agents, and representatives 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) 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 there under of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

Additional Insured Endorsement Requirements.

The Contractor shall name, on any policy of insurance required the District, their officers, employees, Construction Manager, Architect, and all other Agents and Representatives as additional insureds. Subcontractors shall name the Contractor, the District, their officers, employees, Construction Manager, Architect, and all other Agents and Representatives as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor 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.

9. Public Contract Code Section 22300 permits the substitution of securities for any retention monies withheld by the DISTRICT to ensure performance under this Agreement. At the request and expense of the CONTRACTOR, securities equivalent to the monies withheld shall be deposited with the DISTRICT, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to the CONTRACTOR. The DISTRICT retains the sole discretion to approve the bank selected by the CONTRACTOR to serve as escrow agent. Upon satisfactory completion of the Agreement, the securities shall be returned to the CONTRACTOR. Securities eligible for investment shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

In the alternative, under Section 22300, the CONTRACTOR may request DISTRICT to make payment of earned retention monies directly to the escrow agent at the expense of the CONTRACTOR. Also at the CONTRACTOR's expense, the CONTRACTOR may direct investment of the payments into securities, and the CONTRACTOR shall receive interest earned on such investment upon the same conditions as provided for securities deposited by CONTRACTOR. Upon satisfactory completion of the Agreement, CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by escrow agent from DISTRICT pursuant to the terms of Section 22300.

10. If CONTRACTOR is a corporation, the undersigned hereby represents and warrants that the corporation is duly incorporated and in good standing in the State of _______________________, and that _______________________, whose title is _______________________, is authorized to act for and bind the corporation.

11. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and
if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

12. This Agreement constitutes the entire agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties and pursuant to action of the Governing Board of the District. This Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

DISTRICT

By: ________________________________

    Signature

Print Name

Title

Contractor's License No.

Tax ID/Social Security No.

(CORPORATE SEAL OF CONTRACTOR, if corporation)

CONTRACTOR

By: ________________________________

    Signature

Print Name

Title

Contractor's License No.

Tax ID/Social Security No.
ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into, as of ______________________, 20_____, by and between South Orange County Community College District, whose address is 28000 Marguerite Parkway, Mission Viejo, CA 92692 hereinafter called "DISTRICT;" __________________________________, whose address is ___________________________________________, hereinafter called "Contractor; 
and, __________________________________, whose address is ___________________________________________, hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the DISTRICT, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by DISTRICT pursuant to the Agreement entered into between the DISTRICT and Contractor for _________ in the amount of _________, dated _____________________________. (hereinafter referred to as the "Agreement"). Alternatively, on written request of the Contractor, the DISTRICT shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for retention earnings, the Escrow Agent shall notify the DISTRICT within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Agreement between the DISTRICT and Contractor. Securities shall be held in the name of DISTRICT, and shall designate the Contractor as the beneficial owner.

(2) The DISTRICT shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the DISTRICT makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time the escrow created under this Escrow Agreement is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the DISTRICT pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the DISTRICT. These expenses and payment terms shall be determined by the DISTRICT, Contractor and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the DISTRICT.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the DISTRICT to the Escrow Agent that DISTRICT consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The DISTRICT shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven (7) days’ written notice to the Escrow Agent from the DISTRICT of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the DISTRICT.

(8) Upon receipt of written notification from the DISTRICT certifying that the Agreement is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Agreement, Escrow Agent shall release
to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the DISTRICT and the Contractor pursuant to Sections (5) to (8), inclusive, of this Escrow Agreement and the DISTRICT and Contractor shall hold Escrow Agent harmless from Escrow Agent’s release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the DISTRICT and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

<table>
<thead>
<tr>
<th>On behalf of DISTRICT:</th>
<th>On behalf of Contractor:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Title</td>
</tr>
<tr>
<td>Name</td>
<td>Name</td>
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<tr>
<td>Signature</td>
<td>Signature</td>
</tr>
<tr>
<td>Address</td>
<td>Address</td>
</tr>
</tbody>
</table>
On behalf of Escrow Agent:

Title

Name

Signature

Address

At the time the Escrow Account is opened, the DISTRICT and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Escrow Agreement.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement by their proper officers on the date first set forth above.

DISTRICT

Title

Name

Signature

CONTRACTOR

Title

Name

Signature

Escrow Agent

Title

Name

Signature
GUARANTEE

Guarantee for____________________. We hereby guarantee that the____________________, which we have installed in____________________, has been done in accordance with the Project Documents and that the work as installed will fulfill the requirements included in the Project Documents. The undersigned agrees to repair or replace any or all of such work, together with any other adjacent work which may be displaced in connection with such repair or replacement, that may prove to be defective in workmanship or material within a period of one (1) year from the date of completion of the Project, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the undersigned's or undersigned surety's failure to commence and pursue with diligence said repairs or replacements within ten (10) calendar days after being notified in writing by the DISTRICT, the undersigned authorizes the DISTRICT to proceed to have said defects repaired or replaced and made good at the expense of the undersigned and surety who hereby agree to pay the costs and charges therefore immediately upon demand. (General Conditions Article 47(d))

________________________________________
Name of Contractor

By: ______________________________________
Signature of Contractor

________________________________________
Print Name

________________________________________
Title

Contractor shall provide copy of this Guarantee to Contractor’s surety.
Guarantee (continued)

Name of Subcontractor
(if work performed by subcontractor)

By: _________________________________________
Signature of Subcontractor

_______________________________________________
Print Name

_______________________________________________
Title

Representatives to be contacted for service:

Name: _________________________________________

Address: _______________________________________

                                _____________________________
Telephone: ______________________________________
SHOP DRAWING TRANSMITTAL

The procedure governing shop drawing submittals is contained in the General Conditions. In addition, all Supplemental Conditions, Special Conditions and Specifications must be followed by the CONTRACTOR.

Failure to comply with all requirements will constitute grounds for return of the shop drawing for proper resubmittal. CONTRACTOR shall sequentially number each submittal.

Date: ____________________________  Submittal No.: ____________________________

From: ____________________________  To: ____________________________

Project Name: ____________________________

This is a(n):  Original  __________
Submittal  __________
2nd Submittal  __________
[ ] Submittal  __________

Subject of Submittal:  Equipment  Specification
Designation:  Section(s):

Complete either (a) or (b)  Check One:

(a) We have verified that the material or equipment contained in this submittal meets all the requirements specified or shown (no exceptions).

(b) We have verified that the material or equipment contained in this submittal meets all the requirements specified or shown, except for the following deviations (List deviations on an attached sheet).

(continued on next page)
The CONTRACTOR has reviewed and approved not only the field dimensions but the construction criteria and has also made written notation regarding any information in the shop drawings that does not conform to the Project Documents. This shop drawing has been coordinated with all other shop drawings received to date by CONTRACTOR and this duty of coordination has not been delegated to subcontractors, material suppliers, the ARCHITECT, or the engineers on this Project.

Signature of Contractor or Supplier
DRUG-FREE WORKPLACE CERTIFICATION

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

Pursuant to Government Code Section 8355, every person or organization awarded a contract from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

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

b) establishing a drug-free awareness program to inform employees about all of the following:
   1) the dangers of drug abuse in the workplace;
   2) the person's or organization's policy of maintaining a drug-free workplace;
   3) the availability of drug counseling, rehabilitation and employee-assistance programs;
   4) the penalties that may be imposed upon employees for drug abuse violations;

c) requiring that each employee engaged in the performance of the contract be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract, the employee agrees to abide by the terms of the statement.

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

I also understand that if the DISTRICT determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract awarded herein is subject to suspension of payments, termination, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350, et seq.
I acknowledge that I am aware of the provisions of Government Code Section 8350, et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

______________________________
NAME OF CONTRACTOR

______________________________
Signature

______________________________
Print Name

______________________________
Title

______________________________
Date
## CHANGE ORDER NO._________ (ADDITIVE)

**PROJECT:**

**TO:**

You are hereby directed to provide the extra work necessary to comply with this Change Order.

**DESCRIPTION OF CHANGE:**

---

**COST (This cost shall not be exceeded):**

<table>
<thead>
<tr>
<th>Original contract price:</th>
<th>$ ____________</th>
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<tbody>
<tr>
<td>Change Order amount:</td>
<td>$ ____________</td>
</tr>
<tr>
<td>New contract price:</td>
<td>$ ____________</td>
</tr>
</tbody>
</table>

**TIME FOR COMPLETION:**

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<th>Original completion date:</th>
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<td>Time for completion of</td>
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<tr>
<td>Change Order:</td>
<td>______________</td>
</tr>
<tr>
<td>New completion date:</td>
<td>______________</td>
</tr>
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</table>

Contractor agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Project Documents. The amount of the charges under this Change Order is limited to the charges allowed under Article 60 of the General Conditions. The adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time due Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of District. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order.

(continued on next page)
This Change Order is hereby agreed to, accepted and approved.

CONTRACTOR
By: ____________________________
   Signature

   Print Name
   Title
   Date

DISTRICT
By: ____________________________
   Signature

   Print Name
   Construction Manager
   Title
   Date

ARCHITECT
By: ____________________________
   Signature

   Print Name
   Title
   Date

DISTRICT
By: ____________________________
   Brandy D’Lena
   Executive Director, Facilities Planning

   Date
CHANGE ORDER NO. __________________ (DEDUCTIVE)

PROJECT: ____________________________________________________________

TO: ________________________________________________________________

You are hereby directed to comply with this Change Order.

DESCRIPTION OF CHANGE: __________________________________________

____________________________________________________________________

____________________________________________________________________

COST (This cost shall be deleted.):

Original contract price: $ __________________
Change Order amount: $ __________________
New contract price: $ __________________

TIME FOR COMPLETION:

Original completion date: __________________
Time for completion of Change Order: __________________
New completion date: __________________

Contractor agrees to deduct the above-described work in accordance with the above terms and in compliance with applicable sections of the Project Documents. Contractor agrees to the adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of District. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order.

(continued on next page)
This Change Order is hereby agreed to, accepted and approved.

<table>
<thead>
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<th>CONTRACTOR</th>
<th>DISTRICT</th>
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<td>By:</td>
<td>By:</td>
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<tr>
<td>Print Name</td>
<td>Print Name</td>
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<tr>
<td>Title</td>
<td>Construction Manager</td>
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<tr>
<td>Date</td>
<td>Date</td>
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<tr>
<th>ARCHITECT</th>
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<tr>
<td>By:</td>
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<td>Print Name</td>
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<td>Title</td>
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<tr>
<td>Date</td>
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</table>
CONTRACTOR’S CERTIFICATE REGARDING NON-ASBESTOS CONTAINING MATERIALS

Per Article 70 of the General Conditions.

Certification for _________________________. We hereby certify that no Asbestos, or Asbestos Containing Materials shall be used in this Project or in any tools, devices, clothing, or equipment used to affect the ______________________ which we have installed in the South Orange County Community College District under Project/Bid No. _____

(a) The Contractor further certifies that he/she has instructed his/her employees with respect to the above mentioned standards, hazards, risks and liabilities.

(b) Asbestos and/or asbestos containing material shall be defined as all items containing but not limited to chrysotile, cordicilite, amosite, anthopyllite, tremolite and actinolite.

(c) Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos containing material.

(d) Any disputes involving the question of whether or not material contains asbestos shall be settled by electron microscopy. The costs of any such tests shall be paid by the Contractor if the material is found to contain asbestos.

(e) 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.

______________________________
Date

Name of Contractor

By: ________________________________

Signature

______________________________
Print Name

______________________________
Title
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ARTICLE 1.
ARTICLE 1  DEFINITIONS

1.1. Basic Definitions

a. **Acceptance.** The point that the Work as a whole is accepted by the Board of Trustees.

b. **Action of the Governing Board.** A vote of a majority of the members in a lawful meeting.

c. **Acts of God.** As defined in Public Contract Code Section 7105.

d. **Addenda.** The changes in Plans, Specifications, Drawings, and/or Project Documents which have been authorized in writing by the DISTRICT or ARCHITECT, and which alter, explain or clarify the Project Documents prior to the bid deadline.

e. **Agents & Representatives.** All project participants employed by or holding contract with the DISTRICT other than the CONTRACTOR.

f. **Agreement.** Includes collectively all Project Documents.

g. **Applicable Laws.** All statutes, ordinances, rules, regulations, policies and guidelines enacted by Governmental Authorities (including, without limitation, Environmental Laws and Disability Laws), codes adopted or promulgated by Governmental Authorities (including, without limitation, building and health and safety codes), lawful orders of Governmental Authorities and common law, including but not limited to, principles of equity applied by the courts of the State of California, which are in effect at the time the Work is performed.

h. **Application for Payment.** CONTRACTOR’S itemized application for Progress Payment or Final Payment prepared, submitted and substantiated for review and approval by DISTRICT in accordance with the requirements of the Contract Documents.

i. **Approval.** Written authorization by ARCHITECT or DISTRICT.

j. **ARCHITECT.** Architect of Record/individual or representative acting as the licensed architect that has responsibility for preparing the Construction Documents and whose professional certification stamp will appear on the Construction Documents.

k. **Award of Contract.** The action of the Board of Trustees duly approving the DISTRICT’S entering into the Agreement with the CONTRACTOR.

l. **Board of Trustees.** The governing board of the South Orange County Community College District.

m. **Change Order.** A written instrument, signed in accordance with the requirements of the General Conditions, setting forth the agreement of DISTRICT and CONTRACTOR on the terms of the contract adjustment.

n. **Concurrent Delay.** The portion of two or more delays affecting the critical path to Completion that are overlapping or co-existent

o. **CONTRACTOR.** Those mentioned as such in the Agreement. They are treated throughout the Project Documents as if they are of singular number and neuter gender.
p. **Construction Documents.** The Division of the State Architect stamped Drawings and Specifications for the Project, including all addenda and construction change directives (CCDs).

q. **Contract Documents.** The following collection of documents governing the CONTRACTOR’S performance of the Work:

1. Notice Calling for Bids
2. Information for Bidders
3. Bid Form
4. Designation of Subcontractors Form
5. Noncollusion Affidavit
6. Workers’ Compensation Certificate
7. Faithful Performance Bond
8. Payment Bond
9. Agreement
10. Escrow Agreement
11. Drug Free Workplace Certification
12. Change Orders
13. Insurance Forms
14. Guarantee Forms
15. Contractor’s Certificate Regarding Non-Asbestos Containing Materials
17. General Conditions
18. Supplemental and Special Conditions (if applicable)
19. Drawings, Specifications and all modifications addenda and amendments
20. Reference documents
21. Labor Compliance Program documents
22. Those documents, or portions or provisions of documents that, although not listed in subparagraphs a through above, are expressly cross-referenced therein or attached thereto.

r. **Date of Commencement of Construction.** The starting date set forth in the Notice to Proceed, from which is measured the Contract Time for completion of the Work. If no Notice to Proceed is issues, then the DATE OF Commencement of Construction shall be the date the CONTRACTOR actually commences Work at the Site as noted in final construction progress meeting minutes.

s. **Day.** Defined as business day unless otherwise noted.

t. **Defective Work.** Work by CONTRACTOR or its subcontractors that contains, includes or constitutes materials, equipment labor, workmanship, construction services or other construction performed or provided by the CONTRACTOR or its subcontractor that is (a) faulty, omitted, incomplete, or deficient or (b) does not conform to Applicable Laws, the Contract Documents, or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.

u. **Department of Industrial Relations.** The Department of Industrial Relations of the State of California.
v. **Disability Laws.** All applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government Authority, for persons with disabilities, including, without limitation, the Americans With Disabilities Act (42 U.S.C. §§ 12101, et seq.) and the Fair Housing Amendments Act of 1988 (42 U.S.C. §§ 3604 et.seq.).

w. **DISTRICT.** The Governing Board of the South Orange County Community College District for a community college district organized under the laws of the State of California, acting through its Chancellor, Vice Chancellor(s) or their designees designated by him/her to act on his/her behalf.

x. **Drawings.** The graphic and pictorial portions of the Project Criteria or Construction documents showing the design, location and dimensions of the Work, including Plans elevations, details, schedule and diagrams. The term “Drawings” is used interchangeably with “Plans”.

y. **DSA.** The Division of the State Architect in the Department of General Services for the State of California.

z. **Environmental Laws.** All applicable federal, state, local or municipal laws, rules orders, regulations, statutes, ordinances, codes, decrees, or requirements of any Governmental Authority, which regulate, relate to, or impose liability or standards of conduct concerning any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof), occupational or environmental conditions on, under, or about the Site or Existing Improvements (including, without limitation, soil, groundwater, and indoor and ambient air conditions), or occupational health or industrial hygiene (but only to the extent related to Hazardous Substances on, under, or about the Site of Existing Improvements), as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. §§ 9601 et seq.;] the Resource Conservation and Recovery Act of 1976 [42 U.S.C. §§ 6901 et seq.;] the Clean Water Act (also known as the Federal Water Pollution Control Act) [33 U.S.C. §§ 1251 et seq.;] the Toxic Substances Control Act [15 U.S.C.A. §§ 2601 et seq.;] the Hazardous Substances Transportation Act [49 U.S.C. §§ 1801 et seq.;] the Insecticide, Fungicide, Rodenticide Act [7 U.S.C.A §§ 136 et seq.;] the Superfund Amendments and Reauthorization Act [42 U.S.C.A. §§ 6901 et seq.;] the Clean Air Act [42 U.S.C. §§ 7401 et seq.;] the Safe Drinking Water Act [42 U.S.C.A §§ 300f et seq.;] the Solid Waste Disposal Act [42 U.S.C. §§ 6901 et seq.;] the Surface Mining Control and Reclamation Act [30 U.S.C.A. §§ 1201 et seq.;] the Emergency Planning and Community Right to Know Act [42 U.S.C §§ 11001 et seq.;] the Occupational Safety and Health Act [29 U.S.C. 655 and 657]; the Residential Lead-Based Paint Exposure Act (Title X of the Housing and Community Development Act of 1992) [15 U.S.C. §§ 2681 et seq.;] the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. §§ 4821 et seq.;] and all similar federal, state or local laws, rules orders, regulations, statutes, ordinances, codes, decrees or requirement.

aa. **Escrow Agent.** The entity serving as escrow agent pursuant to California Public Contract Code §22300 in connection with the deposit of securities or retention.
bb. **Existing Improvements.** All improvements that, as of the Award of Contract date are located above or below the surface of the ground at the Site, including but not limited to existing buildings, utilities, infrastructure improvements and other facilities.

c. **Extra Work.** Labor, materials, equipment, services or other work, not reasonably inferable from the design and other information set forth in the Contract Documents, the performance of which requires the expenditure by the CONTRACTOR or additional and unforeseen costs of performance. References to Extra Work shall not be interpreted to mean or imply that the CONTRACTOR is entitled to contract adjustment unless such Extra Work is accepted through written instruction by the DISTRICT.

d. **General Conditions.** The herein set forth general terms and conditions governing performance of the Work.

e. **Governmental Authority.** The United States, the State of California, the County of Orange, the City in which the Project is located, any other local (other than county, regional, state or federal political subdivision, authority, agency, department, commission, board, bureau, court, judicial or quasi-judicial body, and any legislative or quasi-legislative body, or instrumentality of any of them, which exercises jurisdiction over the Project, Work, Site, CONTRACTOR or DISTRICT, including, without limitation, any Governmental Authorities (including, without limitation, DSA) having jurisdiction to review and approve or reject the Construction Documents, Contract Documents or the Work based on compliance or non-compliance with Applicable Laws.

ff. **Hazardous Substance.** Either of the following: (1) any chemical, material or other substance defined as or included within the definition of “hazardous substances,” “hazardous wastes,” “extremely hazardous substances,” “toxic substances,” “toxic material,” “restricted hazardous waste,” “special waste,” “contamination” or words of similar import under any Environmental Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls (“PCBs”) and PCB-containing materials, whether or not occurring naturally; or (2) any substance that because of its quantity, concentration or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any governmental Authority to be a hazardous waste or hazardous substance.

g. **Inspector of Record.** A certified inspector approved by the Office of Regulations Services of the Division of State Architect for the Department of General Services of the State of California to inspect the Work pursuant to the Field Act (California Education Code §§ 81130.3 et seq.) and applicable provisions of the California Code of Regulations with a class rating sufficient for the Work.

hh. **Lean Scheduling.** Using a reverse phase schedule, subcontractors plan the project starting with the last work activity and work backwards to ensure that each subcontractor consider what work must be done prior to any scheduled activity thus ensuring adequate durations are in place for late activities, possible constraints are identified early and all participating trades have buy-in during Project planning.
ii. **Locality.** Where the work is performed means the county and city in which the work is done.

jj. **Notice of Completion.** A “notice of completion” as defined in California Civil Code §3093 means the written notice by DISTRICT and approved by the Board of Trustees confirming the date that the Work is finally completed by CONTRACTOR.

kk. **Notice to Proceed.** The written notice issued by the DISTRICT to the CONTRACTOR to begin the Work.

ll. **Plans.** The graphic and pictorial portions of the Project Criteria or Construction Documents showing the design, location and dimensions of the Work, including plans elevations, details, schedules and diagrams. The term “Plans” is used interchangeably with “Drawings”.

mm. **Project.** The planned undertaking as provided for in the Project Documents by DISTRICT and CONTRACTOR.

nn. **Project Documents.** Collectively, to wit: Notice Calling for Bids, Information for Bidders, Bid Form, Bid Security, Designation of Subcontractor form, Information Required of Bidder, all prequalification forms submitted pursuant to Public Contract Code Section 20111.5, if any, Noncollusion Affidavit, Workers’ Compensation Certificate, Faithful Performance Bond, Payment Bond, Agreement, Escrow Agreement, Drug-Free Workplace Certification, Change Order forms, Shop Drawing Transmittals form, Insurance Certificates and Endorsements, Guarantee form, Contractor’s Certificate Regarding Non-Asbestos Containing Materials, General Conditions, Supplemental Conditions, if any, Special Conditions, if any, Drawings, Specifications, and all modifications, addenda and amendments thereto. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

oo. **Provide.** Shall include "provide complete in place," that is, "furnish and install."

pp. **Record Documents.** The collection of documents assembled and prepared by CONTRACTOR (including, without limitation, the Record Drawings and Specifications, warranties, guaranties, maintenance and operations manuals and other documents both hard copy and electronic format) that are to be maintained by the CONTRACTOR on the Site and delivered to the DISTRICT upon Final Completion of the work showing the condition of the Work as actually built. For purposes of these Contract Documents, the Record Drawings and Specifications must utilize Building Information Modeling (BIM) technology and are defined to include both hard copy and electronic format marked by CONTRACTOR to show the condition, location and placement of the Work as actually built, including, without limitation, the locations, lengths and dimensions of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are depicted diagrammatically in the Contract Documents.

qq. **Safety Orders.** Those orders issued by the Division of Industrial Safety and OSHA safety and health standards for construction.

rr. **Schedule of Values.** A detailed, itemized breakdown of the Contract Sum, which provides for an allocation of the dollar values to each of the various parts of the Work.
ss. **Shop Drawing.** As used herein shall be understood to include, but not be limited to, detail design calculations, fabrication and installation drawings, lists, graphs and operating instructions.

tt. **Site.** (1) The parcel of land identified in the Contract Documents on which the Project is to be constructed and such additional parcels as may be purchased by DISTRICT for such construction; (2) all areas adjacent to such parcels that may be used by CONTRACTOR for staging, storage, parking or temporary offices; and (3) all land areas, both private and public, adjacent to such parcels on which Work is required to be performed under the Contract Documents, Applicable Laws or permits relating to the Project.

uu. **Specifications.** The portion of the Construction Documents consisting of the written requirement for materials, equipment, standards and workmanship for the Work and performance of related services.

vv. **Standards, Rules, and Regulations.** Recognized printed standards that shall be considered as one and a part of these Specifications within limits specified.

ww. **Subcontractor.** Those parties having a direct contractual relationship with CONTRACTOR and one who furnishes material worked to a special design according to Plans, Drawings, and Specifications, but does not include one who merely furnishes material not so worked.

xx. **Surety.** The person, firm, or corporation that executes as a California admitted surety insurer, the CONTRACTOR'S Bid Security, faithful performance bond and payment bond per California Insurance Code §995.120.

yy. **Work.** Labor or materials (including, without limitation, equipment and appliances) or both, incorporated in, or to be incorporated in the Project by the CONTRACTOR or subcontractor.

zz. **Workers.** Laborer, worker, or mechanic employed by the CONTRACTOR or subcontractor.

aaa. **Working day.** A business day.

1.2. Correlation, Interpretation and Intent of Contract Documents

a. **Technical Words.** Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood construction industry meanings and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

b. **Incidental Items.** The naming of any material or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and labor therefore, in accordance with first-class practices of the trade involved, unless specifically noted otherwise.

c. **Applicable Laws.** Compliance with Applicable Laws shall be considered as a part of the Work.

d. **Singular, Gender, Captions.** When appropriate to the contexts, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust or other
legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only as a matter of reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

e. Cross-References. Any cross-references indicated between various paragraphs or other portions of the Specifications, Drawings or other Contract Documents are provided for the convenience of the CONTRACTOR and shall not be deemed to be all-inclusive.

f. Demolition. Existing Improvements at the Site, for which no specific description is made in the Project Criteria or Approved Deviations, but which could be reasonably assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by the CONTRACTOR without Contract Adjustment.

g. Omissions. Items missing from the Contract Documents shall nevertheless be provided by the CONTRACTOR, without Contract Adjustment, to the extent reasonably inferable from the Contract Documents as being necessary to satisfy the Project.

h. Conditions Precedent. Wording used in the Contract Documents indicating that a right of the CONTRACTOR or an obligation of DISTRICT (either directly or through the District Project Manager) is subject to or conditioned upon the occurrence of a condition or event, whether or not such condition or event is within the control of CONTRACTOR, DISTRICT or others and whether or not such condition or event is designated to be a condition precedent, shall be understood and interpreted to mean that the stated condition or event is a condition precedent to the existence, arising, performance and exercise of such right or obligation.

i. Design Deficiencies. Statements in the Contract Documents to the effect that CONTRACTOR shall comply with or conform to the requirements of the Contract Documents shall not be interpreted as relieving the CONTRACTOR from any responsibility to correct any design deficiency in the Construction Documents.

j. Conflicts. All conflicts in the Contract Documents shall be reported to the District Project Manager in writing before proceeding with the Work affected thereby. Notwithstanding the order of precedence provisions set forth in this document, in the event of conflict between any of the Contract Documents, the provision placing a more stringent requirement or greater burden on the CONTRACTOR or requiring the greater quantity or higher quality material or the workmanship shall prevail, unless otherwise directed by the DISTRICT in writing. Conflicts that cannot be so resolved shall be interpreted in accordance with the following order of precedence (the first being the highest order of precedence):

1. Applicable Laws (provided, however, that where the Contract Documents or manufacturer’s recommendations or specification required standards higher than those of Applicable Laws, the Contract Documents or manufacturer recommendations or specifications shall control);

2. Addenda;

3. Change Orders, Unilateral Change Orders and Field Orders;
4. General Conditions;
5. Supplementary and Special Conditions;
6. Final Construction Documents approved by DISTRICT; and
7. Reference Documents.

k. **Rehabilitation Work.** If any existing conditions in Existing Improvements, such as deterioration or construction not complying with Applicable Laws, be discovered by CONTRACTOR, with respect to which the Work covered by the Contract Documents does not provide for rectification of such conditions in a manner that complies with Title 24, California Code of Regulations, then a separate set of Drawings and Specifications, detailing and specifying the Work required to so rectify such conditions shall be developed and approved by the Office of Regulations Services of the Division of the State Architect in the State Department of the General Services for the State of California before proceeding with the Work.

**ARTICLE 2 STATUS OF CONTRACTOR**

2.1. **Independent 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 the Project Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the DISTRICT 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 and shall not be considered in any manner to be DISTRICT employees. DISTRICT shall be permitted to monitor the activities of the CONTRACTOR to determine compliance with the terms of the Project Documents.

2.2. **Licensed Contractor.** CONTRACTORS are required by law to be licensed and regulated by the Contractors' State License Board. Any CONTRACTOR not so licensed is subject to penalties under the law, and the contract will be considered void pursuant to Section 7028.7 of the Business and Professions Code. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, 9821 Business Park Drive, P. O. Box 26000, Sacramento, CA 95826.

**ARTICLE 3 CHANGE IN NAME AND NATURE OF CONTRACTOR’S LEGAL ENTITY**

3.1. **Legal Change.** Before CONTRACTOR makes any change in the name or legal nature of the CONTRACTOR'S entity, CONTRACTOR shall first notify the DISTRICT in writing and cooperate with DISTRICT in making such changes as the DISTRICT may request in the Project Documents.

**ARTICLE 4 CONTRACTOR'S SUPERVISION, PROSECUTION AND PROGRESS**

4.1. **Personnel.** During progress of the work, CONTRACTOR shall keep on the work Site at all times that Work is underway competent management personnel (“Personnel” equals project manager, superintendent and engineer) satisfactory to DISTRICT.
a. Before commencing the work herein, CONTRACTOR shall give written notice to DISTRICT and ARCHITECT of the name, qualifications and experience of Personnel.

b. If any one or more of the Personnel is found unsatisfactory by DISTRICT, CONTRACTOR shall replace the unsatisfactory Personnel with one or more that are acceptable to the DISTRICT.

c. Personnel shall not be changed except with written consent of DISTRICT, unless Personnel proves to be unsatisfactory to CONTRACTOR and/or ceases to be in its employ, in which case, CONTRACTOR shall notify DISTRICT and ARCHITECT in writing and replace said personnel with one or more replacement acceptable to the DISTRICT.

d. Of the assigned Site Personnel, one or more persons shall be identified to represent CONTRACTOR and all directions given to identified personnel shall be as binding as if given to CONTRACTOR. If no single person is identified to represent CONTRACTOR, all Site Personnel shall be determined to act as CONTRACTOR representatives.

e. CONTRACTOR shall provide prior to the start of the Work, telephone numbers where Personnel can be reached 24 hours a day, 7 days a week.

4.2. Project Knowledge. CONTRACTOR shall supervise and direct the work competently and efficiently, devoting such attention thereto and applying such skills as may be necessary to perform the work in accordance with the Project Documents.

a. Document Inconsistency. CONTRACTOR shall carefully study and compare all Plans, Drawings, Specifications, and other instructions and shall at once report to ARCHITECT any error, inconsistency or omission which CONTRACTOR or its employees may discover. The CONTRACTOR represents itself to DISTRICT as a skilled, knowledgeable, and experienced CONTRACTOR. The CONTRACTOR shall carefully study and compare the Project Documents with each other, and shall at once report to the ARCHITECT any errors, inconsistencies, or omissions discovered. The CONTRACTOR shall be liable to the DISTRICT for damage resulting from errors, inconsistencies, or omissions in the Project Documents that the CONTRACTOR recognized and which CONTRACTOR knowingly failed to report and which a similarly skilled, knowledgeable, and experienced contractor would have discovered.

b. Verify Dimensions. 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 Project Documents before commencing work. Errors, inconsistencies or omissions discovered shall be reported to the DISTRICT 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. Intent. Omissions from the Plans, Drawings or Specifications, or the mis-description of details of work which are manifestly necessary to carry out the intent of the Plans, 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 Plans, Drawings and Specifications.

d. Unknown Conditions. Save and except as hereinafter provided, CONTRACTOR agrees at CONTRACTOR'S Own Expense to assume the risk and costs of Extra Work and Delay due to concealed or unknown conditions, surface or subsurface, at the Site or in Existing Improvements.

1. Differing Site Conditions. Differing Site Conditions are those conditions located at the Site or in Existing Improvements and not otherwise ascertainable by CONTRACTOR in the performance of its obligations that constitute: (1) hazardous materials that constitute hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of Applicable Laws; (2) subsurface or concealed conditions at the Site or concealed conditions in Existing Improvements which differ materially from those indicated by the Contract Documents or other information available to CONTRACTOR prior to the Notice of Award; or (3) unknown physical conditions at the Site or concealed conditions in Existing Improvements of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

2. Notice of Change and Investigation. If CONTRACTOR encounters conditions it believes constitute Differing Site Conditions, then CONTRACTOR shall, before such conditions are disturbed, give notice stating, without limitation, a detailed description and precise location of the conditions encountered. Upon receipt of notice from CONTRACTOR, DISTRICT shall promptly investigate CONTRACTOR'S report of Differing Site Conditions.

3. Change Order Request. If CONTRACTOR intends to seek a contract adjustment based upon Differing Site Conditions, it shall submit a complete and timely Change Order Request setting forth its request. If DISTRICT finds that Differing Site Conditions exist, then a contract adjustment shall be made in such amounts and durations as DISTRICT determines according to a good faith determination by DISTRICT are reasonable and permitted by these general conditions.

4. Waiver by Contractor. Failure by CONTRACTOR to strictly comply with these requirements concerning the timing and content of any notice or request for contract adjustment based on Differing Site Conditions shall constitute a waiver by CONTRACTOR of the right to further recourse or recovery upon such claim.

5. Final Completion. No claim by CONTRACTOR for additional compensation for Differing Site Conditions shall be allowed if asserted after final payment.

4.3. **Daily Reports by Contractor.** At the close of each working day, the CONTRACTOR shall submit a daily report to the DISTRICT, ARCHITECT and the Inspector, on forms approved by the DISTRICT, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, and
for other services and expenditures when authorized concerning Extra Work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the DISTRICT and the CONTRACTOR. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the CONTRACTOR.

a. Labor. The report shall show names of workers, classifications, and hours worked and hourly rate. Project Superintendent expenses are not allowed.

b. Materials. The report shall describe and list quantities of materials used and unit cost.

c. Equipment. The report shall show type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable, and hourly/daily cost.

d. Inspection and Testing Activities. A list of inspections performed by name of inspector and testing company and the type of inspection, items of the Work involved and a description of the outcome of such inspection or test.

e. Visitors, Guests, Dignitaries. A list of visitors and guests by name, title, company and purpose of visit.

f. Areas of the Work. As statement of the areas of the Site on which the Work was performed and a detailed description of the stage, status and progress of the Work in each such area at the beginning and end of the Day.

g. Accidents, Delays, Defective Work. A description in detail of any injuries to the workers, accidents or delays that occurred or defective work that was encountered.

h. Payment. Timely and complete submission of daily reports by CONTRACTOR shall be a condition to CONTRACTOR’S right to payment under the contract.

4.4. **Progress Meetings.** CONTRACTOR shall coordinate and attend all progress meetings at the Site, at which meetings progress of the Work shall be reported in detail with reference to the then-current updated Schedule accepted by the DISTRICT. Progress meetings shall be held weekly, or at such other time or frequency as DISTRICT, in its sole and absolute discretion, deems necessary. The ARCHITECT, Inspector of Record and each Subcontractor then actively performing Work, scheduled to become active within one week (greater if determined to be in the best interest of the project) or currently a critical path activity whether or not performing, shall have a competent and knowledgeable representative present at such progress meeting to report on the condition of the Work of such Subcontractor and to receive relevant information. Meeting notes shall be taken by the CONTRACTOR and draft form distributed to the DISTRICT, all meeting attendees and all other affected parties. Meeting Minutes will become final with incorporated comments by team members upon completion of the next regularly scheduled weekly meeting.

4.5. **Notice Requirements.** Under no circumstances shall information contained in CONTRACTOR’S daily job reports, monthly reports or progress meeting minutes relieve CONTRACTOR of its obligations to comply with, serve as a substitute for, nor constitute a waiver by DISTRICT of its right to insist upon, CONTRACTOR’S compliance with the provisions of the Contract Documents relative to timely and
complete notice to DISTRICT of changes, delays, claims, or other matters for which written notice is required by the Contract Documents.

4.6. **Use of Site.** CONTRACTOR shall coordinate operations with, and secure the approval of, DISTRICT before using any portion of the Site.

a. **Staging Area.** CONTRACTOR will be assigned staging space on or adjacent to the Site, and all field offices, materials and equipment shall be kept within this area. Unless otherwise required by the Contract Documents, CONTRACTOR shall be responsible for restoring such areas and surrounding areas to the condition they were in prior to CONTRACTOR’S commencement of the Work.

b. **Existing Improvements.** During the installation of the Work, CONTRACTOR shall ensure that Existing Improvements are adequately protected. Upon Final Completion of the Work, all Existing Improvements that may have been damaged shall be restored to the condition they were in prior to CONTRACTOR’S commencement of the Work.

c. **Unauthorized Use.** Personnel of CONTRACTOR and the Subcontractors shall not occupy, live upon or otherwise make use of the Site during any time that the Work is not being performed at the Site, except as otherwise approved by DISTRICT.

d. **College Operations.** CONTRACTOR shall anticipate and take all necessary and reasonable measures to minimize and control dust and noise that might interfere with the use or enjoyment of the Site by the DISTRICT and the College’s students, staff and visitors. The CONTRACTOR shall familiarize itself with the activities of the College, including, without limitation, campus functions and ceremonies and plan the Work so as to avoid interferences or disturbances therewith. The CONTRACTOR shall enclose the working area with a substantial barricade and arrange the Work to cause minimum amount of inconvenience and danger to students, faculty, staff and visitors.

e. **Site Security.** CONTRACTOR is responsible for the security of the Site and all of the Work. Fences, barricades and other perimeter security shall be maintained in good condition and secured with locking devices. Damage shall be repaired immediately. Graffiti and unauthorized postings shall be removed or painted over so as to maintain a clean and neat appearance. Mobile equipment and operable machinery shall be kept locked or otherwise made inoperable whenever left unattended.

f. **Persons on Site.** CONTRACTOR shall not allow any person, other than the workers on the Project, or other individuals authorized by DISTRICT, to come upon any portion of the Site where the Work is being performed. Only authorized personnel will be permitted on the Site. CONTRACTOR shall at all times maintain good discipline and order among its employees and the employees of Subcontractors. Any person in the employ of CONTRACTOR or any of Subcontractor whom DISTRICT may deem, in its sole and absolute discretion, incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the Site and shall not again be employed on the Site except with written approval of DISTRICT and all losses to CONTRACTOR or DISTRICT associated therewith shall be paid at CONTRACTOR’S own expense.
g. **Confinement of Operations.** CONTRACTOR shall confine apparatus, the storage of materials and the operations of the workers to limits indicated by Contract Documents or as otherwise directed by DISTRICT in writing. CONTRACTOR shall confine access and parking at the Site to areas permitted by Applicable Laws and/or DISTRICT direction. CONTRACTOR acknowledges that it is experienced in performing construction within limited and confined areas and spaces such as those that are anticipated to exist on this Project and agrees to assume responsibility, without a contract adjustment, to take all special measures (including, without limitation, those related to protection, storage, staging and deliveries) as may be necessary to adapt its performance to the constraints of the Site.

h. **Prohibited Substances.** CONTRACTOR shall not permit (1) the possession or use of alcohol, smoking or controlled substances on the Site.

4.7. **Dust, Fumes, Noise.** CONTRACTOR shall take preventive measures to minimize, and eliminate wherever reasonably possible, generation of dust, fumes and noise.

a. CONTRACTOR shall ensure that all disturbed unpaved roads and disturbed areas within the Project are watered at least three times daily during dry weather. Watering, with complete coverage of disturbed areas shall occur at least three times a day, preferably in the mid-morning afternoon and after work is done for the day.

b. The CONTRACTOR shall ensure that traffic speed on unpaved roads and Project site areas are reduced to 15 miles per hour or less to reduce PM10 and PM2.5 fugitive dust haul road emissions by approximately 44%.

c. The California Air Resources Board, in Title 13, Chapter 10, Section 2485, Division 3 of the California Code of Regulations, imposes a requirement that heavy duty trucks accessing the site shall not idle for greater than five minutes at any location. This measure applies to construction traffic. Prior to grading, a sign shall be posted on-site stating that workers need to shut off engines after five minutes of idling.

d. All Rubber Tired Dozers and Scrapers shall be CARB Tier 2 Certified or better.

e. Equipment and materials shall be staged in areas that will create the greatest distance between construction related noise sources and the noise sensitive receptors nearest the construction site. Construction Equipment staging areas shall be located at least 300 feet away from Sensitive Receptors.

f. All equipment shall be equipped with properly operating and maintained mufflers. To the extent feasible, haul routes shall not pass directly by sensitive land uses.

4.8. **Drainage, Erosion.** CONTRACTOR shall be responsible for changes in patterns of surface water drainage resulting from, and related erosion control made necessary by, the performance of the Work. DISTRICT Projects are part of a larger common plan of development and CONTRACTOR'S are required to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) regardless of size of Project impacted area.

a. **CONTRACTOR'S Responsibility.** The CONTRACTOR shall (1) file and obtain the Storm Water Permit; (2) furnish all notices required under the Storm Water Permit; (3) prior to starting...
any Work at the Site prepare the Storm Water Management Plans and Storm Water Pollution Prevention Plans; and (4) take all necessary steps to monitor, report, enforce and otherwise implement and comply with the requirements of the Storm Water Permit, Storm Water Management Plans and Storm Water Pollution Prevention Plans and all Applicable Laws pertaining to the elimination or mitigation of storm water pollutant discharge to separate storm sewer systems or other watercourses, including without limitation, applicable requirements of the State Water Resources Control Board, Orange County Region Water Quality Control Board and municipal storm water management programs.

b. Copies of Reports. The CONTRACTOR shall provide copies of all reports and monitoring information to the DISTRICT.

c. Violations. The CONTRACTOR recognizes and understands that failure to comply with the requirements of the Storm Water Permit is a violation of federal and state law.

d. Condition of Payment. Compliance by the CONTRACTOR with these requirements shall be a condition to the CONTRACTOR’S right to payment under its Applications for Payment.

e. Costs of Compliance. The CONTRACTOR represents and warrants that it has included in the contract sum all costs of compliance with these requirements.


a. Prior to land-clearing activities from February 1 through August 31, at the expense of the CONTRACTOR and in relationship to addressing CEQA mitigation measures, a qualified biologist shall first evaluate the type and extent of vegetation removal and the impact, if any on nesting birds. If determined necessary, the biologist shall conduct a survey and specify the appropriate mitigation measures for impacts which may include avoidance of occupied nests, working outside an established buffer area, modified scheduling of grading and clearing, and monitoring of active nests during construction.

b. Prior to any excavation, the CONTRACTOR shall compare the limits of proposed excavations with the depth and lateral extent of existing sub-surface disturbances, including foundations, utility and fill materials using information including but not limited to: as built construction plans, underground utility surveys and geotechnical information including boring and trenching logs. Should excavations exceed five feet in depth, a qualified paleontologist shall be retained to conduct additional paleontological assessment using pre-construction geotechnical surveys to better define the subsurface geological feature of the campus. Should data indicate paleontological sensitivity, District shall retain a qualified paleontologist to facilitate a preconstruction meeting and monitor all earth-moving activity with the potential to disturb previously undisturbed paleontologically sensitive sediment. Should resources be uncovered as a result of grading or excavation shallower than five feet, work shall cease until a paleontological monitor arrives.

c. All clearing, grading, earth-moving or excavation activities shall cease when winds exceed 25 mph per SCAQMD guidelines in order to limit fugitive dust emissions.
4.10. **Solid Waste Management.** CONTRACTOR shall comply with all provisions of Applicable Laws (including, without limitation, the requirements of the California Public Resources Code, rules and regulations of the California Integrated Waste Management Board and provisions of any Site-specific plans adopted by District) that are applicable to the activities of contractors performing construction or related activities on the Site.

a. Recycling. Without limitation to the foregoing, the Design-Build Entity shall take action to ensure that no less than ninety percent (90%) of marketable materials generated from the activities of the Design-Build Entity and Subcontractors on the Site that are not fully consumed in the performance of the Work are recycled.

b. Records. Design-Build Entity shall maintain, and make available to the District Project Manager upon request, complete and accurate records verifying its compliance with its obligations under this Section 3.23.

c. Condition of Payment. Compliance by the Design-Build Entity with these requirements shall be a condition to the Design-Build Entity’s right to payment under its Applications for Payment.

d. Costs of Compliance. The Design-Build Entity represents and warrants that it has included in the Contract Sum all costs of compliance with these requirements.

4.11. **Remediation by CONTRACTOR.** The provisions of this paragraph shall apply only if the Work to be performed by CONTRACTOR includes within its scope the removal, abatement, moving, handling, containment, disposal or transport of Hazardous Substances or Mold.

a. Advance Submissions. Before CONTRACTOR or any of its Subcontractors or Subconsultants moves, removes, or transports Hazardous Substances to a facility for the receipt, treatment, storage or disposal of the Hazardous Substances (“Hazardous Substances Facility”), CONTRACTOR shall cause the person or entity who will be moving, removing or transporting the Hazardous Substances to provide to DISTRICT the following: (1) verification of the Hazardous Substance Facility’s or other transporter’s licensed status to haul such materials; (2) verification of the Hazardous Substance Facility’s licensed status, including a current permit to receive the specific materials to be transported there; (3) certification that the Hazardous Substance Facility is not under enforcement action by the U.S. Environmental Protection Agency (“EPA”) or applicable State Government Authority or listed on any applicable EPA or applicable State Government Authority list of violating facilities; (4) verification of the Hazardous Substances Facility’s EPA Identification Number (if applicable); and (5) original executed letter(s) of indemnity from the Hazardous Substance Facility bearing the Hazardous Substance Facility’s letterhead. CONTRACTOR further warrants that the selected Hazardous Substance Facility is appropriately licensed and permitted to store, treat and dispose of Hazardous Substances waste in connection with the Work.

b. CONTRACTOR Responsibility. CONTRACTOR warrants that it is aware of and understands the hazards which are presented to persons, property and the environment in performance of the transportation, storage and disposal of Hazardous Substances. CONTRACTOR and its Subcontractors, and agents shall be responsible for the following: (1) processing the application for, and receiving on behalf of the DISTRICT or appropriate entity, an EPA or state-equivalent generator identification number (if required); (2) preparing manifests and other shipping documents; (3) making all necessary arrangements (after consultation with
DISTRICT or DISTRICT Consultant) for any off-Site transportation, treatment, storage and
disposal of Hazardous Substances in accordance with Applicable Laws; (4) ensuring the
proper and lawful transportation and disposal of Hazardous Substances, even if such
services are performed by other entities under contract with CONTRACTOR or its
Subcontractors; and (5) taking any necessary actions to ensure such proper transport and
disposal of Hazardous Substances in the event of any contingency, such as the rejection of
the Hazardous Substances as nonconforming by any waste disposal facility. CONTRACTOR
shall promptly provide to DISTRICT copies of all manifests and other shipping documents
confirming the receipt and proper disposal of all waste at the Hazardous Substances Facility,
even if such services are performed by other entities under contract with CONTRACTOR or
its Subcontractors.

c. Reporting Requirements. CONTRACTOR shall comply with any Hazardous Substances release
reporting requirements to Governmental Authorities directly applicable to CONTRACTOR.
Notice of such reporting must be provided in advance to DISTRICT or concurrently in the
event of an emergency.

d. Samples. CONTRACTOR and its Subcontractors shall retain all media samples for the longer
of (1) the longest holding period specified in any federal, state or local laboratory analytical
procedures or guidance for the analyses performed; or (2) three months for soil samples
and thirty (30) Days for water samples. Further storage or transfer of samples will be made
at DISTRICT’S expense upon DISTRICT’S written request of CONTRACTOR. CONTRACTOR
shall require by contract that each and every Subcontractor and agent of CONTRACTOR who
performs testing of samples in connection with the Work properly disposes of such samples
in accordance with Applicable Laws after completion of testing and notice to DISTRICT.
Regarding any such samples which may remain on-Site, provided DISTRICT or DISTRICT
Consultant has approved of such on-Site storage in advance, DISTRICT agrees to pay all costs
associated with the storage, transport, and disposal of such samples.

e. Verification. Upon Final Completion of the Work, CONTRACTOR shall confirm by a writing
delivered to DISTRICT or DISTRICT Consultant that: (1) all Hazardous Substances specified for
removal in the Contract Documents have been removed; and (2) all Hazardous Substances
wastes removed from the Site as part of the Work have been disposed of in accordance with
this Subparagraph 10.3.1.2 and Applicable Laws in a Hazardous Substances Facility.

f. Mold. CONTRACTOR is responsible to immediately notify DISTRICT in writing if any
conditions in the construction materials incorporated or to be incorporated into the Work or
present in existing improvements are encountered at the Site that CONTRACTOR or any
Subcontractor knows or, in the exercise of due care, should know indicate the presence of
Mold or if untreated are likely to result in the growth of Mold. CONTRACTOR shall thereafter
take such precautions as are reasonably required to prevent the exposure of persons to
such conditions until they have been evaluated. Except as otherwise authorized by the
Contract Documents or as are usual and customary according to prevailing standards of the
construction industry in the vicinity of the Project, CONTRACTOR shall not allow water or
moisture to come into contact with materials in existing improvements or with materials
located at the Site that are incorporated or to be incorporated into the Work and if such
contact occurs, the areas affected shall be inspected by CONTRACTOR, using appropriate
consultants experienced in testing and evaluating Mold, for the presence of Mold and evaluated for the potential of future growth of Mold. All portions thereof that are found to indicate the presence of Mold, or that are found to be in a condition that has the potential for becoming a source of Mold, shall be removed and replaced. Costs incurred by CONTRACTOR due to its failure to perform its obligation under this paragraph shall be borne by CONTRACTOR at CONTRACTOR’S own expense.

g. Release of DISTRICT Liability. CONTRACTOR assumes the risk that its employees or the employees of its Subcontractors, and other persons that they cause or permit to be present on the Site, may be exposed to known or unknown Hazardous Substances or Mold. Under no circumstances shall DISTRICT be liable for, and CONTRACTOR hereby fully and unconditionally releases DISTRICT and the other Indemnities from, and agrees to defend and indemnify DISTRICT and the other Indemnities on the terms set forth in section, against, any and all known and unknown loss resulting from or relating to the exposure of any employee of CONTRACTOR or its Subcontractors, or other person that they cause or permit to be present on the Site, to: (1) Hazardous Substances or Mold encountered in connection with or as a result of the performance of the Work, or (2) Hazardous Substances or Mold not necessarily encountered in connection with the performance of the Work, but to which any of them may nevertheless be exposed as a result of their being present on the Site.

h. Governmental Authorities. CONTRACTOR shall provide to DISTRICT copies of all written communications with Governmental Authorities or others relating to Hazardous Substances or Mold (other than privileged communications); provided, however, that non-disclosure of privileged communications shall not limit Design-Build Entity’s obligation to otherwise comply with the terms of the Contract Documents, including, without limitation, this section.

i. Subcontractors, Subconsultants. CONTRACTOR shall include provisions in all contracts it enters into with Subcontractors for the Work requiring them to assume toward CONTRACTOR and DISTRICT the same obligations that CONTRACTOR assumes toward DISTRICT under this section. CONTRACTOR shall require the Subcontractors to ensure that such provisions are included in all contracts they enter into with all lower-tier subcontractors.

4.12. **Other Services and Expenditures.** Other services and expenditures shall be described in such detail as the DISTRICT may require. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Project Documents.

**ARTICLE 5 SUBCONTRACTORS**

5.1. **Bind Terms.** CONTRACTOR agrees to bind every subcontractor by terms of the Project Documents as far as such terms are applicable to subcontractor’s work. If CONTRACTOR shall subcontract any part of the work, 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 Project
Documents shall create any contractual relation between any subcontractor and DISTRICT, nor shall the Contract Documents be construed to be for the benefit of any subcontractor.

5.2. **No Relief upon Consent.** DISTRICT’s consent to any subcontractor shall not in any way relieve CONTRACTOR of any obligations under the Project Documents and no such consent shall be deemed to waive any provision of any Project Document.

5.3. **Designation of Subcontractors.** CONTRACTOR must submit with its bid, a Designation of Subcontractors pursuant to the Subletting and Subcontracting Fair Practices Act. If CONTRACTOR specifies more than one subcontractor for the same portion of work or fails to specify a subcontractor, and such portion of the work exceeds one-half of one percent of the total bid, CONTRACTOR agrees that it is fully qualified to perform and shall perform such work itself, unless CONTRACTOR provides for substitution or addition of subcontractors. Substitution or addition of subcontractors shall be permitted only as authorized under the Subletting and Subcontracting Fair Practices Act, Public Contract Code Section 4100, et seq.

5.4. **Licensed Subcontractor.** In accordance with Business and Professions Code Section 7059, if CONTRACTOR is designated as a "specialty contractor" (as defined in Section 7058 of the Public Contract Code), all of the work to be performed outside of the CONTRACTOR’S license specialty shall be performed by a licensed subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Section 4100, et seq.

5.5. **File Subcontractor Agreements.** A copy of each subcontract, if in writing, or, if not in writing, then a written statement signed by the CONTRACTOR giving the name of the subcontractor and the terms and conditions of such subcontract, shall be filed with the DISTRICT before the subcontractor begins work. Each subcontract shall contain a reference to the Agreement between the DISTRICT and the CONTRACTOR and the terms of that Agreement and all parts of the Project Documents shall be made a part of such subcontract insofar as applicable to the work covered thereby. Each subcontract will provide for termination in accordance with Article 13 of these General Conditions. Each subcontract shall provide for its annulment by the CONTRACTOR at the order of the ARCHITECT if in the ARCHITECT’s opinion the subcontractor fails to comply with the requirements of the Project Documents insofar as the same may be applicable to this work. Nothing herein contained shall relieve the CONTRACTOR of any liability or obligation hereunder.

5.6. **No Ineligible Subcontractors.** A CONTRACTOR may not permit a subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code to bid on, be awarded, or perform work as a subcontractor on a public works project.

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**ARTICLE 6  PROHIBITED INTERESTS**

6.1. No official of DISTRICT who is authorized in such capacity and on behalf of DISTRICT to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall become directly or indirectly interested financially in this Project or in any part thereof. No officer, employee, ARCHITECT, attorney, engineer or inspector of or for DISTRICT who is authorized in such capacity and on behalf of DISTRICT to exercise any executive, supervisory or other similar functions in connection with construction of
Project shall become directly or indirectly interested financially in this Project or in any part thereof. CONTRACTOR shall receive no compensation and shall repay DISTRICT for any compensation received by CONTRACTOR hereunder, should CONTRACTOR aid, abet or knowingly participate in violation of this Article 6.

ARTICLE 7 DISTRICT’S INSPECTOR

7.1. **General.** One or more Inspector(s), including special inspectors, as required, will be employed by DISTRICT and will be assigned to the Project.

7.2. **No Direction to Work.** No work shall be performed by the CONTRACTOR solely upon the instructions or comments by the Inspector. The Inspector has no authority to interpret the Project Documents or order Extra Work and any Extra Work performed without the written instruction of the DISTRICT shall be at CONTRACTOR’s sole cost and expense and there will be no delay damages incurred by DISTRICT for such work.

7.3. **Fully Informed.** No work shall be carried on except with the knowledge and under the inspection of said Inspector(s). He/she shall have free access to any or all parts of work at any time. CONTRACTOR shall furnish Inspector reasonable opportunities for obtaining such information as may be necessary to keep Inspector fully informed respecting progress and manner of work and character of materials. Inspection of work shall not relieve CONTRACTOR from any obligation to fulfill the Project Documents. Inspector or ARCHITECT shall have authority to stop work whenever provisions of Project Documents are not being complied with and such noncompliance is discovered. CONTRACTOR shall instruct its employees accordingly.

7.4. **Notification.** CONTRACTOR understands and agrees that the Inspector for the Project may also serve concurrently as inspector for other DISTRICT projects and may not therefore be available on Site during the entire work day. It shall be the responsibility of CONTRACTOR to notify the Inspector not less than twenty-four (24) hours in advance of materials and equipment deliveries and required inspections.

7.5. **Inspection Trailer.** If required by DISTRICT, CONTRACTOR shall provide inspection trailer in accordance with provisions of Special or Supplemental Conditions.

ARTICLE 8 ARCHITECT’S STATUS

8.1. **General.** The ARCHITECT shall be the DISTRICT’s representative during construction and shall observe the progress and quality of the work on behalf of the DISTRICT. ARCHITECT shall have the authority to act on behalf of DISTRICT only to the extent expressly provided in the Project Documents. ARCHITECT shall have authority to stop work whenever such stoppage may be necessary in ARCHITECT’S reasonable opinion to ensure the proper execution of the Project Documents.

8.2. **Evaluate Performance.** The ARCHITECT shall be, in the first instance, the judge of the performance of the work. ARCHITECT shall exercise authority under the Project Documents to enforce CONTRACTOR’S faithful performance.
8.3. **Authority.** The ARCHITECT shall have all authority and responsibility established by law. The ARCHITECT has the authority to enforce compliance with the Project Documents and the CONTRACTOR shall promptly comply with instructions from the ARCHITECT or an authorized representative of the ARCHITECT.

8.4. **Governing Decision.** On all questions related to the quantities, the acceptability of material, equipment or workmanship, the execution, progress or sequence of work, the interpretation of Plans, Specifications or Drawings, and the acceptable performance of the CONTRACTOR pursuant to the decision of the ARCHITECT shall govern and shall be precedent to any payment unless otherwise ordered by the Governing Board. The progress and completion of the work shall not be impaired or delayed by virtue of any question or dispute arising out of or related to the foregoing matters and the instructions of the ARCHITECT relating thereto.

8.5. **CONTRACTOR’S Responsibility.** General supervision and direction of the work by the ARCHITECT shall in no way imply that the ARCHITECT or his or her representatives are in any way responsible for the safety of the CONTRACTOR or its employees or that the ARCHITECT or his or her representatives will maintain supervision over the CONTRACTOR’S construction methods or personnel other than to ensure that the quality of the finished work is in accordance with the Project Documents.

### ARTICLE 9 NOTICE OF TAXABLE POSSESSORY INTEREST

9.1. The terms of the Agreement may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to the Agreement, the private party may be subjected to the payment of property taxes levied on such interest.

### ARTICLE 10 ASSIGNMENT OF ANTITRUST ACTIONS

10.1. **General.** Public Contract Code Section 7103.5 provides:

   a. 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 awarding body (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. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the 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.

10.2. **Assignment of Rights.** CONTRACTOR, for itself and all subcontractors, agrees to assign to DISTRICT all rights, title, and interest in and to all such causes of action CONTRACTOR and all subcontractors may have under the Agreement. This assignment shall become effective at the time DISTRICT tenders final payment to the CONTRACTOR and CONTRACTOR shall require assignments from all subcontractors to comply herewith.

### ARTICLE 11 OTHER CONTRACTS
11.1. General. 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 such other contractors.

11.2. Inspect and Report. If any part of CONTRACTOR'S work depends for proper execution or results upon work of any other contractor, the CONTRACTOR shall inspect and promptly report to ARCHITECT in writing any defects in such work that render it unsuitable for such proper execution and results. CONTRACTOR will be held accountable for damages to DISTRICT for that work which it failed to inspect or should have inspected. CONTRACTOR'S failure to inspect and report shall constitute its acceptance of other contractor's work as fit and proper for reception of its work, except as to defects which may develop in other contractors' work after execution of CONTRACTOR'S work.

11.3. Define Changes in Work. To ensure proper execution of its subsequent work, CONTRACTOR shall measure and inspect work already in place and shall at once report to the ARCHITECT in writing any discrepancy between executed work and Project Documents.

11.4. Review Work Compatibility. CONTRACTOR shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by DISTRICT in prosecution of the Project to the end that CONTRACTOR may perform this Agreement in the light of such other contracts, if any.

11.5. Non-Exclusive Occupancy. Nothing herein contained shall be interpreted as granting to CONTRACTOR exclusive occupancy at Site of Project. 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.

11.6. No Damages. DISTRICT shall not be responsible for any damages suffered or extra costs incurred by CONTRACTOR resulting directly or indirectly from award or performance of any other contract or contracts on Project, or caused by any decision or omission of DISTRICT respecting the order of precedence in performance of contracts.

ARTICLE 12 OCCUPANCY

12.1. DISTRICT reserves the right to occupy buildings and/or portions of the Site at any time before completion, and such occupancy shall not constitute final Acceptance of any part of work covered by this Agreement, nor shall such occupancy extend the date specified for completion of the work. Beneficial occupancy of building(s) does not commence any warranty period nor shall it entitle CONTRACTOR to any additional compensation due to such occupancy.

ARTICLE 13 DISTRICT’S RIGHT TO TERMINATE AGREEMENT

13.1. Termination for Cause. If the CONTRACTOR refuses or fails to complete the work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or fails to complete said work within such time, or if the CONTRACTOR should file
a petition for relief as a debtor, or should relief be ordered against CONTRACTOR as a debtor under Title 11 of the United States Code, or if CONTRACTOR should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should refuse or should fail to supply enough properly skilled workers or proper equipment, tools, and materials in the necessary quantity and quality to complete the work in the time specified, or if CONTRACTOR should fail to make prompt payment to subcontractors for materials or labor, or disregard laws or ordinances or instructions of DISTRICT, or if CONTRACTOR or its subcontractors should otherwise be guilty of a violation of any provision of this Agreement, then CONTRACTOR shall be deemed to be in default of the Agreement and DISTRICT may, without prejudice to any other right or remedy, serve written notice upon CONTRACTOR and its Surety of DISTRICT’s intention to terminate this Agreement, such notice to contain the reasons for such intention to terminate, and unless within ten (10) calendar days after the service of such notice such condition shall cease or such violation shall cease, or arrangements satisfactory to DISTRICT for the correction thereof be made and corrective action commenced in a diligent and workmanlike manner and pursued to satisfactory completion, this Agreement shall upon the expiration of said ten (10) calendar days, cease and terminate. In such case, CONTRACTOR shall be excluded from the worksite and not be entitled to receive any further payment until work is finished to DISTRICT’s satisfaction.

13.2. **Surety Take Over.** In the event of any such termination, Surety shall have the right to take over and perform this Agreement, provided, however, that if Surety within five (5) calendar days after service upon it of said notice of termination does not give DISTRICT written notice of its intention to take over and perform this Agreement or does not commence performance thereof within ten (10) calendar days after date of serving such notice of termination by DISTRICT on Surety, DISTRICT may take over the work and prosecute same to completion by any means determined by DISTRICT including hiring another contractor for the account and at the expense of CONTRACTOR, and CONTRACTOR and its Surety shall be liable to DISTRICT for any excess cost or other damages occasioned by the DISTRICT thereby. Time is of the essence in this Agreement. If the DISTRICT takes over the work as hereinabove provided, the DISTRICT may, without liability for so doing, take possession of and utilize in completing the work such materials, supplies, equipment and other property belonging to the CONTRACTOR as may be on the Site of the work and necessary therefore.

13.3. **Back charge Additional Compensation.** The expense of finishing the work, including compensation for additional architectural, managerial, and administrative services, shall be a charge against CONTRACTOR and CONTRACTOR agrees that the charge may be deducted from any money due or becoming due to CONTRACTOR from DISTRICT or CONTRACTOR shall pay the charge to the DISTRICT. Expense incurred by DISTRICT as herein provided, and damage incurred through CONTRACTOR’S default, shall be certified to DISTRICT by ARCHITECT. The Surety shall become liable for payment should CONTRACTOR fail to pay in full any cost incurred by the DISTRICT.

13.4. **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, 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.

13.5. **Other Remedies.** The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the DISTRICT.

**ARTICLE 14   BONDS**

14.1. **Performance and Payment Bonds.** Within fourteen (14) Days of Notice of Intent to Award or Board approval of contract, CONTRACTOR shall deliver to DISTRICT a good and sufficient labor and material payment bond (“Payment Bond”) and a good and sufficient performance bond (“Performance Bond”), each in the amount of one hundred percent (100%) of the Contract Sum.

a. **Changes.** The penal amounts of the Performance Bond and Payment Bond shall be increased on account of Change Orders and Unilateral Change Orders increasing the Contract Sum. If requested by DISTRICT, CONTRACTOR shall deliver to DISTRICT evidence of the increases of such penal amounts.

b. **Replacement.** Should any bond required hereunder or any Surety on such bond become or be determined by DISTRICT to be insufficient, it shall be replaced within ten (10) Days by a bond that fully complies with the requirements of this section.

c. **Duration.** The Payment Bond shall remain in effect until acceptance of the Work and all Claims of CONTRACTOR and the Subcontractors of any Tier, have been fully and finally resolved. The Performance Bond shall remain in effect and assure faithful performance of all CONTRACTOR’S obligations under the Contract Documents, including, without limitation, warranty obligations.

d. **Premiums.** The premiums for the Performance Bond and Payment Bonds are included in the Contract Sum and shall be paid by CONTRACTOR at CONTRACTOR’S Own Expense.

e. **Obligee.** A Performance Bond shall name DISTRICT as obligee. All performance bonds, if any, purchased by Subcontractors shall name DISTRICT as a dual obligee with CONTRACTOR.

f. **No Exoneration.** The Performance Bond and Payment Bond shall contain provisions to the effect that Change Orders, Unilateral Change Orders, Field Orders, Modifications, Changes and Contract Adjustments shall in no way release or exonerate CONTRACTOR or its Surety from their obligations and that notice thereof is waived by the Surety.

g. **No Limitation.** The requirements of this section pertaining to the Performance Bond and the Payment Bond shall be without limitation to any other obligations CONTRACTOR may have under Applicable Laws to provide bonding for the benefit of, and to assure payment to the Subcontractors performing the Work for the Project.
h. **Subcontractor Bonds.** Each performance bond, if any, furnished by a first-Tier Subcontractor shall include a provision whereby the Surety consents to the contingent assignment of CONTRACTOR’S rights under such bond to DISTRICT as provided in section.

14.2. **Condition of Payment.** No payments to CONTRACTOR for Work performed shall be made or due until there has been full compliance with the requirements of this section.

14.3. **Surety Rating.** Any Surety company issuing the Payment Bond or Performance Bond shall be, at all times while such bonds are in effect, listed in the latest published United States Treasury Department list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” and have a current A.M. Best rating of A VIII or better.

14.4. **Communications.** DISTRICT shall have the right to communicate with Surety with respect to matters that are related to performance of the Work. CONTRACTOR shall be provided with a copy of all such communications that are in writing. Such communications shall not create or be interpreted as creating any contractual obligation of DISTRICT to Surety.

**ARTICLE 15  SUBSTITUTION OF SECURITIES**

15.1. **Securities for Investment.** Pursuant to the requirements of Public Contract Code Section 22300, upon CONTRACTOR’S request, DISTRICT will make payment to CONTRACTOR of any earned retention funds withheld from payments under this Agreement if CONTRACTOR deposits with the DISTRICT or in escrow with a California or federally chartered bank acceptable to DISTRICT, securities eligible for the investment pursuant to Government Code Section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:

a. CONTRACTOR shall be the beneficial owner of any securities substituted for retention funds withheld and shall receive any interest thereon.

b. All expenses relating to the substitution of securities under said Section 22300 and under this Article 15, including, but not limited to DISTRICT’s overhead and administrative expenses, and expenses of Escrow Agent shall be the responsibility of the CONTRACTOR.

c. If CONTRACTOR shall choose to enter into an escrow agreement, such agreement shall be in the form as set forth in Public Contract Code section 22300(f) attached hereto as part of the Project Documents and which shall allow for the conversion to cash to provide funds to meet defaults by the CONTRACTOR including, but not limited to, termination of the CONTRACTOR’S control over the work, stop notices filed pursuant to law, assessment of liquidated damages or amount to be kept or retained under the provisions of the Project Documents.

d. Securities, if any, shall be returned to CONTRACTOR only upon satisfactory completion of the Agreement.

15.2. **Deposit Security.** To minimize the expense caused by such substitution of securities, CONTRACTOR shall, prior to or at the time CONTRACTOR requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of this Agreement. Should the value of such substituted security at any time fall below the amount for
which it was substituted, or any other amount which the DISTRICT determines to withhold, CONTRACTOR shall immediately, and at CONTRACTOR'S expense, deposit additional security qualifying under said Section 22300 until the total security deposited is no less than equivalent to the amount subject to withholding under the Agreement.

15.3. **Payment to Escrow.** In the alternative, under Section 22300, CONTRACTOR, at its own expense, may request DISTRICT to make payment of earned retention funds directly to the Escrow Agent. Also at the expense of CONTRACTOR, CONTRACTOR may direct investment of the payments into securities, and CONTRACTOR shall receive the interest earned on the investment upon the same conditions as shown in paragraph (a) for securities deposited by CONTRACTOR. Upon satisfactory completion of the Agreement, CONTRACTOR shall receive from the Escrow Agent all securities, interest and payments received by the Escrow Agent from DISTRICT, pursuant to the terms of Section 22300.

15.4. **Full Force and Effect.** If any provision of this Article 15 shall be found to be illegal or unenforceable, then, notwithstanding, this Article 15 shall remain in full force and effect, and such provision shall be deemed stricken.

**ARTICLE 16 FIRE INSURANCE**

16.1. CONTRACTOR will procure at CONTRACTOR'S own expense, and before commencement of any work under this Agreement, fire insurance on the Project. Amount of fire insurance shall be sufficient to protect against loss or damage in full until work is accepted by DISTRICT. CONTRACTOR shall submit proof of insurance and shall provide endorsements on forms provided by the DISTRICT or on forms approved by the DISTRICT.

**ARTICLE 17 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

17.1. **General.** CONTRACTOR shall take out and maintain during the life of this Agreement such public liability and property damage insurance as shall protect CONTRACTOR and DISTRICT from all claims for personal injury, including accidental death, to any person (including, as to DISTRICT, injury or death to CONTRACTOR's or subcontractor's employees), as well as from all claims for property damage arising from operations under this Agreement, in amounts as set forth in the Agreement.

17.2. **Subcontractor Insurance.** CONTRACTOR shall require its subcontractors, if any, to take out and maintain similar public liability and property damage insurance in like amounts or insure the activities of its subcontractors in CONTRACTOR's own policy.

17.3. **Builder's Risk.** CONTRACTOR, during the progress of the work and until final Acceptance of the work by DISTRICT upon completion of the entire Agreement, shall maintain Builder's Risk/“All Risk,” course-of-construction insurance in an amount not less than as set forth in the Agreement. Coverage is to provide extended coverage and insurance against vandalism, malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, earthquake, collapse, flood, wind, lightning, smoke, riot, debris removal (including demolition), and reasonable compensation for ARCHITECT'S services and expenses required as a result of such insured loss upon the entire work which is the subject of the Project Documents, including completed work, work in progress to the full insurable amount thereof, and temporary field offices placed at the project Site by the Contractor or District Consultants in conjunction with the Project. The risk of damage to the work
due to the perils covered by the Builder’s Risk/“All Risk” Insurance, as well as any other hazards which might result in damage to the work, is that of CONTRACTOR and the surety, and no claims for such loss or damage shall be recognized by DISTRICT nor will such loss or damage excuse the complete and satisfactory performance of the Agreement by CONTRACTOR.

17.4. **Proof of Insurance.** CONTRACTOR shall submit proof of insurance and shall provide endorsements on the forms provided by the DISTRICT or on forms approved by the DISTRICT. Such insurance shall be issued by admitted surety insurers under the same conditions as required for bonds on the Project.

**ARTICLE 18  WORKERS’ COMPENSATION INSURANCE**

18.1. **General.** In accordance with the provisions of Section 3700 of the Labor Code, the CONTRACTOR and every subcontractor shall be required to secure the payment of compensation to its employees.

18.2. **Full Employee Coverage.** The CONTRACTOR shall provide, during the life of the Agreement, workers' compensation insurance for all of its employees engaged in work under this Agreement, on or at the Site of the Project, and, in case any of its work is sublet, the CONTRACTOR shall require the subcontractor similarly to provide workers' compensation insurance for all the latter’s employees. 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 Agreement, on or at the Site of the Project, is not protected under the workers' compensation statute, the CONTRACTOR shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected before subcontractor commences work. The CONTRACTOR shall file with the DISTRICT certificates of its insurance protecting workers and a thirty (30) day notice shall be provided to DISTRICT before the cancellation or reduction of any policy of CONTRACTOR or subcontractor. CONTRACTOR shall submit proof of insurance and shall provide endorsements on the forms provided by the DISTRICT or on forms approved by the DISTRICT. Such endorsements shall be submitted concurrently with the Project Documents.

**ARTICLE 19  PROOF OF CARRIAGE OF INSURANCE**

19.1. **General.** CONTRACTOR shall not commence work nor shall it allow any subcontractor to commence work under this Agreement until all required insurance certificates and endorsements from admitted surety insurers have been obtained and delivered in duplicate to and approved by DISTRICT. Such insurance shall be issued by admitted surety insurers under the same conditions as required for bonds on the Project. CONTRACTOR shall provide proof of insurance on DISTRICT approved forms without revisions.

19.2. **Certificate Contents.** Certificates and insurance policies shall include the following:

   a. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amount of insurance until notice has been mailed to DISTRICT stating date of cancellation or reduction. Date of cancellation or reduction may not be less than thirty (30) days after date of mailing notice."
b. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

c. Statement that the DISTRICT is an additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the DISTRICT.

19.3. **Failure to Provide.** In case of CONTRACTOR’s failure to provide insurance as required by the Agreement, the DISTRICT may, at DISTRICT’s option, take out and maintain at the expense of the CONTRACTOR, such insurance in the name of CONTRACTOR, or subcontractor, as the DISTRICT may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which are due or to become due to the CONTRACTOR under this Agreement.

**ARTICLE 20  DRAWINGS AND SPECIFICATIONS**

20.1. **General.** Drawings and Specifications are intended to delineate and describe the Project and its component parts to such a degree as will enable skilled and competent contractors to intelligently bid upon the work, and to carry said work to a successful conclusion.

20.2. **Compliance.** 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 Project Documents, said laws, ordinances, rules and regulations shall be considered as a part of the Agreement within the limits specified. The CONTRACTOR shall bear all expenses of correcting work done 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.

20.3. **Clarification.** Questions regarding interpretation of Drawings and Specifications shall be clarified by the ARCHITECT. Before commencing any portion of the work, CONTRACTOR shall carefully examine all Drawings and Specifications and other information given to CONTRACTOR. CONTRACTOR shall immediately notify ARCHITECT and DISTRICT in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications. If CONTRACTOR or its subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any work under the Project Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, CONTRACTOR shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof. In the event ARCHITECT determines that CONTRACTOR’S requests for clarification or interpretation are not justified or do not reflect adequate competent supervision or knowledge by the CONTRACTOR or his/her subcontractors, CONTRACTOR shall be required to pay ARCHITECT’S reasonable and customary fees in processing and responding to such requests. 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.

20.4. **Order of Precedent.** 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 Drawings shall take precedence over smaller scale Drawings as to shape and details of construction. Specifications shall govern as to materials, workmanship, and installation procedures. Drawings and Specifications are intended to be fully cooperative and to agree. If CONTRACTOR observes that Drawings and Specifications are in conflict, CONTRACTOR shall promptly notify the ARCHITECT in writing, and any necessary changes shall be adjusted as provided in the Article entitled "Changes and Extra Work;" provided, however, that the specification calling for the higher quality material or workmanship shall prevail without additional cost to DISTRICT.

20.5. **Standard Meaning.** 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.

20.6. **Trade Term.** It is not the intention of the Agreement to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of 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 incidental and accessory items according to the best practices of the trade.

20.7. **Associated Items.** The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor necessary to achieve full and complete functioning of the material and/or equipment as per best practices of the trade(s) involved, unless specifically noted otherwise.

20.8. **Record Documents.**

a. **Posting.** CONTRACTOR shall maintain Record Drawings and Specifications in a satisfactory record condition by posting, on a weekly basis (or, in the case of building or site mechanical, electrical, plumbing or fire sprinkler systems, as soon thereafter as is reasonable and practical and prior to payment request for associated Work), thoroughly and neatly, all Changes to the Work and the location of the Work, including, without limitation, the location of portions of the Work shown diagrammatically, as occurs in the actual construction of the Work, as well as any as-built conditions noted by other DISTRICT Consultants, including, without limitation, DISTRICT Consultants involved in the commissioning process. Each revision, change and notation shall be coordinated with other revisions, changes and notations and accurately annotated and cross-referenced by the CONTRACTOR.

b. **Property of District.** All Record Drawings and Specifications and other Record Documents shall be deemed the sole property of the DISTRICT and at the earlier of Final Completion or termination of the CONTRACTOR, shall be turned over to DISTRICT.

c. **Final Completion.** CONTRACTOR shall, as a condition to Final Completion and Final Payment, furnish the DISTRICT with one (1) Building Information Model (BIM) of the Record Drawings provided according to the requirements identified in the BIM standards and one (1) annotated hard copy and one (1) computer disk (using software format acceptable to the DISTRICT) of the Record Specifications. All electronic versions shall conform to the requirements of the BIM Standards. Each page of such Record Drawings and the cover page of such Record Specifications shall prominently bear the words “Record Documents” and the
CONTRACTOR’S approval by manual signature certifying that, to the best of his/her knowledge, they are true and accurate and that the indications thereon represent the actual condition of the Work.

d. Condition of Payment. Compliance by CONTRACTOR with the requirements of this Record Documents paragraph shall be deemed a condition to CONTRACTOR’S right to payment upon its Applications for Payment.

e. Drawings Furnished for Posting. DISTRICT will furnish to CONTRACTOR one (1) complete set of drawings for posting of changes. Additional copies shall be provided upon payment by CONTRACTOR. During the construction period, CONTRACTOR shall maintain the set of drawings in a satisfactory record condition, and shall thoroughly and neatly post, as they occur, all additions, deletions, corrections and/or revisions in the actual construction of the Project. The Record Drawings must be posted monthly and be current prior to each submission of each certificate of payment.

**ARTICLE 21  OWNERSHIP OF DRAWINGS**

21.1. All Plans, Drawings, designs, Specifications, and other incidental architectural and engineering work or materials and other Project Documents and copies thereof furnished by DISTRICT are DISTRICT’s property. They are not to be used in other work and are to be returned to DISTRICT on request at completion of work, and may be used by DISTRICT as it may require, without any additional costs to DISTRICT.

**ARTICLE 22  DETAIL DRAWINGS AND INSTRUCTIONS**

22.1. Additional Information. In case of ambiguity, conflict, or lack of information, ARCHITECT shall furnish additional instructions by means of Drawings or otherwise, necessary for proper execution of work. All such drawings and instructions shall be consistent with Project Documents, true developments thereof, and reasonably inferable therefrom. Such additional instructions shall be furnished with reasonable promptness, provided that CONTRACTOR informs the ARCHITECT of the relationship of the request to the critical path of construction.

a. Work shall be executed in conformity therewith and CONTRACTOR shall do no work without proper Drawings and instructions.

b. The ARCHITECT will furnish necessary additional details to more fully explain the work, which details shall be considered as part of the Project Documents.

22.2. Increased Detail. Should any details be more elaborate, in the opinion of the CONTRACTOR, than scale drawings and Specifications warrant, CONTRACTOR shall give written notice thereof to the ARCHITECT within five (5) days of the receipt of same. In case no notice is given to the ARCHITECT within five (5) days, it will be assumed the details are reasonable development of the scale drawings. In case notice is given, then it will be considered, and if found justified, the ARCHITECT will either modify the Drawings or shall recommend to DISTRICT a change order for the Extra Work involved.

22.3. Proper Performance. All parts of the described and shown construction shall be of the best quality of their respective kinds and the CONTRACTOR is hereby advised to use all diligence to become fully
involved as to the required construction and finish, and in no case to proceed with the different parts of the work without obtaining first from the ARCHITECT such directions and/or drawings as may be necessary for the proper performance of the work.

22.4. **Improper Work.** If it is found at any time, before or after completion of the work, that the CONTRACTOR has varied from the Drawings and/or Specifications, in materials, quality, form or finish, or in the amount or value of the materials and labor used, the ARCHITECT shall make a recommendation: (1) that all such improper work should be removed, remade and replaced, and all work disturbed by these changes be made good at the CONTRACTOR's expense; or (2) that the DISTRICT deduct from any amount due CONTRACTOR, the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications. ARCHITECT shall determine such difference in value. The DISTRICT, at its option, may pursue either recommendation made by the ARCHITECT.

**ARTICLE 23  SUBMITTALS AND SHOP DRAWINGS**

23.1. **Not Contract Documents.** Shop Drawings, Product Data, Samples and other Submittals are not Contract Documents. Their purpose is to demonstrate for those portions of the Work for which Submittals are required the way the CONTRACTOR proposes to conform to the Work to the designs and other information in the Contract Documents.

23.2. **Submittal Review.** All Shop Drawings, Product Data, Samples and other Submittals required by the Contract Documents shall be submitted to DISTRICT for its review, with a copy to College Director of Facilities and to such of DISTRICT'S Consultants or Separate Contractors as DISTRICT may direct in writing.

a. **Transmittal Form.** All Submittals shall be accompanied by an accurately completed transmittal in the form required by District. With respect to Submittals of documents, the transmittal shall give a list of the numbers of the sheets submitted. All sheets shall be marked with the name of the Project and the name of CONTRACTOR, shall be numbered consecutively and referenced to the sheets or paragraphs of the Drawings and Specifications affected. A separate transmittal form shall be used for each specific item or class of material or equipment for which a Submittal is required. Transmission of Submittals of various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency dictates review of the group or package as a whole. Any Submittal not accompanied by such transmittal form, or where all applicable items on the form are not completed, may be returned for re-submittal without review.

b. **Similar Work Together.** Except where the preparation of a Submittal is dependent upon the approval of a prior Submittal, all Submittals pertaining to the same class or portion of the Work shall be submitted simultaneously.

c. **Appropriate Back up.** Submittals shall consist of the appropriate combination of catalog sheets, material lists, manufacturer’s brochures, technical bulletins, specifications, diagrams and product samples, necessary to describe a system, product or item. Submittals shall show in detail the size, sections and dimensions of all members, the arrangement and
construction of all connections, joints and other pertinent details, and all holes, straps and other fittings for attaching the Work. When required by the Contract Documents, engineering computations shall be submitted.

d. Timely Submittal. CONTRACTOR shall in all cases submit its Submittals within a time frame sufficiently early to allow review of the same by the ARCHITECT, DISTRICT and DISTRICT Consultants without causing Delay to construction progress. CONTRACTOR will be responsible to pay, at CONTRACTOR’S own Expense, additional services fees and costs incurred by DISTRICT in order to expedite review of Submittals which are not submitted in a timely fashion.

e. Checked and Coordinated. The CONTRACTOR’S submission of Submittals to DISTRICT constitutes a representation that the CONTRACTOR has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents and with the Submittals for related Work. CONTRACTOR’S review and approval of shop drawings shall include the following stamp: "The CONTRACTOR has reviewed and approved not only the field dimensions but the construction criteria and has also made written notation regarding any information in the shop drawings that does not conform to the Project Documents. This shop drawing has been coordinated with all other shop drawings received to date by CONTRACTOR and this duty of coordination has not been delegated to subcontractors, material suppliers, the ARCHITECT, or the engineers on this project. Signature of CONTRACTOR"

f. Evidence of Approval. Submittals without evidence thereon of the CONTRACTOR’S approval shall be returned, without further consideration, for resubmission in accordance with these requirements.

g. Information Submittal. Informational Submittals (i.e., Submittals upon which no responsive action is expected) may be required and if so shall be limited to those Submittals so identified in the Contract Documents. Submittals made by CONTRACTOR which are not required by the Contract Documents may be returned without action.

h. ARCHITECT Review. The ARCHITECT shall review and submit CONTRACTOR’S Shop Drawings, Product Data, Samples and other Submittals to the DISTRICT, in accordance with the latest Submittal Schedule accepted by the DISTRICT. If prints of the Shop Drawings, Product Data, Samples and other Submittals are returned to the CONTRACTOR marked "NO EXCEPTIONS TAKEN," formal revision of said drawing will not be required. If prints of the drawing are returned to the CONTRACTOR marked "MAKE CORRECTIONS NOTED," formal resubmittal of said drawings will not be required. If prints of the drawing are returned to the CONTRACTOR marked "REVISE AND RESUBMIT," the CONTRACTOR shall revise said drawing and shall resubmit six (6) copies of the revised drawing to the ARCHITECT. If prints of the drawing are returned to the CONTRACTOR marked "REJECTED RESUBMIT," the CONTRACTOR shall resubmit six (6) new copies of the drawing to the ARCHITECT.
i. **Attention to Revisions.** CONTRACTOR shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or other Submittals, to revisions other than those requested by ARCHITECT or DISTRICT on previous Submittals.

23.3. **Deviations.** CONTRACTOR shall, notwithstanding any review or approval thereof by ARCHITECT and DISTRICT be solely responsible for the content of all Submittals. Without limitation to the foregoing, deviations in Submittals from requirements of the Contract Documents shall remain the sole responsibility of CONTRACTOR unless CONTRACTOR has specifically informed ARCHITECT and DISTRICT in writing, using Substitution Form, of such deviation at the time of submission of the Submittal and DISTRICT has given specific written approval thereof.

23.4. **No Basis for Adjustment.** Revisions indicated on Shop Drawings, Product Data, Samples or other Submittals shall not be considered as a basis for a Contract Adjustment.

23.5. **Submittal Approval before Work.** CONTRACTOR shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or other Submittals until the respective Submittal has been returned by the ARCHITECT and DISTRICT with an indication that it has been reviewed and that the Work addressed by the Submittal may proceed. Such Work shall be in accordance with such Submittals, unless such Submittal indicates that there are corrections to be made. If corrections are indicated to be made then the Work shall be in accordance with the resubmitted and corrected Submittal that is reviewed and returned to the CONTRACTOR by the ARCHITECT and DISTRICT. Fabricating dimensions, quantities of material, applicable code requirements, and other contract requirements shall be the CONTRACTOR’S responsibility particularly where piping, machinery, and equipment and the required arrangements and clearances are involved.

23.6. **Deferred Approval.** CONTRACTOR shall submit its related DSA Deferred Approval Submittals to DSA through the ARCHITECT with an original, manual signature of the professional engineer registered in the State of California responsible for preparing such Submittal. Calculations of a structural nature must be approved by the Division of State ARCHITECT. Shop drawings shall be submitted at a time sufficiently early to allow review of same by the Division of State Architect (DSA) if required, and the ARCHITECT, and to accommodate the rate of construction progress required under the Project Documents. CONTRACTOR will be required to pay ARCHITECT’S reasonable and customary fees in order to expedite review of shop drawings which are not submitted in a timely fashion.

23.7. **No Delay Claim.** The CONTRACTOR shall have no claim for damages or extension of time due to any delay resulting from the CONTRACTOR having to make the required revisions to shop drawings unless review by the ARCHITECT of said drawings is delayed beyond the time provided hereinbefore and the CONTRACTOR can establish that the ARCHITECT’S delay in review actually resulted in a delay in the CONTRACTOR construction schedule. CONTRACTOR shall not be entitled to any claim for damages resulting from DSA review extending beyond fifteen (15) calendar days after submittal. However, DISTRICT may consider an extension of time due to any delay caused by DSA review.

23.8. **Submittal Process.** CONTRACTOR shall check and verify all field measurements and shall submit to ARCHITECT, with sufficient advance time, six (6) copies, checked and approved by CONTRACTOR, of all shop or setting list drawings, schedules, and materials list required for the work of various trades. ARCHITECT shall review such drawings, schedules and materials list only for conformance with
design concept of Project and compliance with information given in Project Documents, and return as approved or disapproved with guidance as to required corrections within fourteen (14) calendar days (and more than 14 calendar days for complex reviews). CONTRACTOR shall make any corrections required by ARCHITECT, file three (3) corrected copies with ARCHITECT, and furnish such other copies as may be needed for construction within fourteen (14) calendar days. ARCHITECT’S approval of such drawings, schedules, or materials list shall not relieve CONTRACTOR from responsibility for deviations unless CONTRACTOR has in writing called ARCHITECT’S attention to such deviations at time of submission and secured ARCHITECT’S written approval, nor shall it relieve CONTRACTOR from responsibility for errors in shop drawings or schedules.

23.9. **Complete and Conforming.** All submittals of shop drawings, catalog cuts, data sheets, schedules and material lists shall be complete and shall conform to contract Drawings and Specifications.

23.10. **Direct Communication.** The CONTRACTOR may authorize a material or equipment supplier to deal directly with the ARCHITECT with regard to shop drawings, however, ultimate responsibility for the accuracy and completeness of the information contained in the submittal shall remain with the CONTRACTOR.

23.11. **Complete by Second Submittal.** The CONTRACTOR shall make a complete and acceptable submittal to the ARCHITECT by the second submission of drawings. The DISTRICT shall withhold funds due the CONTRACTOR to cover additional costs of the ARCHITECT’S review beyond the second submission and any other costs incurred by DISTRICT.

**ARTICLE 24  LAYOUT AND FIELD ENGINEERING**

24.1. All field engineering if required for laying out of work and establishing grades for earthwork operations shall be furnished by CONTRACTOR at its expense. Such work shall be done by a qualified civil engineer approved by the DISTRICT.

**ARTICLE 25  SOILS INVESTIGATION REPORT**

25.1. **General.** When a soils investigation report has been obtained from test holes at the Site, such report is available for the CONTRACTOR’S use for work under this Agreement. Such report shall not be part of the Agreement. Any information obtained from such report or any information given on the project documents as to surface and subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed and does not form a part of the Agreement. CONTRACTOR is required to make a visual examination of Site and must make whatever test CONTRACTOR deems appropriate to determine surface and subsurface soil conditions. If, during the course of work under this Agreement, CONTRACTOR encounters subsurface or latent conditions which differ materially from those indicated in the soils investigation report, then CONTRACTOR shall notify the DISTRICT within five (5) working days of discovery of the condition.

25.2. **No Warranty.** **WARNING:** DISTRICT does not warrant the soils at the project Site nor any information contained in any soils report. Soils investigation report is provided for CONTRACTOR’S information only. CONTRACTOR must conduct an independent investigation of the project Site and the soils conditions of the Site. DISTRICT does not warrant the soils conditions of the Site and CONTRACTOR
is fully responsible to ascertain Site conditions for the purposes of determining construction means and methods prior to commencing construction.

a. CONTRACTOR agrees that no claim against DISTRICT will be made by CONTRACTOR for damages and hereby waives any rights to damages in the event that during progress of work CONTRACTOR encounters subsurface or latent conditions at the worksite materially different from those shown on project documents.

ARTICLE 26 TESTS AND INSPECTIONS

26.1. **Code Compliance.** Tests and inspections will comply with California Code of Regulations and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction over the Project.

26.2. **General.** One or more Inspectors of Record, including special inspectors as required, will be employed by DISTRICT and will be assigned to the Work. The fees of Inspectors of Record shall be directly paid for by DISTRICT. No work shall be carried on except under the inspection, and with the knowledge, of the appropriate inspector(s) of record and CONTRACTOR shall be responsible, at CONTRACTOR’S Own Expense, to remove and replace any Work performed without such inspection by the appropriate Inspector of Record.

26.3. **Coordination.** CONTRACTOR shall schedule, arrange, and coordinate its activities with the activities of the DISTRICT, Inspectors of Record, Design Consultant, DISTRICT Consultants and others designated by DISTRICT to inspect or observe the Work. CONTRACTOR understands and agrees that the Inspector of Record for the Project may also serve concurrently as inspector for other DISTRICT projects and may not therefore be available on site during the entire work day. It shall be the responsibility of CONTRACTOR to notify the Inspector not less than forty-eight (48) hours in advance of materials and equipment deliveries and required inspections. When, in order to comply with the intent of the Contract Documents, inspection or observation must be made at the plant or mill of the manufacturer or fabricator of material or equipment, CONTRACTOR shall notify the DISTRICT, as well as any other persons identified by DISTRICT as assigned by it to inspect or observe the Work, a sufficient length of time and no less than seventy two (72) hours in advance to allow for arrangements to be made for such inspection or observation.

26.4. **Uncovering of Work.** DISTRICT or an Inspector or Record shall have the right to request that any portion of the Work be uncovered by CONTRACTOR for inspection. Except as otherwise provided, if such Work is found to be in accordance with the Contract Documents, then all of the additional costs incurred in uncovering, replacing and re-covering the Work shall constitute grounds for CONTRACTOR, upon proper notice, to receive a contract adjustment for compensable change and if such uncovering, replacing and re-covering of the Work causes a delay, such delay shall constitute grounds for CONTRACTOR, upon proper notice, to receive a contract adjustment for compensable delay. If such Work is not in accordance with the Contract Documents, then such costs of uncovering, replacing and re-covering shall be paid for by CONTRACTOR at CONTRACTOR’S Own Expense and any resulting delay shall be considered an unexcused delay.

26.5. **Off-Hours Inspections.** CONTRACTOR shall request approval by DISTRICT before arranging any inspections either: (1) before 6:00 am or after 6:00 pm on Monday through Friday, or (2) on any
Saturday, Sunday, holiday or any other time when Work is not usually in progress. Such request shall be delivered to DISTRICT at least two (2) working days in advance of the inspection being performed. Approval or disapproval of such request is in the sole and absolute discretion of DISTRICT, which approval will be communicated to CONTRACTOR by the DISTRICT. Except where such off-hours inspections are due to a breach by DISTRICT of an obligation under the Contract Documents, the additional cost (over and above that which would be required for inspections during regular business hours) to DISTRICT of the inspection shall be paid for by CONTRACTOR at CONTRACTOR’S Own Expense.

26.6. **Off Site Inspections.** CONTRACTOR shall be responsible for any additional inspection cost due to fabrication of materials being performed outside of Orange County.

26.7. **Access to the Work.** CONTRACTOR shall make available for use by DISTRICT, Inspectors of Record, Design Consultant, DISTRICT Consultants and others assigned to inspect or observe the Work, any equipment (wheelbarrow, shovel, ladder, man-lift, etc.) that is available or in use on Site, and is required to assist in such inspections or observations.

26.8. **Right to Stop Work.** Inspectors of Record shall, only if and to the extent permitted by applicable laws, have the authority, but not the obligation, to stop the Work whenever provisions of Contract Documents are not being complied with, or the conduct of the Work poses a probable risk of harm to persons or property.

26.9. **No DISTRICT Duty.** No authority of the DISTRICT, Inspectors of Record, Design Consultant, DISTRICT Consultants or others designated by DISTRICT to inspect the Work that is conferred by the Contract Documents nor any decision made by any of them in good faith either to exercise or not exercise such authority, nor any recommendation by any of them, shall give rise to a duty or responsibility on the part of any of them to CONTRACTOR or to the Subcontractors of any Tier.

26.10. **CONTRACTOR Responsibility.** Inspections or observations by the DISTRICT, Inspectors of Record, DISTRICT Consultants or others shall not in any way relieve CONTRACTOR from its sole responsibility for full compliance with all of the terms and conditions of the Contract Documents, nor be construed to lessen, to any degree, CONTRACTOR’S responsibility for providing efficient and capable superintendence as required herein or for incorporating into the Work only those items of the Work that conform to the Contract Documents. Welding procedures shall be purchased solely through American Welding Society (AWS).

26.11. **Reimbursement to DISTRICT.** Without limitation to any other provisions of the Contract Documents, CONTRACTOR shall reimburse the DISTRICT at CONTRACTOR’S Own Expense, or DISTRICT shall have the right, at its option, to withhold from payments due to CONTRACTOR, costs of inspections, observations or testing and other losses that are incurred for any of the following reasons: (1) CONTRACTOR has failed to execute the Work in accordance with the Contract Documents; (2) materials or equipment have been substituted by CONTRACTOR without prior approval by the DISTRICT; (3) defective work; or (4) to conduct load testing of certain portions of the structure that have not fully met the requirements of the Contract Documents.
27.1. **Protection.** CONTRACTOR shall provide adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation, which conform to applicable safety standards.

27.2. **Greater than Five Feet.** If this Agreement involves the excavation of any trench or trenches five (5) feet or more in depth, and the Project cost is in excess of $25,000, the CONTRACTOR shall, in advance of excavation, submit to the DISTRICT for acceptance or to whomever DISTRICT designates which may include a registered civil or structural engineer employed by the DISTRICT to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the CONTRACTOR, and all costs therefore shall be included in the price named in the Agreement for completion of the work as set forth in the Project Documents. In no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by CAL-Osha and a CAL-Osha permit for such plan delivered to the DISTRICT. (Labor Code Section 6500 and 6705; Health and Safety Code Section 17922.5)

27.3. **Greater than Four Feet.** If this Agreement involves the digging of trenches or excavations that extend deeper than four feet below the surface, the following shall apply pursuant to Public Contract Code section 7104:

   a. The CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the DISTRICT, in writing, of any:
      1. Material that the CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
      2. Subsurface or latent physical conditions at the Site different from those indicated.
      3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

   b. **Material Difference.** The DISTRICT shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR’S cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Project Documents. In the event a dispute arises between the DISTRICT and the CONTRACTOR, the CONTRACTOR shall not be excused from any scheduled completion date provided for by the Project Documents, but shall proceed with all the work to be performed under the Project Documents. The CONTRACTOR shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.
ARTICLE 28 DOCUMENTS ON WORK

28.1. CONTRACTOR shall keep on the job Site at all times one legible copy of all Project Documents, including addenda and change orders, and all approved Drawings, Plans, schedules and Specifications. Said Documents shall be kept in good order and available to ARCHITECT, ARCHITECT’S representatives, and all authorities having jurisdiction. CONTRACTOR shall be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project.

ARTICLE 29 STATE AUDIT

29.1. Pursuant to and in accordance with the provisions of Government Code Section 8546.7, or any amendments thereto, all books, records and files of the DISTRICT, the CONTRACTOR, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars ($10,000.00), including, but not limited to, the costs of administration of the Agreement, shall be subject to the examination and audit of the State Auditor at the request of the DISTRICT or as part of any audit of the DISTRICT for a period of three (3) years after final payment is made under this Agreement.

ARTICLE 30 SUBSTITUTIONS

30.1. Prior to Bid Opening. Should the bidder wish to request prior to bid opening, any substitution for the materials, process, service or equipment specified, the bidder shall submit a written request at least ten (10) working days before the bid opening date and hour. If the substituted item is acceptable, the DISTRICT will approve it in an Addendum issued to all bidders of record. Requests received less than ten (10) working days prior to bid opening will not be considered. DISTRICT shall only consider substitution requests from the bidder submitting the bid for the project.

30.2. After Bid Opening and Prior to Award of Contract. If the bidder clearly indicates in its bid that it is proposing to use an “equal” product, the brand name or trade name, if any, of a proposed substitute item shall be inserted in the spaces provided on the SUBSTITUTION REQUEST FORM. Any submittal provided after the aforementioned deadline will not be considered. If the bidder fails to indicate an “equal” product, its bid shall be considered as offering the material, process, service or equipment referred to by the brand name or trade name specified. It is expressly understood and agreed to by the bidder that the DISTRICT reserves the right to reject any such proposed substituted item. It is further expressly understood and agreed by bidder that in the event the DISTRICT rejects a proposed “equal” item, the bidder will then supply the material; process, service or equipment designated by brand name or trade name or a substitute therefore which meets with the approval of the DISTRICT.

30.3. The Substitution Request Form. Requests for substitutions of products, materials, or processes in place of a specified item must in writing on the DISTRICT’S Substitution Request Form (“Request Form”) at the time of submitting bids to the District.

a. The SUBSTITUTION 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 the 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.

b. In completing the SUBSTITUTION REQUEST FORM, the bidder must state, with respect to each requested substitution, whether the bidder will agree to provide the Specified Item in the event that the District denies the bidder’s request for such requested substitution. In the event that the bidder has agreed in the Request Form to provide the Specified Item and the District denies the bidder’s requested substitution for a Specified Item, the bidder shall provide the Specified Item without any additional cost or charge to the District.

30.4. “Equal Substitution.” With respect to all proposed substitutions of “equal” items, the bidder shall submit all pertinent and appropriate data substantiating its request for substitutions within fifteen (15) days prior to the Award of Contract. DISTRICT shall only consider substitution requests from the bidder submitting the bid for the Project. The DISTRICT is not responsible for locating or securing any information which is not included in such substantiating data. The burden of proof as to the quality or suitability of proposed substituted items shall be borne by the bidder. The DISTRICT shall be the sole judge as to the quality and suitability of proposed substituted items, and decisions of the DISTRICT shall be final and conclusive. Unless extended by the mutual agreement of the parties, the DISTRICT shall notify the successful bidder of the decision concerning the proposed substitution of “equal” items prior to the Award of Contract. Also such decisions by the DISTRICT shall be in writing, and no proposed substituted item shall be deemed approved unless the DISTRICT has so indicated in writing. These time limitations shall be complied with strictly, and in no case will an extension of time for completion be granted because of the bidder’s failure to request the substitution of an item at the times and in the manner set forth herein.

30.5. “Or Equal.” Whenever in Specifications any materials, process, service or equipment is indicated or specified by brand name, trade name, proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of material, process, service or equipment desired and shall be deemed to be followed by the words "or equal," and CONTRACTOR may, unless otherwise stated, offer any material, process, service, or equipment which shall be substantially equal or better in every respect to that so indicated or specified subject to DISTRICT or ARCHITECT approval.

30.6. Burden of Proof. If material, process, service, or equipment offered by CONTRACTOR is not, in opinion of ARCHITECT, or DISTRICT, substantially equal or better in every respect to that specified, then CONTRACTOR shall furnish the material, process, service, or equipment specified. Burden of proof as to equality of any material, process, service, or equipment shall rest with CONTRACTOR. Provision authorizing submission of "or equal" substantiating data shall not in any way authorize an extension of time for performance of this Agreement.
30.7. **Defective “Equal”**. In the event CONTRACTOR furnishes material, process, service or equipment other than what was specified by the DISTRICT and which has been accepted by the DISTRICT and which later is defective, then CONTRACTOR at its sole cost and expense shall furnish the DISTRICT specified material, process, service or equipment or fully replace with new the defective material process, service or equipment at DISTRICT’s discretion.

30.8. **Cost of Approved Alternate**. In the event CONTRACTOR furnishes material, process, service, or equipment more expensive than that specified, difference in cost of such material, process, service, or equipment so furnished shall be borne by CONTRACTOR. Any engineering, design fees, or approval agencies’ fees required to make adjustments in material or work of all trades directly or indirectly affected by the approved substituted items shall be borne entirely by CONTRACTOR. Any difference in cost between an approved substitution which is lower in cost than the originally specified item shall be refunded or credited by CONTRACTOR to DISTRICT.

30.9. **Preferred material**. Price, fitness and quality being equal with regard to supplies, the District may prefer supplies grown, manufactured, or produced in California and next prefer supplies partially manufactured grown, or produced in California provided the bids of said suppliers or the prices quoted by them do not exceed by more than 5% of the lowest bids/prices quoted by out of state suppliers, the major portion of the manufacture of the supplies is not done outside of California and the public good will be served thereby. (Government Code section 4330-4334).

**ARTICLE 31 SAMPLES**

31.1. **General**. CONTRACTOR shall furnish for approval, within thirty-five (35) calendar days following Award of Contract, all samples as required in Specifications together with catalogs and supporting data required by ARCHITECT. This provision shall not authorize any extension of time for performance of the work. ARCHITECT shall review such samples, as to conformance with design concept of work and for compliance with information given in Project Documents and approve or disapprove same within ten (10) working days from receipt of same.

31.2. **ASTM Testing**. 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.

31.3. **Test Approval before Installation**. Samples shall, upon demand of ARCHITECT or DISTRICT, be submitted for tests or examinations and considered before incorporation of same into the work. 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 the CONTRACTOR.

**ARTICLE 32 PROGRESS SCHEDULE**

32.1. **General**. Within five (5) calendar days after Board approval of contract, CONTRACTOR shall submit a preliminary schedule that describes the work sequence planned in the first 30 days of construction. Within 21 calendar days following Board approval of contract, CONTRACTOR shall prepare and submit for DISTRICT’s acceptance the Initial Construction Schedule for the value reporting, planning and scheduling, of all work required under the Project Documents. The schedule will separately
identify those milestones or events that must be completed before other portions of the work can be accomplished.

32.2. **Format.** The schedule shall be in the form of a critical path progress schedule that shows, in graphic form, a plan for performance of the Work within the Contract Time. It shall indicate the beginning and completion dates of all phases of construction, using Primavera P3 or later version, as a time-scaled bar chart showing:

a. continuous flow from left to right and activities and milestones that are critical to Completion of the Work;

b. identification of “float”, techniques or methods designed to suppress depiction of available float are strictly prohibited;

c. a clearly highlighted critical path, no more than ten percent (10%) of the activities shall be shown as critical;

d. Durations and specific calendar days shall be clearly and legibly shown for the early and late start and finish of each activity; and

e. With the exception of DISTRICT review periods and governmental authority review periods, any activity having a duration of more than fifteen (15) Days will be segmented into fifteen (15) Day increments;

f. The weighted cost value expressed as a percentage of the total cost of the Work for each activity;

g. The final labor force curves by trade;

h. Anticipated duration for shop fabrication requiring special inspections;

i. The anticipated purchase and delivery of major materials and equipment (procurement schedule); and

j. The District’s occupancy requirements with an item with duration for DISTRICT furnished Furniture, Fixture and Equipment procurement and installation.

32.3. **Software Use.** Alternate software may be not be used unless DISTRICT provides written approval in advance of use.

32.4. **Submittal Review.** The scheduling is necessary for the DISTRICT’s adequate monitoring of the progress of the Work and shall be prepared in accordance with the time frame described in the Agreement. The DISTRICT may reject schedule and require modification to it if, in the opinion of the ARCHITECT or DISTRICT, adherence to the progress schedule will cause the Work not to be completed in accordance with the Agreement. CONTRACTOR shall adhere to any such modifications required by the DISTRICT.

32.5. **Lean Scheduling.** CONTRACTOR will participate in no less than six Lean Scheduling exercises prior to each new grouping of major trades coming on Site. CONTRACTOR will exchange scheduling information with subcontractors and suppliers. CONTRACTOR will order work, equipment and materials with sufficient lead time to avoid interruption of the work.
32.6. **Monthly Schedule.** The CONTRACTOR shall submit to DISTRICT a monthly schedule to reflect the actual sequence of the work which shall be totally separate and apart from the original progress schedule.

32.7. **Revised Schedule due to Completion Jeopardy.** The CONTRACTOR shall also, if requested by the ARCHITECT or DISTRICT, provide revised schedules within ten (10) calendar days if, at any time, the ARCHITECT or DISTRICT, consider the completion date to be in jeopardy. The revised schedule shall be designed to show how the CONTRACTOR intends to accomplish the work to meet the original completion date. The form and method employed by the CONTRACTOR shall be the same as for the original progress schedule. The CONTRACTOR shall modify any portions of the schedule that become infeasible because of "activities behind schedule" or for any other valid reason. CONTRACTOR will provide documents and justification for any schedule changes. An activity that cannot be completed by its original completion date shall be deemed to be behind schedule.

32.8. **Revised Schedule due to Extension Request.** CONTRACTOR shall submit a revised schedule within ten (10) consecutive calendar days of CONTRACTOR’S request for any extension of time. Failure to submit such schedule will result in CONTRACTOR waiving his/her right to obtain any extension of time.

32.9. **Float Ownership.** It is agreed that the DISTRICT owns the “float” on this Project. If CONTRACTOR submits a revised schedule showing an earlier completion date for the Project, DISTRICT’S acceptance of this revised schedule shall not entitle CONTRACTOR to any delay claim or disruption damages or any other damages due to any such revised schedule. Nothing provided here in shall be construed as a direct, indirect or implicit acceleration order to the CONTRACTOR

32.10. **Condition of Payment.** Compliance by CONTRACTOR with the requirements of this Article and the other provisions of the Contract Documents pertaining to preparing, submitting, revising and updating the schedule is a condition to DISTRICT’S obligation to make payment to CONTRACTOR. Recognizing that scheduling is a continuing, cumulative and recurring obligation, failure by DISTRICT to assert a right to withhold payment under this Article due to a noncompliance by CONTRACTOR with its schedule obligations shall not waive or diminish the DISTRICT’S right to withhold, or the DISTRICT’S right to disapprove of, future payments on account of such noncompliance or any other past or future noncompliance of the same or similar nature.

32.11. **Look Ahead.** In addition to the requirement to update the baseline schedule, CONTRACTOR is responsible to provide a four week rolling schedule at each progress meeting. This Schedule will include activities that are 1 week behind the Data Date and 3 weeks ahead of the Data Date. The Data Date shall be the date of the progress meeting. Schedule shall include information for all trades on-Site. Schedule will identify any work that is proposed outside the regular working hours.

32.12. **Digger Report.** CONTRACTOR will provide a digger report (version 3.0 or later) with each schedule submittal.

**ARTICLE 33  TIME ALLOWANCES**

33.1. **Notice to Proceed.** DISTRICT will serve a Notice to Proceed upon Contractor by hand delivery, email or delivery to Contractor at legal address.
33.2. **Start Date.** Start date for Contract Times shall be on the date indicated in the Notice to Proceed. If no date is indicated, then the start date for contract time shall be the 5th calendar day from date that Contractor receives DISTRICT’s written Notice to Proceed, unless the Notice to Proceed is served by mail only, then the Start Date under the Contract shall be the tenth (10th) calendar day following the date of mailing. The Contractor shall commence work on such day, and shall prosecute the Work diligently to completion thereafter. No work shall commence before contract bonds and insurance certificates have been filed with the DISTRICT and the contract has been signed by the DISTRICT.

33.3. **Notice of Delay.** Notice shall constitute application for extension of time only if notice requests extension and sets forth the impact of the delay on the critical path and CONTRACTOR'S estimate of additional time required together with full recital of causes of unavoidable delays relied upon.

   a. With respect to any matter that may involve or require an adjustment extending the Contract Time, CONTRACTOR shall, within fourteen (14) Days after receipt by DISTRICT of a notice of delay, submit to DISTRICT a written Request for Extension.

   b. No time extensions shall be granted for delays for which CONTRACTOR fails to give timely notice and CONTRACTOR hereby waives any and all damages for delay for which timely notice is not given.

   c. CONTRACTOR recognizes and acknowledges that timely submission of a formal notice of delay and a formal request for extension, whether or not the circumstances of a delay may be known to DISTRICT or available to DISTRICT through other means, are not mere formalities but are of crucial importance to the ability of DISTRICT to promptly identify, prioritize, evaluate and mitigate the potential effects of delay. Any forms of informal notice, whether verbal or written (including, without limitation, statements at regular job meetings or entries in monthly reports, daily logs, job meeting minutes, updated Design-Build Schedules or look-ahead schedules), that do not strictly comply with the formal requirements herein, shall accordingly be deemed insufficient to satisfy the notice requirements.

   d. Any request for extension of time shall be accompanied by the claimant’s written statement that the adjustment claimed is the entire adjustment to which the claimant is entitled as a result of the occurrence of said event. No claim for an adjustment in the contract times will be valid and such claim will be waived if not submitted in accordance with the requirements of this paragraph.

   e. The CONTRACTOR'S failure to perform in accordance with the construction schedule shall not be excused because the CONTRACTOR has submitted time extension requests, unless and until such requests are approved by DISTRICT.

33.4. **Change of Contract Times.** The contract times may only be changed by change order or written amendment and time is of this essence in this Agreement.

   a. Adjustments. The Contract Times will be adjusted due to

   1. changes in the Work ordered by DISTRICT;
2. acts or neglect by DISTRICT’s consultants, acts or neglect of utility districts, acts or neglect of other contractors performing other Work, provided CONTRACTOR has fully and completely performed its responsibilities under the Contract Documents, including but not limited to, its cooperation and coordination responsibilities required by the Contract Documents;

3. Fires, floods, abnormal weather conditions, earthquakes, civil disturbances, or Acts of God, provided damage resulting from same is not the result of CONTRACTOR’S failure to properly protect the Work as required by the Contract Documents. Notwithstanding the foregoing, the contract times shall not be extended unless CONTRACTOR has actually been prevented from completing any part of the Work within the contract time due to delay which is (i) beyond the control of CONTRACTOR and (ii) due to reasons for which CONTRACTOR is not responsible and (iii) a claim for delay is made as provided for herein. Delays attributable to and within the control of a subcontractor, or its subcontractors, or supplier shall be deemed to be delays within the control of CONTRACTOR.

b. Weather. The Contract Times will be adjusted due to Weather. CONTRACTOR shall have no right to an adjustment in the time of completion due to weather conditions which are normal for the locality of the Site.

1. The time period for completion of the project has been determined with consideration given to the average climatic range prevailing in the locality of the Site.

2. Delays due to adverse weather conditions will not be allowed for weather conditions which do not directly impact the performance of the critical path. Whenever the CONTRACTOR has undertaken an exterior critical path activity which is directly impacted by adverse weather conditions, the CONTRACTOR shall immediately notify the DISTRICT of the potential delay to such activity. The DISTRICT shall inspect the Site, meet with the CONTRACTOR and confirm that the exterior critical path activity is impacted and grant an extension of the Contract Times sufficient to allow the CONTRACTOR to perform the impacted activity.

c. Non-compensable Delay. Where CONTRACTOR is prevented from completing any part of the Work within the contract due to delay beyond the control of both DISTRICT and CONTRACTOR, an extension of contract times in an amount equal to the time loss due to such delay shall be the CONTRACTOR’S sole and exclusive remedy for such delay. DISTRICT shall not be liable to CONTRACTOR, any subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, Acts of God or acts or neglect by utility districts.

d. Concurrent Delay. The Contract Times will be adjusted due to Concurrent Delay. If delays acceptable for evaluation occur concurrently, the maximum extension of the Contract time shall be the number of days from the commencement of the first delay to the cessation of
the delay which ends last. If an inexcusable delay occurs concurrently with acceptable delays for evaluation, the maximum extension of the Contract Time shall be the number of days, if any, by which the duration of a delay exceeds the inexcusable delay. The duration of concurrence is non-compensable.

e. Expiration of Contract. Delay in completion of the Work beyond the expiration of the contract time resulting from causes other than those listed as acceptable for evaluation are considered inexcusable delays and shall not entitle the CONTRACTOR to an extension of the contract time or an adjustment of the Contract amount.

f. Calculating Changes Involving Time. Contract Adjustments to the contract sum or contract time that are based on an extension of the contract time for compensable delay or a shortening of the contract time due to deleted Work shall be calculated as stated below, with no allowable markup thereon for CONTRACTOR. Contract Adjustments that are based on an acceleration in performance of the Work that is ordered by DISTRICT in writing to overcome a compensable delay for which the CONTRACTOR is entitled to an extension of the contract time that has been properly requested and is not granted by DISTRICT due to a DISTRICT decision to accelerate rather than extend the contract time shall be calculated as stated below:

1. Extensions. Provided that CONTRACTOR has complied with the contract provisions (including, without limitation, the requirements pertaining to timely delivery of a Notice of Delay and Request for Extension), if, as a result of excusable delay or compensable delay to the actual, as-built critical path of activities leading to achievement Completion, CONTRACTOR is unable to achieve Completion of the Work within the contract time Completion, then the contract time for completion of Final Construction Documents shall be extended, either by Change Order or Unilateral Change Order, for the length of the proven, resulting delay to CONTRACTOR’S ability to complete the construction Work within the contract time. The contract time shall not be adjusted for unexcused delays.

2. Shortening. CONTRACTOR shall within ten (10) Days after receiving notice of deleted Work prepare and deliver to DISTRICT a time impact analysis of the impact of the deleted work upon the critical path to determine if the contract time should be shortened thereby and if so the duration of the shortening. If the DISTRICT and CONTRACTOR are unable to agree upon the duration of the shortening, then DISTRICT shall make a good faith determination of the reasonable amount of time that the contract time shall be shortened on account of such deleted Work.

3. Prescribed Calculations.

i. Work Day Lost Calculations. CONTRACTOR may claim an excusable delay or a compensable delay for a full Day only if all Work on a critical path activity is stopped for more than six (6) hours of a normal eight (8) hour work Day and for a half-Day only if all Work on a critical path activity is stopped for three (3) to six (6) hours of such a normal Work Day. No excusable delay or compensable delay may be claimed if all Work on a critical path activity is stopped for less
than three (3) hours of such a normal work Day. Similarly, where deleted Work results in the projected avoidance of the need to perform more than six (6), or between three (3) and six (6) hours of all Work on a critical path activity on such a normal work Day, the contract time shall be contracted by a full Day or half Day, respectively.

ii. Dry Out Time Calculations. Contract Adjustments to the contract time that are based upon unusual precipitation that is an Act of God as defined herein, shall include, in addition to the number of Days of excusable delay to which CONTRACTOR is entitled due to a cessation of Work that occurs at the Site while the unusual precipitation is occurring, an additional extension for the delay to the critical path of activities affecting Completion that is the result of CONTRACTOR being unable, after cessation of the unusual precipitation at the Site, to proceed with performance of Work due to wet or muddy conditions at the Site (hereinafter referred to as “dry out” time); provided, however, that the amount of dry out time for which CONTRACTOR is entitled to an extension of time in any given calendar month shall not exceed the number of Days that is the product derived by multiplying (a) the number of Days of excusable delay to which CONTRACTOR is entitled due to a cessation of Work that occurs at the Site while such unusual precipitation is occurring, by (b) a fraction, the (i) numerator of which is the number of Days of excusable delay due to measurable unusual precipitation occurring at the Site during such calendar month that constitutes an Act of God as defined herein, and (ii) the denominator of which is the total number of Days of measurable precipitation occurring at the Site during said calendar month (including both the number of Days comprising the normal, 10-year monthly average of measurable precipitation recorded by NOAA and the excess, or unusual precipitation that constitutes an Act of God as defined herein.

33.5. DISTRICT Response to Time Change Request. All claims and adjustments in the contract times shall be determined by DISTRICT and shall be in accordance with the requirements set forth in the section on Changes and Extra Work.

a. After receipt of a timely and complete request for extension, DISTRICT shall investigate the facts concerning the cause and extent of such delay and, depending on whether the request for extension is justified, will notify CONTRACTOR of its approval or disapproval in writing of all or a portion of CONTRACTOR’S request.

b. Extensions of time approved by DISTRICT shall apply only to that portion of the Work affected by the delay, and shall not apply to other portions of Work not so affected.

c. DISTRICT shall have the right, exercised in its sole and absolute discretion, in lieu of granting a contract adjustment to the contract time for compensable delay, to direct in writing the acceleration of the Work by CONTRACTOR in order to recapture time lost due to such compensable delay. The DISTRICT and CONTRACTOR shall endeavor prior to commencement of such acceleration to mutually agree upon the amount of compensation
to be paid therefor. DISTRICT shall have the right, in the absence of such an agreement, to direct in writing that CONTRACTOR accelerate. CONTRACTOR shall comply with such directive. CONTRACTOR’S right to a contract adjustment to the contract sum on account of such acceleration shall be limited to (1) the premium time portion of any overtime paid for labor provided by CONTRACTOR or any subcontractor, plus (2) additional supervision costs for additional shifts of supervision provided at the Site by CONTRACTOR only (not by Subcontractors or Subconsultants), plus (3) allowable markup thereon. Except as directed by DISTRICT in writing, no statements, conduct or actions by DISTRICT will be construed as creating an obligation on the part of DISTRICT to agree to a contract adjustment to the contract sum on account of any cost of overtime or other costs associated with an acceleration of the Work to recapture time lost due to compensable delay.

33.6. **No Damage for Contractor Caused Delay.** CONTRACTOR shall not be entitled to any compensation, including but not limited to extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays caused in whole or in part by CONTRACTOR’S failure to perform its obligations under this Contract, or during periods of delay concurrently caused by CONTRACTOR and either DISTRICT or others. CONTRACTOR may be compensated for delays caused directly and solely by DISTRICT except that CONTRACTOR shall not be entitled to damages for delay to the Work caused by the following reasons:

a. DISTRICT’s right to sequence Work in a manner which would avoid disruption to the DISTRICT’s tenants and their contractors or other prime contractors and their respective subcontractors, exercised as a result of CONTRACTOR’S failure to perform its cooperation and coordination responsibilities required by this Contract;

b. DISTRICT’S enforcement of government act or regulation, or the provisions of the Contract Documents; and

c. Extensive requests for clarifications to Construction Documents or modifications to contract, provided such clarifications or modifications are processed by DISTRICT or its consultants in a reasonable time commensurate with provisions of Contract requirements.

33.7. **Extension of time does not waive DISTRICT’S Rights.** Granting of time extension for any reason shall in no way operate as waiver on part of DISTRICT, of right to collect liquidated damages for other delays or of right to collect other damages or other rights to which DISTRICT is entitled.

**ARTICLE 34 MATERIALS AND WORK**

34.1. **General.** Except as otherwise specifically stated in this Agreement, CONTRACTOR shall provide and pay for all materials, supplies, tools, equipment, labor transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete the Project within specified time.

34.2. **New Material.** Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.

34.3. **Storage.** 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. DISTRICT
has no obligation to pay for any prefabricated material stored offsite until delivered and installed to the jobsite and inspected and approved by the Inspector of Record.

34.4. **Timely Procurement.** CONTRACTOR shall, after issuance of the Notice to Proceed by DISTRICT, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the work. CONTRACTOR shall, upon demand from the ARCHITECT, furnish to the ARCHITECT documentary evidence showing that orders have been placed.

34.5. **DISTRICT Material Orders.** DISTRICT reserves the right, for any neglect in not complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the work may be completed at the date specified in the Agreement, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by the CONTRACTOR.

34.6. **No Interest Retained.** No materials, supplies, or equipment for work under this Agreement 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 Agreement shall have any right to lien upon premises or any improvement or appurtenance thereon, except that CONTRACTOR may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, CONTRACTOR shall advise DISTRICT as to owner thereof.

34.7. **Protection of Supplier’s Rights.** Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by CONTRACTOR for their protection or any rights under any law permitting such persons to look to funds due CONTRACTOR in hand of DISTRICT, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials or labor when no formal contract is entered into for such materials or labor.

34.8. **CONTRACTOR Retains Title.** The title to new materials and/or equipment and attendant liability for its protection and safety, shall remain in the CONTRACTOR until incorporated in the work and accepted by the DISTRICT; no part of said materials and/or equipment shall be removed from its place of onsite/offsite storage except for immediate installation in the work; and CONTRACTOR shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the DISTRICT or its authorized representative.

**ARTICLE 35 INTEGRATION OF WORK**

35.1. **General.** CONTRACTOR shall do all cutting, fitting, patching, and preparation of work as required to make its several parts come together properly, and fit it to receive or be received by work of other contractors or existing conditions showing upon, or reasonably implied by, the Drawings and Specifications, and shall follow all directions given by the ARCHITECT.
35.2. **CONTRACTOR Costs.** All costs caused by defective or ill-timed work shall be borne by CONTRACTOR.

35.3. **Consent of ARCHITECT.** CONTRACTOR shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor without the written consent of the ARCHITECT. CONTRACTOR shall be solely responsible for protecting existing work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.

35.4. **DSA Review.** Cutting, boring, saw-cutting or drilling through structural elements of Existing Improvements is not to be started until the details (if the details are not already shown in, or as shown do not conform to, the DSA-approved Contract Documents) have been reviewed and approved the appropriate subconsultant responsible for structural engineering and the DSA field engineer.

35.5. **Match Existing.** When modifying existing work or installing new work adjacent to existing work, CONTRACTOR shall match, as closely as conditions of Site and materials will allow, the finishes, textures, and colors of the original work, refinishing existing work as required, at no additional cost to DISTRICT.

35.6. **Phased Construction.** CONTRACTOR is aware that this Project may be split into several phases. If the Project is split into phases then CONTRACTOR has made allowances for any delays or damages which may arise from coordination with contractors for other phases. If any delays should arise from a contractor working on a different phase, CONTRACTOR'S sole remedy for damages, including delay damages, shall be against the contractor who caused such damage and not the DISTRICT. CONTRACTOR shall provide access to contractors for other phases as necessary to prevent delays and damages to contractors working on other phases of construction.

### ARTICLE 36 OBTAINING OF PERMITS, LICENSES AND EASEMENTS

36.1. **General.** 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 the ARCHITECT before demand is made for the certificate of final payment. CONTRACTOR shall, and shall require subcontractors to, maintain contractors’ licenses in effect as required by law.

36.2. **Payment for Easements.** Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by DISTRICT, unless otherwise specified.

36.3. **Utility Coordination.** Permits and charges for installation, and inspection thereof, of utility services by serving utilities shall be secured and paid for by DISTRICT.

### ARTICLE 37 SURVEYS

37.1. Surveys to determine location of property lines and corners will be supplied by DISTRICT. Surveys to determine locations of construction, grading, and site work, shall be provided by CONTRACTOR.
38.1. **Unidentified Utilities.** Pursuant to Government Code Section 4215, the DISTRICT assumes the responsibility for removal, relocation, and protection of utilities located on the construction Site at the time of commencement of construction under this Agreement with respect to any such utility facilities which are not identified in the Plans and Specifications. The CONTRACTOR shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the DISTRICT to provide for removal or relocation of such utility facilities. If the CONTRACTOR, while performing work under this Agreement, discovers utility facilities not identified by the DISTRICT in the Plans or Specifications, CONTRACTOR shall immediately notify the DISTRICT and the utility in writing. CONTRACTOR shall be compensated according to the provisions governing changes in the work.

38.2. **Other Utilities.** This Article shall not be construed to preclude assessment against the CONTRACTOR for any other delays in completion of the work. Nothing in this Article shall be deemed to require the DISTRICT to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the construction Site can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Site of the construction.

38.3. **Code Requirements.** As part of the work to be performed, CONTRACTOR shall provide the notices and proceed in accordance with Government Code Sections 4216.2, 4216.3 and 4216.4, and pay all fees charged pursuant to Government Code Section 4216, et seq.

**ARTICLE 39  WORK TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS**

39.1. **Compliance.** CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the work as indicated and specified.

39.2. **Notify of Variance.** If CONTRACTOR observes that Drawings or Specifications are at variance therewith, CONTRACTOR shall promptly notify ARCHITECT in writing and any changes deemed necessary by the ARCHITECT shall be adjusted as provided for changes in work. If CONTRACTOR performs any work which it knew, or through exercise of reasonable care should have known, to be contrary to such laws, ordinances, rules or regulations, and without such notice to ARCHITECT, CONTRACTOR shall bear all costs arising therefrom. Where Plans, Drawings or Specifications state that materials, processes, or procedures must be approved by the Division of State ARCHITECT, State Fire Marshall, or other body or agency, CONTRACTOR shall be responsible for satisfying requirements of such bodies or agencies.

**ARTICLE 40  ACCESS TO WORK AND PHOTOGRAPHY**

40.1. **Access.** 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.

40.2. **Consent to Photographing.** CONTRACTOR is advised that DISTRICT intends, from time to time, to take photographs, videotapes and/or motion pictures of the Work, and workers located on the Site and proximate settings. CONTRACTOR consents to the use of CONTRACTOR’S name and likeness in instructional or training uses, news releases, advertising and/or publicity throughout the world in perpetuity, in all media now known or hereafter invented. CONTRACTOR shall include in its contracts
with its Subcontractors a consent by the Subcontractor to the use of Subcontractor’s name and the likeness of its employees on the same terms as provided for herein applicable to such consent by CONTRACTOR.

ARTICLE 41 PAYMENTS BY CONTRACTOR

41.1. General. CONTRACTOR shall pay:

a. For all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered;

b. For all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at Site of Project and balance of cost thereof not later than the 30th day following completion of that part of work in or on which such materials, tools, and equipment are incorporated or used; and

c. To each of its subcontractors, not later than the 5th day following each payment to CONTRACTOR the respective amounts allowed CONTRACTOR on account of work performed by respective subcontractor to the extent of such subcontractor’s interest therein.

d. Within seven (7) days from the time that all or any portion of the retentions are received by CONTRACTOR from DISTRICT, to each of its subcontractors from whom retention has been withheld, each subcontractor’s share of the retention received. However, if a retention payment received by CONTRACTOR is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract. CONTRACTOR may withhold from a subcontractor its portion of the retentions if a bona fide dispute exists between the subcontractor and the CONTRACTOR. The amount withheld from the retention shall not exceed one hundred fifty percent (150%) of the estimated value of the disputed amount.

ARTICLE 42 INSPECTOR’S FIELD OFFICE

42.1. CONTRACTOR shall provide for the exclusive use of Inspector a temporary field office to be located as directed by Inspector and to be maintained until removal is authorized by DISTRICT. Office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key-type lock or padlock hasp. A table satisfactory for study of Plans and two chairs shall be provided by CONTRACTOR. CONTRACTOR shall provide and pay for adequate electric lights, telephone service (not a pay phone), and adequate heat for the field office until authorized removal.

ARTICLE 43 UTILITIES

43.1. General. All utilities, including but not limited to electricity, water, gas, and telephone used on work shall be furnished and paid for by CONTRACTOR. CONTRACTOR shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on Site where utility is necessary to carry on the work. When it is necessary to interrupt any existing utility service to make connections, a minimum of forty-eight (48) hours advance notice shall be
given to the DISTRICT, the College Director of Facilities and ARCHITECT. Interruptions in utility services shall be of the shortest possible duration for the work at hand and shall be approved by the DISTRICT and the ARCHITECT. In the event any utility service is interrupted without the required forty-eight (48) hour notice, then CONTRACTOR shall be liable for all damage suffered by DISTRICT due to the interruption. Upon completion of work, CONTRACTOR shall remove all temporary distribution systems.

43.2. **Use of Existing Utilities.** CONTRACTOR may, with written permission of DISTRICT, use DISTRICT’s existing utilities by making prearranged payments to DISTRICT for utilities used by CONTRACTOR for the Project.

**ARTICLE 44  SANITARY FACILITIES**

44.1. The CONTRACTOR shall provide sanitary temporary toilet and wash facilities in no fewer numbers than required by law and such additional facilities as may be directed by the Inspector for the use of all workers. The toilet facilities shall be maintained in a sanitary condition at all times and shall be left at the Site until removal is directed by the Inspector. Use of toilet and wash facilities in the Work under construction shall not be permitted. Use of existing or permanent toilet facilities shall not be permitted except by written consent of DISTRICT.

**ARTICLE 45  CLEANING UP**

45.1. CONTRACTOR at all times shall keep work Site free from debris such as waste, rubbish, and excess materials and equipment caused by this work. CONTRACTOR shall not leave debris under, in, or about the work Site and shall remove same promptly and with not greater than one week between removals. 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. 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, the DISTRICT shall do so and the cost thereof shall be charged to the CONTRACTOR and deducted from any progress payment due.

**ARTICLE 46  PATENTS, ROYALTIES, AND INDEMNITIES**

46.1. The CONTRACTOR shall hold and save the DISTRICT and its governing board, officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this Agreement, including its use by the DISTRICT, unless otherwise specifically provided in the Project Documents, and unless such liability arises from the sole negligence, or active negligence, or willful misconduct of the DISTRICT.

**ARTICLE 47  GUARANTEE**

47.1. **Warranty.** CONTRACTOR warrants that the work (which includes any equipment furnished by CONTRACTOR as 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.

47.2. **Assignment.** CONTRACTOR does hereby unconditionally and irrevocably assign to DISTRICT all warranties and guarantees issued or made by any Subcontractor of any Tier (including, without limitation, any manufacturer, supplier and distributor). Such assignment shall not relieve CONTRACTOR of, or otherwise limit, any of its obligations contained in the Contract Documents, including, without limitation, the general responsibility and liability of CONTRACTOR for a breach by a Subcontractor (including, without limitation, any manufacturer, supplier and distributor) of a warranty or guarantee given by such Subcontractor in connection with the Work.

47.3. **Warranty Period.** The warranty period for discovery of defective work shall commence on the date stamped on the Notice of Completion verifying County recordation 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.

47.4. **Repairs.** District shall give CONTRACTOR prompt written notice after discovery of any Defective Work. CONTRACTOR shall correct any such Defective Work, as well as any damage to any other part of the work resulting from such Defective Work, and provide repair, replacement, or reimbursement, at its sole expense, in a manner approved by the DISTRICT and with due diligence and dispatch as required to make the work ready for use by DISTRICT, ordinary wear and tear, unusual abuse or neglect excepted. Such corrections shall include, but not be limited to, any necessary adjustments, modifications, changes of design (unless of DISTRICT’s design), removal, repair, replacement or reinstallation, and shall include all necessary parts, materials, tools, equipment, transportation charges and labor as may be necessary, and cost of removal and replacement of work shall be performed at a time and in such a manner so as to minimize the disruption to DISTRICT’s use of the work.

47.5. **DISTRICT Right to Repair.** In the event of failure of CONTRACTOR or Surety to commence and pursue with diligence said repairs or replacements within ten (10) calendar days after being notified in writing, DISTRICT is hereby authorized to proceed to have defects repaired or replaced and made good at expense of CONTRACTOR and Surety who hereby agree to pay costs and charges therefore immediately on demand.

47.6. **Dangerous Condition.** If, in the opinion of the DISTRICT, Defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the DISTRICT or to prevent interruption of operations of the DISTRICT, the DISTRICT will attempt to give the written notice required by this Article. If the CONTRACTOR or Surety cannot be contacted or neither complies with the DISTRICT’s requirements for correction within a reasonable time as determined by the DISTRICT, the DISTRICT may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against the CONTRACTOR and Surety. Such action by the DISTRICT will not relieve the
CONTRACTOR and Surety of the guarantees provided in this Article or elsewhere in the Project Documents.

47.7. **Not a Limitation.** This Article does not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. CONTRACTOR shall furnish to DISTRICT all appropriate guarantee or warranty certificates upon completion of the Project or upon request by DISTRICT.

47.8. **Delivery of Bound Volume.** All guarantees required under this Article shall be in writing on the Guarantee form included in the Project Documents. All such guarantees and warranties shall be: (1) in writing; (2) indexed and bound; (3) accompanied by such certifications and instruction materials as may be required by the Contract Documents; and (4) issued or assignable by their terms to DISTRICT and will in the latter case be assigned to DISTRICT. Nothing herein shall limit any other rights or remedies available to DISTRICT.

47.9. **Manuals.** CONTRACTOR shall provide to DISTRICT instruction manuals for all items which require same.

   a. Two (2) hard copies and one (1) electronic version of operations and maintenance manuals will be prepared and transmitted to DISTRICT within the Contract Time for Final Completion.

   b. Final Payment will not be due until District Project Manager has received manuals covering the Work that are either required to be provided by the terms of the Contract Documents or if not required are customarily provided according to usual commercial practices applicable to the portion of Work involved. Operating instructions will be included within the equipment manuals and will state all information necessary for DISTRICT to operate, use, maintain and service the equipment fully and efficiently.

47.10. **Fees.** The DISTRICT may collect its reasonable costs and attorneys' fees in any action to enforce this Article.

**ARTICLE 48  DUTY TO PROVIDE FIT WORKERS**

48.1. **General.** CONTRACTOR and subcontractors shall at all times enforce strict discipline and good order among their employees and shall not employ on work any unfit person or anyone not skilled in work assigned to such person. It shall be the responsibility of CONTRACTOR to ensure compliance with this Article.

48.2. **Excluded from Work.** Any person in the employ of the CONTRACTOR or subcontractors whom DISTRICT or ARCHITECT may deem incompetent, unfit, troublesome or otherwise undesirable shall be excluded from the work Site and shall not again be employed on it except with written consent of DISTRICT.

**ARTICLE 49  WAGE RATES, TRAVEL AND SUBSISTENCE**

49.1. **General.** Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code, the governing board of 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 file with the Clerk of the DISTRICT’s governing board and copies will be made available to any interested party on request. CONTRACTOR shall post a copy of such wage rates at the work Site. Labor Code Section 1773.2. The rates are available on the Internet at www.dir.ca.gov “Statistics & Research.”

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

49.3. **Not Less than Prevailing Rate.** CONTRACTOR shall pay and shall cause to be paid each worker engaged in work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR or any subcontractor and such workers.

49.4. **Travel and Subsistence.** CONTRACTOR shall pay and shall cause to be paid to each worker needed to execute the work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations in accordance with Labor Code Section 1773.8.

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

49.6. **Penalty.** Pursuant to Labor Code Section 1775, CONTRACTOR shall as a penalty to the DISTRICT, forfeit fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Agreement by CONTRACTOR or by any subcontractor under it. The amount of the penalty shall be determined by the Labor Commission and shall be based on consideration of the CONTRACTOR’S mistake, inadvertence or neglect in failing to pay the correct prevailing rate of per diem wage, or the previous record of the CONTRACTOR in meeting his or her prevailing rate of per diem wage obligations, or the CONTRACTOR’s willful failure to pay the correct prevailing rate of per diem wages. A mistake, inadvertence or neglect in failing to pay the correct prevailing rate of per diem wage is not excusable if the CONTRACTOR had knowledge of his or her obligations under this part. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each worker by the CONTRACTOR.

49.7. **Closest Correspondence of Trade.** Any worker employed to perform work on the Project, which work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the Director shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.
49.8. **Per Diem.** Pursuant to Labor Code Section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code Section 1773.8.

49.9. **Wage Rates and Deductions.** CONTRACTOR shall post at appropriate conspicuous points on the Site of the Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

### ARTICLE 50  HOURS OF WORK

50.1. **General.** As provided in Article 3, (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the CONTRACTOR or by any subcontractor on any subcontract under this Agreement upon the work or upon any part of the work contemplated by this Agreement shall be limited and restricted by the Agreement to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed by employees of CONTRACTOR in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

50.2. **Records.** The CONTRACTOR shall keep and shall cause each subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the work or any part of the work contemplated by this Agreement. The record shall be kept open at all reasonable hours to the inspection of the DISTRICT and to the Division of Labor Standards Enforcement, Department of Industrial Relations.

50.3. **Penalty.** Pursuant to Labor Code Section 1813, the CONTRACTOR shall pay to the DISTRICT a penalty of Twenty-Five Dollars ($25) for each worker employed in the execution of this Contract by the CONTRACTOR or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

50.4. **No Additional Cost to DISTRICT.** Any work necessary to be performed after regular working hours, or on Saturdays or other holidays shall be performed without additional expense to DISTRICT.

### ARTICLE 51  PAYROLL RECORDS

51.1. **General.** Pursuant to the provisions of Labor Code Section 1776, the CONTRACTOR shall keep and shall cause each subcontractor performing any portion of the work under this Agreement to keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONTRACTOR in connection with the work.
51.2. **Certified Payroll.** The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the CONTRACTOR on the following basis:

a. 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 as required by law or at DISTRICT direction.

b. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished as required by law or upon DISTRICT request, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

c. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection upon request by the public or copies thereof made; provided, however, that a request by the public shall be made through either 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), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the CONTRACTOR, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the CONTRACTOR.

d. The form of certification shall be as follows: I, ________________ (Name-print), the undersigned, am __________ (position in business) with the authority to act for and on behalf of ________________ (Name of business and/or CONTRACTOR), certify under penalty of perjury that the records or copies thereof submitted and consisting of ________________ (description, number of pages) are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named. Dated: ________________ Signature: __________________________

51.3. **File Certified Copy.** Contractor shall file a certified copy of the payroll records enumerated in subdivision (a) with the entity that requested the records within ten (10) days after receipt of a written request. In the event that the CONTRACTOR fails to comply within the 10-day period, the CONTRACTOR shall, as a penalty to the DISTRICT, forfeit Twenty-Five Dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

51.4. **Redacted Copy.** Any copy of payroll records made available for inspection as copies and furnished upon request to the public by the DISTRICT, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the CONTRACTOR shall not be marked or obliterated.
51.5. **Location of Payroll Records.** The CONTRACTOR shall inform the DISTRICT of the location of the payroll records enumerated under subdivision (a), including the street address, city and county, and shall, within five (5) working days, provide a written notice of a change of location and address.

51.6. **Pre-Construction Meetings, Interviews.** The CONTRACTOR shall attend any pre-construction meetings held by the DISTRICT to discuss labor requirements. The CONTRACTOR and the subcontractors shall allow the DISTRICT, DISTRICT Third Party Labor Compliance Officer, DISTRICT Consultants and the Department of Industrial Relations, and designated representatives of each, to conduct, at their discretion, interviews of workers at the Site during working hours.

51.7. **Compliance.** It shall be the responsibility of the CONTRACTOR to ensure compliance with the provisions of this Article and the provisions of Labor Code Section 1776.

51.8. **Condition of Payment.** Compliance by the CONTRACTOR with the requirements of the provisions of this Article and the provisions of Labor Code Section 1776 shall be a condition to the CONTRACTOR’S right to payment under its Applications for Payment. Without limitation to the foregoing, payments to the CONTRACTOR shall not be made when payroll records are delinquent or inadequate.

### ARTICLE 52 APPRENTICES

52.1. **General.** The CONTRACTOR acknowledges and agrees that, if this Agreement involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Agreement is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the CONTRACTOR to ensure compliance with this Article 51 and with Labor Code Section 1777.5 for all apprenticing occupations.

52.2. **Registered Apprentices.** Apprentices of any crafts or trades may be employed and, when required by Labor Code Section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

52.3. **Apprentice Wage.** Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered.

52.4. **Standards and Agreements.** Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed on public works. The employment and training of each apprenticeship shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he or she is training.

52.5. **Apprentice Ratios.** Pursuant to Labor Code Section 1777.5, the CONTRACTOR and any subcontractors employing workers in any apprenticeship craft or trade in performing any work under this Agreement shall employ apprentices in at least the ratio set forth in Section 1777.5 and apply to the applicable joint apprenticeship committee for a certificate approving the CONTRACTOR or subcontractor under the applicable apprenticeship standards for the employment and training of apprentices.

52.6. **Contract Award to Apprenticeship Committee.** Every contractor and subcontractor shall submit contract award information to the applicable joint apprenticeship committee which shall include an
estimate of journeyman hours to be performed under the Agreement, the number of apprentices to be employed and the approximate dates the apprentices will be employed.

52.7. **Noncompliance.** If the CONTRACTOR or subcontractor willfully fails to comply with Labor Code Section 1777.5, then, upon a determination of noncompliance by the Chief of the Division of Apprenticeship Standards, the CONTRACTOR or subcontractor shall be subject to the penalties imposed under Labor Code Section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council.

52.8. **Discrimination Forbidden.** The CONTRACTOR and all subcontractors shall comply with Labor Code Section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

52.9. **Fully Acquainted.** CONTRACTOR shall become fully acquainted with the law regarding apprentices prior to commencement of the work. Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and Title 8, California Code of Regulations, Section 200, et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, 8th Floor, San Francisco, California 94102, (415) 703-4920.

**ARTICLE 53 LABOR - FIRST AID**

53.1. The CONTRACTOR shall maintain emergency first aid treatment for CONTRACTOR's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Sec. 651, et seq.).

**ARTICLE 54 PROTECTION OF PERSONS AND PROPERTY**

54.1. **General.** 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 Agreement 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. CONTRACTOR shall provide such heat, covering, and enclosures as are necessary to protect all persons, work, materials, equipment, appliances, and tools against damage by weather conditions. All work shall be solely at the CONTRACTOR'S risk with the exception of damage to the work caused by Acts of God.

54.2. **Safety.** CONTRACTOR shall take, and require subcontractors to take, all necessary precautions for safety of workers 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 the work Site, on a twenty-four (24) hours a Day, seven (7) Days a week basis, and to provide a safe and healthful place of employment.

a. Protection. 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 security personnel for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.
b. Illness and Injury Prevention Plan. Prior to the start of the Work, CONTRACTOR shall prepare and submit to DISTRICT an Illness and Injury Prevention Plan, which shall comply with the requirements of the Contract Documents and shall include, at a minimum, guidelines, requirements and procedures for the following: safety management policy; emergency response plan; illness and injury prevention procedures; safety meetings; accident investigation; basic accident causes; safety inspection checklist; fire prevention and control; report forms; and employee safety manual and procedures for achieving compliance with safety requirements of insurers. A copy of the Illness and Injury Prevention Plan shall be maintained on Site at all times and provided to the DISTRICT upon request. CONTRACTOR, and any member of the CONTRACTOR Team, where applicable, is solely responsible for monitoring activities at the Site for compliance with the Illness and Injury Prevention Plan and for the enforcement thereof.

c. Safety Representative. CONTRACTOR shall designate a responsible employee, 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 in writing to DISTRICT by CONTRACTOR.

d. First Aid. CONTRACTOR shall maintain emergency first aid treatment for all workers and other persons on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., §§651 et seq.) and all other Applicable Laws.

e. Loading, Storage. CONTRACTOR shall be responsible for coordinating the storage and staging of materials and equipment on-Site and off-Site and shall not load or store or permit any part of the Work or the Site to be loaded or stored so as to endanger the safety of persons or property.

f. Unsafe Conditions. CONTRACTOR shall immediately correct any condition that exists on the Site, or that DISTRICT, in its reasonable judgment, determines to exist on the Site, that is unsafe or potentially unsafe to persons or property. If, in the sole and absolute discretion of DISTRICT, the condition is potentially life-threatening, the DISTRICT may, with or without notice to CONTRACTOR, take whatever immediate action is necessary to correct the life-threatening condition, and the costs thereof, including, without limitation, any additional service fees or costs of the DISTRICT, Design Consultant, Inspectors of Record, DISTRICT Consultants or others to whom DISTRICT may be liable, shall be reimbursed to DISTRICT by CONTRACTOR at CONTRACTOR’S Own Expense. Nothing set forth in this paragraph shall be interpreted as an assumption of any obligation on the part of the DISTRICT, Inspectors of Record, Design Consultant, DISTRICT Consultants or other persons or entities other than CONTRACTOR and the Subcontractors, to report such conditions to CONTRACTOR nor as relieving CONTRACTOR of any of its responsibilities under the Contract Documents.

g. Corrections. CONTRACTOR shall correct any violations of safety laws, standards, orders, rules, 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 immediately by the CONTRACTOR at CONTRACTOR’S expense.

h. Separate Contractors. With respect to work of separate contractor being performed within an area of the Site that is under the responsibility or control of the CONTRACTOR, CONTRACTOR shall: (1) provide copies of the IIPP to the separate contractors; (2) protect the separate contractors’ work and workers from loss due to the actions or inactions of CONTRACTOR and the subcontractors; and (3) notify the separate contractor and DISTRICT of any observed violation by the separate contractor of the IIPP or of any violations by the separate contractor of Applicable Laws governing safety on the Site. Nothing herein shall be interpreted as relieving the separate contractors from their obligations to comply with the CONTRACTOR’S IIPP, as excusing any failure by a separate contractor from performing its obligations under its contracts with DISTRICT or Applicable Laws or as obligating CONTRACTOR to directly supervise or enforce the obligations of the separate contractors to comply with the requirements of the IIPP or applicable law relating to safety.

54.3. **Safety Emergency.** In an emergency affecting safety of person or 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. Any compensation claimed by CONTRACTOR on account of emergency work shall be determined by written agreement with the DISTRICT.

54.4. **Safeguards.** 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. CONTRACTOR shall (unless waived by the DISTRICT in writing):

a. Provide substantial barricades around any shrubs or trees indicated to be preserved.

b. Deliver materials to building area over route designated by ARCHITECT.

c. When directed by DISTRICT, take preventive measures to eliminate objectionable dust.

d. 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.

e. 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 civil engineer at no cost to the DISTRICT.

54.5. **Hazardous Material Release.** CONTRACTOR and its Subcontractors shall not cause the introduction, discharge, release, emission, spill, storage, treatment or disposal of any Hazardous Substance on or adjacent to the Site. Should CONTRACTOR or its Subcontractors introduce, discharge, release, emit, spill, treat, store or dispose of any Hazardous Substance on the Site in violation of the foregoing obligation or otherwise in violation of Applicable Laws, CONTRACTOR shall at CONTRACTOR’S own expense and without limitation to DISTRICT’S other rights or remedies for default immediately (1)
inform DISTRICT in writing of such event, (2) advise DISTRICT with respect to any release reporting or notification requirement that may apply as a result of such event, (3) assist DISTRICT in complying with any such reporting or notification requirement as determined by DISTRICT, and (4) perform any investigation, remediation, removal or other response that is necessary or desirable in order to abate or clean up the condition resulting from such event to the full satisfaction of DISTRICT and any applicable Governmental Authority. Such Hazardous Substances shall be removed and properly disposed of as soon as they can be accepted at an appropriate disposal facility, and in no event later than sixty (60) Days after such waste is generated, unless a longer time is approved by DISTRICT.

54.6. **Indemnification of Adjacent Property Owners.** In the event CONTRACTOR enters into any agreement with the owners of any adjacent property to enter upon such property for the purpose of performing the Work or other activities incidental to the Work, CONTRACTOR shall fully indemnify, defend and hold harmless any person or entity which owns or has any interest in such adjacent property against any loss resulting from the acts or omissions of the CONTRACTOR.

54.7. **Responsibility for Loss.** CONTRACTOR shall promptly remedy loss to any property or person caused in whole or in part by the failure of CONTRACTOR, the subcontractors of any Tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable to fully comply with the requirements of this section, except loss attributable solely to the negligent acts or omissions of the DISTRICT, Inspectors of Record, Design Consultant, DISTRICT Consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable, in whole or in part, to the negligence, willful misconduct or violation of Applicable Laws by CONTRACTOR or a subcontractor of any Tier, or the failure by CONTRACTOR to comply with the Contract Documents. The foregoing obligations of CONTRACTOR are in addition to and not a limitation upon CONTRACTOR’S indemnity obligations.

### ARTICLE 55  NON-DISCRIMINATION

55.1. In the performance of the terms of this Agreement, 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, age or sex of such persons.

### ARTICLE 56  SCHEDULE OF VALUES AND PERIODICAL ESTIMATES

56.1. **General.** CONTRACTOR shall furnish on form(s) approved by DISTRICT:

   a. Within ten (10) calendar days of Award of Contract a detailed schedule of values prepared in a form and incorporating a level of detail satisfactory to DISTRICT, that allocates the Contract Sum to various portions of the Work, giving complete breakdown of contract price for each component of the Project or Site which shall include all subcontractor/supplier agreements showing dollar amounts of these agreements to justify the schedule of values; and

   b. Balanced Allocation. The Schedule of Value shall be balanced, reflecting in each line item CONTRACTOR’S estimated or actual cost commitments for the category of Work included in the line item and a proportionate share of CONTRACTOR’S overhead and profit. Techniques,
such as “front-end loading”, designed to create an imbalanced cash flow are strictly prohibited.

c. Updating. The Schedule of Values shall be updated by CONTRACTOR each month as necessary to reflect the CONTRACTOR’S actual progress in the Work. An updated Schedule of Values shall be attached to each Application for Payment.

d. Substantiation. CONTRACTOR shall provide such data as DISTRICT may reasonably require to substantiate that the Schedule of Values has been prepared in conformance with the requirements of the Contract Documents. Failure to provide such substantiation shall result in the Schedule of Values being deemed incomplete and unapproved by DISTRICT.

e. Corrections. If corrections are required in order to make the Schedule of Values comply with the requirements of the Contract Documents, such corrections shall be made as a condition of the CONTRACTOR’S Application for Payment being considered properly prepared, submitted and complete.

f. Changes to Work. Costs involved in the performance of Work covered by change orders, unilateral change orders or field orders shall be separately scheduled.

g. Applications for Payment. The Schedule of Values prepared by CONTRACTOR in accordance with the requirements of the Contract Documents shall be used as a basis for DISTRICT’S review and approval or disapproval of Applications for Payment.

56.2. ARCHITECT’S Review. Values employed in making up any of these schedules are subject to the ARCHITECT’s written approval and 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.

ARTICLE 57 CONTRACTOR CLAIMS

57.1. If the CONTRACTOR shall claim compensation for any damage sustained by reason of the acts of the DISTRICT or its agents, CONTRACTOR shall, within five (5) calendar days after sustaining of such damage, make to the ARCHITECT a written statement of the damage sustained. On or before the 15th day of the month succeeding that in which such damage shall have been sustained the CONTRACTOR shall file with the DISTRICT an itemized statement of the details and amount of such damage, and unless such statement shall be made as thus required, CONTRACTOR’S claims for compensation shall be forfeited and invalidated and it shall not be entitled to consideration for payment on account of any such damage.

ARTICLE 58 DISPUTES DECISIONS AND RESOLUTION

58.1. Initial Analysis. The ARCHITECT shall, within a reasonable time, make decisions on all matters relating to the CONTRACTOR’S execution and progress of the work. The decisions of the ARCHITECT shall not be binding, but shall be advisory only on the CONTRACTOR for the purpose of CONTRACTOR’S obligation to proceed with the work.

58.2. Continuous Work. In the event of a dispute between the parties as to performance of the work, the interpretation of this Agreement or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of the dispute, CONTRACTOR
agrees to continue the work diligently to completion. If the dispute is not resolved, CONTRACTOR agrees it will neither rescind the Agreement nor stop the progress of the work, but CONTRACTOR’S sole remedy shall be to submit such controversy to determination by a court of the State of California, in Orange County, having competent jurisdiction of the dispute, after the Project has been completed, and not before.

58.3. **Settlement Procedures.** Except for tort claims, all claims by the CONTRACTOR for a time extension, payment of money or damages arising from work done by, or on behalf of, the CONTRACTOR pursuant to the Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or as to the amount of payment which is disputed by the DISTRICT of Three Hundred Seventy Five Thousand Dollars ($375,000) or less shall be subject to the settlement procedures set forth in Public Contract Code Section 20104, et seq. which provisions are incorporated herein by reference.

a. Mediation Requirements. All claims, disputes or controversies arising out of or relating to the PROJECT or to this agreement or the breach thereof shall be first attempted to be resolved through mediation.

b. Arbitration. If mediation is unsuccessful, claims, disputes or controversies arising out of or relating to this AGREEMENT will be decided by arbitration in accordance with the American Arbitration Association then prevailing unless the parties mutually agree otherwise.

1. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by the CONTRACTOR, DISTRICT and any other person sought to be joined. Consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named therein.

2. This agreement to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

3. Notice of demand for arbitration shall be filed in writing with the other party to this AGREEMENT in accordance with the rules of the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in questions would be barred by the applicable statutes of limitation.

4. In any judicial proceeding to enforce this agreement to arbitrate, the only issues to be determined shall be those set forth in 9 U.S.C. Section 4 Federal Arbitration act and such issues shall be determined by the court without a jury. All other issues, such as, but not limited to, arbitrability, prerequisites to arbitration, compliance with contractual time limitations, applicability of indemnity clauses, clauses limiting damages and statutes of limitation shall be for the arbitrators whose decision
thereon shall be final and binding. There shall be no interlocutory appeal of an order compelling arbitration.

5. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

58.4. **Jurisdiction.** Unless otherwise provided, this Agreement shall be governed by the law of the state and county where the Project is located.

**ARTICLE 59 PAYMENTS**

59.1. **General.** Unless otherwise specified in writing, each month within thirty (30) days after receipt by the DISTRICT of the monthly progress schedule and an undisputed, properly submitted payment request from CONTRACTOR which has been certified for payment by the ARCHITECT, there shall be paid to CONTRACTOR a sum equal to ninety five percent (95%) of value of work performed and of materials delivered to the jobsite and inspected and approved by the Inspector of Record and subject to or under the control of the DISTRICT and unused up to the last day of the previous month, less aggregate previous payments. Public Contract Code Section 20104.50. 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 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 Agreement, 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 the DISTRICT or ARCHITECT shall remain not complied with by the CONTRACTOR. CONTRACTOR agrees to the five percent retention on all progress payments for construction projects which exceed in cost a total of five thousand dollars. Public Contract Code Section 9203.

59.2. **Support Documents.** DISTRICT has discretion to require from the CONTRACTOR any of the following information with the Application for Payment: (i) certified payroll covering the period of the prior Application for Payment; (ii) unconditional waivers and releases from all subcontractors/suppliers for which payment was requested under the prior Application for Payment; (iii) receipts or bills of sale for any items; and/or any other items noted within these general conditions as a condition for payment. CONTRACTOR agrees that payment may be contingent upon District receiving any one or more of these documents.

59.3. **ARCHITECT Review.** Before payment is made hereunder, a certificate in writing shall be obtained from the ARCHITECT stating that the work for which the payment is demanded has been performed in accordance with the terms of the Project Documents and that the amount stated in the certificate is due under the terms of the Project Documents, which certificate shall be attached to and made a part of the claim made and filed with the DISTRICT, provided that if the ARCHITECT shall, within three (3) days after written demand therefore, fail to deliver such certificate to the DISTRICT, the CONTRACTOR may file its claim with the DISTRICT without said certificate, but together with such claim shall be filed a statement that demand was made for such certificate and that the same was
refused. Thereupon, the DISTRICT will either allow said claim as presented or shall, by an order entered on the minutes of said DISTRICT state the reasons for refusing to allow said claim. It is understood, moreover, that the certificate of the ARCHITECT shall not be conclusive upon the DISTRICT, but advisory only.

59.4. **DISTRICT Review.** Upon receipt of CONTRACTOR’S payment request, DISTRICT shall review the payment request as soon as practicable after receipt for the purpose of determining that the payment request is proper. Any payment request determined not to be proper shall be returned to the CONTRACTOR as soon as practicable but not later than seven (7) days after receipt and shall be accompanied by a document setting forth in writing the reasons(s) why the payment request was not proper. Public Contract Code Section 20104.50

59.5. **No Acceptance.** No payment by DISTRICT hereunder shall be interpreted so as to imply that DISTRICT has inspected, approved, or accepted any part of the work.

59.6. **District Nullification.** DISTRICT reserves the right to nullify any prior approval of an Application for Payment that is later found to have not complied with the requirements of the Contract Documents, whether or not such noncompliance was observed or apparent on the face of the Application for Payment, and based on such nullification DISTRICT may take either of the following actions, as applicable: (1) if the Application for Payment has not yet been paid by DISTRICT, disapprove of that portion of the Application for Payment that is not in compliance and withhold payment of that sum until the noncompliance is fully rectified, or (2) if the Application for Payment has been paid by DISTRICT, nullify the prior approval and withhold payment of such disputed amounts in response to future Applications for Payment; provided, however, that in either case the amount of the DISTRICT’S nullification shall be limited to that portion of the amount requested in the Application for Payment that is in dispute and the amount of its withholding from the current or any future Application for Payment shall be limited to the amount nullified plus any additional withholding permitted to protect DISTRICT from loss or threatened loss.

59.7. **No Waiver by District.** Neither approval by DISTRICT, failure by DISTRICT to exercise its right of nullification with respect to, nor payment by DISTRICT upon, an Application for Payment or any portion thereof shall be interpreted as or constitute a waiver or release of any of DISTRICT’S rights to require CONTRACTOR’S full compliance with the Contract Documents.

59.8. **Changes in Work.** Applications for Payment may include requests for payment on account of Compensable Changes in the Work which have been properly authorized by Change Order or Unilateral Change Order.

59.9. **Percentage Completion.** Progress Payments shall indicate the CONTRACTOR’S estimated percentage of completion of each line item listed in the Schedule of Values as of the end of the period covered by the Application for Payment.

59.10. **Disagreements.** In the event of a disagreement between DISTRICT and CONTRACTOR over the accuracy or reasonableness of the CONTRACTOR’S percentage estimates, the DISTRICT shall make a good faith determination, which percentage shall then be inserted by CONTRACTOR and the Application for Payment submitted, or resubmitted, incorporating such revision.
59.11. **Certification by CONTRACTOR.** Each submitted Application for Payment shall be signed by CONTRACTOR with a certification that: (1) the data comprising the Application for Payment is accurate and the Work has progressed to the point indicated; (2) to the best of CONTRACTOR’S knowledge, information and belief, the Work is in accordance with the Contract Documents; (3) CONTRACTOR is entitled to payment in the amount certified; and (4) all sums previously applied for by CONTRACTOR on account of the Work performed by the Subcontractors that have been paid by DISTRICT have been paid to the Subcontractors performing such Work, without any retention, withholding or back charge by DISTRICT.

59.12. **Stored Materials.** DISTRICT may, in the exercise of its sole and absolute discretion, approve or disapprove for inclusion in CONTRACTOR’S Application for Payment the cost of materials to be incorporated but not yet incorporated in the Work and delivered and suitably stored either at the Site or at a bonded warehouse location acceptable and within proximity for verification by the DISTRICT. As part of any request for such approval, CONTRACTOR shall furnish evidence satisfactory to DISTRICT: (1) of the cost of such materials; (2) that such materials are under the exclusive control of CONTRACTOR, or if not, that title to the materials is in the DISTRICT’S name, free of any lien or encumbrance; and (3) with respect to materials stored off-Site, that the materials are safely and suitably stored with appropriate insurance coverage satisfactory to DISTRICT. No payment or approval by DISTRICT shall (a) be construed as an inspection or acceptance of the materials; (b) relieve CONTRACTOR of its continuing and sole responsibility for the care and protection of, and sole responsibility for any loss to, such materials, from any cause whatsoever; or (c) operate as a waiver of rights by DISTRICT.

59.13. **Title.** CONTRACTOR warrants that title to all the Work covered by an Application for Payment will pass to DISTRICT no later than the time of payment. CONTRACTOR further warrants that upon submittal of an Application for Payment all Work for which approval for payment has been previously issued by DISTRICT shall, to the best of CONTRACTOR’S knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of CONTRACTOR, the Subcontractors, or other persons or entities making a claim by reason of having provided labor, materials, equipment and services for the Work.

59.14. **Summary of Claims.** Unless otherwise provided, on or before making request for final payment of the undisputed amount due under the Agreement, CONTRACTOR shall submit to DISTRICT, in writing a summary of all claims for compensation under or arising out of this Agreement which were timely filed. The acceptance by CONTRACTOR of the payment of the final amount shall constitute a waiver of all claims against DISTRICT under or arising out of this Agreement, except those previously made, in a timely manner and in writing, and identified by CONTRACTOR as unsettled at the time of CONTRACTOR’S final request for payment.

59.15. **Subcontractor Retention Release.** CONTRACTOR shall pay each of its subcontractors from whom retention has been withheld each subcontractor’s share of the retention received within seven (7) days from the time that all or any portion of the retention are received by the CONTRACTOR subject to any limitations set forth in Public Contract Code Section 7107(e).

59.16. **Joint Payment.** DISTRICT shall have the right, if deemed necessary in its sole and absolute discretion, to issue joint checks made payable to CONTRACTOR and any of the Subcontractors of any
Tier. The joint check payees shall be solely responsible for the allocation and disbursement of funds included as part of any such joint payment. Endorsement on such check by a payee shall be conclusively presumed to constitute receipt of payment by such payee. In no event shall any joint check payment be construed to create: (1) any contract between DISTRICT and any of the Subcontractors of any Tier; (2) any obligation from DISTRICT to any of the Subcontractors; or (3) any third-party rights against DISTRICT.

59.17. **Direct Negotiation of Stop Notices.** DISTRICT shall have the right to directly discuss, negotiate, settle or pay, without notice to or participation by CONTRACTOR, any stop notice claims asserted by the Subcontractors of any Tier, and to deduct such sums paid from sums due to CONTRACTOR.

59.18. **Release of Stop Notices.** With the exception of that portion, and only that portion, of a stop notice or other claim that arises as a result of a failure by the DISTRICT to make payment to CONTRACTOR under circumstances constituting a breach of the Contract by DISTRICT, if any stop notice or other claim, whether invalid or valid, is made, filed with, served upon or asserted against the DISTRICT or the Site by any Subcontractor of any Tier, or their agent or employee, for money claimed due, then CONTRACTOR shall within five (5) Days after written notice by the DISTRICT procure, furnish and record appropriate releases or other instruments which under Applicable Laws will fully release, extinguish and remove such stop notice or claim, as well as any notices of pending action or other notices recorded against the Site in connection with the enforcement thereof. All costs of such actions by CONTRACTOR shall paid for by CONTRACTOR. Unless and until fully released as aforesaid, the DISTRICT shall have the right to retain from any payment then due, or thereafter to become due, to CONTRACTOR an amount equal to one hundred and fifty percent (150%) of the amount necessary to satisfy, discharge and defend against any such stop notice or claim and any action or proceeding thereon. If the amount to be paid, or the amount retained, is insufficient to satisfy, discharge and defend against any such stop notice or claim and any action or proceeding thereon, then CONTRACTOR shall be liable for the difference and upon demand shall immediately deposit the same with the DISTRICT. These provisions are in addition to such other rights as the DISTRICT may have against CONTRACTOR under the Contract Documents or Applicable Laws.

59.19. **No District Obligation.** DISTRICT shall have no obligation to pay or to see to the payment of money to any of the Subcontractors except as may otherwise be required by Applicable Laws.

59.20. **Application for Final Payment.** Upon issuance by DISTRICT of the Notice of Final Completion, CONTRACTOR shall submit to DISTRICT its Application for Payment requesting Final Payment. DISTRICT will review and approve or disapprove of the Application for Payment requesting Final Payment.

59.21. **Conditions to Final Payment.** Without limitation to any other conditions to payment set forth elsewhere in the Contract Documents, the following shall be conditions to a proper submission, and to DISTRICT’S approval, of CONTRACTOR’S Application for Payment requesting Final Payment:

a. submission of a certificate evidencing that the insurance required by the Contract Documents is in force;
b. submission of conditional releases and waivers of stop notice and bond rights upon final payment in the form required by California Civil Code §8132 executed by CONTRACTOR and by all the Subcontractors of every Tier;

c. submission of all Close-Out Documents including, without limitation, complete, accurate As-Built Drawings and Specifications certified by CONTRACTOR;

d. compliance with the Labor Compliance Program including, without limitation, proper payment of prevailing wages as defined in California Labor Code §1720, et seq., timely submission of adequate and complete certified payroll records as required by the Contract Documents for any time period that Work was performed, which have not been submitted by CONTRACTOR in connection with its previous Applications for Payment, submission of certifications by CONTRACTOR and each Subcontractor, as required by the Labor Compliance Program or Applicable Laws, certifying that all employee benefit contributions due and owing have been paid in full; and

e. submission of any other documents or information required by the Contract Documents as a condition of Final Payment or Final Completion.

59.22. **Disputed Amounts.** Pursuant to California Public Contract Code §7107, DISTRICT may deduct and withhold from Final Payment an amount of up to one hundred fifty percent (150%) of any disputed amounts, including, without limitation, amounts to protect DISTRICT against any loss caused or threatened as a result of CONTRACTOR’S failing to fully satisfy the conditions of Final Completion and Final Payment.

59.23. **Waiver by CONTRACTOR.** Acceptance of Final Payment by CONTRACTOR or a Subcontractor shall constitute a waiver of all rights by that payee against DISTRICT for recovery of any loss, excepting only those Claims that have been submitted by CONTRACTOR prior to or at the time of CONTRACTOR’S submission of its Application for Payment requesting Final Payment.

59.24. **Completion.** Work shall be deemed one hundred percent complete upon Completion and the amount released to CONTRACTOR shall, subject to District’s right to withhold be a sum sufficient to increase the total of Progress Payments to CONTRACTOR to ninety five percent (95%) of the Contract Sum.

59.25. **Retention Release.** The final payment of the five percent (5%) retention of the value of the work done under this Agreement, if unencumbered, shall be made thirty-five (35) days after recording by the DISTRICT of the Notice of Completion at the County Recorder’s Office. Approval of Completion of the Project will be made only by action of the governing board of DISTRICT. Public Contract Code Section 7107.

**ARTICLE 60 CHANGES AND EXTRA WORK**

60.1. **General.** DISTRICT may, as provided by law and without affecting the validity of this Agreement, 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 the original Agreement except that any extension of time caused thereby shall be adjusted at time of ordering such change. DISTRICT has discretion to order
changes on a “time and material” basis with adjustments to time made after CONTRACTOR has justified through documentation the impact on the critical path of the Project.

60.2. **Entire Compensation.** Notwithstanding any other provision in the Project Documents, the adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in a change order shall constitute the entire compensation and/or adjustment in the contract time due CONTRACTOR arising out of the change in the work covered by the change order unless otherwise provided in the change order. The amount of the compensation due CONTRACTOR shall be calculated pursuant to subparagraph (e) of this Article 59. The entire compensation shall not include any additional charges not set forth in subparagraph (e) and shall not include delay damages (due to processing of a change order, refusal to sign a change order) indirect, consequential, and incidental costs including any project management costs, extended home office and field office overhead, administrative costs and profit other than those amounts authorized under subparagraph (e) of this Article 59.

60.3. **Architect Authority.** 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 Project. 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.

60.4. **Request Proposal.** If the ARCHITECT determines that work required to be done constitutes Extra Work outside the scope of the Agreement, the ARCHITECT shall send a request for a detailed proposal to the CONTRACTOR. CONTRACTOR will respond with a detailed proposal within five (5) calendar days of receipt of the Request for Proposal which shall include a complete itemized cost breakdown of all labor and materials showing actual quantities, hours, unit prices, and the wage rates required for the change. If the change order involves a change in construction time, a request for the time change shall accompany the change order cost breakdown. All such requests for time shall be specified by CONTRACTOR as either “work days” or “calendar days.” Any request for time received with only the designation of “days” shall be considered calendar days. The term “work days” as used in this paragraph shall mean Monday through Friday, excluding Saturdays, Sundays and federal/State of California observed holidays. If the work is to be performed by a subcontractor, CONTRACTOR must include a bid from the subcontractor containing the same detailed information as required for CONTRACTOR. No extensions of time will be granted for change orders that, in the opinion of the ARCHITECT, do not affect the critical path of the Project.

60.5. **Value Determination.** Value of any such Extra Work, change, or deduction shall be determined at the discretion of DISTRICT in one or more of the following ways:

a. By mutual written acceptance of a lump sum proposal from CONTRACTOR properly itemized and supported by sufficient substantiating data to permit evaluation by DISTRICT and ARCHITECT.

b. By unit prices contained in CONTRACTOR’s original bid and incorporated in the Project Documents or fixed by subsequent agreement between DISTRICT and CONTRACTOR.
By cost of material and labor and percentage for overhead and profit ("time and material"). If the value is determined by this method the following requirements shall apply:

1. **Daily Reports by Contractor.**
2. **Basis for Establishing Costs**
   
i. **Labor.** The costs of labor will be the actual cost for wages prevailing locally for each craft classification or type of workers at the time the Extra Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of labor classification which would increase the Extra Work cost will not be permitted unless the CONTRACTOR establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

   **ii. Materials.** The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available and delivered to the work Site in the quantities involved, plus sales tax, freight and delivery. The DISTRICT reserves the right to approve materials and sources of supply, or to supply materials to the CONTRACTOR if necessary for the progress of the work. No markup shall be applied to any material provided by the DISTRICT.

   **iii. Tool and Equipment Rental.** No payment will be made for the use of tools which have a replacement value of $500 or less or where an invoice is not provided.

   **A.** Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental source, or distributors, at the time the work is performed. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Necessary loading and transportation costs for equipment used on the Extra Work shall be included.

   **B.** If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the DISTRICT than holding it at the work Site, it shall be returned, unless the CONTRACTOR elects to keep it at the work Site at no expense to the DISTRICT.

   **C.** All equipment shall be acceptable to the ARCHITECT, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and manufacturer's approved modifications shall be used to classify equipment and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
iv. Other Items. The DISTRICT may authorize other items which may be required on the Extra Work. Such items include labor, services, material and equipment which are different in their nature from those required by the work and which are of a type not ordinarily available from the CONTRACTOR or any of the subcontractors. Invoices covering all such items in detail shall be submitted with the request for payment.

v. Invoices. Vendors’ invoices for material, equipment rental, and other expenditures, shall be submitted with the request for payment. If the request for payment is not substantiated by invoices or other documentation, the DISTRICT may establish the cost of the item involved at the lowest price which was current at the time of the report.

3. The following form shall be used as applicable by the DISTRICT and CONTRACTOR to communicate proposed additions and deductions to the Agreement.

<table>
<thead>
<tr>
<th>EXTRA</th>
<th>CREDIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. Material/Equipment (attach itemized quantity and unit cost plus sales tax)</td>
<td></td>
</tr>
<tr>
<td>ii. Labor (attach itemized hours and rates)</td>
<td></td>
</tr>
<tr>
<td>iii. Subtotal</td>
<td></td>
</tr>
<tr>
<td>iv. If subcontractor performed work, add Subcontractor's overhead and profit to portions performed by it, not to exceed 15% of Item iii. above</td>
<td></td>
</tr>
<tr>
<td>v. Subtotal</td>
<td></td>
</tr>
<tr>
<td>vi. General Contractor's Overhead and Profit, not to exceed 15% of Item v if Contractor performed the work. If subcontractor performed the work, not to exceed 5% of Item v. Of portions performed by Contractor and subcontractors, portions performed by Contractor shall not exceed 15% of Item V, and portions performed by Subcontractor shall not exceed 5% of Item v.</td>
<td></td>
</tr>
<tr>
<td>vii. Subtotal</td>
<td></td>
</tr>
</tbody>
</table>
viii. Bond and Liability Insurance
Premium, if in fact additional
bonds or insurance were actually
purchased, not to exceed 1% of
Item vii.

ix. Total

It is expressly understood that the value of such Extra Work or changes, as determined by
any of the aforementioned methods, expressly includes any and all of CONTRACTOR’S costs
and expenses, both direct and indirect, resulting from additional time required on the
project, or resulting from delays to the Project. Any costs or expenses not included are
deemed waived. For purposes of determining the cost, if any, of any Extra Work, change,
addition or omission hereunder, all trade discounts, rebates, refunds, and all returns from
the sale of surplus materials and equipment shall accrue and be credited to CONTRACTOR,
and CONTRACTOR shall ensure that such discounts, rebates, refunds, and returns may be
secured, and the amount thereof shall be allowed as a reduction of CONTRACTOR's cost in
determining the actual cost of construction for purposes of any Extra Work, change,
addition or omissions in the work as provided herein.

60.6. Procedures.

a. Notice of Change. CONTRACTOR shall submit a written Notice of Change to DISTRICT if any
instruction, request, drawing, specification, action, condition, omission, default or other
circumstance occurs that constitutes a compensable change, deleted work, compensable
delay or other matter that may involve or require a Contract Adjustment (additive or
deductive). Such notice shall be provided prior to commencement of performance of the
Work affected and no later than three (3) working days after the discovery date of such
circumstance.

b. Form. Notices of Change shall be provided using forms furnished by the DISTRICT. Failure
by DISTRICT to request or approve a particular form shall not relieve CONTRACTOR of its
obligation to provide a Notice of Change in a written form that complies with the
requirements specified below:

1. a general statement of the circumstances giving rise to the Notice of Change
   (including, without limitation, identification of any related field order);

2. an reasonable order of magnitude estimate by CONTRACTOR of any related
   Contract Adjustments (additive and deductive) to the Contract Sum; and,

3. if such circumstances involve a right to adjustment of the contract time due to
   compensable delay or excusable delay that has not been waived, CONTRACTOR
   shall include, if not previously provided, a complete and timely Notice of Delay.

c. Waiver by CONTRACTOR. Failure by CONTRACTOR to provide a complete and timely notice
   of change under circumstances where a notice of change involving a change is required shall
constitute a waiver by CONTRACTOR of the right to a Contract Adjustment on account of
such circumstances and a waiver of any right to further recourse or recovery by reason or related to such change by means of the claims dispute resolution process or by any other legal process otherwise provided for under Applicable Laws.

d. Deductive Adjustments. Failure by CONTRACTOR to submit a timely or proper Notice of Change under circumstances in which a Notice of Change is required shall in no way affect DISTRICT’S right to a deductive Contract Adjustment on account of such circumstances.

60.7. **No Written Authorization.** Without limitation to any other provisions of the Contract Documents expressly or impliedly requiring performance of Work at CONTRACTOR’S own expense, any change performed by CONTRACTOR pursuant to any direction other than a duly authorized and executed change order or unilateral change order shall be paid for by CONTRACTOR at CONTRACTOR’S own expense.

60.8. **Unilateral Change Order.** The purpose of a Unilateral Change Order is to establish the DISTRICT’S estimate of the undisputed amount of an otherwise disputed Contract Adjustment.

a. Good Faith Determination. The DISTRICT’S estimate in a Unilateral Change Order of a Contract Adjustment shall be based upon a good faith determination by DISTRICT of the Contract Adjustment to the contract sum and/or contract time that is appropriate under the circumstances and consistent with the terms of the Contract Documents.

b. Claim by CONTRACTOR. If CONTRACTOR disputes any portion of the DISTRICT’S good faith determination of the Contract Adjustment that is set forth in a Unilateral Change Order, CONTRACTOR shall file within thirty (30) Days after issuance of the Unilateral Change Order by DISTRICT a claim. The amount of the Contract Adjustment requested in the claim shall not exceed the difference between the amount (either in terms of dollar amount or amount of time extension) of the Contract Adjustment requested by CONTRACTOR and the amount (either in terms of dollar amount or amount of time extension) of the Contract Adjustment granted in the Unilateral Change Order. CONTRACTOR shall have no reserved right, and hereby waives any such right that may exist under Applicable Law, to seek in such claim a Contract Adjustment or recovery that is based upon any amount (either in terms of dollar amount or amount of time extension) that is in excess of such difference.

c. Waiver by CONTRACTOR. Failure by CONTRACTOR to submit a claim within thirty (30) days after issuance of a Unilateral Change Order by DISTRICT shall constitute a waiver by CONTRACTOR of the right to further recourse or recovery, either by means of the claims dispute resolution process or by any other legal process otherwise provided for under Applicable Laws, based on an assertion that the amount of the Contract Adjustment on account of the change or delay described in such Unilateral Change Order should be different than the amount of the Contract Adjustment set forth in such Unilateral Change Order.

60.9. **Time Allotted.** 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 CONTRACTOR or to grant an extension of time, or constitutes a waiver of any provision in the Agreement, CONTRACTOR shall notify the DISTRICT, in writing, of such claim within
five (5) calendar days from the date CONTRACTOR has actual or constructive notice of the factual basis supporting the claim. The notice shall state the factual bases for the claim and cite in detail the Project Documents (including Plans and Specifications) upon which the claim is based. The CONTRACTOR’s failure to notify the DISTRICT within such five (5) day period shall be deemed a waiver and relinquishment of such a claim. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in these General Conditions.

60.10. **Qualifying Language Prohibited.** CONTRACTOR use of qualifying language stamps on DISTRICT Drawings or contract forms is prohibited. Contractor shall not countersign or endorse any form, drawing, change order, contract or other documents with any conditions not mutually agreed to in advance by the DISTRICT and the CONTRACTOR. Endorsement of a contract, change order, specification, drawing or form with the following: “This change order is being executed without waiver of the right to seek additional compensation for such services,” shall be of no legal force or effect.”

**ARTICLE 61  COMPLETION**

61.1. **Contract Time.** CONTRACTOR shall achieve Completion of the Work, or such portion of the Work as may be designated at any time by DISTRICT for separate delivery, in accordance with the requirements of the contract time and other provisions of the Contract Documents. However, the DISTRICT, at its sole option, may accept completion of the Project and have the Notice of Completion recorded when the entire work including individual portions of the work shall have been completed to the satisfaction of the DISTRICT, except for minor corrective items, as distinguished from incomplete items.

61.2. **Request for Inspection.** A final walk through of the Project to determine completion and to record the Notice of Completion shall occur only upon a valid claim by CONTRACTOR that the Project is complete except for minor corrective items. Any erroneous claims of completion by CONTRACTOR resulting in a premature walk through shall be at CONTRACTOR’S sole cost and expense and DISTRICT shall make adjustments to the contract price by reducing the amount thereof to pay for any costs incurred by the DISTRICT due to the erroneous claims by the CONTRACTOR that the Project is complete. Minor corrective items shall be identified in the final walk through of the Project.

61.3. **Punch List.** At the conclusion of such inspection, DISTRICT shall prepare and give to CONTRACTOR a Punch List of items, if any, to be completed or corrected for Completion. If CONTRACTOR disputes any of the items included, it shall so note its objection on the Punch List. CONTRACTOR shall proceed within forty-eight (48) hours after preparation of the Punch List to commence correction and completion of the items on the Punch List, including, without limitation, any disputed items, and all such items of Work shall be completed by CONTRACTOR before the Work will be considered as Complete. Failure by DISTRICT, Inspector of Record, Design Consultant or CONTRACTOR to include an item on the Punch List does not alter the responsibility of CONTRACTOR to perform the Work in accordance with the Contract Documents. Items of Work necessary for Completion that, for any reason, have been omitted from the Punch List shall be added to the Punch List and shall be promptly completed by CONTRACTOR upon request by DISTRICT, Design Consultant or Inspector of Record made at any time prior to Final Payment.
61.4. **Re-Inspection.** CONTRACTOR shall notify DISTRICT when the items of Work shown on the Punch List are completed. DISTRICT, Inspector of Record, Design Consultant and such others as DISTRICT deems necessary or appropriate will then make a further inspection to determine whether such Work is Complete. If such inspection, or any subsequent re-inspection required pursuant hereto, discloses any item, whether or not included on the Punch List, which must be completed or corrected before Completion, CONTRACTOR shall, as a condition of Completion, complete or correct such item, which shall then be re-inspected to confirm that such Work is Complete. CONTRACTOR shall reimburse DISTRICT, or DISTRICT may at its option withhold from CONTRACTOR payments, amounts incurred by DISTRICT, Inspector of Record, Design Consultant, DISTRICT Consultants or others whose services, for reasons within the control or responsibility of CONTRACTOR or the Subcontractors, are necessary for more than two (2) such re-inspections to determine Completion.

61.5. **Partial Occupancy or Use.** DISTRICT reserves the right to beneficially occupy all or any portion of the Work at any time before Completion of the entire Work. Beneficial occupancy means that DISTRICT has assumed physical occupancy and use of such portion of the Work. Commencement of improvements or other work by separate contractors in order to ready the Work for use or occupancy by DISTRICT shall be unconditionally permitted in all cases prior to Completion and shall not constitute a taking of beneficial occupancy by DISTRICT. Exercise by DISTRICT in accordance with the provisions of this section of its right to take beneficial occupancy shall not constitute grounds for a Contract Adjustment. The DISTRICT’S right of beneficial occupancy of all or a portion of the Work prior to Completion shall be subject to the following conditions:

a. DISTRICT and such others as DISTRICT deems necessary will make an inspection of the portion of the Work to be beneficially occupied and prepare a list of items to be completed or corrected in the same manner as required by and subject to the same conditions as set forth above.

b. Beneficial occupancy by DISTRICT shall not be construed as acceptance of that portion of the Work which is to be occupied.

c. Except as otherwise provided in this section, beneficial occupancy by DISTRICT shall not constitute a waiver of rights of the DISTRICT against CONTRACTOR. Notwithstanding anything stated in this section or elsewhere in the Contract Documents to the contrary, beneficial occupancy by DISTRICT shall not constitute a waiver of rights of DISTRICT relating to defective Work in the area beneficially occupied or in any other portion of the Work.

d. Prior to the DISTRICT’S taking beneficial occupancy, CONTRACTOR shall submit to DISTRICT an itemized list of each piece of equipment located in or serving the area to be occupied stating the date operation of such piece of equipment commenced, together with operating instructions, manuals and other information required by the Contract Documents. CONTRACTOR shall provide, in the areas beneficially occupied, on a continual basis, utility services, elevator service, and heating and cooling systems in operable condition commencing at the time of beneficial occupancy and until Completion of the entire Work. DISTRICT shall be responsible, from and after taking occupancy, for utility consumption, regular operation and regular maintenance of such systems or equipment.
e. Provided that all of the equipment and systems located in or serving the occupied area are complete and operational, the Guarantee to Repair Period, as well as other express warranties on materials, equipment or other Work installed and contained entirely within that portion of the Work which is beneficially occupied, will commence upon the first date of actual beneficial occupancy or use of such occupied portions of the Work by DISTRICT.

f. DISTRICT shall pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.

g. DISTRICT shall pay all utility costs that arise out of its beneficial occupancy.

h. CONTRACTOR shall not be responsible for providing security in areas beneficially occupied.

i. DISTRICT shall use its best efforts to prevent its beneficial occupancy from interfering with the conduct of CONTRACTOR’S remaining Work.

j. CONTRACTOR shall not be required to repair damage caused solely by DISTRICT’S beneficial occupancy.

k. CONTRACTOR shall continue to maintain all insurance required by the Contract Documents in full force and effect.

61.6. Notice of Completion. The DISTRICT shall accept completion of the Project and have the Notice of Completion recorded within ten (10) days of acceptance of completion of the Project when the entire work including punch list items shall have been completed to the satisfaction of the DISTRICT. Civil Code Section 3093. The work may only be accepted as complete by action of the DISTRICT’s Governing Board.

ARTICLE 62 ADJUSTMENTS TO CONTRACT PRICE

62.1. Adjustment due to Deficiency. If CONTRACTOR defaults or neglects to carry out the work in accordance with the Project Documents or fails to perform any provision thereof, DISTRICT may, after ten (10) days written notice to the CONTRACTOR and Surety without prejudice to any other remedy it may have, make good such deficiencies.

62.2. Withhold Payment. If the CONTRACTOR fails to complete the minor corrective items prior to the expiration of the thirty-five (35) day period immediately following recording of the Notice of Completion, the DISTRICT shall withhold from the final payment an amount equal to one hundred fifty percent (150%), as determined by the DISTRICT, of the amount of each item until such time as the item is completed. Public Contract Code Section 7107.

ARTICLE 63 CORRECTION OF WORK

63.1. General. CONTRACTOR shall promptly remove all work identified by DISTRICT as failing to conform to the Project Documents, whether incorporated or not. CONTRACTOR shall promptly replace and re-execute its own work to comply with Project 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.
63.2. **DISTRICT Removal and Sale.** 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 64  EXTENSION OF TIME - LIQUIDATED DAMAGES

64.1. **General.** 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. CONTRACTOR shall be assessed liquidated damages for each and every day the work required under the Project Documents 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 Project Documents. The CONTRACTOR will pay to the DISTRICT or DISTRICT may retain from amounts otherwise payable to the CONTRACTOR, said amount for each day after failure to meet the requirements of the contract completion as scheduled in the Agreement. Government Code Section 53069.85 For purposes of this article, the work shall be considered "complete" in accordance with the provisions of the Article, "COMPLETION", except that the work may be considered complete without formal Acceptance by the DISTRICT Governing Board so long as the Governing Board, at its next regularly scheduled meeting, accepts the work.

64.2. **Exemptions.** 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. CONTRACTOR shall provide documentation and justification to substantiate the delay and its relation to the Project's critical path. 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. Extension of time shall apply only to that portion of work affected by the delay, and shall not apply to other portions of work not so affected.

### ARTICLE 65  PAYMENTS WITHHELD

65.1. **General.** In addition to amount which DISTRICT may retain under Article entitled "COMPLETION" and Article entitled "PAYMENTS," 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:

a. 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, including, without limitation, payments made pursuant to the Article entitled "PAYMENTS BY CONTRACTOR."

b. The cost of Defective Work which CONTRACTOR has not remedied.

c. Liquidated damages assessed against CONTRACTOR.

d. Penalties for violation of labor laws.
e. The cost of materials ordered by the DISTRICT pursuant to Article entitled "MATERIALS AND WORK."

f. The cost of completion of this Agreement if there exists a reasonable doubt that this Agreement can be completed for the balance then unpaid to CONTRACTOR.

g. Damage to DISTRICT, another contractor, or subcontractor.

h. Site clean-up as provided in Article entitled "CLEANING UP."

i. Payments to indemnify, defend, or hold harmless the DISTRICT.

j. Any payments due to the District including but not limited to payments for failed tests, utilities or imperfections.

k. Extra services for ARCHITECT.

l. Extra services for the INSPECTOR including but not limited to re-inspection required due to CONTRACTOR’S failed tests or installation of unapproved or defective materials and CONTRACTOR’S requests for inspection and CONTRACTOR’S failure to attend the inspection.

m. Failure of CONTRACTOR to submit on a timely basis, proper and sufficient documentation required by the Project Documents, including without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders and verified reports.

n. Any other obligation(s) of the DISTRICT which the DISTRICT is authorized and/or compelled by law to perform.

65.2. Payments on Behalf of the CONTRACTOR. 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 obligations. DISTRICT will render CONTRACTOR an accounting of such funds disbursed on behalf of CONTRACTOR.

65.3. Adjustment. 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 entitled "ADJUSTMENTS TO CONTRACT PRICE."

ARTICLE 66 TAXES

66.1. General. CONTRACTOR will pay all applicable federal, state and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Project Documents.

66.2. Documents. 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 excise tax because it is a sale to a state or local government for its exclusive use, the DISTRICT, upon request, will execute documents necessary to show (1) that the 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 the DISTRICT. No excise tax for such materials shall be included in any bid price.

ARTICLE 67   NO ASSIGNMENT OR THIRD PARTY RIGHTS

67.1. **No Assignment.** The CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or of its rights, title or interest in or to the same or any part thereof. If the CONTRACTOR shall assign, transfer, convey, sublet or otherwise dispose of the Agreement or its right, title or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever; and the Agreement may, at the option of the DISTRICT, be terminated, revoked and annulled, and the DISTRICT shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to the CONTRACTOR, and to its purported assignee or transferee.

67.2. **No Third-Party Rights.** Nothing contained in the Contract Documents is intended to make any person or entity who is not a signatory to this Contract a third-party beneficiary of any right of CONTRACTOR (including, without limitation, any right of CONTRACTOR to a benefit derived from, or to the enforcement of, an obligation assumed by DISTRICT) that is expressly or impliedly created by the terms of the Contract Documents or by operation of Applicable Laws.

ARTICLE 68   NOTICE

68.1. **General.** Any notice from one party to the other or otherwise under the Agreement 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:

a. 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;

b. 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 Agreement, and sent by registered or certified mail with postage prepaid;

c. If notice is given to Surety or other persons, 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.

68.2. **Extent of Agreement.** The Contract Documents represent the full and complete understanding of every kind or nature between the parties and all preliminary negotiations and prior representations, proposals and contracts, of whatever kind or nature, are merged herein and superseded hereby. No verbal agreement or implied covenant shall be held to vary the provisions of the Contract...
Documents. Any modification the Contract Documents will be effective only by written instrument signed by both DISTRICT and CONTRACTOR and shall, if required by Applicable Laws, be formally approved or ratified by the Board of Trustees.

ARTICLE 69 NO WAIVER AND SEVERABILITY

69.1. **No Waiver.** The failure of the DISTRICT in any one or more instances to insist upon strict performance of any of the terms of this Agreement 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.

69.2. **Severability.** Should any part, term, portion or provision of the Contract Documents, or the application thereof to any party or circumstance, be held to be illegal, invalid or in conflict with Applicable Laws, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to any other party or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by Applicable Laws.

ARTICLE 70 NON-UTILIZATION OF ASBESTOS MATERIAL

70.1. **General.** The CONTRACTOR will be required to execute and submit the Certificate Regarding Non-Asbestos Containing Materials.

70.2. **Criteria for Removal.** Should asbestos containing materials be installed by the CONTRACTOR in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will meet the following criteria:

   a. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).

   b. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.

   c. The asbestos consultant shall be chosen and approved by the DISTRICT who shall have sole discretion and final determination in this matter.

   d. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

70.3. **Cost.** Cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs as may be incurred by the DISTRICT shall be borne entirely by the CONTRACTOR.

70.4. **Hold Harmless.** Interface of work for the Project with work containing asbestos shall be executed by the CONTRACTOR at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos
containing products. By execution of the Agreement, the CONTRACTOR acknowledges the above and agrees to hold harmless the DISTRICT, its Governing Board, employees, agents, and ARCHITECT and assigns for all asbestos liability which may be associated with this work. The CONTRACTOR further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risks and liabilities.

**ARTICLE 71 LEAD**

71.1. Pursuant to the Lead-Safe Schools Protection Act (Education Code Sections 32240, et seq.) and other applicable law, the CONTRACTOR shall not use lead-based paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or the modernization or renovation of any existing school facility.

**ARTICLE 72 GOVERNING LAW**

72.1. The laws of the State of California shall govern the Project and the Agreement.