SAN BERNARDINO COUNTY

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SECTION D

GENERAL CONDITIONS

CSA 70 D-1 LAKE ARROWHEAD
MacKay PARK
PICKLEBALL COURTS PROJECT

NOT FOR BID

FOR

COUNTY SERVICE AREA 70 D1 MacKay PARK
LAKE ARROWHEAD, CALIFORNIA

PROJECT NO.: 30.30.0165

GENERAL PROVISIONS

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SAN BERNARDINO COUNTY
DEPARTMENT OF PUBLIC WORKS
SPECIAL DISTRICTS

GENERAL CONDITIONS
CONSTRUCTION PROJECTS
CSA 70 D-1 Lake Arrowhead MacKay Park Pickleball Courts Project

1 GENERAL PROVISIONS

1.1 Basic Definitions

1.1.1 Acceleration Proposal Request. District's written request to Contractor to submit an itemized proposal for Extraordinary Measures in order to achieve early completion of all or a portion of the Work when the need for such measures is not due to the fault of the Contractor.

1.1.2 Addenda. The Addenda or Addendum consist of the written clarifications of the Bid Documents issued by the District prior to the execution of the Contract.

1.1.3 Applicable Law. State, federal, and local laws, statutes, ordinances, building codes, rules and regulations relating to the Work.

1.1.4 Architect – The firm hired by the District to design the Project.

1.1.5 As Built. The Contractor's daily, current and complete on-site set of Plans and Specifications showing all changes, modifications and revisions performed during the progress of the Project construction.

1.1.6 Board. The Governing Board for the District.

1.1.7 Bid Documents. The documents contained in the bid packages including, but not limited to, advertisement for bids, instructions to bidders, bid proposal, non-collusion declaration, sample standard contract, contractor's affidavit and final release, sample bond forms, State wage determinations, general conditions, special conditions, technical specifications, performance specifications and Project drawings/plans.

1.1.8 Change Order. A Change Order is a written document prepared by the District reflecting the agreement between the District and Contractor for: a change in the terms or conditions of the Contract, if any; a specific Scope Change in the Work; the amount of the adjustment, if any, in the Contract Sum; and the extent of the adjustment, if any, in the Contract Time. The Change Order must be signed by an authorized representative of the District and Contractor.

1.1.9 Change Order Request (COR). As more specifically described herein below, a Change Order Request is a written document originated by the Contractor, which describes an instruction(s) issued by the District after the effective date of the Contract,

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which Contractor believes to be a Scope Change that may result in changes to the Contract Sum or Contract Time or, which describes the need for or desirability of a change in the Work proposed by Contractor.

1.1.10 Construction Change Directive. A Construction Change Directive is a unilateral written order prepared and signed by the District, directing Contractor to perform a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

1.1.11 Contract. The Contract Documents form the Contract ("Contract" or "Agreement").

1.1.12 Contract Documents. The Contract Documents consist of the documents enumerated as such in the Contract between District and Contractor, including, but not limited to, all Addenda issued prior to, and Modifications issued after the effective date of the Contract, Plans/drawings, Specifications, request for qualifications, instructions to bidders, general conditions, special conditions, and bonds.

1.1.13 Contract Sum. The term "Contract Sum" means the amount of compensation stated in the Contract for the performance of the Work. The Contract Sum may be adjusted only by Change Order, Construction Change Directive, or written amendment to the Contract.

1.1.14 Contractor. The individual, partnership, corporation, joint venture, or other legal entity entering into the Contract with the District to perform the Work.

1.1.15 County. The San Bernardino County.

1.1.16 Date of Commencement. The date for commencement of the Work fixed by District in a Notice to Proceed to Contractor.

1.1.17 Day(s). The terms "day" or "days" mean calendar days unless otherwise specifically designated in the Contract Documents. The term "Workday" or "Working Day" shall mean any calendar day except Saturdays, Sundays and County recognized legal holidays.

1.1.18 Defective Work. Any or all of the Work, which is unsatisfactory, faulty, omitted, incomplete or deficient, in material, workmanship or operation, or which does not conform to the requirements of the Contract Documents, directives of the District, applicable code requirements, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.

1.1.19 Department. San Bernardino County, Department of Public Works - Special Districts.

1.1.20 Director. The Director of the Department of Public Works - Special Districts.

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1.1.21 District. County Service Area 70 D-1 Lake Arrowhead MacKay Park. The political subdivision identified as a special district of San Bernardino County, governed by the Board of Supervisors, and administered by the Department of Public Works – Special Districts.

1.1.22 Extraordinary Measures. Measures implemented by Contractor at District's direction to expedite the progress of construction of all or a portion of the Work, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) submitting a recovery schedule for re-sequencing performance of the Work or other similar measures, as more specifically described in Paragraph 2.8.

1.1.23 Final Completion. The term Final Completion is the date, evidenced by the District's approval of Contractor's Final Application for Payment, when the Work has been completed and the requirements for Project closeout set forth in the Contract Documents including, but not limited to, those set forth in Paragraph 9.8 below, have been satisfactorily completed. May be demonstrated by the recording of a Notice of Completion by the District.

1.1.24 Final Payment. District's payment of the Contract Sum due to Contractor for the entire Work, less only the sums which District is specifically allowed to withhold under the terms of the Contract Documents and Applicable Law.

1.1.25 Modifications. A Modification is (i) a written amendment to the Contract signed by duly authorized representatives of the Parties, (ii) a Change Order, or (iii) a Construction Change Directive.

1.1.26 Notice of Completion. Document that is submitted by the District to the County Recorder for filing and recordation when all Work called for in the Construction Documents has been completed.

1.1.27 Notice to Proceed. The Notice to Proceed is a document issued by the District fixing the Date of Commencement for the Work. The Contract Time for Contractor's performance of the Work is measured in calendar days (not Workdays).

1.1.28 Owner. The District or its duly authorized representative.

1.1.29 Parties. The District and Contractor may be referred to collectively in the Contract Documents from time to time as the Parties.

1.1.30 Plans/Drawings. The Drawings, profiles, cross-sections, working drawings, and supplemental drawings or reproductions thereof, reviewed by the District or its authorized agent, which show the locations, character, dimensions, or details of the Work.

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1.1.31 Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the County, District or by Separate Contractors.

1.1.32 Project Manager. District's Project Manager, identified by District in writing, is the District's Project Representative, who interprets and defines the District's policies, renders decisions with respect to Contractor's performance of the Work, approves Contractor's Applications for Payment, reviews and approves Contractor's schedules and submittals, reviews Change Order Requests and Change Orders and Construction Change Directives, reviews all quantity calculations related to pay quantities, reviews and approves changes in the Contract Time, concurs in any defective Work notification, and reviews and determines Substantial Completion of the Work and Final Completion of the Work. The extent and limits of the authority of any designee of the District's Project Manager shall be set forth in writing. Contractor shall be entitled to rely on the decisions and information provided by such written designee subject to the limitations of authority set forth in writing. All correspondence and electronic communication shall flow through the Project Manager. The Project Manager does not have the authority to approve a Change Order, written amendment to the Contract or Change Order Directive on behalf of the District. Contractor acknowledges that all Change Orders, Change Order Requests, Construction Change Directives, and amendments to the written Contract require the approval of the Director, or his/her designee, and may also require the approval of the Board.

1.1.33 Project Representative. Those individuals designated by the Parties in writing with authority to render decisions in connection with the Work and the Contract.

1.1.34 Scope Change. A Scope Change is Work that is not reasonably inferable from the Contract Documents upon which the Contract Sum is based, by a Contractor with the skill, experience, and expertise necessary for the proper, timely, and orderly completion of the Work, and is (i) materially inconsistent with, or (ii) a material change in the quantity, quality, or other substantial deviation in, the Contract Documents upon which the Contract Sum is based; and are necessary to correct an error, omission or defect in the Contract Documents, which cannot reasonably be corrected in the construction process.

1.1.35 Separate Contractors. The term Separate Contractors means licensed contractors performing a portion of the Project under separate contracts with the District.

1.1.36 Site. The physical area designated in the Contract Documents for Contractor's performance of the Work.

1.1.37 Specifications. The portion of the Contract Documents consisting of the written requirements for labor, materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services, including all Work and services defined in the Standard specifications, reference specifications, technical

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specifications, special provisions, General Conditions, and specifications in supplemental agreements between the District and Contractor.

1.1.37.1 Article, Paragraph, and Subparagraph titles and other identifications of subject matter in the Specifications are intended as an aid in locating and recognizing the various requirements in the Specifications. Except where the titling forms a part of the text, such as beginning words of a sentence or where the title establishes the subject, the titles are subordinate to and do not define, limit, or restrict the Specification text. Underlining or capitalizing of any words in the text does not signify or mean that such words convey special or unique meanings having a precedence over any other part of the Contract Documents. Specification text shall govern over titling and shall be understood to be and interpreted as a whole. The listings of various Sections of the Specifications are for convenience only and do not control the Contractor in dividing the Work among the subcontractors or establish the extent of the Work to be performed or provided by any Subcontractor or trade. **Contractor is solely responsible for providing the complete Work without respect to where or how the various parts of the Work may be indicated or specified.**

1.1.38 Subcontractor. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" does not include a Separate Contractor or subcontractors of a Separate Contractor.

1.1.39 Sub-subcontractor. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site.

1.1.40 Substantial Completion. Substantial Completion is defined to mean the state in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents as determined by the District so that the District can occupy and utilize the Work for its intended use and as further defined in the Contract.

1.1.41 Work. The term "Work" means the construction and other services required by, and reasonably inferable from, the Contract Documents as amended by Contract Modifications, whether completed or partially completed, and includes all labor, materials, equipment, tools, and services provided or to be provided by Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project, and includes products purchased by Contractor from third parties, and thereafter sold to District by Contractor.

1.1.42 Written Amendment to Contract – An amendment to the Contract which may change the Contract Sum or Contract Time, as necessary, due to unforeseen circumstances at the Project, additional Work required because of changes in Applicable Laws, or other appropriate facts necessitating a Contract amendment.

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1.2 Correlation and Intent of the Contract Documents

1.2.1 Complementary Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by anyone shall be as binding as if required by all. All Work mentioned or indicated in the Contract Documents, and all Work reasonably inferable from them, shall be performed by the Contractor as part of the Contract unless it is specifically indicated in the Contract Documents that such work is to be done by others.

1.2.2 Order of Precedence. In the event of conflict between any of the Contract Documents the provision placing a more stringent requirement on the Contractor shall prevail. The Contractor shall provide the better quality or greater quantity of Work and/or materials unless otherwise directed by District in writing. In the event none of the Contract Documents place a more stringent requirement or greater burden on the Contractor, the controlling provision shall be that which is found in the document with higher precedence. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following order of precedence, with "(1)" being the highest:

(1) Permits.
(2) Modifications.
(3) Specifications.
(4) Detailed Plans/Drawings.
(5) Large Scale Plans/Drawings.
(6) Small Scale Plans/Drawings.
(7) The Contract, including all exhibits, and Addenda with later Addenda having priority over earlier Addenda.
(8) Special Conditions, if any.
(9) General Conditions; and
(10) Bid Documents

1.2.1 Nothing herein shall relieve the Contractor of its obligation to notify the District of any inconsistencies in the Contract Documents. Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the District in writing for such further written explanations as may be necessary.

1.2.2 In the case of conflict or inconsistency in the Contract Documents, the conflict or inconsistency must be brought to the attention of the District for written clarification obtained from the District before proceeding with the Work affected by the conflict or inconsistencies. Failure to obtain such written clarification from the District will constitute waiver of any claim by Contractor related to such conflict or inconsistency.

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All Work shall conform to the Contract Documents. No change therefrom shall be made without review and written acceptance by District.

1.2.3 Organization. Organization of the Specifications into divisions, sections, and articles, and sequential order of Plans/Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed.

1.2.4 Well-Known Terms. Unless otherwise stated in the Contract Documents, words which have well-known technical, or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.5 Contractor Deviations. No deviations by the Contractor from the Contract Documents relating to any portion of the services, materials, labor, or equipment required for the Work shall be construed to set a precedent with respect to subsequent interpretation of the Contract Documents or performance of the Work unless such a deviation is memorialized in a Modification to the Contract.

1.2.6 Complete Agreement. The Contract Documents constitute the full and complete understanding of the Parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both Parties and pursuant to Article 7.

1.3 Capitalization

Terms capitalized in these General Conditions include those which are (i) specifically defined, (ii) the titles of numbered articles, and identified references to paragraphs, subparagraphs, and clauses in the document or (iii) titles of other Contract Documents or forms.

1.4 Interpretation

1.4.1 Omitted Articles. In the interest of brevity, the Contract Documents frequently omit articles such as “the” and “an”, but the fact that an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters whether or not non- limiting language (such as “without limitation, “but not limit to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

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1.4.2 References to Contract Documents. Where “as indicated”, “as detailed”, or words of similar import are used, it shall be understood that the reference is made to any one of the Contract Documents.

1.4.3 Severability. In the event any article, section, sub-article, paragraph, subparagraph, sentence, clause, or phrase contained in the Contract Documents shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable such determination, declaration, or adjudication shall in no manner affect the other articles, sections, sub-articles, paragraphs, subparagraphs, sentences, clauses, or phrases of the Contract Documents, which shall remain in full force and effect as if the article, section, sub-article, paragraph, subparagraph, sentence, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable was not originally contained in the Contract Documents.

1.4.4 Provisions Deemed Inserted. Each and every provision and clause required by law to be inserted in the Contract Documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause is included herein and, if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon application of either Party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

1.4.5 Headings Not Controlling. The various headings contained in the Contract Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Contract or any provision thereof.

1.4.6 Singular/Plural/Gender Terms. Whenever the context so requires, 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.

1.4.7 Technical/Non-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.

1.4.8 Referenced Standards. Bulletins, standards, rules, methods of analysis or test, and specification of other agencies, engineering societies or industrial associations may be referred to in the Contract Documents. Reference may also be made to applicable ordinances, codes or regulations of any political subdivision having jurisdiction. These refer to the latest edition, including amendments in effect and published at the time of advertising the Project for bid, unless specifically referred to by edition, volume or date.

1.4.9 Interpretation. Should any provision of this Contract require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Contract shall be more strictly construed against one

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party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of all the parties have participated equally in the negotiation and preparation of this Contract. The language in all parts of this Contract shall be in all cases construed simply, fairly, equitably, and reasonably, according to its plain meaning and not strictly for or against any of the parties.

1.5 Execution of Contract Documents

1.5.1 Signatures. The Contract shall be signed by the authorized representatives of the District and Contractor.

1.5.2 Contractor Representations Concerning Contract Documents and Site Investigation. By executing the Contract, Contractor represents and warrants that: (i) the Contract Documents are sufficiently detailed to enable Contractor to determine the cost of the Work within the Contract Sum and Contract Time; (ii) it has visited the Project Site, familiarized itself with the local conditions under which the Work is to be performed including, without limitation, the conditions contained in any test results and/or reports provided to or obtained by Contractor, and the conditions reflected on any Site surveys provided to or obtained by the Contractor; (iii) it is fully experienced, qualified and competent to perform the Work set forth in the Contract Documents; (iv) it is properly equipped, organized and financed to perform the Work; (v) it is properly permitted and licensed by California and all other governmental entities to perform the Work required by the Contract and that it will retain only properly licensed Subcontractors to perform the Work of the Contract; (vi) it has familiarized itself with all conditions bearing upon transportation, disposal, handling, and storage of materials;
(vii) it has familiarized itself with the availability of labor, water, electric power, and roads; (viii) it has familiarized itself with uncertainties of weather or similar observable physical conditions at the Project Site; (ix) it has familiarized itself with the character of equipment and facilities needed during performance of the Work; (x) it has familiarized itself with the staging and material storage constraints of the Project Site and surrounding buildings and will confine its staging and storage operations to approved areas; (xi) it shall maintain the immediate surrounding areas of the Project Site in a clean and safe manner at all times; (xii) it will coordinate its construction activities with District's Separate Contractors, if any, performing work on the Project Site; (xiii) it will adhere to the assigned transit route identified by the District; and (xiv) it will adhere to and be bound by conditions set forth in the Contract Documents and any regulatory agency, utility, or governmental entity with jurisdiction over the Project. In addition, and without limiting the foregoing warranties, Contractor represents and warrants to District that prior to executing the Contract:

(1) Contractor has familiarized itself and will continuously familiarize itself throughout performance of the Work with the nature and extent of the Contract Documents, the Work, the Project Site, the identified existing conditions of the Project Site and locality, and all laws, rules, ordinances, and regulations of all government authorities and utilities having

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jurisdiction over the Project that may affect costs, progress, performance, or furnishing of the Work.

(2) Contractor has reviewed and carefully studied all examinations, investigations, explorations, tests, reports, and studies provided to Contractor by District which pertain to the physical conditions at or contiguous to the Project Site or conditions which otherwise may affect the cost, progress, performance or furnishing of the Work, within the Contract Time and Construction Schedule. Contractors may rely upon the accuracy of the technical data contained in such documents but not upon nontechnical data, interpretations, opinions or conditional statements contained therein.

(3) Contractor has reviewed all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the Project Site.

(4) As of the effective date of the Contract, Contractor has no knowledge of any conflicts, errors, or discrepancies in the Contract Documents other than those which Contractor has notified District of in writing prior to executing the Contract; and

(5) The contractor is experienced and competent in the interpretation and use of Specifications and Drawings, and in the use of materials, equipment and construction techniques as are required to successfully complete the Project. Contractor shall, at its own expense, employ any and all experts necessary to successfully complete the Work required by the Contract Documents.

1.6 Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.6.1 Ownership of Contract Documents. All Drawings, Specification, plans, sketches and other documents, including copies thereof, furnished by the District are and shall remain the property of the District and may be required to be returned to the District at the Contractor's expense. They are to be used only with respect to this Project and are not to be used on any other project. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the District's common law copyright or other reserved rights.

1.6.2 Contractor's Assignment of Copyrights. Project related documents created, prepared, or issued by Contractor, or its Subcontractors, including any Drawings, Specifications, and electronic data are "work for hire", and shall become the property of the District when prepared and shall be delivered to District whenever requested. The Contractor hereby assigns to the District, without reservation, all copyrights to all Project related documents, models, photographs, and other written expressions created by the Contractor.

1.6.3 Submissions to District. A copy of every technical memorandum and report prepared by Contractor shall be submitted to the District to demonstrate progress toward completion of Work. In the event District rejects or has comments on any such

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work product, District shall identify specific requirements for satisfactory completion by Contractor. Contractor shall provide District with Project related documents in reproducible or electronic format, upon District's written request. All Project related documents shall be turned over to District upon termination of this Agreement or Final Completion, whichever occurs first.

1.7 Publicity

The Contractor, its agents, employees, subcontractors, and suppliers shall not engage in any communication or correspondence with persons not directly involved in the construction of the Project, concerning any aspect of the construction of the Project, without the express written consent of District. All communications to the media, or in response to inquiries made by private citizens, shall be issued solely through the District.

2 DISTRICT'S DUTIES AND RESPONSIBILITIES

2.1 General

The District shall designate the Project Manager(s) defined in Paragraphs 4.1 below, in writing. Whenever the Contract Documents require or permit the District to take or request an action or approve or disapprove of an action or request made by another Party, the reference to "District" shall mean the District's Project Manager unless the Contract Documents or context make it clear that another person is authorized to act as the District's Project Manager. All communications to the District shall be made through the District's Project Manager. The Contractor shall not be entitled to rely on directions (nor shall it be required to follow the directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to the Contract. Subject to the limitation set forth in this paragraph, direction and decisions made by the District's Project Manager shall be binding on the District. Contractor acknowledges that all Change Orders, Change Order Requests, Construction Change Directives, and amendments to the written Contract require the approval of the Director, or his/her designee, and may also require the approval of the Board.

2.2 Reserved.

2.3 Information and Services Required of the District

2.3.1 Approvals for Permanent Structures. Except for the permits, fees, and other such items set forth under Subparagraph 3.7.1, that are the responsibility of the Contractor under the Contract Documents, the District shall pay for necessary assessments and charges reasonably required for construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

2.3.2 Existing Utilities: Removal, Relocation and Protection. In accordance with California Government Code Section 4215, the District shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project Site which are not identified in the Contract Documents provided by District. Contractor shall be compensated for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Contract Documents with reasonable accuracy, and for equipment on the Project Site necessarily idled during

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such work. Contractor shall not be assessed Liquidated Damages for delay in completion of the Work when such delay is caused by the failure of the District or the utility provider to provide for removal or relocation of such utility facilities. Nothing in this Paragraph 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 Project Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Project Site. If the Contractor encounters utility facilities not identified by the District in the Contract Documents, the Contractor shall immediately notify, in writing, the District. In the event that such utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a price determined in accordance with Article 7 herein.

2.3.3 Surveys. Contractor shall be responsible for locating, and shall locate prior to performing any Work, all utility lines, including telephone, cable, television, and fiber optic lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone cables, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines.

2.3.4 Time for Furnishing. Information or services required of the District by the Contract Documents shall be furnished by the District with reasonable promptness.

2.4 District's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or fails to carry out Work in accordance with the Contract Documents, the District may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the District to stop the Work shall not give rise to a duty on the part of the District to exercise this right for the benefit of the Contractor or any other person or entity. The District's right to stop the Work is in addition to and without prejudice to any other rights or remedies of the District.

2.5 District's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a forty-eight (48) hour period after receipt of written notice from the District to commence and continue correction of such default or neglect with diligence and promptness, the District may after such forty-eight (48) hour period give the Contractor a second written notice to correct such deficiencies within a second forty-eight (48) hour period. If the Contractor within such second forty-eight (48) hour period after receipt of such second notice fails to commence and continue to correct any deficiencies, the County, without prejudice to other remedies the District may have, may correct such deficiencies. In such case an appropriate Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor, the cost of correcting such deficiencies, including

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compensation for any additional design services and expenses made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the County. The County's right to carry out the Work is in addition to and without prejudice to any other rights or remedies of the County.

2.6 Suspensions of Operations

In addition to the County's right to stop the Work set forth in these General Conditions, the Contractor shall, upon receipt of District's written notice and within the time stated therein, suspend shipment and delivery of material and stop any part or all of the Work and operations under the Contract for such period or periods of time as the District may deem advisable and designate in said notice. Upon receipt of such notice to suspend operations, the Contractor shall immediately confer with the District concerning the probable duration of such suspension and stoppage, delays, and extensions of time resulting therefrom as well as the reduction and possible elimination of the Contractor's field cost and such other costs and expenses as may result directly from such Work stoppage. Upon written notice from the District to resume operations, the Contractor shall promptly resume all or any part of the Work and operations including securing of materials required by said resumption notice. Contractor shall be compensated for suspension in accordance with Article 13 herein.

2.7 Prohibited Interests

No official of the 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 District structural, 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 Contract or in any part thereof. No officer, employee, 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 Contract 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 Section.

2.8 District's Right to Order Extraordinary Measures

2.8.1 Non-Compensable Extraordinary Measures. In the event the District determines that the performance of the Work, or any portion thereof, has not progressed or reached the level of completion required by the Contract Documents due to causes within the control of Contractor, the District shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities and (iii) submitting a recovery schedule for re-sequencing performance of the Work or other similar measures as defined as Extraordinary Measures in Paragraph 1.1 above. Such Extraordinary

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Measures shall continue until the progress of the Work complies with the stage of completion as required by the Contract Documents. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with the Extraordinary Measures required by the District under or pursuant to this section. The District may exercise the rights furnished the District under or pursuant to this section as frequently as the District deems necessary to ensure that the Contractor's performance of the Work will comply with the Contract Time or interim completion dates set forth in the Contract Documents. If Contractor or its Subcontractors fail to implement or commence Extraordinary Measures within ten (10) calendar days of District's written demand, District may, without prejudice to other remedies take corrective action at the expense of the Contractor and shall reduce the Contract Sum.

2.8.2 Compensable Extraordinary Measures. District, in its discretion, may issue a written request to the Contractor asking Contractor to submit an itemized proposal for Extraordinary Measures in order to achieve early completion of all or a portion of the Work, due to no fault of the Contractor, in a form acceptable to District within ten (10) calendar days after District's issuance of the Acceleration Proposal Request.

2.9 Authority of the Department of Public Works – Special Districts

2.9.1 The Department of Public Works – Special Districts shall represent the District and shall decide, within the provisions of the Specifications and Drawings, all questions which may arise concerning the quality or acceptability of materials furnished and Work performed.

2.9.2 All questions concerning substitutions, selections, materials, colors, and textures shall be submitted to the Department for approval.

2.9.3 In all cases requiring interpretation of the Drawings and/or Specifications, the decision of the Department shall be final.

2.9.4 Final determination of the acceptable fulfillment of the Contract on the part of the Contractor shall be made by the Department.

2.9.5 The Director is authorized to represent the District regarding any suspension or termination of this Contract. The Board must approve any assignment of this Contract.

2.10 Authority of Board

The Board has the final authority in all matters affecting the Work.

2.11 Materials Furnished by District.

2.11.1 Materials furnished by the District will be available at locations designed in the Contract Documents, or if not designated in the Contract Documents, they will be delivered to a single location of District's choice within the Project area. They shall be hauled to the site of installation by the Contractor at its expense, including any necessary loading and unloading that may be involved. The cost of handling and placing materials furnished by the District shall be considered as included in the Contract Sum.

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2.11.2 The Contractor will be held responsible for all materials furnished to it, and it shall pay all demurrage and storage charges. Furnished materials, after delivery to Contractor, lost or damaged from any cause whatsoever shall be replaced by the Contractor. The Contractor will be liable to the District for the cost of replacing lost or damaged furnished material and such costs may be deducted from any monies due or to become due the Contractor.

3 CONTRACTOR'S DUTIES AND RESPONSIBILITIES

3.1 General

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

3.2 Request for Information ("RFI").

If the Contractor encounters any condition which the Contractor believes, in good faith and with reasonable basis, is the result of an ambiguity, conflict, error or omission in the Contract Documents (collectively the "Conditions"), it shall be the affirmative obligation of the Contractor to timely notify the District, in writing, of the Conditions encountered and to request information from the District necessary to address and resolve any such Conditions. If the Contractor fails to timely notify the District in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions, the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Sum. The Contract Time shall not be subject to adjustment in the event that the Contractor fails to timely request information from the District.

3.3 Supervision and Construction Procedures

3.3.1 Contractor's Means and Methods. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention, and provide sufficient supervision to assure proper coordination and timely completion of Project. The methods and means adopted by the Contractor shall be such as to secure a quality of Work satisfactory to the District and to enable the Contractor to complete the Work by the Contract Time. The Contractor shall be responsible for and have control over construction means, methods, techniques, sequences, and procedures for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such

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means, methods, techniques, sequences, or procedures may not be safe, the Contractor shall give timely written notice within ten (10) calendar days to the District, such notice shall include proposed changes by Contractor, and Contractor shall not proceed with that portion of the Work without further instructions from the District. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by the Contractor, the District shall be solely responsible for any resulting loss or damage.

3.3.2 Contractor's Vicarious Liability. Contractor shall be responsible to District for acts and omissions of Contractor's employees, Consultants, Subcontractors, Sub-subcontractors, and their agents and employees, and any other persons or entities performing any of the Work under a direct or indirect contract (or other arrangement) with the Contractor.

3.3.3 Property Lines and Encroachments. If required by District, prior to the commencement of the Work on the Project Site, District shall have all property corners and benchmarks verified and established by a State licensed land surveyor, shall locate the Project, together with all grades, lines, and levels necessary for the Work, on the Project Site, establishing necessary reference marks from which the Work can progress accurately and shall furnish Contractor with reasonable evidence of such verification, noting any errors, inconsistencies, or omissions discovered during such verification. The Contractor shall not disturb survey monuments, lot stakes (tagged), or benchmarks without the consent of the District. The Contractor shall bear the expense of replacing any that may be disturbed without permission. Replacement shall be done only under the direction of a Licensed Land Surveyor or a Registered Civil Engineer authorized to practice land surveying within California. After all lines are staked out and before foundation Work is commenced, Contractor shall review with District the placement of all buildings and other permanent facilities to be constructed on the Site. Any encroachments resulting from the Contractor's locating or constructing the Work on adjacent properties to the Project Site as revealed by a survey of the foundations or an "as-built" survey, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall commence the remedy of such encroachments within thirty (30) calendar days after discovery thereof (unless circumstances require a more rapid response), at Contractor's sole cost and expense, either by the removal of the encroaching improvement (and the subsequent reconstruction of such improvement on the Project Site) or by agreement with the owner of the adjacent property, in a form and substance satisfactory to District in its sole discretion, providing a permanent easement for such encroachment.

3.3.4 Inspection of Work in Place. The Contractor shall be responsible for the inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.3.5 Contractor's Representative. Contractor shall employ competent Project Staff as deemed necessary by Contractor. Any Project Staff member and any replacement

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member shall be subject to the approval of the District. Upon notice from the District requesting replacement of any Project Staff member who is unsatisfactory to the District, Contractor shall in a timely manner, but in no event longer than twenty-four (24) hours after notification, replace such member with a competent member satisfactory to the District.

3.3.5.1 Superintendent. The Contractor shall provide an onsite full-time superintendent to assure proper coordination and timely completion.

3.4 Labor and Materials

3.4.1 Coordination. The Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and staging of its equipment in areas and locations approved by District. Where the proper and most effective space requirements, locations, and routing cannot be made as indicated in the Contract Documents, the Contractor shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

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

3.4.3 Labor Discipline. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall not permit the possession or use of alcohol or illegal drugs on the jobsite, nor shall the Contractor allow an employee, Subcontractor, material man, or any other person under the influence of alcohol or illegal drugs, or who is otherwise incapacitated to work on the Project.

3.4.4 Skilled Labor. None but skilled workmen shall be employed on any portion of the Work. When required in writing by the District, the Contractor, Subcontractor or Sub-Subcontractor shall discharge any person who is, in the reasonable opinion of the District, incompetent, unfaithful, disorderly or otherwise unsatisfactory, and shall not again employ such discharged person on the Work except with the written consent of the District. Such discharge shall not be the basis of any claim for compensation or damages against the District or any of its officers or agents.

3.4.5 Procurement and Installation of Materials and Equipment. Contractor shall: (i) place orders for all materials and equipment, considering current market and delivery conditions necessary to meet the Construction Schedule; (ii) purchase and expedite the procurement of long lead time items to obtain their delivery by the required.

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dates: and (iii) arrange for alternate sources for the supply of critical materials and equipment to maintain the schedule. Should Contractor fail in this duty, District reserves the right to order such materials and equipment as the District may deem advisable to maintain the schedule for the Work or the Contract Time and all expenses shall be charged to and paid for by Contractor within the Contract Sum. Contractor shall keep the District informed of the status of procurement and shall promptly notify District in writing of any materials or equipment which may not be available within the time scheduled or necessary for the Project. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations and routing cannot be made as indicated, the Contractor shall meet with all others involved, including, but not limited to, District, Architect, Engineer, Inspector and Subcontractors before installation, to plan the most effective and efficient method of overall installation.

3.4.6 Substitution of Materials, Process or Equipment.

3.4.6.1 Whenever any particular material, process, or equipment is indicated in the Contract Documents by patent, proprietary, manufacturer or brand name, with or without the words “or equal”, only such items shall be provided unless the District’s prior written approval is obtained for the substitution. The burden of proving the quality of any material, process, or equipment proposed for substitution shall rest with the Contractor.

3.4.6.2 If any substitution request offered by the Contractor is not found to be equivalent or cannot be delivered to the Site in compliance with the Project Schedule, Contractor shall furnish and install the material specified in the Contract Documents.

3.4.6.3 Proposals for substitutions shall be submitted to the District using an approved format. Unless otherwise approved in writing by District, no substitution will be considered or allowed by the District without Contractor’s delivery of the following to District:

(1) A full explanation of the proposed substitution and submittal of all supporting data including technical information, complete manufacturers catalogs, brochures, drawings, samples, warranties, certified copies of test results, installation instructions, operating procedures, and other descriptive information to substantiate Contractor’s claim of equivalent quality and necessary for a complete evaluation of the proposal.

(2) A complete description of the difference between the requirements of the Contract Documents and the proposed substitution, the comparative advantages and disadvantages of each, and the reasons the substitution is advantageous and necessary, including the benefits of the District and the Work in the event the substitution is acceptable.

(3) A description of aspects of the Contract Documents affected by the proposal.

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(4) The adjustment, if any, in the Contract Sum in the event the substitution is acceptable.
(5) The adjustment, if any, in the Contract Time and impact to the Construction Schedule.
(6) The estimated cost of any engineering, design, or agency fees required for Work of all trades directly or indirectly affected by the substitution.
(7) A list of projects, to the extent known, where the subject of the request was used and the results; and
(8) Other information reasonably necessary to fully evaluate the substitution request.

3.4.6.4 By submitting a substitution request, Contractor will be deemed to certify to the District that (i) the proposed substitution is equal to or exceeds all requirements of the pertinent Contract Documents as reasonably determined by Contractor; (ii) Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified; (iii) the cost data presented is complete and includes all related costs under Contract; (iv) Contractor will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects; (v) Contractor waives all Claims for additional costs related to the substitution which subsequently become apparent; and (vi) Contractor accepts all responsibility for direct or indirect costs and/or time impacts as result of the substitution.

3.4.6.5 Contractor shall submit to District, or its designated representative (i.e. Architect/Engineer) all requests for substitutions, including products to be reviewed as an approved equal, together with substantiating data, within 20 days after the award of the Contract, or as otherwise stated in the Contract Documents. Following commencement of construction, substitutions requested by the Contractor will be considered only when one or more of the following conditions are met and documented by Contractor:

(1) Specified item fails to comply with regulatory requirements; or
(2) Specified item has been discontinued by the manufacturer; or
(3) Specified item, through no fault of the Contractor, is unavailable in the time frame required to meet the Project Schedule; or
(4) Specified item, through subsequent information disclosure, will not perform properly or fit in designated space; or
(5) Manufacturer declares specified product to be unsuitable for intended use or refuses to warrant installation of product.

3.4.6.6 The District has reviewed the technical and aesthetic qualities of materials specified, and in no case will the District accept a substitution of a product with a lower cost which does not extend credit to the District.
3.4.6.7 No incomplete request for substitution will be considered by the District, and products for which insufficient information is submitted will be disapproved by the District for lack of substantiating data.

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3.4.6.8 Failure of the Contractor to submit proposed substitutions for approval in the manner described may be deemed sufficient cause for disapproval by the District of any substitution otherwise proposed.

3.4.6.9 Contractor shall proceed with performance of the Work as required by the Contract Documents and shall not modify such requirements in accordance with any substitution request unless the District approves such request in a written order. In the event District approves a substitution request and Contractor furnishes a material, process or article more expensive than that specified, the difference in cost shall be borne entirely by Contractor. Any engineering, design fees or agency fees required to make adjustments to the material or work of all trades directly or indirectly affected by the approved substituted item shall be borne entirely by Contractor.

3.4.7 Reference Standards. Any material specified by reference to the number, symbol, or title of a standard such as that of the American Society for Testing Materials ("ASTM"), Underwriters Laboratories, Factory Mutual, a product or commercial standard, or similar standards, shall comply with the requirements of the latest revisions thereof and any supplement or amendment thereto in effect on the date of the Contract. The standards referred to, except as specifically modified in the Specifications, shall have the same force as if they were printed in full within the Contract Documents. Whenever a product is specified in accordance with such a Reference Standard, the Contractor shall present a certification from the manufacturer and test data to substantiate compliance, when requested by the District or required by the Specifications, certifying that the product complies with the particular standard or specification.

3.4.8 Manufacturer's Instruction. Where it is required in the Contract Documents that materials, products, processes, equipment or the like be installed or applied in accordance with manufacturer's instructions, directions or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the jobsite. If there is a conflict between manufacturer's instructions and Applicable Law or the Contract Documents, Contractor shall notify District in writing to request clarification.

3.4.9 Workmanship, Materials and Manufactured Items. All workmanship, equipment, materials, and articles incorporated in the Work are to be of the most suitable grade of their respective kinds for the purpose; and equipment, materials, and parts shall be new, best quality, undamaged, and free from defects.

3.4.9.1 All materials to be incorporated in the Work shall be protected from damage during shipping, delivery, storage, and handling, and after installation until acceptance of the Work.

3.4.9.2 Material and work quality shall be subject to the Project Manager's approval.

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3.4.9.3 Materials and work quality not conforming to the requirements of the Contract Documents shall be considered defective and will be subject to rejection.

3.4.9.4 Defective work or material, whether in place or not, shall be removed immediately from the Site by the Contractor, at its expense, when so directed by the Project Manager.

3.4.9.5 If the Contractor fails to replace any defective or damaged work or material after reasonable notice, the Project Manager may cause such work or materials to be replaced. The replacement expense will be deducted from the amount to be paid to the Contractor.

3.5 Warranty and Correction

3.5.1 Warranty. The Contractor warrants to the District that: (i) materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents; (ii) the Work will be of good quality and free from defects; (iii) the Work will conform to the requirements of the Contract Documents; and (iv) Contractor will deliver a Project free of stop notice claims. Work not conforming to these requirements, including substitutions not properly approved by the District, shall be deemed defective. Contractor warranty excludes improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 12.2 herein.

3.5.2 Commencement of Correction Periods. In accordance with Paragraph 12.2 herein, in addition to warranties required elsewhere in the Contract Documents, Contractor shall, and hereby does, warrant all Work for a period of one (1) year commencing from the date of Final Completion of the Work and shall repair or replace any and all such Work, together with any other Work which may be displaced in so doing, that may prove defective in workmanship and/or materials, without expense whatsoever to District.

3.5.2.1 This paragraph does not in any way limit the warranty on any items for which a longer guarantee is specified, or on any items for which a manufacturer gives a warranty for a longer period.

3.5.3 No Limitation. Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligation other than specifically to correct the Work. Neither the making of

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Final Payment nor the use or occupancy of the work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents or relieve the Contractor from liability for faulty or defective Work.

3.5.4 Overlap. Where any warranties provided under the Contract Documents overlap, conflict, or are duplicative, Contractor shall be bound by the more stringent requirements.

3.5.5 District's Right to Correct. If Contractor fails to commence corrections within forty-eight (48) hours after receipt of written notice, District, under the provisions of Article 12 herein, will proceed to have defects repaired and made good at the expense of Contractor and its performance bond surety, plus fifteen percent (15%) for District's overhead and administrative expense. District may charge such costs against any payment due Contractor. If, in the opinion of the District, defective work creates a dangerous or hazardous 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 may take immediate action, give notice, make such correction, or provide such attention and the cost of such correction or attention shall be charged against the Contractor. Such action by the District will not relieve the Contractor of the warranties provided in this Section or elsewhere in the Contract Documents.

3.5.6 Procurement and Assignment of Warranties. Contractor shall obtain in the name of District, or transfer or assign to District or District's designee prior to the time of Final Completion of the Work, any and all warranties or guarantees which Contractor is required to obtain pursuant to the Contract Documents and which Contractor obtained from any other person or entity other than Contractor including, but not limited to, Subcontractors and manufacturers, and further agrees to perform the Work in such a manner so as to preserve any and all such warranties. Contractor shall secure written warranties from all Subcontractors in the form approved by District. Contractor and its Subcontractors shall offer any warranty upgrades or extensions that are offered by manufacturers of any equipment or system in the Project to the District.

3.5.7 Survival of Warranties. The provisions of this Paragraph 3.5 shall survive Contractor's completion of the Work or termination of Contractor's performance of the Work.

3.6 Taxes

3.6.1 Payment. The Contractor shall pay all applicable sales, consumer, use, and similar taxes for the Work provided by the Contractor and such taxes shall be included in the Contract Sum.

3.6.2 Liability for Employee Payments. Contractor accepts full liability for the payment of any and all contributions, deductions, or taxes for social security, unemployment insurance, old age and survivor's benefits, medical and health benefits, or for any other purpose not or hereafter imposed under any Applicable Law measured

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by the wages, salary or other remuneration paid to persons employed by or on behalf of Contractor for the Work. Contractor covenants and agrees to observe and fully comply with all Applicable Law, including procurement of any necessary occupational licenses, permits and inspection certificates.

3.7 Permits, Fees and Notices

3.7.1 Responsibility for Permits and Fees. Except for the permits, approvals, government fees, licenses and inspections which have been identified and designated elsewhere in the Contract Documents to be provided by the District, Contractor shall identify and obtain all permits, certificates, licenses, fees, approvals and inspections necessary or required for the proper execution and completion of the Work, or which are customarily secured after execution of the Contract and shall submit to District copies of receipts for reimbursement within the Contract Sum. All such permits, licenses and certificates shall be delivered to the District before Contractor submits a final Application for Payment. Unless stated otherwise in the Contract Documents, the District will pay connection fees directly to the utilities for all permanent water and electrical connections.

3.7.2 Notices. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

3.7.3 Bonds. The Contractor shall procure and pay for all bonds required of the District by any public or private entity with jurisdiction over the project. Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, traffic regulation, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

3.7.4 Compliance with Applicable Law.

3.7.4.1 Contractor is responsible to perform all Work in accordance with the requirements of local agencies and inspectors having jurisdiction over the Work. If the Contractor observes that any portions of the Contract Documents are at variance with Applicable Law, Contractor shall promptly notify the District in writing.

3.7.4.2 If the Contractor performs any Work when the Contractor knows or should have reasonably known it would be contrary to Applicable Law, Contractor shall assume full responsibility therefore and shall bear all costs (within the Contract Sum) directly or indirectly attributable to the correction of the Work. If Contractor fails to comply with any such codes, laws, ordinances, rules, and regulations, District may (without prejudice to any of its other rights or remedies) issue an order suspending all or any part of the Work.

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3.8 Allowances

Contractor shall include in the Contract Sum and Schedule of Values all Allowances provided for in the Contract Documents. Items covered by Allowances shall be supplied for such amounts approved by Owner. All expenditures for Allowances shall be separately itemized in each Application for Payment and are subject to District's prior approval. District shall not reimburse Contractor for Allowance costs more than the amounts specified in the Schedule of Values without District's prior written approval of such costs.

3.9 Contractor's Key Personnel and Subcontractors

3.9.1 Contractor's Project Manager. The Contractor's Project Manager, as designated in the Agreement or as otherwise approved in writing by District, shall: (i) be present at the Project Site at all times that any Work is in progress and at any time that any Subcontractor or employee of Contractor is present at the Site; (ii) attend all job meetings; (iii) be actively involved throughout all phases of construction of the Project.
(iv) maintain oversight of the Project at all times; (v) have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement; (vi) supervise and direct the Work using his or her best skill and attention; (vii) be responsible for the means, methods, techniques, sequences, and procedures used for the Work; (viii) adequately coordinate all portions of the Work; and (ix) act as the principal contact with District and all Subcontractors and inspectors on the Project. A biography or resume of Contractor's Project Manager, or any proposed designee, shall be submitted to the District at the preconstruction meeting.

3.9.2 Contractor's Key Personnel. In addition to its designated Project Manager, Contractor represents to District that certain additional key personnel, designated in the Agreement or as otherwise approved in writing by District, including but not limited to, the superintendent, will perform services required by the Contract Documents. District may at any time elect to add job categories to the Contractor's key personnel list.

3.9.3 Changes in Contractor's Project Manager, Key Personnel and Subcontractors. Contractor shall not make changes to its Project Manager, key personnel or Subcontractors, or reduce their responsibilities for this Project without the prior written approval of the District. Prior to making any changes to the Project Manager, key personnel, or Subcontractors, the Contractor shall submit the qualifications and experience of the Contractor's proposed replacement for the District's approval. If District determines, in its sole discretion, that the performance of any person or entity employed by Contractor is unsatisfactory, then at the written request of District, Contractor shall remove, reassign, or replace such individual or entity without increase in the Contract Sum and such individual or entity shall not be reemployed on the Project without the prior written approval of District.

3.9.4 Qualifications and Licenses. Work furnished by or on behalf of Contractor shall be performed by persons: (i) qualified to perform the Work assigned to them; and (ii) licensed to practice their respective trades or professions where required by Applicable Law in the State where the Project is located. Contractor's Project Manager, key

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personnel, and Subcontractors shall be experienced in projects of similar nature and complexity to the Project and must provide District with resumes of education, training, and relevant experience whenever requested and shall be approved by District prior to their assignment to the Project.

3.10 Documents and Samples at the Site

3.10.1 As-Built and Record Documents. Contractor shall maintain at the Project Site and shall make available to District, one copy of the Contract Documents, Addenda, requests for information, bulletins, Change Orders and other Modifications to the Contract Documents, approved Construction Documents, Shop Drawings, Product Data, Samples and mock-ups, permits, inspection reports, test results, daily logs, schedules, subcontracts, and purchase orders in good order (the "Record Documents"). The Record Documents shall include a set of As-Built Construction Documents, which shall be continuously updated during the prosecution of the Work. The prints for As- Built Construction Documents will be a set of black line prints produced by Contractor and approved by District at the start of construction. Contractor shall maintain said set in good condition and shall use colored pencils to mark-up said set with "record information" in a legible manner to show; (i) deviations from the District-approved Construction Documents made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing Construction Documents; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub outs; and (v) such other information as District may reasonably request.

3.10.2 Condition to Payment. Contractor's obligation to keep Record Documents current, including As-Built Construction Documents, and to make them available to Districtis a condition precedent to District's duty to process Applications for Payment. The Contractor shall provide a written certification of this monthly review, signed by the District's Project Manager, and attach same to each Application for Payment. Within thirty (30) calendar days after Substantial Completion or earlier termination of the Agreement and as a condition precedent to Final Payment, Contractor shall provide final approved Record Documents including, but not limited to, As-Built Construction Documents and approved Shop Drawings. Contractor's obligations under Paragraph 3.10 shall survive completion of the Work or termination of Contractor's performance of the Work.

3.10.3 Daily Logs. Contractor shall maintain a daily log containing a record of weather, Contractor's own forces working on Site, Subcontractors working on the Site, number of workers for each Subcontractor on Site, materials delivered, Work accomplished, problems encountered and other similar relevant data as the District may reasonably require. The daily log shall be signed by Contractor's Superintendent, submitted within

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24 hours (next working day) to District's Project Manager and shall be made available to others as directed by District.

3.11 Shop Drawings, Product Data and Samples

3.11.1 Shop Drawings. Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor, Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

3.11.2 Product Data. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.11.3 Samples. Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

3.11.4 Purpose. Shop Drawings, Product Data, Samples, and similar submittals ("Submittals") are not Contract Documents. The list of required Submittals is designated in the Specifications. The purpose of these Submittals is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor proposes to conform to the information given and expressed in the Contract Documents.

3.11.5 Contractor's Submittals.

3.11.5.1 Prompt Submittals. The Contractor shall review for compliance with the Contract Documents, confirm, and deliver to the District, Submittals within the timeframes required by the Contract Documents and with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the District or of separate Contractors. Contractor's complete and timely submission of submittals in conformity with the Submittal Schedule (identified in the Specifications) is a material consideration of the Contract. In the event that the District reasonably determines that all or any portion of any Submittal fails to comply with the requirements of the Contract Documents and/or such Submittals are not otherwise complete and accurate so as to require re- submission more than one time, Contractor shall bear all costs (within the Contract Sum) associated with the review and approval of such resubmitted Submittals. No adjustment to the Contract Time or the Contract Sum shall be granted by the District to the Contractor on account of Contractor's failure to make timely submission of any Submittals.

3.11.5.2 Contractor's Confirmation of Submittals. After checking and verifying all field measurements and after complying with applicable procedures specified in the Specifications, Contractor shall submit to District in compliance with the Submittal Schedule for review and approval, or for other appropriate action, one (1) reproducible transparency (sepia) and four (4) opaque prints (unless otherwise specified in the Specifications) of all Shop Drawings and other

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Submittals, which shall bear a stamp or specific written indication that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the Submittal. All Submittals will be identified as the District may reasonably require and shall include at a minimum the name of the Project, name of the Contractor, be numbered consecutively and referenced to the Project Drawings or Specification section affected. Submittals shall be combined for singular assemblies, items or materials. The data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data in order to enable District to review the information as required.

(1) Before submission of each Submittal, Contractor shall have determined and verified quantities and dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed and coordinated each Submittal with other Submittals and with the requirements of the Work and the Contract Documents.

(2) Shop Drawings shall show in detail the size, sections, and dimensions of all members; the arrangement and construction of all connections and joints, and other pertinent details; also, all holds, straps, and other fittings required by other contractors for attaching their work. When required by the District, engineering computations shall be submitted. The Contractor shall be responsible for delivering copies of Shop Drawings to all other persons whose work is dependent thereon.

(3) At the time of each submission, Contractor shall give District specific written notice of each variation that the Submittal may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Submittal submitted to District for review and approval of each such variation.

(4) If the Shop Drawings or manufacturer's data show variations from the Contract Document requirements because of standard shop practice or other reason, the Contractor shall make specific mention of such variations in its letter of transmittal.

(5) By reviewing and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and conditions related thereto, and has checked and coordinated the information contained within such Submittals with the requirements of the Work, of the Contract Documents and of the Shop Drawings for related Work.

3.11.6 Review by District. Unless Contractor is notified in writing of a specific need for an extended period of time due to the nature or extent of the Shop Drawings being submitted, District shall utilize its best efforts to complete Shop Drawing review within a maximum of ten (10) calendar days. Submittals made by Contractor which are not required by the Contract Documents may be returned without action by the District.

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District's review and approval will be general and for compliance with design intent and information given in the Contract Documents and shall not extend to means, methods, techniques, sequences, or procedures of construction (except where a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents). Review of Shop Drawings shall not relieve the Contractor from the responsibility for proper fitting and construction of the Work, nor from furnishing materials and work required by the Contractor which may not be indicated on the reviewed Shop Drawings. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make corrections required by District and shall return the required number of corrected copies of Submittals and submit as required new Submittals for review and approval. Contractor shall direct specific attention in writing to any and all revisions other than the corrections called for by District on previous Submittals.

3.11.7 Performance. The Contractor shall perform no portion of the Work requiring review of Submittals until the District has reviewed the respective Submittal. Such Work shall be in accordance with the approved Submittals and the Contract Documents, and no Work shall be started without obtaining prior written approval from the District.

3.11.8 Approved Submittals. The Work shall be performed in accordance with approved Submittals and the Contractor shall not be relieved of responsibility for variations from requirements of the Contract Documents by the District's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the District in writing of such deviation at the time of submittal and a Change Order or Construction Change Directive has been issued, authorizing the variations. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the District's approval thereof.

3.11.9 Resubmission. Contractor shall direct specific attention, in writing, on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those required by the District on previous submittals. In the absence of such written notice the District's approval of a resubmission shall not apply to such revisions.

3.11.10 Conflicts, Errors or Omissions. If Contractor discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, Contractor shall notify the District and receive written instruction before proceeding with the affected Work.

3.11.11 Maintenance at Site. The Contractor shall maintain at the Site of the Project, at all times, a complete file of District reviewed Shop Drawings and manufacturers' data of his own and all Subcontractors.

3.12 Site Conditions

3.12.1 The Contractor represents that it has taken the necessary steps to ascertain the nature, location, and extent of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work, such as:

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(1) conditions bearing on transportation, disposal and storage of materials.
(2) the availability of labor, water, power and roads.
(3) normal weather conditions.
(4) physical conditions at the Site.
(5) the conditions of the ground.
(6) the character of equipment and facilities needed prior to and during the performance of Work

3.12.2 To the extent the Contractor encounters subsurface conditions or hazardous materials which differ materially from that actually known by the Contractor, or from those ordinarily known to exist or contained in information about the Site made available to Contractor prior to the deadline to submit bids, or generally recognized as inherent in the area, then notice by the Contractor shall be immediately given to the District, before conditions are disturbed, and in no event later than two (2) business days after the first observance of the conditions. If such conditions could not have been reasonably identified by Contractor's Site investigations and available existing data, and the Contractor incurs an increase or decrease in costs or delays as a result of such concealed conditions, such conditions may be subject to a Change Order.

Should any existing utilities or services be disturbed, disconnected or damaged during construction, the Contractor shall be responsible, at no additional cost or time to the District, for all expenses and consequential damages of whatever nature arising from such disturbance or the replacement or repair thereof and shall repair such items as required to maintain continuing service, including emergency repairs.

3.12.3 The Contractor is responsible for foreseeable site conditions and toxic materials to the extent described in the Contract Documents and/or could be reasonably inferred by the Contractor based on its experience and expertise on similar projects.

3.12.4 Reserved.

3.12.5 The Contractor shall verify the location and depth (elevation of all existing utilities and services before performing excavation Work.

3.13 Use of Site

3.13.1 Site Constraints. Prior to mobilization on the Project Site, the Contractor shall submit to the District for approval a Site Constraint Plan including layout drawings to scale as required to fully describe the proposed locations of all temporary construction facilities and controls. This plan shall show the proposed activities in each portion of the Work area and identify the areas of limited use or nonuse. This plan shall also show proposed vehicle access routes and traffic control. Contractor shall confine operations at the Project to the areas designated in the Contract Documents and the approved Site Constraint Plan and within the hours permitted by codes, laws, ordinances, permits, or the District, and shall not unreasonably encumber the Project Site or the adjoining sidewalks, streets, and alleyways with any material, equipment, or debris. In that

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regard, Contractor shall keep the Site and surroundings clean and in a safe condition in accordance with Paragraph 3.15 herein and the Specifications. Contractor shall use only those locations designated on the approve Site Construction Plan for locating Contractor's trailers, staging areas, lay-down areas, and other construction operations. The Contractor shall not unreasonably encumber the Site with any materials or equipment, nor permit any persons on the Site, or any activity at the Site, except as the presence of those persons, or that activity, is directly related to the Project. The Contractor shall be liable for any and all damage caused by it to the District premises.

3.13.2 Coordination. Contractor expressly acknowledges that District, its own forces, and District's Separate Contractors may be working simultaneously with Contractor on the Project during certain periods of time in certain portions of the Project Site. Contractor and District will take all steps necessary in connection with the construction Work not to interfere with the use and occupancy of the Project Site by District's Separate Contractors and personnel to minimize any interruption of services to such person, including, without limitation, utilities, ingress and egress, and parking. Contractor further agrees to coordinate its construction activities with all others performing work on the Project Site, including deliveries, storage, and installation. Contractor shall meet and consult with District from time to time at District's request to ensure that Contractor and District are fully advised of all other construction activities on the Project Site, and Contractor shall take such steps as are reasonably necessary at District's request to coordinate its Work with the Work of District's Separate Contractors on the Project Site.

3.13.3 Security. The Contractor shall be responsible for providing security at the Site of the Work with all such costs included in the Contract Sum. A temporary fence shall surround the Project Site unless otherwise required by District. All security provided by Contractor shall be coordinated with District's existing security personnel, if any. In addition, the Contractor shall take all necessary precautions and provide enclosures, barricades, security guards, signs, notices, shoring, bracing, passageways, lights, and such other materials, equipment, and services as may be required (including, without limitation, such protections as may be required by Applicable Laws) for the protection of: (i) all person who may be on the Project Site or in other areas affected by the Contractor's operations; and (ii) the District's and any third party's personal and real property. Contractor shall execute all repairs to land, roadways, structures, utilities, sidewalks, parkways and alleys damaged by the operations under this Contract.

3.13.4 Utility Interruption. When it is necessary to interrupt any existing utility service, a minimum of fourteen (14) calendar days advance written request for interruption of services shall be given by the Contractor to the District. Interruption of these services shall be of the shortest possible duration and shall be approved by the District in advance of such interruption. In the event that such notices and approvals are not secured prior to interruption in utility services the Contractor shall be financially liable for any and all damages suffered by the District and third parties due to unauthorized interruption.

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3.13.5 Parking. The Contractor shall coordinate and obtain all construction related parking. The cost of all Contractor parking shall be included in the Contract Sum.

3.14 Cutting and Patching

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

3.14.2 Separate Contractors. Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the District or District's Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by the District or a Separate Contractor except with written consent of the District.

3.14.3 Finish Surfaces. Cutting, drilling or other mechanical change to surfaces constituting final finish, including but not limited to, glass, marble, tile mosaic, finish wood, finish metals, etc., necessary for the fastening, installation, securing, and/or insertion of any devices, equipment, and/or materials shall be accomplished with special care. If requested by the District, Contractor shall submit procedures for finish changes to be done by any trades other than the one installing the specific finish material. Failure to obtain District approval shall place full responsibility upon the Contractor for any extra cost occasioned by unacceptable finish-surface.

3.15 Cleaning Up

3.15.1 Continuous Obligations. The Contractor shall keep the Project Site and surrounding area free from accumulation of waste materials or rubbish at all times. As construction is completed on a daily basis, paved surfaces adjoining the Project shall be broomed clean and other surfaces of the Project Site raked clean. If the Contractor defaults or neglects to maintain the Project free from accumulation of waste and rubbish as set forth above, and fails within a twenty-four (24) hour period after receipt of oral notice, subsequently confirmed in writing, to commence and continue correction of such default or neglect with diligence and promptness, the District may after such twenty-four (24) hour period, immediately, without prejudice to other remedies the District may have, correct such deficiencies. In such case, an appropriate Construction Change Directive shall be issued deducting from payments then and thereafter due the Contractor the cost of correcting such deficiencies. If payment then and thereafter due the Contractor is not sufficient to cover such amounts, the Contractor shall pay the difference to the District on demand.

3.15.2 Cleaning and Environmental Controls.

(1) Maintain areas free of waste materials, debris, and rubbish. Maintain site in a clean and orderly condition.

(2) Remove waste materials, debris and rubbish from site and dispose off-site legally.

(3) The Contractor shall take appropriate action to ensure that no dust originates from the Project Site.

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(4) Spoil sites shall not be located where spoil shall be washed back into a street gutter, storm drain, runoff conveyance or ocean.

(5) Water containing mud, silt, or other pollutants from activities, shall not be allowed to enter the ocean, or placed in locations that may be subject to storm runoff.

3.15.3 Water Pollution Control. Contractor must comply with all requirements of the California State Water Resources Control Board, including the statewide General Permit for Discharges of Storm Waters Associated with Construction Sites (See Order No. 2009-0009-DWQ). This includes, but is not limited to, paying all appropriate fees, filing all required documentation, and complying with all the regulations of the State Water Resources Control Board.

As part of the District's Storm Water Management Program, implementation of minimum Best Management Practices (BMPs) is required for this Contract. The Contractor is directed to comply with applicable requirements of the BMPs that are specified under this section to reduce pollutants from entering the storm drain system.

The Contractor shall maintain copies of these BMP fact sheets (guidance paper) at the Project Site and shall make these fact sheets available during construction activities. Best Management Practices shall be defined as any program, technology, progress, siting criteria, operating method, measure, or device that controls, prevents, removes, or reduces pollution. These BMPs have been selected from the California Storm Water Best Management Practice Handbook, Municipal Industrial, and Construction Volumes (May 1993). These handbooks contain a full description of each BMP and provide for its implementation. Copies of the handbook may be obtained from:

San Bernardino County
Environmental Management Division
825 East Third Street – Room 201
San Bernardino, CA 92415-0835
Telephone No. (909) 387-8112

As a minimum, the Contractor shall implement the following BMPs in conjunction with all its activities construction operations:

B.1. Site Planning Consideration

Preservation of Existing Vegetation (ESC02)

B.2. Construction Practices

Structure Construction and Painting (CA03)
Spill Prevention and Control (CA12)
Dust Control (ESC21)
Storm Drain Inlet Protection (ESC54)

B.3. Vehicle & Equipment Management

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Vehicle & Equipment Cleaning (CA30)
Vehicle & Equipment Maintenance (CA32)

B.4. Material Management

Solid Waste Management (CA20)
Concrete Waste Management (CA23)
Sanitary/Septic Waste Management (CA24)

3.15.3.1 Additional BMPs. Contractors may be required to implement additional BMPs as a result of a change in actual field conditions, Contractor activities, or construction operations. When more than one BMP is listed under each category, the Contractor shall select the appropriate and necessary BMPs in order to achieve the BMP objective.

3.15.3.2 Enforcement. The District, as a permittee, is subject to enforcement actions by the Regional Water Quality Control Board, U.S. Environmental Protection Agency, environmental groups and private citizens. The Contractor shall be responsible for the costs and for any liability imposed by law as a result of the Contractor's failure to comply and/or less than complete implementation with the requirement set forth in this section "Water Pollution Control". Cost and liabilities include, but are not limited to, fines, penalties and damages whether assessed against the District or the Contractor. In addition to any remedy authorized by law, so much of the money due to the Contractor under the Contract that shall be considered necessary by the District may be retained by the District until disposition has been made of the costs and liabilities.

3.15.3.3 Maintenance. Contractor shall ensure the proper implementation and functioning of BMPs control measures and shall regularly inspect and maintain the construction site for the BMPs identified in Section 3.15.3 above. The Contractor shall identify corrective actions and time frames to address any damaged measures or reinitiate any BMPs that have been discontinued.

3.15.4 Final Completion. In order to achieve Final Completion of the Work, the Contractor must remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials as well as the requirements set forth in the Contract Documents. In addition to the general cleaning, the Contractor must perform the following special cleaning requirements:

(1) Remove putty stains from glazing, then wash and polish glazing.

(2) Remove marks, stains, fingerprints, and other soil or dirt from glass, painted, stained, or decorated work.

(3) Remove temporary protection and clean and polish floors and waxed surfaces.

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(4) Clean and polish hardware and plumbing trim; remove stains, dust, dirt, plaster, and paint.

(5) Remove spots, soil, plaster, and paint from tile work, and wash tile.

(6) Clean all fixtures and equipment, remove excess lubrication, clean light fixtures and lamps, polish metal surfaces.

(7) Vacuum-clean carpeted surfaces and remove any stains; and

(8) Remove debris from roofs, downspout, and drainage system.

3.16 Access to Work

The Contractor shall provide the District and its respective Project Managers, Consultants, and other persons authorized by the District, access to the Work in preparation and progress wherever located. Contractor shall provide safe and proper facilities for such access and for inspection.

3.17 Royalties, Patents and Copyrights

3.17.1 Contractor Must Secure Rights. The Contractor shall secure in writing from all patentees, copyright holders, and assignees of all Project-related documents, all copyrights, assignments, and licenses related to such expression (e.g., designs, drawings, Contract Documents, specifications, documents in computer form, etc.) as necessary to allow the District the full, unlimited, and unencumbered use of that expression for the execution, operation, maintenance, modernization or expansion of the Project. The Contractor shall immediately convey all such copyrights, assignments, and licenses to the District without reservation. In the case of products, materials, systems, etc., protected by patent, the Contractor shall not specify or cause to be specified any infringing use of a patent. The Contractor shall pay all royalties and license fees.

3.17.2 Infringement. Should the Contractor become aware of or receive notice of potential infringement of any intellectual property right related to the Project, regardless of the source of that awareness or notice, in addition to its indemnity obligation, the Contractor shall (a) immediately cease the copying and any other activity which is the potential source of infringement; and within seven (7) calendar days (b) investigate the potential infringement; (c) submit to the District copies of all documents relating to that awareness, the notice, or the object thereof; and (d) issue to the District a complete written response and analysis of the potential infringement and the course of action recommended by the Contractor. The Contractor shall submit to the District a supplement of the initial report within seven (7) calendar days of the Contractor's receipt of, or awareness of, additional related information. Nothing in this Agreement shall be deemed to relieve the Contractor of its obligations under this Article, nor shall the District's receipt of the information indicated in this Article give rise to any duty or obligation on the part of District.

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3.17.3 Assignment of Rights. The Contractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 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 of the State of California], arising from purchases of goods, services or materials pursuant to the performance of the Work. This assignment will be made and become effective at the time the District tenders Final Payment to the Contractor, without further acknowledgement by the Parties.

3.18 Indemnification

To the fullest extent possible permitted by law, Contractor assumes liability for and agrees, at the Contractor's sole cost and expense, to promptly and fully indemnify, defend (with counsel reasonably approved by the District) (even if the allegations are false, fraudulent, or groundless), and hold harmless the County, the District and their authorized officers, employees, agents and volunteers (Indemnitees) from and against any and all claims (including claims against the County or the District seeking compensation for labor performed or materials used or furnished to be used in the work or alleged to have been furnished on the project, including all incidental or consequential damages resulting to the County or the District from such claims), allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, demands, losses, costs, damages, judgments, liens, stop notices, penalties, anticipated losses of revenue and/or liability, and expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses) arising out of, resulting from, or in any way (either directly or indirectly) related to the contract, the work, the project or any breach of the Contract by Contractor (or any of its officers, agents, employees, subcontractors, or any person performing any of the work, or from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor's indemnification obligation applies to the Indemnitee's "passive" negligence but does not apply to the Indemnitee's "sole" or "active" negligence or "willful misconduct" within the meaning of Civil Code section 2782 provided such "active" negligence or "willful misconduct" is determined by agreement of the parties or by findings of a court. In instances where an Indemnitee's "active" negligence accounts for only a percentage of the liability for the claim involved, the obligation of the Contractor will be for that entire percentage of liability for the claim not attributable to the "active" negligence or "willful misconduct" of the Indemnitees. The County and the District shall be consulted with regard to any proposed settlement.

The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by Contractor of the tender of any claim from the County or the District. The Contractor's obligation to defend the County and the District shall be at Contractor's sole expense, and not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable. The duty to defend shall apply whether or not a claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively, or concurrently negligent, or which otherwise asserts that the Indemnitees are responsible, in whole or in part, for any claim. The Contractor shall respond within thirty (30) calendar days to the tender of any claim for defense

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and/or indemnity by the County or the District unless the County and the District agree in writing to an extension of this time. The defense provided to the Indemnitees by Contractor shall be by well qualified, adequately insured, and experienced legal counsel acceptable to the County Counsel.

It is the intent of the parties to the Contract that the Contractor and its subcontractors of all tiers shall provide the Indemnitees with the broadest defense and indemnity permitted by law. In the event that any of the defense, indemnity, or hold harmless provisions are found to be ambiguous, or in conflict with one another, it is the parties' intent that the broadest and most expansive interpretation in favor of providing defense and/or indemnity to the Indemnitees be given effect.

Contractor shall ensure, by written subcontract agreement, that each of Contractor's subcontractors of every tier shall protect, defend, indemnify, and hold harmless the Indemnitees with respect to all claims arising out, in connection with, or in any way related to each such subcontractor's work in the same manner in which Contractor is required to protect, defend, indemnify, and hold the Indemnitees harmless. In the event Contractor fails to obtain such defense and indemnity obligations from its subcontractors as required herein, Contractor agrees to be fully responsible to the Indemnitees according to the terms of this Section.

Contractor's indemnification and defense obligations set for in this Section are separate and independent from the insurance requirements and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance requirements. The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations.

Contractor's obligations under this Section are binding on Contractor's and its subcontractors' successors, heirs and assigns and shall survive the completion of the work or termination of the Contractor's performance of the work.

3.19 Signs and Advertising

Contractor shall not place or maintain any advertising signs, bills, or posters, nor shall it allow the same to be placed in or about the Project Site, or on any structure, fence, or barricade located on the Project Site, except as may be specified herein or approved in writing by the District, which approval shall not be unreasonably withheld, delayed, or conditioned. District shall have the right to reasonably approve the size, style, text, and location of any Contractor sign placed on the Project Site or on any structure, fence, or barricade located at the Project Site. Notwithstanding any other provision of the Contract Documents, District shall have complete discretion with respect to placement of Subcontractor and Sub-subcontractor signs on the Project Site.

3.20 Coordination with Neighboring Property

Contractor shall coordinate with adjoining property businesses, tenants, and their customers and contractors to provide access to neighboring property and shall implement measures to minimize disruption to operations and occupancy of neighboring property businesses, tenants, and their customers and contractors.

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3.21 Nondiscrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

3.22 Mandatory Provisions in Specifications

Any mention in the sections of the Specifications or indication on the Drawings of articles, materials, operations, or methods requires that the Contractor provide each item mentioned or indicated, or quality or subject or qualifications noted. The Contractor shall perform according to conditions stated each operation prescribed; and provide therefore all necessary labor, equipment, transportation and incidentals, even though such mention of articles, materials, operations, methods, quality, qualifications or conditions is not expressed in complete sentences.

3.23 Plans and Specifications

3.23.1 Unless otherwise provided in the Contract Documents, the District will furnish the Plans and Specifications to the successful Contractor on electronic media (CD) at no cost. If the successful Contractor requires a paper copy of the Plans and Specifications the District will provide one copy without charge. Any additional paper copies will be provided by the District to Contractor at $0.10 per page.

3.23.2 Familiarity with Plans and Specifications.

3.23.2.1 Contractor shall carefully examine the Contract Documents, all applicable codes and the Site. The submission of a bid shall be conclusive evidence that the Contractor has investigated and has personal knowledge of the conditions to be encountered as to character, quality, scope of Work to be performed, and quantities of materials to be furnished. Submission of a bid also infers that the Contractor has knowledge of the use to which the Work is to be put, and the climatological conditions to which it shall be exposed. Any uncertainties by the Contractor shall be submitted to the District in writing at least five (5) days (or within the time designated in the Advertisement for Bids, Instructions to Bidders, or otherwise in Bid Documents) prior to the opening of bids, and failure to do so constitutes a waiver of any future claim.

3.23.2.2 It shall be the responsibility of Contractor to be so thoroughly familiar with all details of the Project, including all Contractor and Subcontractor work, that the following shall be brought to the attention of the District for clarification in sufficient time to give the District time to respond before an error is made in the bid or in construction:

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(1) Errors and omissions in the Drawings and Specifications.

(2) Work shown on the Drawings or in the Specifications which, if so constructed, would result in confusion or interference with other work or the work of other trades, including the location of fixtures and equipment.

(3) Any noted violations of applicable codes.

3.23.2.3 Changes to the Contract Sum will not be approved for the cost of correction work where such work could have been avoided by proper examination of the Drawings and Specifications by the Contractor, and the Work will be held in abeyance pending instructions from the District.

3.23.3 Interpretation of Plans and Specifications.

3.23.3.1 In general, the Drawings will show dimensions, positions, and kind of construction; and the Specifications will define materials, quantities, and methods. Any Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both. Work not particularly detailed, marked or specified, shall be the same as similar parts that are detailed, marked, or specified.

3.23.3.2 Every part of the Work, as shown on the Drawings and described in the Specifications, must be complete and finished. No deviations are to be made from the Drawings or Specifications without previously obtaining written authorization from the District. Failure to obtain such written clarification from the District will constitute waiver of any claim by Contractor related to such conflict or inconsistency.

3.23.3.3 The Drawings shall be accurately followed as to scale, except where figures are given to determine dimensions, which in all cases shall be calculated from figures shown on the Drawings and take preference to scale measurements. Large scale details take precedence over small drawings in all cases, full-scale drawings have preference. Obvious discrepancies between scale and figured dimensions, not marked “not to scale,” must be brought to the District’s attention before proceeding with the Work affected by the discrepancy. Failure to submit any such discrepancies in writing shall constitute a waiver of future claims.

3.23.3.4 Architectural and structural Drawings take precedence over electrical and mechanical Drawings in regard to location and arrangement of fixtures, outlets, and equipment. Electrical and mechanical Drawings take precedence in describing and specifying equipment and in describing the diagrammatic requirements. If the Contractor has any question regarding precedence noted in this Paragraph, a written clarification shall be obtained from the District, and the failure to do so constitutes a waiver of any claim.

3.23.3.5 Should an error or inconsistency be found in the Specifications or Drawings, or in the Work done by others affecting Contractor’s Work, the Contractor shall notify the District at once, and the District will issue instructions as to procedure. If the Contractor proceeds with the Work so affected without such instructions, it will make

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good any resulting damage or defects in his or adjacent work. This includes typographical errors in the Specifications and notational errors on the Drawings were doubtful of interpretation.

3.23.3.6 The general character of the detailed Work is shown in the Drawings, but minor modifications may be made in details when needed to more fully explain the Work and the same shall be considered part of the Contract. Should any detail submitted after award of Contract, in the opinion of the Contractor, be more elaborate than the scale Drawings and the Specifications indicate, written notice thereof shall be given to the District prior to the performing the Work pursuant to Article 7. The claim will then be considered and, if justified, said detail drawings will be amended or the extra work authorized. Contractor's failure to provide the District with the required notice shall relieve the District of any claim.

3.23.3.7 Where on any Drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply also to all other like portions of the Work. Where ornament or other detail is indicated on starting only, such detail shall be continued throughout the course of parts in which it occurs and shall also apply to all other similar parts in the Work unless otherwise indicated.

3.23.4 Accuracy of Plans and Specifications

3.23.4.1 Omissions from the Plans and Specifications shall not relieve the Contractor from the responsibility of furnishing, making, or installing all items required by law or code or usually furnished, made, or installed in a project of the scope and general character indicated by the Plans and Specifications.

3.23.4.2 The topography of Site and existence and location of utilities indicated on Plans are in accordance with the best information obtainable but cannot be guaranteed. They shall be investigated and verified at the Site by the Contractor before starting the Work. The Contractor shall be held responsible for any damage to, and for maintenance and protection of, existing utilities, fences, and remaining structures.

3.23.5 Division of Specifications.

For convenience, the Specifications are arranged in various trade sections, but such segregation shall not be considered as limiting the Work of any Subcontractor or trade. The Contractor shall be solely responsible for all Subcontractor arrangements of the Work regardless of the location or provision in the Specifications.

3.24 **Contractor Responsibility**.

The Contractor shall be responsible for all acts and omissions of Contractor's agents, employees, and Subcontractors and their respective agents and employees.

3.25 Meetings.

Construction meetings shall be held at the jobsite as scheduled by the District's Project

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Manager or as requested by the Contractor. Details regarding jobsite meetings will be arranged at the pre-construction conference.

3.26 Sanitation and Power Supply

3.26.1 Sanitation.

Adequate sanitary conveniences of an approved type for the use of persons employed on the Site, and properly secluded from the public observation, shall be provided and maintained by the Contractor in such a manner and at such points as shall be required by the District. These conveniences shall be maintained at all times without nuisance and their use shall be strictly enforced. Upon completion of the Work, they shall be removed from the premises, leaving the premises clean and free from nuisance.

3.26.2 Power Supply.

All electrical power required for construction uses or other purposes shall be provided by the Contractor at Contractor's expense.

3.27 Clean Air Act, Clean Water Act, Environmental Protection Agency, Energy Efficiency, and California State Water Resources Control Board

During the performance of this contract, the Contractor and all Subcontractors shall:

3.27.1 Comply with all applicable standards, orders, or requirements issued under the Clean Air Act of 1970 (including section 306), including all amendments, and all regulations implementing the Clean Air Act.

3.27.2 Comply with all applicable standards, orders, or requirements issued under the Clean Water Act of 1972 (including section 508), including all amendments, and all regulations implementing the Clean Water Act.

3.27.3 Comply with all applicable standards, orders, or requirements issued under Environmental Protection Agency regulations.

3.27.4 Comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163), including all amendments, and all regulations implementing the Energy Policy and Conservation Act.

3.27.5 Comply with all requirements of the California State Water Resources Control Board, including the statewide General Permit for Discharges of Storm Waters Associated with Construction Sites (See Order No. 2009-009-DWQ). This includes, but is not limited to, paying all appropriate fees, filing all required documentation, and complying with all the regulations of the State Water Resources Control Board.

3.28 Travel Management Policy

Contractor shall adhere to the County's Travel Management Policy (08-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the District. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

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4 ADMINISTRATION OF THE CONTRACT

4.1 District's Project Representative

The District's Project Manager identified by the District in writing is the District's Project Representative. The District's Project Manager shall serve as a single point transmission of District's instructions and approvals, and receive all information required to be provided by Contractor. District's Project Manager shall be on-site on an as-needed basis to monitor progress, quality of work, and Contract and schedule compliance.

4.2 Administration of the Contract

4.2.1 Site Visits. The District's Project Manager will visit the Site at intervals appropriate to the stage of the Contractor's operations to become familiar with the progress and quality of the portion of the Work completed and to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.

4.2.2 No Estoppel. Neither the District nor its Project Manager will be responsible for Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The District and its Project Manager will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. Approval and/or acceptance of all or any portion of the Work shall in no way relieve the Contractor from its obligation to construct each portion of the Work in accordance with the Contract Documents and the District shall not be estopped or otherwise prevented from asserting any claim it might have against the Contractor as a result of any such acceptance or approval.

4.2.3 Determination of Payment Amounts by Project Manager. The District's Project Manager will review Contractor's Application for Payment and determine the amount of payment due Contractor.

4.2.4 Rejection of Work Testing and Inspection. The District has the authority to reject Work that does not conform to the Contract Documents. Whenever the District considers it necessary or advisable, it will require inspection or testing of the Work in accordance with Paragraph 15.5 below, whether or not such Work is fabricated, installed or completed. However, neither this authority nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the District to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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4.2.5 Submittal Review. The District will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples.

4.2.6 Contract Modifications. The District's Project Manager will prepare Change Orders, Construction Change Directives, and written amendments to the Contract. All Change Orders, Construction Change Directives, and written amendments to the Contract involving changes in the Contract Sum or Contract Time require approval by Director and/or Board.

4.2.7 Substantial Completion and Project Closeout. The District's Project Manager will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, review written warranties and related close-out documents required by the Contract and assembled by the Contractor, and will issue a final authorization for payment upon Contractor's satisfaction of the requirements of the Contract Documents.

4.3 Claims and Disputes

4.3.1 Definitions. The term "Claim" or "Claims" shall mean a separate demand by the Contractor for: (i) a time extension (ii) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to this Contract and payment of which is not otherwise expressly provided or the Contractor is not otherwise entitled to; or (iii) an amount the payment of which is disputed by the District.

4.3.2 Notification of Third-Party Claims. District shall provide Contractor with prompt written notice upon District's receipt of any third party claim relating to the Contract.

4.3.3 Notice and Time Limits on Claims. If the Contractor wishes to make a Claim for an increase in the Contract Sum or an extension of the Contract Time, the Contractor shall give the District written notice thereof within ten (10) calendar days after the occurrence of the event giving rise to such Claim. The written notice must comply with the requirements of this Article 4 and Article 8, if applicable, herein. This notice shall be given by the Contractor before proceeding to execute Work affected by the event, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Article 10 below.

4.3.4 Resolution. The District will issue a Change Order, a Construction Change Directive, or a written amendment to the Contract, to Contractor within a reasonable period of time after District's approval of any Claim, specifying the additional cost and/or time, if any, approved by District.

4.3.5 Continuing Contract Performance. Contractor shall not delay or postpone any Work pending resolution of any disputes or disagreements, except as the District and Contractor may otherwise agree in writing. Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Contract and the District

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shall continue to make payments for undisputed Work in accordance with the Contract Documents. In the event of disputed work, District shall have the right to unilaterally issue a Construction Change Directive and Contractor shall continue performance pending resolution of the dispute and shall maintain the accounting and cost data described in Paragraph 7.4 herein.

4.3.6 Claims for Concealed or Unknown Conditions. 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 differing from those indicated by information about the Site made available to bidders prior to the deadline for submitting bids.

(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 Documents.

4.3.6.1 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 or written amendment to the Contract, under the procedures described in the Contract.

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

4.3.7 Claims for Additional Cost and/or Time.

4.3.7.1 General. If Contractor wishes to make a Claim for an increase in the Contract Sum and/or Contract Time, Contractor shall provide written notice within ten (10) calendar days, as provided in Paragraph 4.3.3 herein, before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Article 10. If the Contractor believes additional cost is involved for reasons including, but not limited to: (i) any written interpretation; (ii) a Verbal Change in the Work as more specifically described in Subparagraph 7.5.2 below; (iii) failure of payment by the District; or (iv) any order by the District to stop Work where the Contractor was not at fault, Contractor shall file Claims in accordance with the procedures established herein. Compliance with the

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notice and Claim submission procedures described in this Paragraph is a condition precedent to the right to commence litigation, file a Government Code Claim, or commence any other legal action. No claim or issues not raised in a timely notice and timely Claim submitted under this Paragraph may be asserted in any Government Code Claim, subsequent litigation, or legal action.

4.3.7.1.1 The provisions of Section 4.3 and 4.4 constitute a non- judicial claim settlement procedure, and also step one of a two-step claim presentment procedure by agreement under Section 930.2 of the California Government Code. Specifically, step one is compliance with this contract claims procedure and filing/administering timely contract claims in accordance with the Contract Documents. Step two is filing a timely Government Code Section 910 claim in accordance with the California Government Code. Any Government Code Section 910 claims shall be presented in accordance with the Government Code and shall affirmatively indicate Contractor's prior compliance with the claim's procedure herein and previous dispositions under the claim's procedure. These provisions shall survive termination, breach, or completion of the Contract. Contractor shall bear all costs incurred in the preparation and submission of a claim.

4.3.7.2 Certification of Claim.

(1) Contractor, under penalty of perjury under the laws of the State of California, shall submit with the Claim it and its Subcontractors' certification that:

(a) The Claim is made in good faith.

(b) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(c) The amount requested accurately reflects the Contract adjustment for which the Contractor believes the District is liable.

(2) The certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(3) If a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California False Claims Act, California Government Code Sections 12650 et seq.) the District will be entitled to the remedies set forth in the California False Claims Act in addition to all other remedies provided by law. The Contractor may be subject to criminal prosecution.

(4) In regard to any Claim or portion of a Claim for Subcontractor work, the Contractor shall fully review said Claim and certify said Claim, under

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penalty of perjury under the laws of the State of California, to have been made in good faith and in accordance with this Contract.

(5) Failure to furnish certification as required hereinbefore will result in the Contractor waiving its rights to the subject Claim.

4.3.7.3 Content of Written Notice. Contractor shall waive all rights to assert a Claim for Additional Cost and/or Time unless such notice is given as required in this Section. The written notice shall set forth:

(1) The date of the event or occurrence giving rise to the claim and, if applicable, the date when the event ceased.

(2) The nature of the event or occurrence and reasons for which the Contractor believes additional cost and/or time will or may be due.

(3) The quantification of the costs involved together with the accounting and cost data described in Section 7.4 herein.

(4) A Critical Path Method ("CPM") schedule analysis supporting any request for any additional time; and

(5) Contractor's plan for mitigating such costs and/or delay.

4.3.7.4 Back-up Documentation. In addition to the initial ten (10) day written notice required herein, Contractor shall submit detailed backup documentation for its Claim including, but not limited to, contract provisions, specifications, drawings, Request for Information, correspondence, meeting minutes, and the like, within thirty (30) calendar days from Contractor's initial written notice. Failure to provide either this backup documentation or an explanation acceptable to the District for the cause of the Contractor's delay in submitting this documentation as herein indicated shall constitute Contractor's waiver of any and all rights associated with the Claim. Except where provided by law, the District shall not be liable for special or consequential damages, and claims shall not include special or consequential damages.

4.3.7.5 Remedies Related to Delays.

(1) For Claims relating to extensions of Contract Time, due to Compensable District-Caused delays, as described in Article 8 herein, Contractor may be entitled to an equitable adjustment of the Contract Sum and Contract Time provided Contractor otherwise complies with this Paragraph 4.3.

(2) For Claims relating to extensions of Contract Time due to Non-Compensable Force Majeure events, as described in Article 8 herein, Contractor may be entitled to an equitable adjustment of the Contract Time, subject to the limitations set forth in Article 8 below but shall not be entitled to adjustment of the Contract Sum.

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(3) For Claims relating to extensions of the Contract Time due to rain delays/inclement weather, Contractor shall not be entitled to adjustment of the Contract Time unless and until the number of unworkable days due to the effects of rain/inclement weather exceed the number of days set forth in Subparagraph 8.4.1.3 below. In such event, the Contract Time shall be equitably adjusted, but Contractor shall not be entitled to adjustment of the Contract Sum.

4.4 Dispute Resolution

4.4.1 Claims between the District and the Contractor of $375,000.00 or less shall be resolved in accordance with the procedures established in Part 3, Chapter 1, Article 1.5 of the California Public Contract Code Sections 20104 et seq.; provided however that California Public Contract Code Section 20104.2(a) shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such claim or extend the time for giving of such notice as provided in the Contract Documents.

4.4.1.1 Pursuant to Public Contract Code Section 20104(c), the current provisions of Article 1.5 of Chapter 1 of Part 3 of the Public Contract code (commencing with Section 20104) dealing with the mediation and arbitration of public works claims are incorporated herein and applicable provisions are set forth below.

Public Contract Code Section 20104 (a)(1): This article applies to all public works claims of three hundred seventy-five thousand dollars ($375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b)(1) “Public work” means “public works contract” as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) “Claim” means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

Public Contract Code Section 20104.2: For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment.

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Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b)(1) For claims of less than fifty thousand dollars ($50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c)(1) For claims of over fifty thousand dollars ($50,000) and less than or equal to three hundred seventy-five thousand dollars ($375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those

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provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

Public Contract Code Section 20104.4: The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b)(1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

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(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

Public Contract Code Section 20104.6: (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

4.4.1.2 Pursuant to Assembly Bill 626 (2015-2016 Reg. Sess.) the text of Public Contract Code section 9204 is included as follows:

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:
(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
(C) Payment of an amount that is disputed by the public entity.
(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered a direct contract with a public entity for a public works project.
(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city, and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly

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owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High–Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45–day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time

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prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the

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contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

4.4.2 Except as provided for in Subparagraph 4.4.1, any other claims, disputes, or other matters in controversy shall be resolved as follows. In lieu of, or prior to litigation, the Parties shall endeavor to settle disputes by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect unless the Parties mutually agree otherwise to a different method of alternative dispute resolution. Mediation shall be non-binding and utilize services of a mediator mutually acceptable to the Parties. If the Parties cannot agree on a mediator, then the American Arbitration Association shall appoint a mediator trained in construction industry disputes.

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4.4.3 Any dispute which cannot be resolved between the Parties shall be resolved through litigation in a court of competent jurisdiction of the State of California. Venue for any such litigation concerning this Project or Agreement shall be in the Superior Court of California, San Bernardino County, San Bernardino District and Contractor agrees to incorporate this provision into all subcontracts.

4.4.3.1 Each Party hereby waives any law or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this Contract, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

5 SUBCONTRACTORS

5.1 Award of Subcontracts

5.1.1 Subcontractor Listing. The Contractor shall list its Subcontractors, and shall make no substitution except in accordance with Public Contract Code Sections 4100 et seq. ("Subcontractor Listing Law").

5.1.1.1 Substitution Process. Any request of the Contractor to substitute a listed Subcontractor will be considered by the District only if such request is in strict conformity with this Paragraph 5.1 and Chapter 4 of the California Public Contract Code (commencing with Section 4100). All costs and fees, including all costs of the hearing, incurred by the District in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contactor; such costs and fees may be deducted by the District from the Contract Sum then or thereafter due the Contractor. For purposes of a hearing for the substitution of subcontractors (pursuant to the Public Contract Code commencing with Section 4100) the awarding authority shall be the San Bernardino County, Director of the Department of Public Works - Special Districts, or his/her designee.

5.1.1.2 Responsibilities of Contractor upon Substitution of Subcontractor. Neither the substitution nor the District's consent to Contractor's substitution of a listed Subcontractor shall relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Sum. In the event that the District determines that revised or additional Submittals are required of the newly substituted Subcontractor, the District shall promptly notify the Contractor, in writing, of such requirement and the time for Submittal. In the event that the revised or additional Submittals are not submitted by Contractor within the time specified, Contractor shall be solely responsible for delays in the Work arising from the untimely Submittal. Contractor shall reimburse the District for all fees and costs incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this paragraph; the District may deduct such fees and costs from any portion of the Contract Sum then or thereafter due the Contractor. In the event that additional or revised Submittals are required pursuant to this paragraph, such requirement shall not result in an increase to the Contract Time or the Contract Sum.

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5.2 Subcontractor Relations.

5.2.1 Agreements. By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by Contract Documents, assumes toward the District. Each such agreement shall preserve and protect the rights of the District under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the District. The Contractor shall require each Subcontractor to enter into similar agreements with their Sub-subcontractors. The Contractor shall make available to each Subcontractor, prior to the execution of the agreement, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph. At a minimum, each agreement shall:

(1) Require that the Work being performed pursuant to such agreement, as the case may be, be performed in accordance with the requirements and intent of the Contract Documents and provide no less than five percent (5%) retainage unless otherwise indicated in Agreement between the District and Contractor;

(2) Require submissions of Applications for Payment in the form required by the Contract Documents, together with invoices and billings supporting such applications and conditional and unconditional lien releases in the form required by the Contract Documents completed by it and by its Sub-Subcontractors as a condition to the disbursement of any progress payment next due and owing to it.

(3) Require the Subcontractor, Sub-Subcontractor, or supplier, as the case may be, to maintain insurance coverage as provided in the Contract Documents and to file required certificates of such coverage and additional insured endorsements with District, and, upon District's request, to provide copies of such insurance policies to District.

(4) Require each Subcontractor, Sub-Subcontractor, and supplier to furnish to Contractor or the applicable Subcontractor, as the case may be, in a timely fashion all information necessary for transmittal of Submittals and the reports required herein.

(5) Require that each Subcontractor and supplier continue to perform under its subcontract if the Contract is terminated and if District takes an assignment of the subcontract or supply agreement and requests the Subcontractor or supplier to continue such performance.

(6) Require each Subcontractor, Sub-Subcontractor, and supplier to remove all debris created by its activities.

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(7) Provide that in the event that District accepts the conditional assignment of the subcontract, District shall only be responsible to the Subcontractor for those obligations that accrue subsequent to District's acceptance of the assignment.

(8) Require the Subcontractor to resolve all disputes involving District according to the dispute resolution procedure established in Paragraph 4.4 herein.

(9) Contractor shall cause each subcontract to expressly include the following requirement:

"The District and entities and agencies designated by the District shall have access to and the right to audit and the right to copy at the District's cost all of Subcontractor's and supplier's books, records, contracts, correspondence, instructions, Drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Subcontractor shall preserve all such records and other items for a period of at least five (5) years after Final Completion"; and

(10) Require the Subcontractor engaged upon the Site to arrange the storage of materials and equipment and performance of his Work so as to interfere as little as possible with other persons engaged in Work for the District upon the same Site.

5.2.2 Precedence. If any provision of any Subcontractor supply agreement is inconsistent with any provision of the Contract Documents or the intent of the Contract Documents, then the Contract Documents shall control.

5.2.3 Payments. Contractor shall make payment to Subcontractor within seven (7) days of receipt of each progress payment, in accordance with Public Contract Code Section 10262 and Business and Professions Code Section 7108.5. District hereby reserves the right, upon written notice to Contractor, to make, at any time, and from time-to-time, payments directly to each Subcontractor, and, if such rights shall be exercised by District, then such amount shall be credited against the Contract Sum due to Contractor hereunder and District shall be relieved and released from the obligation to make such payment to Contractor and Contractor shall be relieved and released as to District from the obligation to make such payments to each Subcontractor paid by District, but not from any of the other obligations and responsibilities of Contractor to District under the Contract Documents.

5.2.4 Contractor Responsibility. The Contractor shall be responsible for all acts and omissions of Subcontractors and for all Contract Work regardless of any subcontracts. All interest of the District in the Subcontractor's work shall be coordinated through the Contractor.

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5.3 Contingent Assignment of Subcontractor and Material Supply Agreements

Each Subcontractor and supplier agreement for a portion of the Work is assigned by the Contractor to the District provided that:

(1) Assignment is effective only after termination of the Contract by the District only for those subcontracts which the District accepts by notifying the Subcontractor or supplier, and Contractor in writing;

(2) Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract; and

(3) Upon exercise of this right of assignment, District has the right to reassign the agreement.

6 CONSTRUCTION BY DISTRICT OR BY SEPARATE CONTRACTORS

6.1 District's Right to Perform Construction and to Award Separate Contracts

6.1.1 District's Right to Perform. The District reserves the right to perform construction or operations related to the Project with the District's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site. If the Contractor claims that delay or additional cost is involved because of such action by the District, the Contractor shall make such Claim as provided in Paragraph 4.3 herein.

6.1.2 Reserved.

6.1.3 Coordination. The District shall provide for coordination of the activities of the District's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other Separate Contractors and the District in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. Upon District's written approval, the revised Construction Schedule shall then constitute the schedule to be used by the Contractor, Separate Contractors, and the District until subsequently revised and approved by District.

6.1.4 Cooperation. Each Contractor or Subcontractor engaged upon the Site shall arrange the storage of materials and equipment and performance of his work so as to interfere as little as possible with other persons engaged in work for the District upon the same Site.

6.2 District's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the District as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the District may clean up and allocate the cost among those responsible.

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6.3 Independent Testing

6.3.1 District Testing. The District will employ and pay for services of an independent testing laboratory to perform services specifically required by the governing code authority, as detailed in the Specification, and as additionally requested by District.

6.3.2 Contractor Duties. The Contractor shall:

(1) Notify the District and the testing laboratory sufficiently in advance of the required test to allow for its assignment of personnel and scheduling of tests;
(2) Cooperate with testing and inspection personnel provide access to the Work and to offsite fabrication facilities;
(3) Furnish copies and records of mill test reports;
(4) Employ and pay for services of the same independent testing laboratory to perform additional inspections, sampling, and testing required when initial tests indicate Work does not comply with Contract requirements;
(5) Be responsible for all scheduling of inspections and tests; and
(6) Not proceed with Work requiring inspection if the appropriate inspector is absent.

6.3.3 Material testing. All material testing which conforms to or meets specified standards in the following categories shall be paid for by the District. Material tests in the following categories which fail to meet specified standard shall be paid for by the Contractor:

(1) Soil density tests
(2) Concrete compression tests
(3) Grout compression tests
(4) Mortar compression tests
(5) Testing of masonry units
(6) Testing of reinforcing steel
(7) Structural steel
(8) Anchors and fasteners

Unless stated otherwise in the Contract Documents, any other required or specified tests shall be paid by the Contractor and shall be performed by a qualified testing laboratory approved by the District.

7 CHANGES IN THE WORK

7.1 General

7.1.1 District's Right to Order Changes. The District, without invalidating the Contract, may authorize changes in the Work consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly, if necessary. All such changes in the Work shall be authorized by Change Order, Construction Change Directive, or Written Amendment to Contract, and Contractor shall perform such changes in the Work according to the applicable requirements of the Contract Documents. The District is not required to provide notice to Contractor's sureties of Change Orders, Contract Change Directives or Written Amendment to Contract.

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7.1.2 Basis for Agreement. A Change Order or Written Amendment to Contract shall be based upon agreement between the District and Contractor. A Construction Change Directive may or may not be agreed to by the Contractor.

7.1.3 No Estoppel. Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with the change, unless otherwise provided in the Change Order, Construction Change Directive, or Written Amendment to Contract. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order, Construction Change Directive, or Written Amendment to Contract. Accordingly, no course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work and no Claim that the Contract has been abandoned or the District has been unjustly enriched by any alteration or addition to the Work shall be the basis of any Claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

7.1.4 Change in Work. The District may at any time make any change, modification or addition to the Work by written Change Order, Construction Change Directive, or Written Amendment to Contract, including but not limited to changes:

(1) in the Specifications or Drawings;

(2) in the sequence, method or manner of performance of the Work;

(3) in the District furnished facilities, equipment, materials, services or Site; or

(4) directing acceleration in the performance of the Work.

7.2 Change Orders

7.2.1 Computation. Methods used in determining adjustments to the Contract Sum by Change Order or Written Amendment to Contract may include those listed in Paragraph 7.4 below.

7.2.2 Accord and Satisfaction. Agreement on any Change Order or Written Amendment to Contract shall be a full compromise and settlement of all adjustments to Contract Time and Contract Sum, and compensation for any and all delay, extended or additional field and home office overhead, disruption, acceleration, inefficiencies, lost labor or equipment productivity, differing site conditions, construction interferences and other extraordinary or consequential damages (hereinafter called "Impacts"), including any ripple or cumulative effect of said Impacts on the overall Work under the Contract arising directly or indirectly from the performance of Work described in the Change Order or Written Amendment to Contract. By execution of any Change Order or Written Amendment to Contract, Contractor agrees that the Change Order or Written Amendment to Contract constitutes a complete accord and satisfaction with respect to all claims for schedule extension, Impacts, or any costs of whatsoever nature, character or kind arising out of or incidental to the Change Order or Written Amendment to Contract. No action, conduct, omission, product failure or course of dealing by the District shall act to waive, modify, change, or alter the requirement that (i) Change Orders, Construction Change Directive, or Written Amendment to Contract must be in writing, signed by the District and

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Contractor and; (ii) that such written Change Orders,

Construction Change Directives, or Written Amendment to Contract are the exclusive method for effectuating any change to the Contract Sum and/or Contract Time.

7.3 Construction Change Directives

7.3.1 Use. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.2 Duty to Proceed. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the Work involved and advise the District of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.3 Disagreement. If the Contractor does not promptly indicate its disagreement with the method of pricing provided in the Construction Change Directive, Contractor shall be deemed to agree with the method of pricing the change. If the Contractor indicates it disagreement with the method of pricing or if no method of pricing is provided in the Construction Change Directive, the increase in cost or credit to the Contract Sum for the change shall be determined by cost in accordance with Subparagraph 7.4.1(3) and the provisions of Subparagraphs 7.4.2, 7.4.3 and 7.4.4 shall apply to the change.

7.3.4 Agreement. A Construction Change Directive is effective immediately whether or not it is signed by the Contractor. If the Contractor signs a Construction Change Directive such agreement shall be effective immediately and shall be recorded as a Change Order.

7.4 Computation of Cost or Credit for Changes

7.4.1 Cost or Credit. The cost or credit to the District resulting from a change in the Work shall be determined by District by one or more of the following methods:

(1) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

(2) Unit prices stated in the Contract Documents or subsequently agreed upon.

(3) By cost, as defined in (a), (b), (c) and (d) below, properly itemized and supported by sufficient substantiating data to permit evaluation, plus agreed to markup for overhead and profit as defined in (e) below. Such costs shall be itemized by craft directly allocable to the change in the Work:

(a) Cost of materials, including cost of transportation and delivery.

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(b) Cost of labor, including social security, unemployment insurance, and fringe benefits required by agreement and Workers' Compensation insurance.

(c) Rental value of equipment and machinery, exclusive of hand tools;

(d) Sales tax; insurance; permit costs and bond premiums;

(e) Mark-up to Contractor, Subcontractors, and Sub-subcontractor for overhead, profit and other expenses which are not specifically included in (a) through (d) above shall not exceed the following amounts:

(i) Fifteen (15%) of the cost of that portion of the Extra Work to be performed by the Contractor with its own forces.

(ii) Fifteen percent (15%) of the cost of that portion of the Work to be performed by a Subcontractor or Sub-subcontractor with its own forces, plus 5% for the Contractor. Total combined Contractor, Subcontractor and Sub-subcontractor fee shall not exceed 20%.

(f) Cost of Extra Work shall not include any of the following:

(i) Superintendent(s)

(ii) Assistant Superintendent(s)

(iii) Project Engineer(s)

(iv) Project Manager(s)

(v) Scheduler(s)

(vi) Estimator(s)

(vii) Incidental Drafting or Detailing

(viii) Small tools (Replacement value does not exceed $300)

(ix) Office expenses including staff, materials and supplies

(x) On-Site or off-site trailer and storage rental and expenses

(xi) Site fencing

(xii) Utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment

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(xiii) Data processing personnel and equipment

(xiv) Federal, state, or local business income and franchise taxes

(xv) Overhead and Profit beyond that authorized by Section 7.4.1(3)(e)

7.4.2 Credits. The amount of credit to be allowed by the Contractor to the District for a deletion or change, which results in a net decrease in the Contract Sum, shall be actual net cost as determined herein. The amount of deduct/credit for liquidated damages shall be in accordance with the Agreement. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase/decrease, if any, with respect to that change.

7.4.3 Contractor Maintenance of Records. In the event that Contractor is directed to perform any changes to the Work or should Contractor encounter conditions which the Contractor believes would obligate the District to adjust the Contract Sum and/or the Contract Time, Contractor shall maintain detailed records of the cost of such changes on a daily basis. Such records shall include without limitation hourly records for labor and construction equipment and itemized records of materials and equipment used each day in connection with the performance of any change to the Work. In the event that more than one change to the Work is performed by the Contractor on a calendar day, Contractor shall maintain separate records of labor, construction equipment, materials, and equipment for each such change. In the event that any Subcontractor or Sub-subcontractor, of any tier, shall provide or perform any portion of any change to the Work, Contractor shall require that each such Subcontractor and Sub-subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Contractor's Project Representative; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, complete, and relates only to the change referenced therein. All records maintained by a Subcontractor and Sub-subcontractor, of any tier, relating to the costs of a change in the Work shall be signed by such Subcontractor's authorized Project Manager or Superintendent. Such records shall be forwarded to District's Project Manager on the day the Work is performed (same day) for independent verification. In the event that Contractor shall fail or refuse, for any reason, to maintain or make available for inspection, review, and/or reproduction such records, adjustments to the Contract Sum or Contract Time, if any, on account of any change to the Work shall be determined by District which shall be binding upon Contractor. Contractor's obligation to maintain records hereunder is in addition to, and not in lieu of, any other Contractor obligation under the Contract Documents with respect to changes to the Work.

7.4.4 Payment of Undisputed Amounts. Pending final determination of the total cost of a Change, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by an approved Change Order, Construction

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Change Directive or Written Amendment to Contract, indicating the Parties' agreement with part or all of such costs.

7.5 Authority to Approve Changes

7.5.1 District's Project Manager's Authority. The District's Project Manager must authorize any change in the Work. Such changes shall be affected by a written order approved by the Director or District's Governing Board and shall be binding on the Contractor.

7.5.2 Verbal Changes. Any oral order, direction, instruction, interpretation, or determination from the District (collectively "Verbal Change") which, in the opinion of the Contractor, causes a Scope Change in the Work, or otherwise requires an adjustment to the Contract Sum or the Contract Time, shall be treated as a Change Order Request only if the Contractor gives the District written notice within ten (10) calendar days of the Verbal Change and prior to acting in accordance therewith. Time is of the essence in Contractor's written notice pursuant to the preceding sentence, so that the District can promptly investigate and consider alternative measures to address the Verbal Change giving rise to Contractor's notice. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice within ten (10) calendar days of such Verbal Change shall be deemed Contractor's waiver of any right to assert or Claim any entitlement to an adjustment of the Contract Time or the Contract Sum on account of such Verbal Change. The written notice shall state the date, circumstances, extent of adjustment to the Contract Sum or the Contract Time, if any, requested and the source of the Verbal Change. Any such Verbal Change shall not be treated as a change and the Contractor hereby waives any Claim for any adjustment to the Contract Sum or the Contract Time on account thereof.

7.5.3 Unauthorized Work. Any Work performed by the Contractor not indicated on the Contract Documents or any changes in the Work performed or provided by the Contractor without notice to the District and written approval by District, shall be considered unauthorized by the District and performed at the sole expense of the Contractor. Unauthorized work so performed will not be measured or paid for and no extension of Contract Time will be granted on account thereof. Any such unauthorized work may be ordered removed at the Contractor's sole cost and expense. The failure of the District to direct or order removal of such unauthorized work shall not constitute acceptance or approval of such work nor relieve the Contractor from any liability on account thereof.

7.6 District Originated Proposal Request

District may issue a request, in writing, to Contractor, describing a proposed change to the Work and requesting the Contractor submit an itemized proposal in a format acceptable to District within ten (10) calendar days after District issues the request. The Contractor's proposal shall include an analysis of impacts to Contract Sum and Contract Time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs (broken down by the cost categories listed in the Agreement and/or Paragraph 7.4 herein), and Contractor's proposed methods to minimize

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costs, delay, and disruption to the performance of the Work. If Contractor fails to submit a written proposal within such period of time, it shall be presumed that the change described in the District's original proposal request will not result in an increase to the Contract Sum or Contract Time and the change shall be performed by Contractor without additional compensation. District's proposal request does not authorize the Contractor to commence performance of the change, unless otherwise specified in writing. If District desires that the proposed change be performed, the Work shall be authorized according to the Change Order or Construction Change Directive procedures set forth above.

7.7 Contractor Originated Change Order Request (COR)

If the Contractor alleges that instructions issued by the District after the effective date of the Contract may result in changes to the Contract Sum or Contract Time or if the Contractor otherwise becomes aware of the need for or desirability of a change in the Work, Contractor may submit a written Change Order Request ("COR") to the District in writing, in a format acceptable to District and in accordance with the notice provisions and other requirements of Paragraph 4.3 above for Claims. The COR must specify the reasons for the proposed change, cost impacts and relevant circumstances and impacts on the Construction Schedule. The document shall be complete in its description of the Work, its material and labor quantities and detail, and must support and justify the Costs and credits claimed by the Contractor. A CPM schedule fragnet is required to support and justify any additional Contract Time of performance requested by the Contractor. The District will not review any COR which is incomplete. The Contractor may request additional compensation and/or time through a COR but not for instances that occurred more than ten (10) calendar days prior to the notice date. Contractor's failure to initiate a COR within this ten-day period or to provide detailed back-up documentation to substantiate the COR within thirty (30) calendar days of the initial written notice shall be deemed a waiver of the right to adjustment of the Contract Sum or the Contract Time for the alleged change. Any COR that is approved by the District will be incorporated in a Change Order, Construction Change Directive or Written Amendment to Contract. If the COR is denied by the District, the Contractor shall not proceed with the Work described in the COR.

7.8 Audit Rights.

With respect to any Change Order, Construction Change Directive or Written Amendment to Contract resulting in an increase in the Contract Sum, the Contractor shall afford (and shall require its Subcontractors to afford) access to the District at all reasonable times to any books, correspondence, instructions, receipts, vouchers, memoranda and records of any kind relating thereto, all of which shall be maintained by the appropriate parties for a period of at least five **(5)** years from and after the date the District makes payment on account of such Change Order, Construction Change Directive or Written Amendment to Contract. The Contractor authorizes the District (and shall requires its Subcontractors to authorize the District) to check directly with any suppliers of labor and material with respect to any item chargeable to the District, to confirm balances due and to obtain sworn statements and waiver of liens, all if the District so elects.

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8 SCHEDULE AND EXTENSIONS OF TIME

8.1 Definitions

8.1.1 Contract Time. The Contract Time is the period of time allocated in the Contract Documents from the date of commencement provided in District's Notice to Proceed for Final Completion of the Work.

8.1.2 Commencement. The Date of Commencement of the Work is the date provided in District's Notice to Proceed.

8.1.3 Substantial Completion. The date of Substantial Completion is the date determined by District and certified by the District in accordance with Paragraph 9.6 below and the terms of this Agreement.

8.2 Progress and Completion

8.2.1 Time is of the Essence. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement and any Modifications relating to Substantial Completion or Contract Time the Contractor agrees and confirms that the Contract Time is a reasonable period for performing the Work and that Contractor is able to complete the Work by that date.

8.2.2 Commencement. The Contractor shall not knowingly prematurely commence operations on the Site or elsewhere prior to the effective date of insurance and bonds required to be furnished by the Contractor to District as specified in the Agreement. The Date of Commencement of the Work shall not be changed by the effective date of such insurance and bonds.

8.2.3 Completion. The Contractor shall proceed expeditiously with adequate labor and supervision to achieve Final Completion within the Contract Time.

8.2.4 Notice to Proceed. The Contract shall commence the Work required by this Contract within ten (10) calendar days of the date specified in the notice from the District to proceed with the Work.

8.2.5 Expeditious Work. Contractor shall proceed expeditiously with adequate forces and shall complete the Work by the date specified in the Contract Documents. If Contractor is not diligently proceeding with the prosecution of the Work as scheduled, Contractor shall, immediately and at no additional cost to the District, take measures necessary, including working such overtime, and additional shifts as may be required to correct such delays.

8.3 Contractor's Schedules

8.3.1 Project Schedule. Unless otherwise provided in the Agreement or Technical Specifications, within fourteen (14) calendar days after the Date of Commencement, Contractor shall submit a baseline Project Schedule for the Work for comment and approval by District. The baseline Project Schedule shall include, but not be limited to:

(1) A CPM format that incorporates all activities with descriptions, sequence, logic relationships, duration estimates, resource-loading, and other

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information required for all pre-construction and construction activities.

(2) Activities to be integrated and shown in the CPM network shall include all milestones representing the Contractor's submittal dates and activities representing the District's review period of each submittal (which review period shall in no case be scheduled for less than 15 working days); Contractor's procurement of materials and equipment; submittals; manufacture and/or fabrication, testing and delivery to the jobsite of special material and major equipment; equipment installation and preliminary, final and performance testing of equipment or systems.

(3) Activities showing the start and finish dates for all temporary works; all construction of mock-ups, and prototypes and/or samples.

(4) Activities showing start and finish dates of owner-furnished items and interface requirements dates with other contractors; regulatory agency approvals; and permits required for the performance of the work.

(5) Activities showing start and finish of tenant programming (as appropriate), modular furniture, tenant improvement work and phased occupancy.

(6) Close-out activities.

(7) The schedule shall consider all foreseeable factors or risks affecting or which may affect the performance of the work, including historical and predicted weather conditions, Applicable Laws, regulations or collective bargaining agreements pertaining to labor, transportation, traffic, air quality, noise and any other applicable regulatory requirements.

(8) The Contractor shall attach a narrative report which explains assumptions used for activity durations, its assumptions regarding crew sizes, equipment requirements and production rates, any potential areas of concern or specific areas requiring coordination it may have identified and any long-lead time materials or equipment.

(9) Time units for all schedules shall be in calendar days, and no construction activity shall have a duration greater than 30 calendar days without District approval.

Upon the District's approval, the Project Schedule shall be deemed to be a Contract Document. Any revisions or updates to the Project Schedule are subject to review and approval by District.

8.3.1.1 The District's review of the form and general content of the baseline Project Schedule is for the purpose of determining, in its judgment, whether the following requirements are satisfied:

(1) Schedules are suitable for monitoring progress of the Work;

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(2) Schedules provide necessary data about the timing of the District's decisions on the District furnished items, including furniture, equipment and occupancy;

(3) Schedules are in sufficient detail to demonstrate adequate planning for the Work; and

(4) Schedules represent a practical plan to complete the Work within the Contract Time.

8.3.1.2 Contractor shall plan, develop, supervise, control, and coordinate the performance of the Work so that the progress and the sequence and timing of Work activities conform to the current accepted Project Schedule. Contractor shall continuously obtain from Subcontractors information and dates about the planning for and progress of the Work, the ordering and fabrication of materials, required Submittals, and the delivery of equipment, shall coordinate and integrate such information and data into updated Project Schedules and "As-Built" Drawings and specifications, and shall monitor the progress of the Work and the delivery of equipment. Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier. Contractor shall cooperate with the District in the development of the Project Schedule and updated Project Schedules.

8.3.1.3 The District's acceptance of or its review comments about any Project Schedule or scheduling data shall not relieve Contractor from its sole responsibility to plan for, perform, and complete the Work by the Contract Time. Acceptance of or review comments about any Project Schedule shall not transfer responsibility for any Project Schedule to the District nor imply their agreement with (1) any assumption upon which such schedule is based on or (2) any matter underlying or contained in such schedule.

8.3.1.4 Failure of the District to discover errors or omissions in schedules that it has reviewed, or to inform Contractor that Contractor, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Project Schedule shall not relieve Contractor from its sole responsibility to perform and complete the Work by the Contract Time and shall not be a cause for an adjustment of Contract Time or the Contract Sum.

8.3.2 Format. Unless otherwise provided in the Agreement or Technical Specifications, the Project Schedule shall be in a detailed precedence CPM or Microsoft type format satisfactory to the District, which shall also: (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and maintenance; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as Milestone Dates). At a minimum the Project Schedule shall depict the schedule for Work on a discipline by discipline and trade by trade basis and tasks within each discipline and

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trade. The Project Schedule shall include: (i) proposed activity sequences and durations; (ii) Milestone Dates for receipt and approval of pertinent information, including District-supplied information and approvals by public authorities having jurisdiction over the Project; (iii) dates for preparation and processing of Shop Drawings, Product Data, and Samples; (iv) dates for delivery of materials or equipment requiring long-lead time procurement; (v) District's occupancy/use requirements showing portions of the Project having occupancy priority; (vi) the estimated date of Substantial Completion and Final Completion; and (vii) other information reasonably required by District. Upon review and acceptance by the District of the baseline Project Schedule, the baseline Project Schedule shall be deemed part of the Contract Documents. If not accepted, the baseline Project Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the District and re-submitted for acceptance.

8.3.3 Updates. With each Application for Payment submitted by Contractor (other than the Final Application for Payment), the Contractor shall submit to the District an updated Project Schedule revised to include, at a minimum:

8.3.3.1 Monthly update/status of electronic database shall include recording of all Actual Start Dates and Actual Finish Dates and status of activities in progress.

8.3.3.2 Review of “planned” versus “actual” work force allocations and progress for the preceding month.

8.3.3.3 Reviews of revisions added or deleted work and how those activities are being integrated into the Contractor’s work plan.

8.3.3.4 Review of the Contractor’s interface and coordination with other work on the Project.

8.3.3.5 Review of all impacts to the Work during the preceding month and to date, Contractor evaluation of those impacts and any recovery plans or remedial actions required to comply with the contract schedule.

If the Contractor does not submit an updated Project Schedule with an Application for Payment, District may withhold payment, in whole or in part. In the event any update to the Project Schedule indicates any delays to the Contract Time that are the fault of Contractor or others for whom Contractor is responsible, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any Project Schedule Update constitute an adjustment in the Contract Time, any deadline, or the Contract Sum unless any such adjustment is agreed to by the District and authorized pursuant to Change Order, Construction Change Directive, or Written Amendment to Contract.

8.3.4 Extraordinary Measures. In the event the District determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the District shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of

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construction, including, without limitation, the Extraordinary Measures as provided in Paragraph 2.8 herein.

8.3.5 Early Completion. While the Contractor may schedule completion of the Project earlier than the date established by the Contract Documents, no additional compensation shall become due the Contractor for the use of float time between the Contractor's projected early completion date and the date for Final Completion established by the Contract Documents except any bonus or penalty provisions set forth in the Contract Documents, which would take precedence over and supersede this Paragraph.

8.3.6 Schedule of Submittals. Unless otherwise provided in the Agreement or Technical Specifications, within ten (10) calendar days after the Date of Commencement, the Contractor shall prepare and keep current, for the District's review and approval, a Schedule of Submittals for Shop Drawings, Product Data, Samples, and similar submittals, coordinated with the baseline Project Schedule and allowing the District reasonable time to review. Contractor shall be solely responsible for any delay, disruption, impact, loss of efficiency or other loss, arising directly or indirectly from Contractor's failure to manage submittals properly.

8.3.7 Procurement Schedule. Unless otherwise provided in the Agreement or Technical Specifications, within ten (10) calendar days after the Date of Commencement, Contractor shall prepare and keep current, for District's approval, a schedule for procurement of materials and equipment which is coordinated with the baseline Project Schedule and allows the District reasonable time to review. Contractor is solely responsible for any delay, disruption, impact, loss of efficiency, or other loss arising directly or indirectly from Contractor's failure to properly manage procurement of equipment and materials.

8.3.8 Performance. The Contractor shall perform the Work in accordance with the most recent Project Schedule and Schedule of Submittals approved by the District. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Project Schedule and shall promptly advise the District of any delays or potential delays.

8.4 Delays and Extensions of Time

8.4.1 Non-Compensable Force Majeure Events.

8.4.1.1 Definition. "Force Majeure" shall mean any of the following events, which materially and adversely affect Contractor's obligations hereunder and which event could not have been avoided or prevented by due diligence and use of reasonable efforts by Contractor: earthquake, fire, flood, epidemic, blockade, rebellion, war, terrorism, riot, act of sabotage, or civil commotion; discovery of any archaeological, paleontological or cultural resources; spill of hazardous substances by a third party at or near the Site which is required to be reported to the Federal or California Environmental Protection Agency, Toxic Substances Control; or discovery at, near,

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or on the Site of any species listed as "threatened" or "endangered" under the Federal or California Endangered Species Act.

8.4.1.2 Remedies. If the critical path of the Work is delayed by Force Majeure events, provided that the aforesaid causes were not foreseeable and did not result from the acts of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes, then the Contractor may pursue remedies for adjustment of the Contract Time in accordance with Paragraph 4.3 above. Unless the Force Majeure event damages the Work at the Project Site, Contractor will not be entitled to an adjustment in the Contract Sum.

8.4.1.3 Rain Days/Inclement Weather. For purposes of granting time extensions pursuant to this subparagraph and in accordance with the Claims procedures set forth in Paragraph 4.3 herein, resulting from unworkable days due to rain/inclement weather which were not reasonably foreseeable, the Contractor and District agree that the impact of rainfall/inclement weather for which the Contractor is not entitled to a time extension is a total of ten (10) Work Days per year ("Rain Days"). The Contractor shall account for the above number of Work Days for which the effects of rainfall/inclement weather are expected to prevent Work in the Project Schedule as set forth in Subparagraph 8.3 herein and shall obtain District's approval of Contractor's use of each Rain Day before requesting extension of the Contract Time.

8.4.2 Compensable District-Caused Delays. If the date for Final Completion of the Work is delayed as a result of the wrongful acts or negligence of the District or anyone for whom District is legally liable and the delays are unforeseeable and are unreasonable under the circumstances involved, the Contractor shall be entitled to an equitable adjustment of the Contract Time and/or compensation for reasonable additional costs directly resulting from such delays, but not for any additional home office overhead, profit or fee, subject to the requirements of Article 8 herein, and further provided Contractor complies with the notice and procedural requirements of Articles 4 and 7 herein.

8.4.3 Concurrent Delays. To the extent the Contractor is entitled to an extension of Contract Time due to an excusable delay, but the performance of the critical path of the Work would have been otherwise suspended, delayed, or interrupted by the fault or neglect of the Contractor or by an inexcusable delay, the Contractor shall not be entitled to any additional cost during the period of such concurrent delay.

8.4.4 Float. Critical Work activities are defined as Work activities which, if delayed or extended, will delay the scheduled completion of the milestones and/or time of completion. All other Work activities are defined as non-critical Work activities and are considered to have float. Float is defined as the time that a non-critical Work activity can be delayed or extended without delaying the scheduled completion of the milestones and/or time of completion. Float is considered a Project resource available to either party or both parties as needed. Once identified, Contractor shall monitor, account for, and maintain float in accordance with Critical Path Methodology.

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Delays of any non-critical Work shall not be the basis for an extension of Contract Time until the delays consume all float associated with that non-critical Work activity and cause the Work activity to become critical.

It is acknowledged that District-caused time savings (i.e., critical path submittal reviews returned in less time than allowed by the Contract Documents, approval of substitution requests which result in a savings of time for Contractor, etc.) create shared float. Accordingly, District-caused delays may be offset by District-caused time savings.

8.4.5 Shortage of Material. An extension of time will not be granted by the District for a delay caused by a shortage of materials, except District-furnished materials, unless the Contractor furnishes to the District documented proof that the Contractor has made every effort to obtain such materials from every known source within reasonable reach of the Work. The Contractor shall also submit proof, in the form of network analysis data that the inability to obtain such materials when originally planned did, in fact, cause a delay in Final Completion of the Work which could not be compensated for by revising the sequence of operations. District will consider only the physical shortage of material as a cause for extension of time. The District will not consider any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of the District that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time the Contract was entered into.

8.4.6 Utility and Agency Delays. Contractor is aware that governmental agencies, gas companies, electrical utility companies, water districts, and other utilities and agencies may be required to approve a proposed installation. Contractor has endeavored and will continue to use its best efforts to include the cost of such anticipated delays and related costs which may be caused by such utilities and agencies in the Contract Sum. Thus, Contractor is not entitled to make claim upon the District for damages or delays arising from the delays caused by such utilities and agencies. Furthermore, the Contractor has included time periods for such governmental approval in the Project Schedule and is not entitled to an extension of time for delays caused by governmental agencies from which Contractor must obtain approvals.

8.4.7 Contractor Fault. No extension of time will be granted under this Article 8 for any delay to the extent: (i) that performance was so delayed by any Contractor induced causes, including but not limited to the fault or negligence of the Contractor or its Subcontractors; or (ii) for which any remedies are provided for or excluded by any other provision of the Contract.

8.4.8 Contract Modification. A Change Order, Construction Change Directive, or Written Amendment to Contract will be issued by the District to the Contractor within a reasonable period of time after approval of a request for extension of time, specifying the number of days allowed, if any, and the new date or number of calendar days after the date of commencement for completion of the Work or specified portions of the Work.

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8.4.9 No Release of Surety. An extension of time granted shall not release the Contractor's surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and said Contract shall be and shall remain in full force and effect during the continuance and until the completion and Final Acceptance of the Work covered by the Contract unless formally suspended or annulled in accordance with the terms of the Contract.

8.4.10 No Waiver. Neither the grant of an extension of time beyond the date fixed for Final Completion of the Work, nor the performance and acceptance of any part of the Work or materials specified by the Contract after the time specified for Final Completion of the Work, shall be deemed to be a grant of any future extensions, a wavier by the District of the District's right to abrogate this Contract for abandonment or failure to complete within the time specified, or to impose and deduct damages as may be provided in the Contract Documents.

8.5 Liquidated Damages

8.5.1 District and Contractor recognize that time is of the essence in this Agreement and that the District may suffer financial loss in the form of lost grant funds, additional contract administration expenses, and loss of public use if the Work is not completed within the Contract Time, including any extensions thereof allowed in accordance with the Contract Documents.

8.5.2 Contractor and District agree to liquidate damages with respect to Contractor's failure to achieve Final Completion of the Work within the Contract Time. The Parties intend for the liquidated damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85. Contractor acknowledges and agrees that the liquidated damages are intended to compensate District solely for Contractor's failure to meet the deadline for Final Completion and shall not excuse Contractor from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.

8.5.3 In the event that Contractor fails to achieve Final Completion of the Work within the Contract Time, Contractor agrees to pay District the amount per day designated in the Contract and/or Special Conditions for liquidated damages for each calendar day that Final Completion is delayed.

8.5.4 Contractor acknowledges and agrees that the foregoing liquidated damages have been set based on an evaluation by District of damages that it will incur in the event of the late completion of the Work. Contractor and District agree that because of the nature of the Project it would be impractical or extremely difficult to fix the amount of actual damages incurred by the District due to a delay in completion of the Work. Accordingly, the District and Contractor have agreed to such liquidated damages to fix Contractor's costs and to avoid later disputes. It is understood and agreed by Contractor that any liquidated damages payable pursuant to this Agreement are not a

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penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the effective date of this Agreement.

8.5.5 It is further mutually agreed that District shall have the right to deduct liquidated damages against progress payments or retainage and that the District will issue a unilateral Construction Change Directive and reduce the Contract Sum accordingly. In the event the remaining unpaid Contract Sum is insufficient to cover the full amount of liquidated damages, Contractor shall pay the difference to District.

9 PAYMENTS AND COMPLETION

9.1 Contract Sum

The Contract Sum, including authorized adjustments, is the total maximum amount payable by the District to the Contractor for performance of the Work under the Contract Documents.

9.2 Schedule of Values

Within fourteen (14) calendar days after the Date of Commencement, Contractor shall submit to the District a Schedule of Values allocated to various portions of the Work. The Schedule of Values shall be approved by the District in writing. The Schedule of Values shall be prepared in such a manner that each major item of Work assigned to Contractor and to each separate Subcontractor is shown as a single line item on AIA Document G703 (or other form as required by District) and supported by such data to substantiate its accuracy as the District may require. The approved Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 Applications for Payment

9.3.1 Applications for Payment. The Contractor shall submit to the District an itemized Application for Payment, utilizing a form approved in writing by the District, for operations completed in accordance with the Schedule of Values and the payment provisions of the Agreement. Such Application shall be notarized, if required by District, and supported by such data substantiating the Contractor's right to payment as the District may require, including copies of requisitions from Subcontractors and Suppliers.

9.3.1.1 Payment will be made on valuation of Work done as of the twenty-fifth of each month, and such application shall be submitted approximately five (5) days before the end of the month.

9.3.1.2 No payments made to the Contractor, nor partial or entire use or occupancy of the Work by the District, shall be acceptance of any Work or materials not in accordance with the Contract Documents.

9.3.2 Based on California Public Contract Code Section 20104.50 and the Contract Documents, each Application for Payment shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the payment request is proper. Any Application for Payment determined not to be suitable for payment shall be returned to Contractor not later than seven (7) calendar days after receipt. Any returned Application for Payment shall be accompanied by a document setting forth in writing the

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reasons why the payment request is not proper. The District shall make any progress payment within 30 days after receipt of an undisputed and properly submitted Application for Payment from the Contractor.

9.3.2.1 Such Applications for Payment shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason, or as to which an appropriate conditional or unconditional waiver and release of rights upon payment has not been provided.

9.3.3 Documentation. As a condition precedent to District's monthly progress payment to Contractor, Contractor shall submit with each Application for Payment the following documentation:

(1) Updated Schedules of Values, invoices and requisitions from all Subcontractors, Sub-subcontractors and suppliers performing Work covered by the Application for Payment;

(2) Completed and executed form of conditional waiver and release of rights upon progress payment in accordance with California Civil Code Section 8132, from Contractor and its Subcontractors covering the amount of the current Application for Payment;

(3) Completed and executed forms of unconditional waiver and release of rights upon progress payment in accordance with California Civil Code Section 8134, from Contractor and its Subcontractors covering the amount of the previous Application for Payment (but no later than two months prior to the current Application for Payment);

(4) Reserved.

(5) At its sole discretion, the District reserves the right to request (i) an executed subcontract including bonds, insurance, certificates, and endorsements and all other exhibits and attachments for each item of material, labor and service for which a disbursement has been requested and (ii) certifications from each Subcontractor and Sub-subcontractor of any tier, that each is current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which any such Subcontractor or Sub-subcontractor is a Party or is otherwise bound; and

(6) Such other documentation as the District may reasonably request.

Any Payment made by District to Contractor in the absence of any of the preceding documents in no way relieves the Contractor from providing all these documents for the current and/or any future payment.

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9.3.3.1 As a further condition precedent to District's obligation to make monthly progress payment to Contractor, Contractor must be current in its submittal of documentation required by the Contract Documents including, but not limited to the following:

(1) A Subcontractor Procurement Log listing executed subcontracts including bonds, insurance, certificates, and endorsements and all other exhibits and attachments for each item of material, labor, and service for which a disbursement has been requested.

(2) Log of all licenses, leases, permits, approvals, and agreements relating to the construction of the Project.

(3) Contractor's daily logs.

(4) Record Documents and As-Built Drawings and Specifications updated with current Project information as described in Subparagraph 3.10.1 above.

(5) Updated Project Schedule.

(6) RFI Log.

(7) Change Order Request Log and Change Order Log, including a list of any Change Orders and Construction Change Directives, contemplated or under negotiation at the date of such payment request, the status, and a rough order of magnitude cost for each such change.

(8) Certified Payrolls for the time covered in the Application for Payment.

Any payment made by District to Contractor in the absence of any of the preceding documents in no way relieves the Contractor from providing all these documents for the current and/or any future payment.

9.3.4 Initial Payment Application. Contractor shall ensure that all administrative actions, submittals, payment procedures and requirements set forth in the Contract Documents for the first Application for Payment must precede or coincide with the initial Application for Payment, including:

(1) A description of the types of Work and the amounts thereof to be provided by the Contractor (as opposed to the Subcontractors).

(2) A list of Subcontractors, principal suppliers and fabricators.

(3) A Submittal Schedule.

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(4) Copies of all necessary permits.

(5) All insurance certificates and endorsements for Contractor and all Subcontractors are in place.

(6) Payment and Performance Bonds for Contractor and Subcontractors, as applicable, are in place; and

(7) Job signs have been installed.

9.3.5 Payment to Subcontractors. Within seven (7) calendar days of Contractor's receipt of payment from District for Work performed by a Subcontractor, the Contractor shall pay all Subcontractors for and on account of Work on the Contract performed by each. The Contractor shall by appropriate agreement with each Subcontractor and Supplier, require each Subcontractor to make payments to Sub-subcontractor in a similar manner. The District will, on request, furnish to a Subcontractor, Sub- subcontractor, or supplier, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the District on account of portions of the Work done by each.

9.3.6 Substantial Completion Payment Application. Following the determination of Substantial Completion by the District's Project Manager and approval thereof by District, the Contractor shall submit an Application for Payment at Substantial Completion. In addition to submittals required for all applications for progress payments, the Contractor shall complete the following administrative actions and submittals, all of which shall precede or coincide with this application:

(1) List all incomplete items of Work and the value of each item of incomplete Work.

(2) Obtain and submit all documentation necessary to enable the District's full and unrestricted use of the Work or portions thereof, and access to services and utilities, and to supply any change-over information necessary to the District's occupancy, use, operation, and maintenance;

(3) Discontinue and remove temporary facilities and services from the Site, along with construction tools and facilities, forms, and similar items except for Contractor's field office.

(4) Obtain all temporary occupancy permits and similar approvals for the use of the facilities.

(5) Inspect, test, and adjust performance of every system of facility of the Work to ensure that overall performance is in compliance with terms of the Contract Documents.

(6) Submit a report of such test results to the District;

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(7) Provide instruction for the District's operating personnel on systems and equipment operational requirements;

(8) Report performance of completed installations after adjustment that appear unable to comply with the requirements of the Contract Documents; and

(9) Submit the operating manual(s) for operating and maintaining the building.

9.3.7 Warranty of Title. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the District no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Applications for Payment have been previously issued and payments received from the District shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, stop notices, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, Sub-subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and/or equipment relating to the Work. This provision shall not relieve the Contractor from the responsibility for materials and Work upon which payments have been made, the restoration of damaged Work, or waive the right of the District to require the fulfillment of the terms of the Contract.

9.3.8 Cash Allowance. Whenever the Specifications provide a lump sum amount for specified Work, the Contractor shall include that amount in his bid for the designated Work, and the stated amount shall be deemed to include the full allowance. Any difference in cost to the Contractor from the supplier shall be added to or deducted from the Contract Sum.

9.3.9 Equipment or Materials. If, during the progress of the Work, the Contractor, with the written approval of the District, purchases and stores in an approved manner on the Site any equipment or materials required to complete the Work prior to the normal need of such equipment or materials, Contractor will be paid on the same basis as provided in Paragraph 9.3, except that the value of such materials or equipment shall be claimed as a separate item and so reported until it shall have been incorporated in the Work. District will not pay for the materials or equipment at the time they are ordered and will not pay for materials or equipment until they are delivered to the Site.

9.3.9.1 If required by the District, such payments shall be conditional upon submission by the Contractor of bills of sale, or such procedure as will establish the District Title to such equipment or materials, or otherwise adequately protect the District's interests.

9.3.9.2 Any equipment or materials stored and paid for by the District prior to being incorporated in the Work shall not be used for any other purpose and shall not be removed from the Site.

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9.4 Decisions to Withhold Payment

9.4.1 Basis for Decision to Withhold. The District's Project Manager may withhold payment in whole or in part, to the extent reasonably necessary to protect the District. If the District's Project Manager is unable to approve payment in the amount of the Contractor's Application for Payment, the District's Project Manager will notify the Contractor of the reasons for failing to approve the payment. If the Contractor and District's Project Manager cannot agree on a revised amount, the District's Project Manager will promptly issue payment for the amount for which the District's Project Manager is able to make such representations to the District. The District's Project Manager may refuse to make payment or, because of subsequently discovered evidence, the District's Project Manager or the District may nullify the whole or a part of a payment previously issued, to such extent as may be necessary in the District's Project Manager's opinion to protect the District from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2 and 3.18 or because of:

(1) Defective work not remedied.

(2) Third party claims filed or reasonable evidence indicating probable filing of such claims, including stop notices, unless security acceptable to the District is provided by the Contractor;

(3) Failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials, services or equipment.

(4) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum.

(5) Damage to the District or another contractor.

(6) Reasonable evidence that the Work will not be completed within the Contract Time.

(7) Persistent failure to carry out the Work in accordance with the Contract Documents.

(8) Liquidated damages, if any, which accrued as of the date of the Application for Payment.

(9) Such other sum as the District is entitled to recover from the Contractor; and

(10) Contractor’s failure to timely submit:

(a) Daily logs.

(b) Certification from District and Contractor that Record Documents and As-Built Drawings and Specifications have been updated with current Project information as described in Paragraph 3.10 above.

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(c) Updated Construction Schedule.

(d) RFI logs.

(e) Change Order Log; and

(f) Certifications from each Subcontractor and Sub-subcontractor of any tier that each is current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which any such Subcontractor is a Party or is otherwise bound.

9.4.2 Withhold for Disputes. In the event of a dispute between District and Contractor, the District may withhold from payments an amount not to exceed one hundred fifty percent (150%) of the disputed amount. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.4.3 Withhold for Stop Notice Claims.

9.4.3.1 If at any time there shall be evidence of the existence, whether or not same has been asserted, of any stop notice, or claim arising out of or in connection with the performance or default in performance of this Contract or any subcontract or supply contract entered into by Contractor to perform this Contract, and if the District might become liable for the discharge of or satisfaction of such stop notice or claim, then the District shall have the right to retain out of any payment then due or thereafter to become due, in addition to the amounts set forth above, an amount sufficient to discharge such stop notice or satisfy such claim and to reimburse the District and the Project Manager(s) of the District for all costs and expenses in connection therewith, including attorneys' fees. Further, the District, in its sole discretion, shall have the right to discharge or satisfy such stop notice or claim and pay all costs and expenses in connection therewith if the Contractor does not have such stop notice or claim discharged or satisfied within ten (10) calendar days after receiving notice to remove the stop notice or claim from District or unless some other procedure for discharge or satisfaction of such claim is agreed between District and Contractor. If the amounts retained are insufficient for the aforesaid purposes, or if such stop notice or claim remains undischarged or unsatisfied after all payments have been made to the Contractor, then the Contractor shall refund to the District all monies that may have been paid, or need to be paid, to discharge such stop notice or satisfy such claims, including the costs, expenses, and attorney's fees in connection therewith.

9.4.3.2 The District may release any payments withheld due to a stop notice claim if the Contractor obtains a release bond that is: (i) issued by a surety acceptable to District admitted to issue surety bonds by the California Department of Insurance; (ii) is in form and substance satisfactory to the District; and (ii) is in an amount of not less than 125% of the amount of any stop notice claim.

9.5 Progress Payments

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9.5.1 District Payments to Contractor. After the District's Project Manager has issued an authorization for payment, the District, subject to its rights under Paragraph 9.5 herein, shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the District's Project Manager.

9.5.2 Joint Checks or Direct Payments. Neither the District nor District's Project Manager shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. District, however, reserves the right, in its sole discretion for reasonable cause, to make payments to Contractor in the form of checks payable jointly to Contractor and to any of Contractor's Subcontractors or suppliers or, upon notice to Contractor with the opportunity to object, payments directly to Subcontractors and suppliers, in satisfaction of District's obligation to make payments to Contractor.

9.5.3 Payment Not Acceptance of Work. An authorization for payment, a progress payment, or partial or entire use or occupancy of the Project by the District shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.5.4 Retention. From each progress payment, five percent (5%) will be deducted and retained by the District and the remainder, less the amount of all previous payments and less the amounts needed to satisfy outstanding stop notices, will be paid to the Contractor. At no time shall the progress payments be in excess of ninety-five percent (95%) of the percentage of actual work completed plus ninety-five percent (95%) of the value of materials delivered on the ground or stored and under the control of the District.

9.5.5 The Contractor may, at the Contractor's sole cost and expense, substitute securities equivalent to any monies withheld by the District to insure performance under this Contract. Such security shall be deposited with the District or a state or federally chartered bank as escrow agent, who shall pay such monies to the Contractor upon satisfactory completion of the Contract. The Contractor shall be the beneficiary of any security substituted for monies withheld and shall receive any accrued interest thereon. Securities eligible for investment shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit. No such substitution shall be accepted until the Escrow Agreement, Forms of Security and any other document related to said substitution is reviewed and found acceptable by the District, nor unless the Contractor shall have notified the District of its intention to substitute securities for retainage within ten (10) days of the signing of the Agreement.

9.5.6 Payment by Electronic Fund Transfer. Contractor shall accept all payments from District via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by District required to process EFT payments.

9.6 Substantial Completion

9.6.1 Contractor Request for Inspection and Punch List. When the Contractor considers that the Work is substantially complete, the Contractor shall prepare and submit to the District's Project Manager and District a request for

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such inspection and a comprehensive Punch List of items to be completed or corrected prior to Final Payment. Failure to include an item on such Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.6.2 District Inspection. Upon receipt of the Contractor's Punch List, the District's Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the Contractor's Punch List, which is not sufficiently complete in accordance with the Contract Documents so that the District can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before the determination by District of Substantial Completion, complete or correct such item upon notification by District. In such case, the Contractor shall then submit a request for another inspection by District to determine Substantial Completion.

9.6.3 Determination of Substantial Completion. When the Work or designated portion thereof is substantially complete, the District's Project Manager will make a determination of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the District and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall finish all items on the Punch List and as required in the Contract Documents.

9.6.4 District's Acceptance. The determination of Substantial Completion prepared by District's Project Manager shall be submitted to the Contractor. Upon such acceptance and consent of surety, provided the requirements for Substantial Completion Payment set forth in the Agreement are met, the District shall make payment to the Contractor for the cost of undisputed Work in place. The District's payment shall not exceed 95% of the Contract Sum until Final Completion and acceptance by District of the Work. District, however, shall be entitled to withhold retainage equaling 150% of the estimated cost of the following items until Final Completion:

(1) Punch list items.

(2) All items necessary to obtain the Final Certificate of Occupancy identified in the Contract Documents as the Work of Contractor;

(3) As Built and Record Documents;

(4) Potential stop notice claims of individuals or entities who have not provided Conditional Waivers and Releases Upon final Payment; and

(5) Any Claims the District may have against the Contractor.

If the Contractor has not completed all items enumerated above within thirty (30) calendar days after the determination of Substantial Completion, the District shall have

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the right to demand completion or correction of the items within a 48-hour period. If the Contractor does not commence the requested Work within the 48-hour period or provide District with written notice of a legitimate reason why Contractor is not able to commence the Work within the 48-hour period, the District shall have the unilateral right to complete the Work and deduct the cost of completion of the Work from any money held pending Final Completion.

9.7 Partial Occupancy or Use

9.7.1 District's Rights and Allocation of Responsibility. The District may occupy or use any completed or partially completed portion of the Work at any stage provided such occupancy or use is consented to by the insurer providing builder's risk property insurance to the Project and is not prohibited by the applicable legal requirements. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the District and Contractor have agreed in writing as to the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to District and District's Project Manager as provided under Subparagraph 9.7.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the District and Contractor.

9.7.2 Joint Inspection. Immediately prior to such partial occupancy or use, the District, Contractor and District's Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.7.3 No Acceptance. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.7.4 Conditions. The Contractor agrees to District's use and partial occupancy of a portion or unit of the Project before formal acceptance by the District under the following conditions:

(1) Occupancy by the District shall not be construed by the Contractor as being an acceptance by District of that part of the Project to be occupied.

(2) Contractor shall not be held responsible for any damage to the occupied part of the Project resulting solely from the District's occupancy;

(3) Occupancy by the District shall not be deemed to constitute a waiver of existing claims on behalf of the District or Contractor against each other.

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(4) If the Project consists of more than one building, and one of the buildings is to be occupied, the District, prior to occupancy of the building, shall secure permanent property insurance on the building to be occupied and any necessary partial occupancy permits from the governmental agencies in jurisdiction. Final approval and occupancy permit from agencies in jurisdiction are still the responsibility of the Contractor, which may be required for use and occupancy;

(5) Contractor shall make available in the areas occupied, on a 24-hour day and seven-day week basis if required, any utility services, heating, and cooling as are in condition to be put in operation at the time of early occupancy. All responsibility for the operation and maintenance of said equipment shall remain with the Contractor while it is so operated. However, an itemized list of each piece of equipment so operated, with the date operation commences, shall be made and certified by the District's Project Manager. This list shall be the basis for the commencement of guarantee periods on the equipment being operated for the benefit of the District's early occupancy. The District shall pay for all utility costs and operational expenses which arise out of the occupancy by the District during construction;

(6) District's use and partial occupancy prior to Project acceptance does not relieve the Contractor of his responsibility to maintain all insurance and bonds required of the Contractor under the Contract until the Project is complete and the Notice of Completion is recorded by the District; and

(7) If time and/or costs are impacted by District's partial occupancy or use, Contractor may submit a Claim for such financial and/or Schedule impact in accordance with Article 4.

9.8 Final Completion and Final Payment

9.8.1 Inspection. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a Final Application for Payment, the District's Project Manager will promptly make such inspection and, when the District finds the Work acceptable under the Contract Documents and the Contract fully performed, the District's Project Manager will promptly issue a final authorization for payment stating that to the best of the District's Project Manager's knowledge, information and belief, and on the basis of the District's Project Manager's on-site visits and inspections, the Work has been fully and satisfactorily completed in strict compliance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final authorization for payment is due and payable. The District's Project Manager's final authorization for payment will constitute a further representation that conditions listed in Subparagraph 9.8.2 as precedent to the Contractor's being entitled to Final Payment have been fulfilled. Warranties required by the Contract Documents shall commence on the date of Final Completion of all Work.

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9.8.2 Documentation. In addition to the requirements for Final Payment set forth in the other Contract Documents, the Final Payment shall not become due until (i) Contractor has fully performed the Contract, including all Punch List work; (ii) a Final Certificate of Occupancy (or equivalent inspection sign-off), if required by District, has been issued (unless failure to issue is due to circumstances beyond the control of Contractor); (iii) sixty (60) calendar days have elapsed since District's recordation of a Notice of Completion; and (iii) Contractor has submitted to the District:

(1) A full, complete and proper Final Application for Payment.

(2) A current Sworn Statement from the Contractor setting forth all Subcontractors and material suppliers with whom Contractor has subcontracted; the amount of each subcontract; the amount requested for each Subcontractor and supplier in the payment application; the balance remaining on the subcontract; and that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the District or the District's property might be responsible or encumbered (less amounts withheld by District) have been paid or otherwise satisfied;

(3) A current Sworn Statement from each Subcontractor setting forth all Sub-subcontractors and material suppliers with whom Subcontractor has subcontracted; the amount of each sub-subcontract; the amount requested for each Sub-subcontractor and supplier in the payment application; the balance remaining on the subcontract; and that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the District or the District's property might be responsible or encumbered (less amounts withheld by District) have been paid or otherwise satisfied;

(4) Completed and executed forms of conditional waiver and release of rights upon final payment in accordance with California Civil Code Section 8136 from Contractor and all persons eligible to record mechanics' liens and file stop notices in connection with the Work, covering the final payment period.

(5) Completed and executed forms of unconditional waiver and release of rights upon progress payment in accordance with California Civil Code Section 8134 from Contractor and all persons eligible to record mechanics' liens and file stop notices in connection with the Work, covering the previous payment period.

(6) Completed and executed affidavits from Contractor and Subcontractors, attaching certificates and endorsements evidencing that insurance required by the Contract Documents to remain in force after Final Payment, if any, is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the District;

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(7) A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents.

(8) Consent of surety(ies) to Final Payment.

(9) Contractor's written assurance that identified corrective work not complete and accepted will be completed by a stated date agreeable to District;

(10) The required Record Documents and As-Built Construction Documents including, but not limited to, shop drawings and other submittals.

(11) Reasonable proof that taxes, fees and similar obligations of Contractor have been paid.

(12) If required by District, a certificate in form and substance acceptable to District and signed by the District's Project Manager certifying that, to the best of its knowledge, the Work has been completed in accordance with the Contract Documents, all Applicable Laws and restrictions; that the Work, as completed, complies in all material respects with all applicable zoning, environmental, building, and land use laws which apply to the Project; that to the knowledge of the District's Project Manager, no governmental entity has issued any notice of violation or nonconformity in connection with the improvements; that direct connection has been made to all abutting gas, sewer, telephone, and electrical facilities necessary for occupancy and use of the Project; and that the Project is ready for occupancy/use;

(13) All warranties from vendors and Subcontractors, maintenance manuals, instructions and related agreements, equipment certifications and similar documents, and maintenance and operating instructions, which shall include:

(a) Schematic piping and wiring diagrams.

(b) Valve charts and schedules.

(c) Electrical panel schedules are complete and posted in panels.

(d) Lubrication charts and schedules.

(e) Guides for troubleshooting.

(f) Pertinent diagrams of equipment with main parts designated for identification.

(g) Manufacturer's data and capacity data on all equipment.

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(h) Operating and maintenance instructions for all items of equipment and all control systems.

(i) Manufacturer's parts list; and

(j) Testing procedures for operating tests.

(14) Tools, spare parts and required extra materials (i.e., attic stock), and similar items.

(15) Keys and proof of the final change-over of locks. In addition, Contractor must advise the District's personnel of the change-over in security provisions;

(16) Written start-up testing performance reports of all systems after completion of start-up testing, and complete instruction of the District's operating and maintenance personnel;

(17) Proof of adherence to final cleaning requirements of the Contract Documents; and

(18) Proof of touch up and other repairs and restoration of all marred and exposed finishes.

9.8.3 Release of Stop Notices. If a Subcontractor or supplier refuses to furnish a release or waiver required by District or files a stop notice, the Contractor shall furnish a bond satisfactory to the District to release the stop notice and indemnify the District against such stop notice and District shall enforce its right under Subparagraph 9.4.3 herein.

9.8.4 Delay Not Caused by Contractor. If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final Completion, the District shall, upon application by the Contractor and certification by the District, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted provided, however, that the retainage amount held following such payment shall be equal to 150% of the estimated cost of completing the Work as determined by the District. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the District prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment.

9.8.5 Contractor's Acceptance of Final Payment. Acceptance of Final Payment by the Contractor, a Subcontractor, or material supplier shall constitute a waiver of any and all Claims by that payee, of whatsoever nature, character or kind, except those previously.

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made in writing and identified by that payee as unsettled at the time of Final Application for Payment.

9.8.6 District's Final Payment. The making of Final Payment shall not constitute a waiver of Claims by the District arising from:

(1) Unsettled stop notices.

(2) Faulty or defective work appears after Substantial Completion of the Work.

(3) Failure of the Work to comply with the requirements of the Contract Documents.

(4) Terms of any special warranties required by the Contract Documents; or

(5) Any other Claim unless specifically waived by the District in writing.

10 PROTECTION OF PERSONS AND PROPERTY

9.6 Safety Precautions and Programs

The Contractor is responsible for establishing, maintaining, and supervising the necessary safety precautions needed to permit the performance of the Work without endangering public safety and property. A Site Specific Safety Program and the Contractor's Safety Policy must be prepared and submitted for the District's review and comments. Contractor shall comply with the review comments of District. The Site-Specific Safety Program shall include the following:

(1) The identity of outside safety consultant or Contractor's safety officer and on-site safety officer.

(2) The schedule for the Contractor's safety inspections.

(3) The type and frequency of training conducted for Contractor's personnel including tailgate meeting, lifting training, emergency procedure, etc.;

(4) Information on the types of heavy equipment to be used and the necessary precaution to be taken if there is an accident.

(5) A copy of the Contractor's Hazardous Communications Program.

(6) A list of any possible fire hazards and the firefighting equipment for the particular Site.

(7) A detailed description of hazardous or unusual procedures necessary for the particular Site.

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(8) Information on any material impact of the construction on the surrounding area including traffic flow, parking, street closure, utility shutoffs, and pedestrian crossing.

(9) Placement, quantity and type of safety warning lights, signs, or other devices during construction.

(10) Written procedures in the event of an injury, fire, hazardous material experience, or other emergency during construction; and

(11) Description of the location and enclosure of the approved staging area.

Contractor shall also comply with any safety requirements required by insurers providing coverage for the Project. Notwithstanding the foregoing, Contractor specifically assumes all risk of damages or injury to any persons or property, wherever located, resulting from any action or operation of the Contractor or Contractor's Subcontractors or Sub-subcontractors under the Contract Documents or in connection with the Work.

9.7 Safety of Persons and Property

9.7.1 Contractor's Responsibility for Damage or Loss. Except as otherwise provided in the Contract Documents and except as to the cost of repair or restoration of damage to the Work caused by Force Majeure events, the Contractor shall bear all losses resulting to him/her on account of the amount or character of the Work, or from any unforeseen obstructions or difficulties which may be encountered, or from any encumbrances on the line of the Work, or because the nature of the ground in or on which the Work is done is different from what is assumed. The Contractor shall bear the risk for any District equipment, material, or supplies with which Contractor has been entrusted and shall bear responsibility for all bodily injuries to persons, including accidental death, which may be caused by Contractor's performance of the Work.

9.7.2 Contractor's Remedy for Damage or Loss. The Contractor shall promptly remedy all damage or loss to any property referred to in this Article arising, in whole or in part, from the Work performed by the Contractor or by any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and for which the Contractor is responsible, except damage or loss attributable to the acts or omission of the District, or anyone directly or indirectly employed by the District, or by anyone for who the District may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's indemnification obligations under Paragraph 3.18 herein.

9.7.3 Precautions and Protection. The Contractor shall take necessary precautions for the safety of, and shall provide necessary protection to prevent damage, injury or loss to:

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(1) Employees on the Site and other persons who may be affected thereby.

(2) The Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

(3) Other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

9.7.4 Notice and Compliance with Applicable Law. The Contractor shall give notices and comply with Applicable Laws bearing on safety of persons or property or their protection from damage, injury, or loss. Contractor shall comply with all laws and regulations, including the California Labor Code and with all California Occupational Safety and Health Act ("OSHA"), Environmental Protection Agency, and South Coast Air Quality Management District and Mojave Desert Air Quality Management District regulations, concerning safety requirements and protection of workers including, but not limited to, those regulations concerning scaffolding, bracing, shoring, trench excavating and removal, and handling and disposal of hazardous waste. Contractor shall fully defend, indemnify, and hold harmless the County and District, and their members, officers, volunteers, employees, and agents, including, but not limited to, the District's Project Manager, from any and all citations and/or memoranda assessed against the District due to regulatory violations of the Contractor, Contractor's Subcontractors, or Sub-subcontractors.

9.7.5 Safeguards. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgate safety regulations, and notify District and users of adjacent Sites and utilities. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon. Any damage to adjacent property or improvements shall be promptly repaired or replaced by Contractor at its sole cost and expense within the Contract Sum.

9.7.6 Excavation. As required by Section 6705 of the California Labor Code and in addition thereto, whenever Work under the Contract involves the excavation of any trench or trenches five feet or more in depth, the Contractor shall submit for acceptance by the District or by a registered civil or structural engineer employed by the District, to whom authority to accept has been delegated, in advance of excavation, 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 Contract for completion of the Work

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as set forth in the Contract Documents. Nothing in this section shall be construed to impose tort liability on the District or any of its officers, agents, officials, volunteers, the Project Managers or employees.

9.7.7 Notice of Hazards. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care, carry on such activities under supervision of properly qualified personnel, and shall provide District and District's Project Manager with reasonable advance notice of such activity.

9.7.8 Loading. The Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety. The Contractor shall be responsible for the protection of all existing structures and improvements, both above and underground, including both the exterior and interior finishes within the adjoining working areas, and shall provide adequate temporary removal as necessary. Any existing structures or improvements damaged during construction shall be repaired or replaced with materials, workmanship, fixtures, or equipment of the same kind, quality, and size as the original, prior to damage. Any materials or equipment temporarily removed and damaged shall be re-erected or installed in a manner approved by the District.

9.7.8.1 The Contractor shall review the structural capability of the construction and Site prior to allowing installation of temporary lifting devices or staging equipment or the temporary off-loading of materials. Contractor shall not exceed design loads without making modifications to the construction or Site to support such loads.

9.7.8.2 All modifications to the construction or Site to support temporary lifting devices, staging equipment, or loading shall be submitted to District for review and acceptance.

9.7.9 Accident Prevention. The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the District.

9.7.10 Accident Reporting. The Contractor shall immediately report all accidents and injuries to District and shall submit on a form approved by District within 24 hours of such accident or injury setting forth essential information for investigation of the accident or injury including, but not limited to, name, address, and phone number of all injured workers and witnesses, location on the jobsite, nature of injury, medical treatment, identity of ambulance company, and hospital.

9.7.11 Adjoining Property. Contractor shall employ all necessary measures to protect adjoining adjacent property and shall provide barricades, temporary fences, and covered walkways required to protect the safety of passersby, as required by prudent construction practices, local building codes, ordinances, or other laws and the Contract Documents.

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9.7.12 Response. Contractor shall immediately respond to notice from the District of unsafe conditions.

9.7.13 Documents Available. The contractor shall have available at the Project Site, copies or suitable extracts of “Construction Safety Orders” and “General Industrial Safety Orders” issued by the State Division of Industrial Safety.

9.8 Hazardous Materials

9.8.1 Notice to District. The Contractor agrees that it is solely responsible for investigation and performing remedial actions on all hazardous materials and other related environmental requirements located on the Project Site. Any hazardous materials that are encountered beyond those described in the Contract Documents may properly be the subject to a Change Order. The District agrees that the Contractor cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site. In the event the Contractor encounters on the Site materials which it reasonably believes to be "hazardous materials" as that term is defined by federal and state law, which have not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the District in writing. The work in the affected area shall not thereafter be resumed until a suitable testing agency certifies the material as nonhazardous or the material is removed or rendered harmless as certified by a suitable testing agency.

9.8.2 Material Safety Data Sheets and Compliance with Proposition 65.

9.8.2.1 Contractor is required to ensure that material safety data sheets are available in a readily accessible place at the Work Site, for any material requiring a material safety data sheet per the federal "hazard communication" standard, or employees' right-to-know law. The Contractor is also required to ensure proper labeling on any substance brought into the Project Site, and that any person working with the material, or within the general area of the material, is informed of the hazards of the substance and follows proper handling and protection procedures.

9.8.2.2 Contractor is required to comply with the provisions of California Health and Safety Code Sections 25249.5 et seq., which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. The Contractor agrees to familiarize itself with the provisions of this section, and to comply fully with its requirements.

9.9 Contractor Materials

The District shall not be responsible for materials and substances brought to the Site by the Contractor unless such materials or substances were required by the Contract Documents.

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9.10 Emergencies

In an emergency affecting the safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

9.11 Protection of the Work

9.11.1 Contractor shall protect all materials, equipment, supplies and Work from injury or damage due to heat, storms, rain, or wind. If unusually severe weather makes it impossible to continue operations safely despite necessary weather precautions, Contractor shall cease Work and notify District of such cessation in accordance with the requirements of Article 4.

9.11.2 Contractor shall not permit open fires on the Project.

9.11.3 Contractor shall take necessary precautions to guard against and eliminate possible fire hazards and to prevent damage to construction Work, building materials, equipment, temporary field offices, storage shed, and public and private property.

9.11.4 If Contractor fails to adequately protect the Work, Contractor is responsible for all damage incurred by District. Contractor is responsible for payment of the deductible on the Builder's Risk Policy, however, District, at its sole discretion, can decide to pay the deductible and deduct such payment from payments then or thereafter due Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such deductible amounts, the Contractor will then pay the different to the District.

9.12 Protection of Existing Property

The Contractor shall be responsible for all measures necessary to protect existing property to remain. This shall include, but is not limited to, padding and draping elevators used in construction, draping of openings and other measures to isolate areas remaining in use, relocation of furniture, fixtures, and equipment, protective covering/draping of furniture, fixtures, and equipment, and protection of landscape materials, planting, and interior and exterior finishes at and adjacent to the Work. Property damaged by the Contractor shall be repaired or replaced by the Contractor to the satisfaction of the District without increase to the Contract Sum. Such measures shall be taken at a frequency required to provide such protection and to keep the areas operational as indicated elsewhere in the Agreement.

10 INSURANCE AND BONDS

10.1 Performance Bond and Payment Bond

10.1.1 Bond Requirements.

10.1.1.1 Contractor shall furnish a Labor and Material Payment Bond, and a Performance Bond on the forms provided by the District or on any other form approved by District. Contractor shall deliver to District no later than ten (10) calendar days after award of the Contract, evidence satisfactory to District that Contractor has obtained the required bonds. The Performance Bond shall be

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furnished as a guarantee of the faithful performance of the requirements of the Contract Documents in an amount equal to one hundred percent (100%) of the Contract Sum. The Payment Bond shall secure payment of all claims, demands, stop notices, mechanics liens, or charges of material suppliers, mechanics, or laborers employed by the Contractor or by any Subcontractor or any person, firm, or entity eligible to file a stop notice with respect to the Work in an amount equal to one hundred percent (100%) of the Contract Sum. Bonds may be obtained through Contractor's usual source, provided the bonds meet all District requirements, and the cost thereof shall be included in the Contract Sum. In the event of changes in the Work that increase the Contract Sum, the amount of each bond shall increase and at all times remain equal to the Contract Sum.

10.1.1.2 The bonds shall be executed by a California admitted surety with an A.M. Best's Company rating satisfactory to the District. If an A.M. Best's rating is not available, the proposed surety must meet comparable standards of another rating service satisfactory to District. Bonds issued by a California admitted surety listed in the latest versions of the U.S. Department of Treasury Circular 570 shall be deemed to be accepted unless specifically rejected by District. Bonds from a California admitted surety not listed in Treasury Circular 570 must be accompanied by all of the documents enumerated in California Code of Civil Procedure Section 995.660(a). All bonds must comply with the Bond and Undertaking Law (Code of Civil Procedure Section 995.010 et. seq.).

10.1.1.3 All such bonds shall be accompanied by a power of attorney from the surety company authorizing the person executing the bond to sign on behalf of the company. If the bonds are executed outside the State of California, all copies of the bonds must be countersigned by a California representative of the surety. The signature of the person executing the bond shall be acknowledged by a Notary Public as the signature of the person designated in the power of attorney.

10.1.1.4 If, during the continuance of the Contract, any of the sureties, in the opinion of the District, are or become non-responsible or otherwise unacceptable to District, District may require other new or additional sureties, which the Contractor shall furnish to the satisfaction of District within ten (10) days after notice, and in default thereof the Contract may be suspended and the materials may be purchased or the work completed as provided in Articles 2 and 13 herein.

10.1.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

10.1.3 The Performance Bond shall name the District as the beneficiary under the bond.

10.1.4 In the event of increases in the Contract Sum by Change Orders, or otherwise, the Contractor shall submit to the District evidence of additional bond coverage (both

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Labor and Material Payment Bond and Performance Bond) for such increases in the Contract Sum. Contractor shall be compensated for such additional bond coverage.

10.1.5 Changes in the Work or extensions of time, made pursuant to the Contract, shall in no way release the Contractor or Surety from their obligations; and the bonds shall remain in full force and effect until one year following the filing of Notice of Completion of the Project by the District. Notice of such changes or extensions shall be waived by the surety.

10.2 Insurance

10.2.1 Contractor shall not commence work under this Contract until all insurance has been obtained that is required under this section and such insurance has been verified by the District, nor shall Contractor allow any Subcontractor to commence work on its Contract until all similar insurance required of the Subcontractor has been so obtained and approved.

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

10.2.1.1 Workers' Compensation/Employers Liability

A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with $250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to the District that is does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

10.2.1.2 Commercial/General Liability Insurance

The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and

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property damage with a combined single limit of not less than one million dollars ($1,000,000), per occurrence. The policy coverage shall include:

(a) Premises operations and mobile equipment.
(b) Products and completed operations.
(c) Broad form property damage (including completed operations).
(d) Explosion, collapse, and underground hazards.
(e) Personal injury
(f) Contractual liability.
(g) $2,000,000 general aggregate limit.

10.2.1.3 Automobile Liability Insurance

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired, and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars ($1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars ($2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

10.2.1.4 Increased General Liability and Automobile Liability Insurance Limits for Larger Construction Projects

Construction contracts for projects of one million ($1,000,000) or over and less than three million ($3,000,000) require limits of not less than three million ($3,000,000) in General Liability and Auto Liability coverage.

Construction contracts for projects of three million ($3,000,000) or over and less than five million ($5,000,000) require limits of not less than five million ($5,000,000) in General Liability and Auto Liability coverage.

Construction contracts for projects of five million ($5,000,000) or over require limits of not less than ten million ($10,000,000) in General Liability and Auto Liability.

10.2.1.5 Umbrella Liability Insurance

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

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10.2.1.6 Continuing Products/Completed Operations Liability Insurance

Contractor shall provide Continuing Products/Completed Operations Liability Insurance with a limit of not less than five million ($5,000,000) for each occurrence for at least three years following substantial completion of the work on projects over one million ($1,000,000).

10.2.1.7 Course of Construction/Installation (Builder's Risk) property insurance providing all risk, including theft coverage for all property and materials to be used on the project. The insurance policy shall not have any coinsurance penalty.

10.2.1.8 Environmental Liability Insurance

Any contract that that involves the use, handling, transportation, storage, abatement, containment or testing of any substance that is potentially toxic or hazardous to the environment, including but not limited to, those listed as hazardous by the United States Department of Transportation or the CAL OSHA "Director's list of Hazardous Substances" or listed as radioactive by the Nuclear Regulatory Commission, shall have the following additional requirements:

Environmental Liability Insurance with a combined single limit of not less than five million ($5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the District without any restrictions.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

10.2.2 Subcontractor Insurance Requirements.

The Contractor agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this Contract to provide insurance covering the contracted operations with the basic requirements identified in Paragraphs 11.2.3 through 11.2.11 and 3.18 (indemnification), and the insurance specifications identified under Paragraph 11.2, (including waiver of subrogation rights) and naming the County and District as additional insureds. The Contractor agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

10.2.3 Additional Insured

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County, the District and their officers, employees, agents, and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the District/County to

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vicarious liability but shall allow coverage for the District and County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

10.2.4 Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, District, and their officers, employees, agents, volunteers, contractors, and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County and District.

10.2.5 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County and/or District.

10.2.6 Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County and/or the District or between the County and/or District and any other insured or additional insured under the policy.

10.2.7 Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the District evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the District, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

10.2.8 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

10.2.9 Deductibles and Self-Insured Retention

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Any and all deductibles or self-insured retentions in excess of $10,000 shall be declared to and approved by Risk Management.

10.2.10 Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the District has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the District will be promptly reimbursed by the Contractor or District payments to the Contractor will be reduced to pay for District purchased insurance.

10.2.11 Insurance Review

Insurance requirements are subject to periodic review by the District and County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the District and/or County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the District and/or County, inflation, or any other item reasonably related to the District's and/or County's risks.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the District to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the District or County.

11 UNCOVERING AND CORRECTION OF WORK

11.1 Uncovering of Work

11.1.1 Specific Request. If a portion of the Work is covered contrary to the District's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the District, be uncovered for the District examination and be replaced at the Contractor's expense within the Contract Sum and without change in the Contract Time.

11.1.2 No Specific Request. If a portion of the Work has been covered, which the District has not specifically requested to examine prior to its being covered, the District may request to see such Work and it shall be uncovered by the Contractor. If such

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Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the District's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense within the Contract Sum unless the condition was caused by the District or a Separate Contractor in which event the District shall be responsible for payment of such costs.

11.2 Correction of Work

11.2.1 Before or After Final Completion. The Contractor shall promptly correct Work rejected by the District as failing to conform to the requirements of the Contract Documents, whether discovered before or after Final Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, inspections, and compensation for the District's services and expenses made necessary thereby, shall be at the Contractor's expense within the Contract Sum.

11.2.1.1 If Contractor fails to promptly correct Work rejected by the District, as failing to conform to the requirements of the Contract Documents, or fails to perform the Work in accordance with the Contract Documents, the District may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Contractor, or until the District chooses to complete the Work. Contractor shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order. The District and District's Project Manager shall have no duty or responsibility to Contractor or any other party to exercise the right to stop the Work.

11.2.2 After Final Completion.

11.2.2.1 In addition to the Contractor's warranty obligations under Paragraph 3.5, if, within one year after the date of Final Completion of the Work or after the date for commencement of warranties established under Subparagraph 3.5.2, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the District to do so, unless the District has previously given the Contractor a written acceptance of such condition. Such corrective work shall be performed without charge or cost to District after Final Completion of the Work. The District shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time after receipt of notice from the District, the District may correct the nonconforming work in accordance with Paragraph 2.5.

11.2.3 Removal. The Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the District.

11.2.4 Destruction or Damage. The Contractor shall bear the cost within the Contract Sum of correcting destroyed or damaged construction, whether completed or partially completed, of the District or Separate Contractor caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

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11.2.5 No Limitation. Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

11.3 Acceptance of Nonconforming Work

If the District prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the District may do so instead of requiring its removal and correction. Such option shall be exercised solely by notice to Contractor and shall not be implied from any act or omission by the District. In such case, the Contract Sum will be reduced by an amount equal to the cost of replacing the Work to make it as originally specified or intended. Such adjustment shall be affected whether or not Final Payment has been made.

12 TERMINATION OR SUSPENSION OF THE CONTRACT

12.1 Termination by the Contractor

12.1.1 Work Stoppage Not Caused by District. If the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons: issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; an act of government, such as a declaration of national emergency which requires all Work to be stopped; and Contractor has given District written notice within ten (10) days of the occurrence of such ground for termination, then the Contractor may, upon thirty (30) additional calendar days written notice to District and, unless the reason has theretofore been cured, terminate its performance and recover from the District payment for Work executed to date and reasonable demobilization costs.

12.1.2 Work Stoppage Caused by District. If the Work is stopped for a period of 120 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the District has persistently failed to fulfill the District's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may give District ten (10) calendar days written notice to cure. If the District fails to cure, the Contractor may, upon ten (10) additional calendar days' written notice to the District, terminate the Contract and recover from the District as provided in Subparagraph 13.1.1 above.

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12.2 Termination by the District for Cause

12.2.1 Grounds. The District may terminate the Contractor's performance of the Contract for cause if:

(1) Contractor fails promptly to begin the Work under the Contract Documents; or

(2) Contractor refuses or fails to supply enough properly skilled workers or proper materials; or

(3) Contractor fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein in constructing the Project, or refuses to remove and replace rejected materials or unacceptable Work; or

(4) Contractor discontinues the prosecution of the Work (exclusive of work stoppage: (i) due to termination by District; or (ii) due to and during the continuance of a Force Majeure event or suspension by District); or

(5) Contractor fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from District to do so or (if applicable) after cessation of the event preventing performance; or

(6) Any representation or warranty made by Contractor in the Contract Documents or any certificate, schedule, instrument, or other document delivered by Contractor pursuant to the Contract Documents shall have been false or materially misleading when made; or

(7) Contractor fails to make payment to Subcontractors for materials or labor in accordance with the respective Contract Documents and Applicable Law; or

(8) Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or

(9) Contractor otherwise is guilty of breach of a provision of the Contract Documents; or

(10) Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide District with adequate assurances of Contractor's ability to satisfy its contractual obligations.

A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to the Contract. Upon that person's appointment, District has, at its option and sole discretion, the right to immediately cancel the Contract and declare it null and

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void.

12.2.2 District's Rights. When any of the reasons specified in Subparagraph 13.2.1 exist, the District may, in addition to and without prejudice to any other rights or remedies of the District, and after giving the Contractor five (5) calendar days written notice, terminate employment of the Contractor and may:

(1) Take possession of the Site and of all materials, equipment, tools and construction equipment, and machinery thereon owned by the Contractor.

(2) Suspend any further payments to Contractor.

(3) Accept assignment of subcontracts pursuant to Paragraph 5.3; and

(4) Finish the Work by whatever reasonable method the District may deem expedient. Upon request of the Contractor, the District shall furnish to the Contractor a detailed accounting of the costs incurred by the District in finishing the Work.

12.2.3 Costs. If District's costs to complete and damages incurred due to Contractor's default exceed the unpaid Contract balance, the Contractor and Contractor's Sureties shall pay the difference to the District.

12.2.4 Erroneous Termination. If it has been adjudicated or otherwise determined that District has erroneously or negligently terminated the Contractor for cause, then said termination shall automatically convert to a termination by the District for convenience as set forth in Paragraph 13.4.

12.3 Suspension by the District

12.3.1 Suspension For Convenience.

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

12.3.1.2 Contractor shall promptly recommence the Work upon written notice from District directing Contractor to resume the Work. The Contract Sum and Contract Time shall be adjusted for any increases in the cost and time caused by suspension, delay, or interruption provided Contractor complies with the Change Order and Claims proceedings set forth the Articles 4 and 7 of these General Conditions. No adjustment shall be made to the extent:

(1) That performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or

(2) That an equitable adjustment is made or denied under another provision of the Contract.

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12.3.2 Suspensions For Cause. District has the authority by written order to suspend the Work without liability to District wholly or in part for Contractor's failure to:

(1) Correct conditions unsafe for the Project personnel or general public; or

(2) Carry out the Contract; or

(3) Carry out orders of District.

12.3.3 Responsibilities of Contractor During Suspension Periods. During periods that Work is suspended, Contractor shall continue to be responsible for the Work and shall prevent damage or injury to the Project, provide for drainage, and shall erect necessary temporary structures, signs or other facilities required to maintain the Project and continue to perform according the Article 10 of these General Conditions.

12.4 Termination by the District for Convenience

12.4.1 Grounds. Without limiting any rights which District may have by reason of any default by Contractor hereunder, District may terminate Contractor's performance of the Contract in whole or in part, at any time, for convenience or any other reason upon written notice to Contractor. Such termination shall be effective as of the date stated in the written notice, which shall be no less than ten (10) calendar days from the date of the notice.

12.4.2 Contractor Actions. Immediately upon receipt of such notice, Contractor shall: (i) cease performance of the Work of this Agreement to the extent specified in the notice. (ii) take actions necessary or that the District may direct, for the protection and preservation of the Work; (iii) settle outstanding liabilities, as directed by District; (iv) transfer title and deliver to District Work in progress, specialized equipment necessary to perform the Work, and Record Documents; and, (v) except for Work directed by District to be performed, incur no further costs or expenses. At the option of the

District, all or any of the subcontracts entered into by Contractor prior to the date of termination shall be terminated or shall be assigned to District.

12.4.3 Compensation. If the Parties are unable to agree on the amount of a termination settlement, the District shall pay the Contractor the following amounts:

(1) For Work performed before the effective date of termination, the total (without duplication of any items) of:

(a) The Cost of the Work; and

(b) A sum, as profit on (1)(a), above, determined by the District to be fair and reasonable;

(2) The reasonable costs of settlement of the Work terminated, including:

(a) Accounting, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting

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data; and

(b) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

In no event shall Contractor be entitled to recover overhead or profit on Work not performed.

12.5 Authority of District

In determination of the question of whether there has been such noncompliance with the Contract as to warrant the suspension or termination of the Contract, the decision of the District will be binding on all parties.

12.6 Termination by Acts of God

In the event the Project is damaged by an "Act of God" as defined in Public Contract Code section 7105, the District may elect to terminate the Contract. If the District terminates the Contract pursuant to this paragraph, compensation to the Contractor shall be solely for any Work completed, any materials purchased, any bonds and insurance paid and for any equipment used prior to the occurrence of the "Act of God".

13 EMPLOYMENT OF LABOR/WAGE RATES

13.1 Determination of Prevailing Rates

Pursuant to California Labor Code, Part VII, Chapter 1, Article 2, Sections 1770, et seq., the District has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Work is to be performed.

Copies of said rates are on file with the District, will be made available for inspection during regular business hours, are included elsewhere in the specifications for the Work in the Project, and are also available online at www.dir.ca.gov/dlsr/DPreWageDetermination.htm. The wage rate for any classification not listed, but which may be required to execute the Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Section 1773.2 of the California Labor Code, the Contractor shall post, at appropriate and conspicuous locations on the jobsite, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code Sections 1773, et seq.

13.1.1 Federal Funding Requirements.

13.1.1.1 If federal funding is involved with the Project the Federal Davis-Bacon Act (40 U.S.C. 3141 et seq.), as supplemented by Department of Labor regulations (29 C.F.R. Part 5), will apply to the Project and those requirements shall be complied with by Contractor. The Contractor and all Subcontractors and Sub-subcontractors are required to pay their employees and workers a wage not less than the minimum wage for the work classification as specified in both the Federal and California wage decisions. The higher of the two applicable wage classifications, either California

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prevailing wage or Davis-Bacon Federal prevailing wage, will be enforced for all Work under this Contract. If applicable, the Contractor is responsible for ensuring Subcontractor compliance with Davis-Bacon and related federal law requirements.

13.1.1.2 Contractor must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. Part 3).

13.1.1.3 Contractor must comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

13.2 Subcontractors

13.2.1 Ineligible Subcontractors. Pursuant to the provisions of Section 1777.1 of the California Labor Code, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at http://www.dir.ca.gov/dir/Labor_law/DSLE/Debar.html. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

System for Award Management (SAM). Neither Contractor, its principals, nor its employees or subcontractors shall be debarred, suspended, proposed for debarment, excluded or disqualified under the non-procurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts,and certain Federal assistance and benefits by any federal agency. See the SAM which can be accessed at http://www.sam.gov/. This information may include names, addresses, DUNS numbers, Social Security Numbers, Employer Identification Numbers or other Taxpayer Identification Numbers, if available and deemed appropriate and permissible to publicize by the agency taking the action.

13.2.1.1 Certification. Contractor certifies that neither it nor its principals or Subcontractors are presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency as required by Executive Order 12549.

13.2.2 Employment of Apprentices. The Contractor and all Subcontractors performing Work for the Project shall comply with all requirements pertaining to the employment of apprentices pursuant to the provisions of the California Labor Code including, but not limited to, California Labor Code Section 1777.5.

13.3 Payment of Prevailing Rates

There shall be paid each worker of the Contractor, or any Subcontractor, of any tier, engaged in the Work, not less than the general prevailing wage rate, regardless of any contractual

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relationship which may be alleged to exist between the Contractor or any Subcontractor, of any tier, and such worker.

13.4 Prevailing Rate Penalty

The Contractor shall, as a penalty, forfeit two hundred dollars ($200.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed by the Contractor or by any Subcontractor in connection with the Work. Pursuant to California Labor Code Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

13.5 Payroll Records

Pursuant to California Labor Code Section 1776, the Contractor and each Subcontractor, of any tier, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or Subcontractor has complied with the requirements of the California Labor Code Sections 1771, 1811, and 1815 for any Work performed by his or her employees on the Project. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

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

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

(3) a certified copy of payroll records shall be made available upon request to the public for inspection 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 previously provided to the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, Subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;

(4) the Contractor shall file a certified copy of the payroll records with the

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entity that requested such records within ten (10) days after receipt of a written request; and

(5) copies provided 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 or any Subcontractor of any tier, performing a part of the Work shall not be marked or obliterated. The Contractor shall inform the District of the location of payroll records, including the street address, city and District and shall, within five (5) working days, provide a notice of a change of location and address.

13.5.1 In the event Contractor does not comply with the requirements of this subsection, the Contractor shall have ten (10) days in which to comply, subsequent to a receipt of written notice specifying in what respects the Contractor must comply herewith. Should non-compliance still be evident after a ten (10) day period, the Contractor shall, as a penalty to the District, forfeit one-hundred dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards

Enforcement, such penalty shall be withheld from any portion of the Contract Sum then due or to become due to the Contractor.

13.6 Limits on Hours of Work

Pursuant to California Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code Section 1811, the time of service of any worker employed at any time by the Contractor or by a Subcontractor, or any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of Contractor or any Subcontractor, of any tier, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and on-half (1½) times the basic rate of pay.

13.7 Penalty for Excess Hours

The Contractor shall pay to the District a penalty of twenty-five dollars ($25.00) for each worker employed on the Work by the Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

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13.8 Contractor Responsibility

Any work performed by workers necessary to be performed after regular work hours or on Sundays or other holidays shall be performed without adjustment of the Contract Sum and/or without additional expense to the District.

13.9 Employment of Apprentices

Any apprentices employed to perform any of the Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the Work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code Section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code Sections 3070 et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

13.10 Apprenticeship Certificate

When the Contractor or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, as hereinafter defined, the Contractor and such Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected, provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees, subsequent to approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or such Subcontractor in order to comply with California Labor Code Section 1777.5. The 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 Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the Joint Apprenticeship Committee or Committees, administering the apprenticeship standards of the crafts or trades in the area of the site of the Work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards.

13.11 Ratio of Apprentices to Journeymen

The ratio of Work performed by the apprentices to journeymen, who shall be employed in the Work, may be the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five hours of labor performed by a journey, except as otherwise provided in California Labor Code Section 1777.5. The minimum ratio of the land surveyor classification shall not be less than one apprentice for each five journeymen. Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated

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by the Joint Apprenticeship Committee, is employed at the site of the Work, and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the completion of the Work. The Contractor shall, however, endeavor, to the greatest extent possible, to employ apprentices during the same time that the journeymen in the same craft or trade are employed at the site of the Work. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a Joint Apprenticeship Committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. The Contractor or any Subcontractor covered by this Article and California Labor Code Section 1777.5, upon the issuance of the approval certificate, or if it has been previously approved in such craft, or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that it employs apprentices in such craft or trade in the State of California on all of its contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 ratio as set forth in this Article and California Labor Code Section 1777.5. This Article shall not apply to contracts of general contractors, or to contracts of specialty contractors not bidding for work through a general or prime contractor, involving less than Thirty Thousand Dollars ($30,000.00) or twenty (20) working days. The term "Apprenticeable Craft or Trade" as used herein shall mean a craft or trade determined as an Apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

13.12 Exemption from Ratios

The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions are met:

(1) unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or

(2) the number of apprentices in training in such area exceeds a ratio of 1-to- 5 in relation to journeymen; or

(3) the Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or

(4) if assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis,

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the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

13.13 Contributions to Trust Funds

The Contractor or any Subcontractor, of any tier, who, performs any of the Work by employment of journeymen or apprentices in any Apprenticeable Craft or Trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Work, to which fund or funds other contractors in the area of the site of the Work are contributing, shall contribute to the fund or funds in each craft or trade in which it employs journeymen or apprentices in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Division of Labor Standards Enforcement is authorized to enforce the payment of such contributions of such fund(s) as set forth in California Labor Code Section 227. Such contributions shall not result in an increase in the Contract Sum.

13.14 Contractor's Compliance

The responsibility of compliance with this Article for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Article are subject to the provisions of California Labor Code Section 3081. In the event the Contractor willfully fails to comply with the provisions of this Article and California Labor Code Section 1777.5, pursuant to California Labor Code Section 1777.7, the Contractor shall:

(1) be denied the right to bid on any public works contract for a period of one (1) year from the date the determination of non-compliance is made by the Administrator of Apprenticeship; and

(2) forfeit, as a civil penalty, the sum of One Hundred Dollars ($100.00) for each calendar day of noncompliance.

Notwithstanding the provisions of California Labor Code Section 1727, upon receipt of such determination, the District shall withhold such amount from the Contract Sum then due or to become due. Any such determination shall be issued after a full investigation, a fair and impartial hearing, and reasonable notice thereof in accordance with reasonable rules and procedures prescribed by the California Apprenticeship Council. Any funds withheld by the District pursuant to this Article shall be deposited in the General Fund or other similar fund of the District. The interpretation and enforcement of California Labor Code Sections 1777.5 and 1777.7 shall be in accordance with the rules and procedures of the California Apprenticeship Council.

13.15 Contractor's Compliance with Law

Contractor, Contractor's agents, and Contractor's employees shall be bound by and comply with all applicable provisions of the Labor Code, and such federal, state, and local laws which affect the conduct of the Work. This includes but is not limited to laws regulating: payment of wages; eight-hour day; overtime, Saturday, Sunday and holiday work; and nondiscrimination.

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The Contractor shall forfeit to the District the penalties prescribed in the Labor Code for violations.

13.15.1 Contractor shall comply with all Executive Orders, statutes, or regulations regarding the stabilization of wages and prices in the construction industry.

13.16 Equal Employment Opportunity.

13.16.1 Contractor agrees to fully comply with the laws and programs (including regulation issued pursuant thereto) which are listed following this paragraph. Such compliance is required to the extent such laws, programs and their regulations are, by their own terms, applicable to this Contract. Contractor warrants that it will make itself thoroughly familiar with the applicable provisions of said laws, programs, and regulations prior to commencing performance of the Contract. Copies of said laws, programs and regulations are available upon request from District. To the extent applicable the provisions of said laws, programs and regulations are deemed to be a part of this Contract as if fully set forth herein.

13.16.1.1 Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) and the applicable clause is inserted pursuant to 41 C.F.R. Sections 60-250.5(a).

13.16.1.2 Rehabilitation Act of 1973, as amended (29 U.S.C. 701 et seq.) and the applicable clause is inserted pursuant to 41 C.F.R. Sections 60-741.5(a).

13.16.1.3 California Fair Employment and Housing Act. (CA Government Code Section 12900 et seq.)

13.16.1.4 Civil Rights Act of 1964, as amended (42 U.S.C. 2000a et seq.), Executive Order No. 11246, September 24, 1965, as amended, and the applicable clause is inserted pursuant to 41 C.F.R. Section 60-1.4.

13.16.2 Executive Order 11246.

Contractor certifies that Contractor will fully comply with Executive Order 11246, as amended by Executive Order 11375, and any other executive order amending this order, and the rules and regulations issued thereunder, which are hereby incorporated by reference as appropriate. The Contractor commits itself to such compliance by submitting a properly signed bid or offer or by signing or otherwise accepting a Contract or subcontract.

13.17 Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements

13.17.1 Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:

13.17.1.1 No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the

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Department of Industrial Relations pursuant to Labor Code section 1725.5, with limited exceptions from this requirement for bid purposes only as allowed under Labor Code section 1771.1(a).

13.17.1.2 No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

13.17.1.3 This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

13.17.1.4 As required by the Department of Industrial Relations, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the Department of Industrial Relations.

13.17.1.5 Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.

(1) The certified payroll must be submitted at least monthly to the Labor Commissioner.

(2) The District reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner

(3) The certified payroll records must be in a format prescribed by the Labor Commissioner.

13.17.1.6 Registration with the Department of Industrial Relations and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is $25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is. $15,000 or less when the project is for maintenance work.

13.17.2 Labor Code section 1725.5 states the following:

"A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars ($400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may

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be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars ($2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an

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additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty- five thousand dollars ($25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars ($15,000) or less when the project is for maintenance work."

13.17.3 Labor Code section 1771.1 states the following:

"(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted, nor any contract or subcontract entered without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.
(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:
(1) The subcontractor is registered prior to the bid opening.

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(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.
(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.
(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.
(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.
(f) A contract entered into with any contractor or subcontractor in violation of subdivision. (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.
(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars ($100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars ($8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.
(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars ($100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars ($10,000).
(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.
(3) A higher tiered public works contractor or subcontractor shall not be liability for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.
(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnity or otherwise be liable for any penalties pursuant to paragraph (1).

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(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at the address on file with either of the following:

(i) The Contractors' State License Board.

(ii) The Secretary of State.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars ($10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty- five thousand dollars ($25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars ($15,000) or less when the project is for maintenance work."

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13.17.4 Labor Code section 1771.4 states the following:

"a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.

14 MISCELLANEOUS PROVISIONS

14.1 Governing Law

The Contract shall be governed by the laws of the State of California without regard to choose of law principles thereof. The exclusive venue of any legal action brought by the District, the Contractor, or any Consultant or Subcontractor, with regard to this Agreement or Project, shall be in the Superior Court of California, San Bernardino County, San Bernardino District. Contractor agrees to incorporate this provision into all Subcontractor agreements.

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14.2 Successors and Assigns

The District and Contractor respectively bind themselves, their partners, successors, assigns, and legal Project Managers to the other Party hereto and to partners, successors, assigns, and legal Project Managers of such other Party in respect to covenants, agreements, and obligations contained in the Contract Documents. The Contractor shall not sublet or assign the Work of this Contract or any portion thereof or any monies due thereunder, without the express prior written consent and approval of District. District may freely assign its rights hereunder, without limitation, to a separate entity and Contractor agrees, upon such entity's request, to continue and complete performance of the Work upon payment of any undisputed outstanding amounts due Contractor for services performed up to and including the effective date of the assignment, provided adequate proof of funding to completion is offered by assignee. Any entity which shall succeed to the rights of District shall be entitled to enforce the rights of District hereunder. If requested by such entity, Contractor will execute a separate letter or other agreement with such entity further evidencing Contractor's commitment to continue performance of the Contract.

14.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person, or by US Mail, courier service, or package delivery service (such as UPS and FedEx) to the individuals identified for receipt of notice in the Agreement.

14.4 Rights and Remedies

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

14.4.2 No Waiver. No action or failure to act by the District shall constitute a waiver of any right or duty afforded the District under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in the Contract Documents or as may be otherwise agreed in writing.

14.5 Tests and Inspections

14.5.1 Required Tests, Inspections, and Costs. If the Contract Documents, District instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, Contractor shall give notice, in accordance with such authority, of its readiness for observation or inspection, at least two (2) working days prior to being tested or covered up. Whenever the Contractor desires to carry on the Work of this Contract at night or on a Saturday, Sunday, or holiday, Contractor shall request authorization in writing from the District for such work at least two (2) working days in advance so that inspection may be provided if authorization is granted and the Contractor agrees to pay overtime reimbursement of costs for this service. If inspection is by authority other than District, Contractor shall inform District of date fixed for such inspection. All required certificates of inspection shall be secured by Contractor. If any Work required to be tested

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should be covered up without approval or consent of District, Contractor must, if required by District, uncover the Work for examination and satisfactorily reconstruct at Contractor's expense within the Contract Sum in compliance with Contract. All labor and equipment necessary for exposing and testing shall be furnished by the Contractor at his expense. The Contractor shall replace, at Contractor's expense, any materials or Work damaged by exposure and any faulty materials or workmanship evidenced by such exposure or testing. Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency or District's Project Manager, and not by Contractor. Contractor shall notify District a sufficient time in advance of manufacture of materials to be supplied by it under Contract, which must, by terms of contract, be tested, in order that District may arrange for testing of same at source of supply. Prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said Project Manager that such testing and inspection will not be required, the materials shall not be incorporated into the Work without prior approval of District and subsequent testing and inspection. Re- examination of questioned work may be ordered by District and, if so ordered, Work must be uncovered by Contractor. All labor and equipment necessary for exposing and testing shall be furnished by the Contractor at his expense. The Contractor shall replace, at Contractor's expense, any materials or Work damaged by exposure and any faulty materials or workmanship evidenced by such exposure or testing.

14.5.2 Additional Tests and Inspections. If the District or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Subparagraph 15.5.1, the District will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the District, and the Contractor shall give timely notice to the District of when and where tests and inspections are to be made so that the District may be present for such procedures. Such costs shall be at the District's expense, if applicable. If such procedures for testing, inspection, or approval under Subparagraphs
15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for District's testing and inspection services and expenses, shall be at the Contractor's expense, within the Contract Sum. Cost of retesting, reinspection, and reapprovals as described herein, including compensation for the District's testing and inspection services and expenses, shall be paid for by the District and deducted from the Contract Sum by a Change Order or Construction Change Directive.

15.5.3 Documentation. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the District. Delivery of such documentation is a condition precedent to District's obligation to make payment to Contractor.

15.5.4 Observation of Tests. If the District is to observe tests, inspections, or approvals required by the Contract Documents, District will do so promptly and, where practicable, at the normal place of testing.

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

WORKING

15.5.6 Responsibility. Any inspection or approval by any representative or agent of the District will not relieve the Contractor of the responsibility of incorporating in the Work only those materials which conform to the Specifications, and any nonconforming materials shall be removed from the Site whenever identified. Further, inspection or approval by the District does not relieve the Contractor of its obligation to provide Work which conforms in all aspects with the Contract Documents.

15.6 Record Retention and Audits

15.6.1 The District and any entities and/or agencies designated by the District, shall have access to, and the right to audit, and the right to copy at the District's cost, all of Contractor's books, records, Contracts, correspondence, instructions, Drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work, changes in the Work, any Change Orders or Construction Change Directives or written amendments to the Contract, and any claims.

15.6.2 Contractor agrees that the District and its designated representative shall have the right to review, to audit, and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the District to audit records and interview staff in any subcontract related to performance of this Agreement.

15.6.3 The Contractor shall establish an official file for the Project (the "Official Project File"). The Official Project File shall contain adequate documentation of all actions that have been taken with respect to the Project, in accordance with generally accepted government accounting principles and the requirements for record retention for capital projects constructed with the proceeds of tax-exempt bonds. The Contractor will provide a copy of such file to the District at its request or upon termination of this Agreement. The documents to be retained shall include, but are not limited to, Contractor's books, records, Contracts, correspondence, instructions, Drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work, changes in the Work, any Change Orders or Construction Change Directives or Contract Amendments, and any claims.

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15.6.4 Contractor agrees to protect records adequately from fire or other damage. When records are stored away from Contractor's principal office, a written index of the location of records stored must be on hand and ready access must be assured. All the Contractor records contained in the Official Project File must be preserved a minimum of five (5) years (the "Record Maintenance Period"). These records shall be subject at all reasonable times to inspection, examination, monitoring, copying, excerpting, transcribing, and audit by the District or designees, by state government auditors or designees, or by federal government auditors or designees. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the Record Maintenance Period, the related records must be retained until the completion of the action and resolution of all issues which arise from it if such date is later than the end of the Record Maintenance Period.

15.6.5 All books, account, reports, files, correspondence, data, and other records relating to this Contract shall be maintained by the Contractor and shall be subject at all reasonable times to review, inspection, and audit by the District or its designated Project Managers for a period of five (5) years after Final Completion of the Work. District shall be entitled, upon forty-eight (48) hours written notice, to inspect all books, records, accounts, and the Official Project File kept by Contractor relating to the Work contemplated by the Agreement. Such records shall be produced by the Contractor at a place designated by the District, upon written notice to the Contractor.

15.6.6 Contractor agrees to maintain adequate fiscal and Project books, records, documents, and other evidence pertinent to the Contractor's Work on the Project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices to the financial statement, to the accounting records, and to the supporting documentation. These records shall be maintained for the Record Maintenance Period and shall be subject to examination and/or audit by District or designees, and state government auditors or designees.

15.6.7 Contractor agrees to make the Official Project File, books, records, supporting documentation and other evidence available to the District, or its designated representatives, during the course of the Project and for the Record Maintenance Period. Contractor agrees to provide suitable facilities for access, monitoring, inspection and copying of said records.

15.6.8 Contractor shall maintain books, records, documents, and other evidence sufficient to reflect properly the amount, receipt, and disposition of all Project funds. The maintenance requirements extend to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel, and payroll records, canceled checks, and related documents and records. Source documents include copies of all awards, applications, and required financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under the award, whether they are employed full- time or part-time. Time and effort reports are also required for consultants and

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subcontractors. Generally accepted government accounting principles and adequate supporting documentation shall be maintained in such detail so as to provide an audit trail which will permit tracing transactions from the invoices to the financial statement, to the accounting records, and to the supporting documentation for the purpose of determining compliance with Public Contract Code Section 10115 et seq., Government Code Section 8546.7 and 2 CCR Section 1896.60 et seq. (as applicable).

15.7 Independent Contractor

Contractor is employed hereunder to render a service within the scope of its training and experience, and Contractor shall be an independent Contractor and not an employee of the District. As such, District shall not be called upon to assume any liability for the direct payment of any salary to any employee or Subcontractor of Contractor, nor to pay any benefit to any employee or Subcontractor or vendor under the Workers' Compensation laws. None of Contractor's officers, agents, employees, and Subcontractors, nor any of their agents, officers, and employees, shall be deemed officers, agents, employees, and Subcontractors of the District, and the District shall not be liable or responsible to them for anything whatsoever other than liability to Contractor set forth in this Contract.

15.8 Keys and Access

If the District furnishes keys and/or access cards to the Contractor to provide access to District's property, the Contractor shall assure that such access instruments are not duplicated and shall return all such instruments in good condition upon request of the District or prior to receipt of final payment, whichever is earlier. If the Contractor fails to return all access instruments furnished to it, the Contractor shall be responsible, within the Contract Sum, for all Work, materials, and costs associated with reestablishing secured access.

15.9 Survival of Terms

The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and the District's right to audit Contractor's books and records, shall remain in full force and effect after Final Completion or termination of the Contract and shall be binding upon Contractor until any action thereunder is barred according to terms in the Contract Documents or by the applicable statute of limitations or statute of repose.

15.10 Cooperation With Labor

15.10.1 General. The Parties agree and declare that Contractor and District are separate and independent entities, and that Contractor has full responsibility for performance of the Work and direction of the work force, subject to and under the duty of Contractor to cooperate with District and its Separate Contractors. Contractor recognizes that in the performance of its Work it may be required to work with and near Separate Contractors and Project Managers of District on the jobsite. The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, slowdowns, disputes, or other labor disturbance. If the Work is to

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be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the District and without recourse to the District, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the Work of any particular trade. Except as specifically provided in Paragraph 8.4 herein, Contractor shall be liable to District for all damages suffered by District, and no extensions of Contract Time shall be given to Contractor, as a result of work stoppage, slowdowns, or strikes related to labor disputes.

15.10.2 Picketing.

15.10.2.1 Contractor agrees that should there be picketing or a threat of picketing by any labor organization at or near the Site, Contractor, in cooperation with District, shall establish a reserve gate system and require employees of Contractor, Subcontractors, and suppliers to use one or more designated gates. In that event, it shall be the affirmative obligation of Contractor, as a material consideration of this Agreement to ensure that employees of Contractor, Subcontractors, and suppliers use only the gates or other entryways designated by District from time to time on the Project.

15.10.2.2 Notwithstanding the establishment or non-establishment of a reserve gate, in the event employees of Contractor, Subcontractors or suppliers refuse to work because of any labor disputes or grievances (including any "secondary" or "sympathy" strike or boycott directed against the Project) not caused by District or its Separate Contractors and not the result of an industry-wide strike and that actually prevent performance of the Work, Contractor shall not be relieved of its obligation to supply enough properly skilled workers to perform the Work without interruption or further delay.

15.10.3 Labor Disputes. Contractor and District agree to cooperate fully with each other and their Project Managers and attorneys with respect to any labor dispute that should arise on the Site, including, but not limited to the giving of testimony and evidence to the agent or judge of the National Labor Relations Board or testimony in connection with proceedings in state or federal court. Contractor hereby warrants that it is not now nor will Contractor be delinquent in the payment or reporting to any labor management benefit trust.

15.11 No Personal Liability

Notwithstanding any contrary provision in this Agreement or the Contract Documents, no member, principal, officer, employee, agent, Project Manager, or subsidiary of District (each a "direct affiliate of District"), or member, general partner, limited partner, principal, officer, employee, agent, or Project Manager of any direct affiliate of District (together with direct affiliates of District, the "affiliates of District") shall have any personal liability for the performance of any contractual obligations, or in respect of any liability of District under this Agreement and no monetary or other judgment shall be sought or enforced against any

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such individuals or their assets, all such personal contractual liability being expressly waived by Contractor. Further, the covenants and obligations contained in this Agreement on the part of District shall be covenants and obligations of the District only, and not of any affiliate of District. No affiliate of District shall be individually liable for breach of any covenant or obligation of District, and no recourse shall be had against the assets of any affiliate of District (except to the extent of District's assets but excluding therefrom any negative capital account of any such affiliate of District) for payment of any sums due or enforcement of any other relief, based upon any claim made by Contractor for breach of any of District's covenants or obligations. Notwithstanding the foregoing, Contractor does not waive any rights under Applicable Law in California concerning the commission of fraud or conversion.

15.12 Antitrust Claims

The Contractor by signing this Agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Code Sections set out below.

15.12.1 The Government Code Chapter on Antitrust claims contains the following definitions:

(1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

(2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. (Government Code Section 4550.)

15.12.2 In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. (Government Code Section 4552.)

15.12.3 If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (Government Code Section 4553.)

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15.12.4 Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. (See Government Code Section 4554.)

15.13 Compliance with Restrictions

Contractor shall comply with all conditions, restrictions and reservations of record, statutes, regulations, and ordinances, including, without limitation, all pollution control, environmental protection, zoning, planning, land use requirements, all restrictions and requirements affecting the Project and adjoining properties, and disabled access imposed by the District and all other governmental entities including, without limitation, the requirements of any general plan and environmental requirements in connection with use, occupancy and building permits, and requirements of public utilities which affect construction of the Work in effect at the time of execution of this Agreement.

15.14 Legal Requirements

Contract shall perform the Work in accordance with the requirements of all Applicable Laws, codes, ordinances, and regulations even though such requirements are not specifically mentioned in the Specifications or shown on the Drawings. When the Work required by the Contract Documents is in conflict with any such legal provision, the Contractor shall notify the District in writing and shall not proceed with the Work until the District has so ordered.

15.15 Third Party

No provision contained in the contract Documents shall create or give to third parties any claim or right of action against the District.

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END OF GENERAL CONDITIONS