



# **PERRIS UNION**

## **HIGH SCHOOL DISTRICT**

**BID DOCUMENTS**

**Bid #050117**

**Epoxy Flooring in Rooms 1204 and 1213  
at Perris High School**

## TABLE OF CONTENTS

1. Notice Inviting Bids
2. Scope of Work & Specifications
3. Instructions for Bidders
4. Required Bidding Forms (Due at Bid Closing)
  - a. Bid Label
  - b. Bid Proposal
  - c. Certification Regarding Bid Security
  - d. Bid Bond
  - e. Non-Collusion Declaration
  - f. Certification Regarding Site Visit
  - g. Subcontractor Listing
  - h. Certification Regarding Contractor Registration
  - i. Certification Regarding Contract Documents
  - j. Certification Regarding Bidder References
  - k. Certification Regarding Iran Contracting Act
5. General Provisions
6. Special Provisions
7. Required Contract Forms (Due Upon Award of Bid)
  - a. Construction Services Agreement
  - b. Payment Bond
  - c. Performance Bond
  - d. Certification Regarding Asbestos
  - e. Notice and Certification Regarding Lead-Free Materials
  - f. Certification Regarding Drug-Free Workplace
  - g. Certification Regarding Tobacco-Free Workplace
  - h. Certification Regarding Workers Compensation
8. Required Project Forms

## NOTICE INVITING BIDS

Your company is listed in Perris Union High School District's Contractor's database to bid Public Projects pursuant to the provisions of Public Contract Code Section 22030-22040, the Uniform Public Construction Cost Accounting Act. **NOTICE IS HEREBY GIVEN** that the Perris Union High School District ("District") is seeking sealed bids from qualified contractors for the following public-works project ("Project"):

***Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School***

**DESCRIPTION OF JOB:** Provide all labor, equipment, and materials for the epoxy flooring per the scope of work and specifications in rooms 1204 and 1213 at Perris High School.

**PLACE FOR SUBMITTING BIDS:** Bids must be submitted to the District at the following location ("Place for Submitting Bids"):

Perris Union High School District  
Purchasing Department, 2<sup>nd</sup> Floor  
Attention: Nick Newkirk  
155 E. 4<sup>th</sup> Street  
Perris, CA 92570

**BID DEADLINE:** Bids must be received at the Place for Submitting Bids no later than **2:00 p.m.** on **May 1, 2017** ("Bid Deadline").

**BID DOCUMENTS:** Bidders may obtain the documents necessary to submit a bid ("Bid Documents") **via the District website at <http://www.puhsd.org/blogs/contracting-opportunities>** or **via email from Nick Newkirk at [nick.newkirk@puhsd.org](mailto:nick.newkirk@puhsd.org).**

**CONTRACTOR LICENSE:** The class of California contractor license required to bid on and perform the Work is: ***Class C15, Flooring and Floor Covering Contractor.***

**MANDATORY PRE-BID CONFERENCE AND JOB WALK:** The District will conduct a **mandatory pre-bid conference and job walk which will begin at Perris High School at 175 East Nuevo Rd., Perris, CA 92570 at 11:00 a.m. on April 21, 2017.** Any bidder that does not attend the entire conference and job walk and/or does not arrive on-time shall be deemed non-responsive.

**QUESTIONS REGARDING THE BID DOCUMENTS, SCOPE OF WORK, AND/OR SPECS OF THE PROJECT:** **All questions concerning this Bid shall be submitted in writing by e-mail** to the Director of Purchasing, Nick Newkirk at [nick.newkirk@puhsd.org](mailto:nick.newkirk@puhsd.org) on or before **April 26, 2017 at 2:00pm.** Please indicate the Bid title in the subject line. **Contact with District personnel shall be made only through e-mail; telephone calls will not be accepted.** Answers to questions will be posted on the District Website as RFIs.

All notices, clarifications, and addenda to this Bid shall be posted on the District website at <http://www.puhsd.org/blogs/contracting-opportunities>. The District shall not be responsible for sending individual notification of changes or updates to any respondents. ***It is the sole responsibility of the bidders to remain apprised of changes to this Bid as shown on the District website.***

**REQUIRED BID SECURITY:** Each bid must be submitted with security in an amount equal to 10% of the maximum bid, in one of the following forms: (i) a cashier's or certified check payable to the District; or (ii) a bid bond. The security must be submitted with a completed copy of the "Bid Security" form included as one of the Required Bidding Forms. Each bid bond must be an executed copy of the "Bid Bond" form included as one of the Required Bidding Forms and must be issued by a California-admitted surety as defined in Code of Civil Procedure Section 995.120. Unless forfeited, the District will return security to the bidders within a reasonable time, but not more than sixty days after award of the Contract for the Work.

**SURETY BONDS:** As described in the General Provisions, the successful bidder must provide a Performance Bond and a separate Payment Bond, each in an amount equal to 100% of the total Contract Price, and each issued by a California-admitted surety as defined in Code of Civil Procedure Section 995.120.

**LABOR LAW:** The Project is a "public work" project that is subject, among other provisions, to Labor Code Sections 1720 through 1861, inclusive. As described in the Instructions For Bidders, each contractor (including subcontractors) must be registered with the California Department of Industrial Relations ("DIR") in accordance with Labor Code Section 1725.5, and bidders must provide evidence of registration for themselves and their subcontractors. Each worker on the Project must be paid not less than the applicable prevailing rates of per-diem wages in the locality in which the Work is to be performed for each craft or type of worker needed to execute the Contract ("Prevailing Wages"). A copy of the applicable rates of Prevailing Wages is on file and available for review at the Place for Submitting Bids, and a copy will be posted at the Project Site. The Project is subject to compliance monitoring and enforcement by the DIR. The successful bidder will be required to post all job-site notices required by DIR regulations and other applicable law. If so specified in the Special Provisions, the District will conduct a mandatory conference for the purpose of describing labor-law requirements.

**RETENTION:** Substitution of securities in lieu of retention, pursuant to Public Contract Code Section 22300, will be permitted as provided in the General Provisions.

**DEFINED TERMS:** Capitalized terms used, but not defined, in this Notice Inviting Bids shall have the meanings ascribed to such terms in other of the Bid Documents.

## **SCOPE OF WORK & SPECIFICATIONS**

### **Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School**

- Demo existing carpet
- Bead blast flooring
- Floor must be smooth before applying epoxy
- Supply and install Flowcrete Epoxy (matte finish)
- Supply and install 4" black rubber base and reducer strips

## INSTRUCTIONS FOR BIDDERS

**Caution: Read these Instructions For Bidders and other Bid Documents carefully. Do not assume that the documents are the same as similar documents you previously may have obtained from the District. Capitalized terms used, but not defined, in these Instructions For Bidders shall have the meanings ascribed to such terms in other of the Bid Documents.**

**1. *Project Delivery Method and Coordination.*** The Project is being completed on the basis of a single general contract for all or the majority of the Project. If the District either contracts for work in connection with the Project in addition to the Work or performs such work using its own forces (in each case, "Work by Others"), the scheduling, performance and priority of the Work is subject to coordination with the Work by Others. In submitting a bid for the Work, a bidder shall be deemed and construed to have acknowledged that: (i) each milestone and period of time for completion of the various portions of the Work, as specified in the Master Construction Schedule, is sufficient and reasonable considering the scope of the Work and the Project, and considering the need to coordinate the Work with the Work by Others; and (ii) if the Contract is awarded to the bidder, the bidder shall have no Claim for delay arising from the need to coordinate the Work with any Work by Others.

**2. *Architect.*** The Architect for the Project is identified in the Special Provisions. The Architect's role is described in the General Provisions and is subject to the provisions of the agreement between the District and the Architect. The Architect will be the District's representative during construction and close-out of the Work in accordance with Title 24 of the California Code of Regulations ("CCR") and provisions of the agreement between the District and the Architect. Communications from the District to bidders prior to award of the Contract may be directed through the Architect.

**3. *Project Manager.*** Notwithstanding that the Project is being completed on a general contract basis, the District may contract for the services of a project management consultant or other consultant ("Project Manager") in connection with the Project. If known, the Project Manager is identified in the Special Provisions. The Project Manager's role is described in the General Provisions and is subject to provisions of the agreement between the District and the Project Manager. The Project Manager will be the District's representative during the bidding, construction and close-out of the Work and will assist the District in the administration of the Contract. Communications from the District to bidders prior to award of the Contract may be directed through the Project Manager. If the District does not contract for the services of a Project Manager in connection with the Project, or if the District terminates and does not replace the Project Manager, then the District may delegate some or all of the Project Manager's responsibilities pursuant to the Contract Documents to the Architect, District staff and/or others.

**4. *Prequalification of Prospective Bidders.*** If the Notice Inviting Bids provides that prequalification of prospective bidders is required, then, pursuant to Public Contract Code Section 20111.6, each contractor having a class A or B license, or a license in any of certain classes of mechanical, electrical and plumbing ("MEP") license categories as described below, must be prequalified in order to bid on the Project. In addition, subcontractors having a license in any of those MEP license categories must be prequalified in order to be listed in any bid for the Project. In accordance with Section 20111.6: (i) the District will consider a bid from a contractor subject to the prequalification requirements only if the contractor has been prequalified by the District; and (ii) the District will consider a bid that lists any MEP subcontractor subject to the prequalification requirements only if all such MEP subcontractors listed in the bid have been prequalified by the District.

The prequalification requirement applies to each MEP contractor with any of the following licenses: C-4 (boiler, hot water, and steam fitting); C-7 (low-voltage systems); C-10 (electrical); C-16 (fire protection); C-20 (HVAC); C-34 (pipeline); C-36 (plumbing); C-38 (refrigeration); C-42 (sanitation systems); C-43 (sheet metal); or C-46 (solar). Contractors that desire to bid on the Project should encourage their potential MEP subcontractors to submit their completed Prequalification Submittal not later than the Prequalification Submittal Deadline specified in the Notice Inviting Bids. The terms and conditions for prequalification are set forth in the prequalification questionnaire and instructions available as described in the Notice Inviting Bids. Each contractor shall be responsible for ensuring that its Prequalification Submittal is received by the District at the Place for Submitting Bids and prior to the Prequalification Submittal Deadline. The clock or other device located in the Location For Delivery of Prequalification Submittals and designated by the District as the official clock for such purposes shall be used for determining whether Prequalification Submittals have been timely received by the District, regardless of whether the time shown on such official clock is precisely accurate.

**THE DISTRICT WILL REJECT ANY PREQUALIFICATION SUBMITTAL THAT DOES NOT FULLY COMPLY WITH THE REQUIREMENTS OF THE PREQUALIFICATION QUESTIONNAIRE AND INSTRUCTIONS, OR THAT IS NOT RECEIVED BY THE DISTRICT AT THE PLACE FOR SUBMITTING BIDS AND PRIOR TO THE PREQUALIFICATION SUBMITTAL DEADLINE. IF PREQUALIFICATION REQUIREMENTS ARE APPLICABLE, THE DISTRICT WILL TO THE EXTENT REQUIRED OR PERMITTED BY LAW REJECT EACH BID FOR WHICH THERE IS NOT FULL COMPLIANCE WITH THE PREQUALIFICATION REQUIREMENTS.**

**5. *Pre-Bid Review of Plans and Specifications.*** Each bidder, prior to submitting a bid for the Work and at its own expense, must thoroughly review and become familiar with all of the Drawings, Specifications, and other requirements for the Work. A bidder is required to review the Drawings and Specifications only in its capacity as a contractor, not as a licensed design professional, but the bidder must, promptly and prior to submitting a bid for the Work, report to the District any errors or omissions in the Drawings and Specifications revealed through such review.

**6. *Examination of Project Site and Contract Documents.*** Each bidder, prior to submitting a bid for the Work and at its own expense, must visit the site where the Project is located and the on-site portion of the Work is to occur ("Project Site") and become fully acquainted with the conditions in and under which the Work will be performed, so that the bidder fully understands the facilities, difficulties, restrictions and requirements attendant to the performance of the Work on and at the Project Site. Subject to District approval and evidence of adequate insurance coverage satisfactory to the District, a bidder that attended the mandatory pre-bid conference and site visit specified in the Notice Inviting Bids, at its own expense, may subsequently conduct additional inspections of the Project Site. Prospective bidders in attendance at any pre-bid conference (mandatory or non-mandatory) or other site visit must be dressed appropriately and with safety in mind, including, at a minimum, by wearing: (i) closed-toe and closed-heel shoes, with regular heels (i.e., tennis shoes or work boots, but not shoes with high or tapered heels); (ii) long pants that cover the ankles; and (iii) a shirt with sleeves. Shorts, dresses, sleeveless shirts, and open shoes will not be permitted on the Project Site. A prospective bidder will not be counted as present for a mandatory pre-bid conference or site visit if not clothed in accordance with the foregoing. Prospective bidders must gather in front of the place where the pre-bid conference or site visit is to occur, any may in no event enter the Project Site unless and until a District representative is present and directs them to do so. In addition, each bidder must thoroughly examine and develop an understanding of all of the Contract Documents, including, without limitation, the Drawings, Specifications, Agreement, General Provisions, Special Provisions, Required Bidding Forms, Required Contract Forms, and Required Project Forms. The failure of a bidder to understand the conditions in and under which the Work is to be performed, or to examine and

understand any of the Contract Documents, shall not relieve the bidder from any obligations pursuant to its bid or the Contract Documents.

**7. Interpretation of Contract Documents.** If a bidder is in doubt as to the true meaning of any part of the Contract Documents, or finds any conflict, omission or other discrepancy in any Drawings, Specifications or other Contract Documents, the bidder must submit a written request to the Architect for an interpretation or correction of the applicable Contract Documents. The bidder submitting the request must provide copies of the request to the District and the Project Manager, and must ensure that the request is delivered to the Architect sufficiently in advance of the scheduled bid opening to permit the Architect a reasonable amount of time to respond considering the nature and scope of the overall Project. Prior to the opening of bids, the Architect will issue interpretations or corrections of the Contract Documents only by addendum or addenda to the Contract Documents. A copy of each addendum will be mailed or delivered to each contractor that has obtained a copy of the Bid Documents by paying a deposit. No person or entity shall be authorized to provide any oral interpretation of any provision of the Contract Documents, and no oral interpretation shall be binding on the District. If the Architect does not issue an addendum to interpret or correct any conflict, omission or other discrepancy in the Drawings, Specifications or other Contract Documents, the bidder must include in its bid the material, item, process, method, *et cetera*, that results in the higher bid amount.

**THE SUBMISSION OF A BID SHALL BE DEEMED AND CONSTRUED AS A REPRESENTATION AND WARRANTY BY THE BIDDER THAT IT HAS COMPLIED WITH THE REQUIREMENTS OF SECTION 6 AND SECTION 7 OF THESE INSTRUCTIONS FOR BIDDERS, AND AT NO TIME AFTER SUBMITTING A BID MAY THE BIDDER ASSERT, CLAIM OR ALLEGE THAT IT HAD ANY DOUBT OR MISUNDERSTANDING AS TO THE NATURE OR SCOPE OF THE WORK.**

**8. Ethics in Bidding.** The District expects each bidder to maintain high ethical standards with respect to bidding on the Work. Prior to the award of the Contract, no bidder shall disclose the amount of any prospective Subcontractor's bid or proposal, or any element thereof, to any other prospective Subcontractor. Bidders must not engage in or permit either of the unethical and unfair practices commonly known as bid shopping (e.g., the bidder uses a Subcontractor's proposal in an attempt to obtain a lower-cost proposal from another Subcontractor) and bid peddling (e.g., a Subcontractor attempts to obtain a job by offering to work for less than the amount specified in another Subcontractor's proposal). If the District determines prior to opening of bids that any bidder has violated any of the foregoing requirements or any other prohibitions set forth in the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 *et seq.*), the District may reject the bidder's bid as non-responsive and report the bidder's actions to the Contractors State License Board.

**9. Contractor Licensing.** At the time it submits its bid for the Work, each bidder must have Class B General Contractor license issued by and in good standing with the State of California. A bidder's failure to be so properly licensed shall result in the bidder being deemed non-responsive, and the bidder will be disqualified from work on the Project. Each bidder must clearly specify its California contractor's license number where indicated in the Bid Proposal. The bidder to which the District awards the Contract must maintain the required license throughout the duration of the Work.

**10. Listing of Subcontractors.** In accordance with the Subletting and Subcontracting Fair Practices Act, each bidder must submit with its bid a list setting forth the name, location of the place of business, and California contractor license number of each Subcontractor that will perform any portion of the Work, or that, under subcontract to the bidder, will specially fabricate and install a portion of the Work, in an amount in excess of ½ of 1 percent of the total amount of the bidder's bid. A bidder may



not list more than one Subcontractor for any one portion of the Work. A bidder that fails to list a Subcontractor for any portion of the Work represents that it is fully qualified to, and agrees that it shall, perform such Work using its own forces. If the Bid Documents require the bidder to submit alternate bids and the bidder intends to use different or additional Subcontractors for the alternates, the bidder must submit a separate list of Subcontractors for each such alternate. A bidder must submit its lists of Subcontractors only on the "Subcontractor Listing" form included in the Required Bidding Forms. In addition to providing the Subcontractor lists, upon request of the District at any time after bids are opened, a bidder must provide the address and telephone number for each listed Subcontractor.

**11. DVBE Requirements.** Bidders must comply with the requirements of this Section only if made applicable pursuant to Section 18 of the Special Provisions. The District has adopted a goal for DVBE participation in the Project of three percent of the overall amount expended for certain new-construction and modernization projects each year. Each bidder must comply with DVBE requirements by making and documenting its reasonable efforts to obtain DVBE services in connection with the Work. In order to be considered reasonable efforts, a bidder's efforts should include advertising in appropriate publications and contacting any responding DVBE. Alternatively, if so provided in Section 19 of the Special Provisions, the Project Manager will advertise for DVBE for the Work, and bidders must contact the Project Manager to obtain information regarding any responding DVBE. The bidder also should contact any DVBE that it knows could perform a portion of the Work. Each bidder must complete, execute and submit with its bid the "Certification Regarding DVBE Compliance Efforts" form included in the Required Bidding Forms. The District will reject as non-responsive any bid that does not fully comply with all of the foregoing DVBE requirements. As a condition to final payment pursuant to the Contract, the successful contractor must complete, execute and submit to the District the "Certification Regarding DVBE Participation" form included in the Required Project Forms.

**12. Use of Bid Proposal Form is Mandatory.** Each bid must be submitted on the "Bid Proposal" form included in the Required Bidding Forms. Unless expressly permitted by the Bid Documents, a bidder shall not: (i) make any changes, additions or other modifications to the pre-printed text of the Bid Proposal or other documents to be submitted with the Bid Proposal; (ii) restate or recharacterize the Work in the bid; or (iii) submit any alternative proposals not authorized by the Bid Documents. The District may reject as non-responsive any bid that does not strictly comply with the foregoing.

**13. Preparing the Bid.** Bidders must fully and properly complete all information required to be included on the Bid Proposal form. Amounts must be stated in both words and numbers where indicated. Prices, wording and notations must be in ink or typewritten. The signatures and/or initials of each person signing the bid and other documents to be submitted with the bid must be in permanent ink, preferably blue in color. A bid may contain an erasure, interlineation, or other correction only if the correction is made to the information entered by the bidder (not to any pre-printed text in the Bid Proposal or other documents to be submitted with the bid), does not result in any inconsistency or ambiguity, and is authenticated by affixing, in the margin immediately adjacent to the correction, the initials of the person or persons signing the bid. In the event of inconsistency between words and numbers, words shall govern over numbers, and the District may consider such inconsistency to be a minor irregularity.

**14. Bid Security.** Each bid must be submitted with security in an amount equal to 10% of the maximum bid, in one of the following forms: (i) a cashier's or certified check payable to the District; or (ii) a bid bond. The security must be submitted with a completed and executed copy of the "Certification Regarding Bid Security" form included in the Required Bidding Forms. A bid bond must be an executed copy of the "Bid Bond" form included in the Required Bidding Forms and must be issued by

a California-admitted surety as defined in Code of Civil Procedure Section 995.120. Unless forfeited, the District will return security to the bidders within a reasonable time, but not more than sixty days after award of the Contract for the Work.

**15. Required Bidding Forms.** Each bidder must complete, execute and submit with its bid each of the forms included in the Required Bidding Forms other than the "Certification Regarding Bidder References" form, which, if required, must be submitted in accordance with Section 28 of these Instructions For Bidders. If a bidder fails to properly complete, execute and submit any of the Required Bidding Forms, the District may determine that the bid is non-responsive to the Notice Inviting Bids.

**16. Signing the Bid and Other Required Documents.** The Bid Proposal, Bid Bond (if applicable), other Required Bidding Forms, and all other documents to be submitted with the bid that require an original signature of the bidder must be signed using permanent, blue ink, and must be signed by a person duly authorized to sign documents and thereby contractually bind the bidder in connection with the Work (each an "Authorized Contractor Officer"). The District may reject as non-responsive any Bid Proposal containing a stamped or mechanically-printed signature. Depending on whether the bidder is an individual or another type of business entity, signatures must comply with the following:

**16.1 Corporations.** If bidder is a corporation, each document must set forth the full, legal name of the corporation and must be signed by both the bidder's President and the bidder's Secretary or Assistant Secretary as the Authorized Contractor Officers for the bidder. Alternatively, the signature of another Authorized Contractor Officer may be affixed to the document if the bidder includes with its bid a certified copy of a resolution of the corporation's board of directors authorizing such person to sign the document as an Authorized Contractor Officer of the bidder. Documents submitted with the bid must include the title of each signatory below the signature and must bear the corporate seal.

**16.2 Limited Liability Companies.** If bidder is a limited liability company, each document must set forth the full, legal name of the company and the names of all members of the company, and all such members must sign the document as the Authorized Contractor Officers for the bidder. Alternatively, the document may be signed by a representative of the managing member of the company if the bidder includes with its bid a certified copy of a statement of the managing member's authority and the specific signatory's authority to sign the document as an Authorized Contractor Officer of the bidder.

**16.3 Partnerships.** If bidder is a partnership of any type, each document must set forth the full, true name of the partnership and the names of all persons and/or entities comprising the partnership, and all such persons and entities (or their legal representatives as determined pursuant to this Section 16) must sign the document. Alternatively, the document may be signed by a general partner of the partnership if the bidder includes with its bid a certified copy of a statement of the partnership acknowledging the signatory as a general partner (or a representative of the general partner) with authority to sign the document.

**16.4 Sole Proprietorships.** If the bidder is a sole proprietorship, each document must set forth the true name of the sole proprietorship and its owner, and such owner must sign the document. Alternatively, an agent of the owner may sign a document if the bidder has included in the bid a certified copy of a current and valid power-of-attorney authorizing the agent to sign the document.

**16.5 Fictitious Names and Joint Ventures.** If the bidder is an entity using a fictitious business name or a joint venture of two or more parties, documents must satisfy the requirements set forth above for signatures on behalf of corporations or partnerships, as applicable. The signature on any document signed on behalf of any entity using a fictitious business name must so indicate in the signature block. Documents submitted by parties acting as joint venturers must so indicate in the signature block and must be signed by or on behalf of each and every joint venturer.

**17. Sealing and Labeling the Bid.** The completed Bid Proposal, other Required Bidding Forms, and all additional documents and other materials to be submitted with the bid must be enclosed in a sealed envelope, except that a completed copy of the "Bid Label" form included in the Required Bidding Forms must be securely fastened to the outside of the bid envelope. No other information must be apparent on the outside of the bid envelope. The District may reject any bid if the outside of the bid envelope is not properly labeled or shows extraneous information or marks.

**18. Submitting the Bid.** For purposes of the Notice Inviting Bids and these Instructions For Bidders, any reference to the "Bid Deadline" shall mean the date and time specified as the Bid Deadline in the Notice Inviting Bids and any authorized extension(s) thereto. The District must receive any bids prior to the Bid Deadline and at the Place for Submitting Bids set forth in the Notice Inviting Bids. The clock located at the Place for Submitting Bids and designated as the official bid clock shall be used in determining whether bids have been timely received by the District, regardless of whether the time shown on the official bid clock is precisely accurate. Each bidder is solely responsible for ensuring that its bid is timely received by the District. A bidder must submit its bid to the District via personal or other delivery. The District will not accept any oral bid or bid sent via facsimile or electronic transmission. At no time will District telephones or facsimile machines be available for use by bidders. Any bid received by the District after the Bid Deadline will be returned to the bidder unopened.

**19. Submitting Bids for Multiple Bid Categories.** If the District is seeking bids for other categories of work on the Project, a bidder, to the extent qualified, may submit bids for more than one bid category. However, the bid for each bid category must be complete unto itself and must not be dependent on the award, price or some other condition relating to any other bid category. No combination bids of any type will be accepted unless expressly permitted in the Bid Documents.

**20. Interests in More Than One Bid.** No person or entity shall submit or have any interest in more than one bid for the Work except to the extent the Bid Documents expressly call for alternate bids. The District will not accept more than one bid for the Work from any person or entity, under the same or different names. A reasonable belief by the District that any person or entity has an interest in more than one bid or has submitted more than one bid for the Work may result in the District rejecting all bids in which the bidder has an interest. A person or entity that has submitted to a bidder any sub-bid or proposal to furnish labor, materials or services in connection with the Work is not thereby prohibited from submitting a sub-bid or proposal to any other bidder(s) on the Work, but that person or entity shall be prohibited from submitting a prime bid for the Work. The District will reject any combination bids as non-responsive unless such combination bidding is expressly authorized in the Bid Documents. Any person or entity that has participated in the preparation of any Specifications for the Work (other than submitting manufacturer specifications) shall be prohibited from bidding on the Work, and the District shall deem any such bid to be non-responsive.

**21. Modifying a Bid.** Not later than the Bid Deadline, a bidder may modify its original bid by submitting the written modification to the District. The bid modification must be submitted in a sealed and labeled envelope as provided in Section 17 of these Instructions For Bidders, but must also include the words "Bid Modification" on the label. The District shall reject any bid modification that is not

received by the District prior to the Bid Deadline. The late receipt and rejection of a bidder's bid modification shall not be deemed or construed to constitute a withdrawal of the original bid by the bidder, and the District still may accept the original bid if responsive and the bidder is a responsible contractor. The District may reject any modified bid if the modification creates an ambiguity or inconsistency, including, without limitation, if the modification makes the bid unintelligible. A bidder must submit any bid modification to the District via personal or other delivery. The District will not accept any oral bid modification or any bid modification sent via facsimile or electronic transmission. Any bid modification received by the District after the Bid Deadline will be returned to the bidder unopened.

**22. *Superseding a Bid.*** Not later than the Bid Deadline, a bidder may supersede its original bid by withdrawing its original bid in accordance with Section 23 of these Instructions For Bidders and concurrently submitting a new bid for the Work to the District. The superseding bid must be submitted in a sealed and labeled envelope as provided in Section 17 of these Instructions For Bidders, but must also include the words "Superseding Bid" on the label. The District shall reject any withdrawal and superseding bid that is not received by the District prior to the Bid Deadline. The late receipt and rejection of a bidder's withdrawal and superseding bid shall not be deemed or construed to constitute a withdrawal of the original bid by the bidder, and the District still may accept the original bid if responsive and the bidder is a responsible contractor. A bidder must withdraw its original bid and submit its superseding bid to the District via personal or other delivery. The District will not accept any oral withdrawal and superseding bid, or any withdrawal and superseding bid sent via facsimile or electronic transmission. Any withdrawal and superseding bid received by the District after the Bid Deadline will be returned to the bidder unopened.

**23. *Withdrawing a Bid.*** A bidder may withdraw its bid at any time prior to the Bid Deadline by submitting a written request to the District via personal or other delivery. The District will not accept any oral withdrawal request or any withdrawal request sent via facsimile or electronic transmission. A withdrawal request must be signed by an Authorized Contractor Officer determined in accordance with Section 16 of these Instructions For Bidders. A withdrawal request received by the District after the Bid Deadline shall in no event be deemed or construed to constitute a withdrawal of the bid, and the District still may accept the bid if it is responsive and the bidder is a responsible contractor. After receipt of a timely withdrawal request, the District shall return the bidder's bid security upon request. Except as provided in Public Contract Code Section 5100 *et seq.*, if a bidder has not withdrawn its bid prior to the Bid Deadline, the bidder thereafter may not withdraw its bid for a period of sixty days after the Bid Deadline.

**24. *Requesting Substitution of Specified Item.*** Except for any Sole-Source Items described in Section 8 of the Special Provisions, the requirement for any Specified Item shall be interpreted as if followed by the words "or equal," and a bidder may offer in place of such Specified Item any material, product, service, or other thing that the bidder can demonstrate is, in every respect, materially equal to or better than the Specified Item and that will completely accomplish the intended aesthetics, purposes and/or functions of the Specified Item. Each substitution request is subject to and must conform with the requirements of Sections 14.4 through 14.10, inclusive, of the General Provisions, including, without limitation, requirements for submitting documentation in support of the request. Requests for substitution must be submitted to the District using a completed and executed copy of the "Request To Substitute Specified Item" form included in the Required Project Forms.

The bidder shall be responsible for establishing that a proposed substitution satisfies all requirements of the Contract Documents, including, without limitation, that the proposed substitute item is, in every respect, materially equal to or better than the Specified Item. The District may at any time request any

additional information regarding the proposed substitute item. The District, in consultation with the Architect and the Project Manager as applicable, will decide whether to approve a substitution based on the information provided by the bidder. The District has the sole discretion to determine whether a proposed substitute item is equal to or better than a Specified Item. Any request for substitution that is granted by the District shall be documented and processed by means of a Change Order after execution of the Contract. The District may condition its approval of any substitution upon delivery to the District of an extended warranty or other assurances of adequate performance of the substitute item. The bidder shall be responsible for and shall bear any and all risks, expenses and costs of delay arising from review or approval of a substitution by the DSA or other governmental agency.

**A substitution request must be submitted to the District not later than seven days prior to the Bid Deadline specified in the Notice Inviting Bids.** The District will not consider any substitution request received thereafter, except to the extent provided in Section 14.5 of the General Provisions. Concurrently with submitting a substitution request or, if Public Contract Code Section 3400 is amended to so provide, concurrently with submitting its bid, the bidder must provide all information required pursuant to Section 14.6 of the General Provisions to substantiate the request. The District shall not be required to make a determination in regard to any substitution request and/or substantiating information prior to award of the Contract. If the District gives a Notice of Award for the Contract to a bidder, but subsequently disapproves a substitution proposed by that bidder, the bidder must provide the Specified Item in accordance with the Contract Documents and at no additional cost to the District.

**25. *District Waiver of Bid Irregularities.*** The District, in accordance with applicable law, may waive any minor irregularity or informality in any bid or in the bidding process.

**26. *District Rejection of Irregular Bids.*** The District will reject as non-responsive to the Notice Inviting Bids any bids containing irregularities that are not minor irregularities, including, by way of example and not as a limitation, any bid that is materially incomplete and any bid that includes any additions or conditional or alternate bids not permitted pursuant to the Bid Documents. In addition, the District may reject as non-responsive any bid in which component bid amounts are obviously unbalanced or inconsistent. The District may, but is not required to, seek information from any bidder that may resolve an ambiguity in the bidder's bid.

**27. *District Rejection of Non-Responsive Bids.*** If a bid fails to conform to requirements set forth in the Notice Inviting Bids, these Instructions For Bidders, or any of the other Bid Documents (including, without limitation, if the District reasonably determines that the bid is unintelligible, internally inconsistent, or otherwise ambiguous), the District may reject the bid as not responsive. The District may, but is not required to, seek information from any bidder that may resolve an ambiguity in the bidder's bid.

**28. *Bidder Evidence of Responsibility.*** In determining whether a bidder is a responsible bidder, the District may consider, among other possible factors, the financial standing and general competency of the bidder with respect to the Work being bid. Within two business days of the District's request, a bidder must submit to the District a completed and executed copy of the "Certification Regarding Bidder References" form included in the Required Bidding Forms. The purpose of the Certification Regarding Bidder References is to assist the District in evaluating the bidder's construction experience, current and anticipated workload, organizational resources available for performance of the Contract, any terminations from projects prior to completion, references for public works and public school projects, financial resources, surety and insurance claims experience, stop notice and other legal proceedings, and other factors pertinent to determining the responsibility of the bidder. The District in

its sole discretion may require submittal of the Certification Regarding Bidder References regardless of whether the bidder was prequalified as described in Section 4 of these Instructions For Bidders.

**29. District Award of Contract.** The District will award to the lowest responsive and responsible bid for each site. Prior to award of the Contract, the District may provide to a bidder notice that it is the apparent low bidder and that the District may award the Contract to such bidder. In its discretion, the District Board may award the Contract to such bidder, may award the Contract to another bidder in the event of a bid protest or other issue, or may reject all bids and either rebid or not rebid the Work. If the District Board awards the Contract, the award will be to the responsible bidder with the lowest responsive bid from among all responsible and responsive bidders (“Successful Bidder”). If two or more responsive and responsible bidders have submitted the same low bid, the District shall determine the Successful Bidder by means of a coin toss or some other random method. The District will issue notice of the award of the Contract to the Successful Bidder (“Notice of Award”).

**30. Bidder Execution of Contract.** The Successful Bidder shall have seven calendar days after the date of the Notice of Award to execute and deliver to the District the Construction Services Agreement and all other documents required in accordance with the Contract Documents. If the bidder fails to execute and provide all such documents within that seven-day period: (i) the bidder will forfeit the bid security submitted with its bid; and (ii) the District may award the Contract to one of the other responsible and responsive bidders or release all bidders.

**31. Refund of Deposit for Bid Documents.** If the Notice of Inviting Bids provides that Bid Documents may be obtained upon payment of a refundable deposit, a contractor may obtain a refund of its deposit by returning the Bid Documents to the Place for Submitting Bids specified in the Notice Inviting Bids not later than seven days after the opening of bids. A contractor will be entitled to refund of its deposit only if the Bid Documents are complete, in a useable condition, and free of any pen, pencil or other markings, erasure marks, rips, tears, *et cetera*. If the Notice Inviting Bids provides that the Bid Documents may be obtained for a non-refundable charge, the District will not refund the amount of the charge to the Contractor.

**32. Bid Protests.** Any bidder that has duly submitted a prime bid for the Work may protest the process used to seek bids for the Work, another bid for the Work and/or the intended award of the Contract for the Work only by filing a written protest with the District in accordance with the procedures set forth in this Section (each a “Bid Protest”). The District will not accept or consider any oral Bid Protest (e.g., by telephone) or any Bid Protest sent via electronic transmission (e.g., e-mail). In order for a Bid Protest to be valid and be considered by the District, the Bid Protest:

- (i) Must be received by the District not later than 4:00 p.m. on the fifth business day following the opening of bids;
- (ii) Must clearly identify the bidder that is filing the Bid Protest, together with the name, address and telephone number of the person representing the bidder for purposes of the Bid Protest;
- (iii) Must clearly identify the specific bid, bidding process, or other matter that is the subject of the Bid Protest;
- (iv) Must clearly identify the specific provisions of all documents relevant to the Bid Protest;
- (v) Must clearly identify and describe in detail the specific basis (or bases) for the Bid Protest and all facts relevant thereto;

- (vi) Must clearly identify and describe in detail all arguments in support of the Bid Protest, including, without limitation, citations to applicable statutory requirements; and
- (vii) Must be submitted with all documentation the bidder desires to submit that is relevant to and supports the basis or bases underlying the Bid Protest.

If a Bid Protest does not comply with each and all of the foregoing requirements (provided that a bidder will be deemed to have submitted all documentation that it desires in accordance with clause (vii) of the foregoing), the District will reject the Bid Protest as invalid. Upon receipt of a valid Bid Protest, the District and/or its legal counsel will review the Bid Protest and all relevant information and documents and will provide a written response to the protesting bidder setting forth a recommendation for District Board action in response to the Bid Protest. A bidder may at any time withdraw its Bid Protest. In response to a Bid Protest that a bidder has not withdrawn, the District Board may decline to award the Contract, may award the Contract to a bidder other than as previously intended, or may award the Contract to a bidder as previously intended despite the Bid Protest. Such action by the District Board shall be a condition precedent to the filing of any claim or demand and to the initiation of any action (legal or equitable) or other proceeding arising from the matter(s) protested.

**COMPLIANCE WITH THE FOREGOING BID PROTEST REQUIREMENTS IS MANDATORY. EACH BIDDER THAT DESIRES TO PROTEST MUST FILE ITS OWN BID PROTEST IN ACCORDANCE WITH THE FOREGOING REQUIREMENTS, AND NO BIDDER MAY RELY ON A BID PROTEST BY ANOTHER BIDDER AS A MEANS OF SATISFYING SUCH REQUIREMENTS. COMPLIANCE WITH THE FOREGOING REQUIREMENTS IS THE SOLE AND EXCLUSIVE MEANS OF PROTESTING A BID, THE BIDDING PROCESS AND/OR THE INTENDED AWARD OF THE CONTRACT, AND FAILURE TO SO COMPLY SHALL BE DEEMED AND CONSTRUED AS A WAIVER OF ANY AND ALL RIGHTS THE BIDDER MAY HAVE TO PURSUE A CLAIM, DEMAND OR ACTION ARISING FROM ANY SUCH MATTER.**

**33. Public Works Project.** The Project is a “public work” and “public project” within the meaning of various provisions of the Public Contract Code, Labor Code, Civil Code, and other applicable legal requirements. Therefore, the performance of the Work is subject to such requirements. The Contract Documents include various provisions relating to public works and public projects as provided by law, and each bidder must thoroughly review and become familiar with the Contract Documents as described above in these Instructions For Bidders. However, the Contract Documents do not include comprehensive statements of all requirements of law applicable to public works and public projects, and each bidder shall be deemed and construed to have acknowledged that fact by submitting a bid for the Work. In addition, by submitting a bid for the Work, each bidder represents and warrants that it is familiar and knowledgeable with respect to all requirements of law applicable to public works and public projects generally and to the Work specifically.

**34. Registration With DIR.** On and after March 1, 2015, no contractor may bid on a public works project unless the contractor is, and no subcontractor may be listed in any bid for a public works project unless the subcontractor is, currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. On and after April 1, 2015, no contractor or subcontractor may be awarded a contract for work on a public works project, or may perform any work on a public works project, unless the contractor or subcontractor is currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of Labor Code Section 1725.5 for an unregistered contractor to submit a bid authorized by Business and Professions Code Section 7029.1 or Public Contract Code Section 20103.5, if the contractor is registered at the time the contract is awarded. Notwithstanding anything to the contrary, if at any time during the

performance of the Work, the Contractor or any of its Subcontractors is not duly registered pursuant to Labor Code Section 1725.5 (including, without limitation, if the registration expires or the DIR revokes the registration), the District in its sole discretion may cancel the Contract and/or replace the Contractor or Subcontractor with a contractor or subcontractor that is duly registered pursuant to Labor Code Section 1725.5. Each bidder must complete, execute, and submit with its bid the "Certification Regarding Contractor Registration" form included in the Required Bidding Forms.

**35. Subcontractor Eligibility and Licensing.** The Successful Bidder shall in no event permit a Subcontractor to perform any of the Work if that Subcontractor is ineligible to work on a public works or public project. Each Subcontractor that the Successful Bidder intends shall perform any portion of the Work must be licensed in accordance with law by the Contractors State License Board prior to commencing its portion of the Work.

**36. Prevailing Wages and Labor-Law Compliance Monitoring.** The Successful Bidder and each of its Subcontractors of any tier shall pay not less than the applicable Prevailing Wages for each craft or type of worker needed to execute the Contract. A copy of the per-diem rates of Prevailing Wages applicable to the Work is on file with the District and is available for review at the location specified in the Notice Inviting Bids as the Place for Submitting Bids, and a copy will be posted at the Project Site. The Work will be subject to compliance monitoring and enforcement by the DIR, as described in more detail in the Special Provisions and General Provisions.

**37. Fingerprinting and Employee Background Checks.** In circumstances that may involve workers having more than limited contact with students, the District may require that any or all persons on, at or in the vicinity of the Project Site on account of the Work (including, without limitation, employees of both the bidder and its Subcontractors) undergo criminal-history background checks requiring submission of fingerprints to the Department of Justice. The District may impose other requirements designed to protect students regardless of whether it requires such criminal-history background checks. The Successful Bidder shall be responsible for compliance with any and all such requirements by its own forces and by its subcontracted forces.

**38. Discrimination Prohibited.** No bidder, in preparing and submitting its bid for the Work, shall discriminate in violation of any applicable law, including, without limitation, those specified in Section 3.6 of the General Provisions. In connection with performance of the Work, neither the Successful Bidder nor any of its Subcontractors of any tier shall illegally discriminate against any prospective or active employee in violation of applicable law, including, without limitation, those specified in Section 3.6 of the General Provisions. The Successful Bidder must comply with applicable federal and California laws prohibiting such discrimination and must require like compliance by any Subcontractors performing any of the Work.

**39. Bidder Investments in Iran.** Subject to certain exceptions, the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) prohibits a party that engages in investment activities in Iran, as described in Public Contract Code Section 2202.5, from entering into any contract of \$1,000,000 or more for goods or services to be provided to a public entity. Each bidder must complete, execute, and submit with its bid the "Certification Regarding Iran Contracting Act" form included in the Required Bidding Forms, to thereby certify to the District that: (i) the bidder is not identified on any list prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; (ii) the bidder is not a financial institution that, for 45 days or more, extends \$20,000,000 or more in credit to any other person or entity identified on any list prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the



energy sector in Iran; (iii) the District has exempted the bidder from the prohibition after making a public finding that, absent the exemption, the District will be unable to obtain the goods and/or services to be provided pursuant to the Contract; or (iv) the bidder's bid, including any and all additive alternates, does not exceed \$1,000,000.

**40. Time for Completion of Work and Liquidated Damages.** The Successful Bidder must complete the Work in accordance with the Contract Documents and within the time period specified in the Special Provisions and the Master Construction Schedule as adjusted in accordance with the Contract Documents. The failure of such bidder to fully complete the Work within such time period(s) may result in the District assessing liquidated damages against the bidder as provided in the General Provisions.

***(End of Instructions For Bidders.)***

## ***REQUIRED BIDDING FORMS***

The Required Bidding Forms are set forth on the following pages and include:

1. Bid Label
2. Bid Proposal
3. Certification Regarding Bid Security
4. Bid Bond
5. Non-Collusion Declaration
6. Certification Regarding Site Visit
7. Subcontractor Listing
8. Certification Regarding Contractor Registration
9. Certification Regarding Contract Documents
10. Certification Regarding Bidder References
11. Certification Regarding Iran Contracting Act

**BID LABEL**

Project: ***Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School***

Bid Deadline: ***May 1, 2017 at 2:00pm***

Location for submittal of Bids: ***Perris Union High School District  
Purchasing Department, 2<sup>nd</sup> Floor  
Attention: Nick Newkirk  
155 E. 4<sup>th</sup> Street  
Perris, CA 92570***

Contractor Company Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contractor Contact Person: \_\_\_\_\_

Contact Person's Telephone No: \_\_\_\_\_

<u>This space for District use only:</u>	
Date/Time Bid Received:	_____ @ _____
District Signature:	_____

**Instructions:** Complete the information on this Bid Label, cut on the dashed line above, and glue or tape the completed Bid Label to the outside of the envelope containing the bid. You are responsible for ensuring that the Bid Label is securely fastened to the envelope containing your bid. You must not write or otherwise place any other information or markings on the outside of the envelope (not including District address and postage, if you mail your bid).

**BID PROPOSAL**

(Do not leave any information blank)

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Bidding Contractor ("Bidder"):** \_\_\_\_\_

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that all of the following is true and correct:

- A. I am a duly-authorized representative of the Bidder and, in that capacity, I have reviewed the information set forth in this Bid Proposal and have executed and submitted this Bid Proposal on behalf of the Bidder.
- B. The Bidder is duly licensed as a contractor by the Contractors' State License Board of the State of California ("CSLB"), such license(s) is(are) in full force and effect as of the date the Bidder has submitted this bid to the District, and the classification(s) of such license(s) is(are) appropriate to allow the Bidder to perform all of the Work in accordance with California law. The classification(s) and number(s) of the license(s) issued to the Bidder by the CSLB is(are):

Class: \_\_\_\_\_; License #: \_\_\_\_\_  
 Class: \_\_\_\_\_; License #: \_\_\_\_\_  
 Class: \_\_\_\_\_; License #: \_\_\_\_\_  
 Class: \_\_\_\_\_; License #: \_\_\_\_\_

- C. The Bidder has become familiar with the Contract Documents as certified in the Certification Regarding Contract Documents submitted concurrently herewith, and hereby represents and warrants that it is sufficiently experienced and qualified, and that it has sufficient financial and other resources, to perform and complete the Work in strict accordance with the Contract Documents.
- D. **Bid Amount:** The Bidder hereby proposes to (and, if awarded the Contract, the Bidder shall) furnish at its own cost and expense any and all labor, materials, tools, equipment, facilities, transportation, services and other things required for completion of the Base Work (as described in the Description of Work) in strict conformity with the Bid Documents, in exchange for payment from the District of the following all-inclusive amount ("Bid Amount"):

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

- F. The Bidder acknowledges that it received, and that it fully considered when completing this Bid Proposal and determining the foregoing Bid Amount, each of the following Addenda to the Bid Documents (check all that apply):

Addendum No. 1       Addendum No. 2       Addendum No. 3       Addendum No. 4  
 Addendum No. 5       Addendum No. 6       Addendum No. 7       Addendum No. 8

- G. The Bidder acknowledges that the Bid Amount shall constitute all-inclusive compensation in exchange for full and satisfactory completion of all of the Work, including, without limitation,

compensation for any and all sales taxes, supervision, general conditions, fees, field-office and home-office overhead, and profit.

- H. The Bidder represents and warrants that it was responsible for preparing this bid and that it has carefully checked and confirmed the Bid Amount and all other information set forth in this Bid Proposal. The Bidder acknowledges and agrees that the District may rely on such information and in no event shall the Governing Board or the District be responsible for any errors or omissions in this bid. The Bidder is aware and acknowledges that the Governing Board has the right to waive any minor irregularity in this bid, any other bid, or all bids for the Project.
- I. The Bidder has completed, executed, and submitted with this Bid Proposal all of the mandatory Required Bid Forms. The Bidder acknowledges that the District shall deem this bid to be non-responsive if the Bidder fails to complete, execute, and submit to the District, concurrently with this Bid Proposal, any of the mandatory Required Bid Forms.
- J. If awarded the Contract, the Bidder shall execute the Contract by causing its duly-authorized representative to sign, and thereby bind the Bidder to, the Contract. The Bidder acknowledges that its bid security submitted concurrently herewith was given to guarantee that, if awarded the Contract, then, within 7 calendar days of receipt of the Notice of Award, the Bidder shall complete as applicable, execute, and submit to the District: (i) the Construction Services Agreement, Payment Bond, Performance Bond, and all other Required Contract Forms; and (ii) all Certificates of Insurance and endorsements required by the Contract Documents. The Bidder further acknowledges that it shall forfeit the whole amount of its bid security in the event Bidder fails to complete as applicable, execute, and submit any such documents to the District within 7 calendar days following receipt by the Bidder of the Notice of Award.
- K. The Bidder is, and if awarded the Contract, then at all times during the performance of Work shall be, in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") relating to its employees, and the Bidder shall indemnify, hold harmless and defend the District against any and all claims, actions, other proceedings, penalties, costs and expenses (including, without limitation, attorneys' fees), and other liabilities of any nature whatsoever that arise out of the Bidder's failure to strictly comply with the IRCA.
- L. The contact information set forth below is the current address and telephone number for the Bidder. The Bidder acknowledges that, if the District attempts to contact the Bidder for any purpose relating to this bid (including, without limitation, to request additional information or to provide a Notice of Award), but the District is unable to reach the Bidder because information set forth below is not correct, then the District may reject this bid and, in such event, the District shall have no liability to the Bidder whatsoever.

Bidder Street Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone Number: \_\_\_\_\_

M. The Bidder is organized as a (check only one):

- Corporation       Limited Liability Company       General Partnership  
 Sole Proprietorship       Other (describe): \_\_\_\_\_

N. The Bidder is organized pursuant to the laws of the state of: \_\_\_\_\_

O. The Bidder acknowledges and agrees that, unless it withdraws this bid prior to the Bid Deadline and in accordance with the Instructions for Bidders, the Bidder may not withdraw this bid for a period of sixty days after the Bid Deadline.

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

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

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

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

## CERTIFICATION REGARDING BID SECURITY

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Bidding Contractor ("Bidder"):** \_\_\_\_\_

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that all of the following is true and correct:

- (i) I am a duly-authorized representative of the Bidder and, in that capacity, I have executed this certification on behalf of the Bidder.
- (ii) Concurrently with submitting its bid for the referenced Project, the Bidder has submitted bid security in an amount equal to 10% of its maximum bid.
- (iii) The Bidder has submitted such bid security in the following form (check only one):
  - Cashier's check payable to the District;
  - Certified check payable to the District; or
  - Bid bond.
- (iv) If the Bidder has submitted bid security in the form of a bid bond, the bid bond is an executed copy of the "Bid Bond" form included as one of the Required Bidding Forms and has been issued by a California-admitted surety as defined in Code of Civil Procedure Section 995.120.
- (v) The Bidder is aware and hereby acknowledges that, unless its bid security is forfeited, the District shall return the bid security to the Bidder not later than sixty days after the District awards a contract for the referenced Project.

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

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

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

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

**BID BOND**

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor** (insert full legal name): \_\_\_\_\_

**Surety** (insert full legal name): \_\_\_\_\_

**Penal Sum:** \_\_\_\_\_ (\$ \_\_\_\_\_)

The Contractor (identified above; herein, the "Principal") has provided this bid bond in connection with the bid submitted by the Principal to the District (identified above) for the construction of the public works project identified above ("Project").

In issuing this bid bond, the Surety (identified above) certifies to the District that the Surety is "an admitted surety insurer" as defined in California Code of Civil Procedure Section 995.120.

We, the Principal and the Surety, as evidenced by the signatures of our respective duly-authorized representatives set forth below, are hereby held and firmly bound unto the District in the amount of the Penal Sum specified above, for the payment of which amount, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns as specified below.

The payment obligation described above shall become null and void if: (i) the District awards the Contract for construction of the Project to the Principal based on the bid described above and, within the required number of days after the notice of such award, the Principal enters into the Contract and provides to the District the required payment and performance bonds; (ii) the District rejects all bids received for the Project; or (iii) the time period during which the Principal may not withdraw its bid has expired without the District awarding the Contract to the Principal.

If, however, the School District awards the Contract to the Principal, but the Principal fails and/or refuses to enter into the Contract and/or to properly and duly-execute and deliver the required payment and performance bonds, then, immediately upon request of the School District and without imposing any additional conditions on payment whatsoever, the Surety and/or the Principal shall forfeit and pay to the School District an amount equal to the costs incurred by the District in connection with such failure or refusal by the Principal. For purposes of the foregoing, the amount payable to the District in connection with such failure or refusal by the Principal, as determined by the District, shall include: (i) the difference between the Principal's bid and the bid submitted by the responsible bidder with the next-lowest responsive bid for the Project; and (ii) the administrative and other costs and expenses incurred by the District to contract with such next-lowest bidder, advertise or otherwise seek additional bids and/or take other actions in response to such failure or refusal by the Principal. In no event, however, shall the liability pursuant to this bid bond exceed the penal sum of this bid bond. The School District may provide notice to the Principal and the Surety that, although payment is not yet due pursuant to this bid bond, payment will be due after the District has determined the amount of the costs it has incurred. Regardless of whether the District gives such notice, this bid bond shall remain in effect until such amount has been paid to the School District.

The Surety, for value received, hereby stipulates and agrees that this bid bond and the Surety's obligations hereunder shall be and remain in effect until such time as one or more of the conditions described herein for rendering this bid bond null and void have been satisfied. The Surety, for value received, further stipulates and agrees that this bid bond shall in no way be impaired or otherwise affected by any extension of the time within which the District may accept the Principal's bid for the Project or of the time within which the Principal must enter into the Contract and submit the required payment and performance bonds, and Surety hereby waives any requirement for notice of any such extension.



Section 00 40 00

Each person signing this bid bond on behalf of either the Principal or the Surety hereby represents and warrants that he or she has been duly-authorized to sign, and thereby bind such party to, this bid bond.

IN WITNESS WHEREOF, the Principal and Surety, acting by and through their respective, duly-authorized representatives, have executed this instrument on the date indicated below and affixed the name and, if applicable, corporate seal of each party.

Principal: \_\_\_\_\_  
(Corporate or Individual Name)

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

Authorized Signature: \_\_\_\_\_ (Affix Corporate Seal)  
(Must be Notarized)

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

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Surety: \_\_\_\_\_  
(Corporate Name)

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

Authorized Signature: \_\_\_\_\_ (Affix Corporate Seal)  
(Must be Notarized)

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

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*(The following is to be completed by Surety.)*

The rate of premium on this bond is: \$ \_\_\_\_\_ per thousand dollars.

Total amount of premium charged is: \$ \_\_\_\_\_.

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Note: A certified copy of the Power of Attorney of the Surety's authorized signatory must be attached to this bid bond.

**NON-COLLUSION DECLARATION**

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Bidding Contractor ("Bidder"):** \_\_\_\_\_

The undersigned hereby declares:

I am the \_\_\_\_\_ (insert position) of the Bidder (identified above), the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true.

The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

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

I declare subject to penalty for perjury pursuant to the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [insert date], at \_\_\_\_\_ [insert city], \_\_\_\_\_ [insert state].

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

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

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

### CERTIFICATION REGARDING SITE VISIT

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Bidding Contractor ("Bidder"):** \_\_\_\_\_

**Site Visit Date(s):** \_\_\_\_\_

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that the following is true and correct:

- (i) I am a duly-authorized representative of the Bidder and, in that capacity, I have executed this certification on behalf of the Bidder.
- (ii) I have sufficient knowledge, experience and/or resources to have undertaken the activities and reached the conclusions described and set forth in this Certification Regarding Site Visit.
- (iii) On the Site Visit Date(s) specified above, I inspected the Project Site and all conditions at the Project Site that will or might affect the performance of the Work or the portion thereof to be performed by the Bidder if awarded the Contract, including, without limitation: (a) the general shape, layout, slope, crossfall and other features of the Project Site; (b) any right-of-way and access limitations affecting the Project Site; (c) any existing buildings, hardscape, paving and other improvements on, at or in the vicinity of the Project Site; (d) any encroachments on the Project Site; (e) any manholes, pullboxes, valves and valveboxes, backflow preventers, stormdrain inlets and outlets, and/or similar features on, at or in the vicinity of the Project Site that may indicate the presence of subsurface utilities or other improvements on the Project Site; (f) any reasonably-apparent past or present uses of the Project Site, and reasonably-apparent age or condition of any improvements on or at the Project Site, that may indicate presence of any asbestos, lead or other hazardous materials on or at the Project Site; and (g) any mature trees or other vegetation, natural drainage or watercourses, or other landscape features on or in the vicinity of the Project Site.
- (iv) I am fully acquainted with all conditions that will affect the Work or the portion thereof to be performed by the Bidder if awarded the Contract, and I fully understand the facilities, difficulties, and restrictions attending the execution of such Work; and such understanding is hereby attributed to and deemed to be the understanding of the Bidder.
- (v) In connection with the Work or the portion thereof to be performed by the Bidder if awarded the Contract, the Bidder accepts full responsibility for all conditions on, at or in the vicinity of the Project Site affecting such Work, including, without limitation, any as described herein, that reasonably could have been observed or identified during my visit to the Project Site.

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

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

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

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

### SUBCONTRACTOR LISTING

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Bidding Contractor ("Bidder"):** \_\_\_\_\_

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that the following is true and correct:

- (i) I am a duly-authorized representative of the Bidder and, in that capacity, I have executed this certification on behalf of the Bidder.
- (ii) The Bidder knows and understands the provisions of the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 *et seq.*), including, without limitation, the consequences of not listing any subcontractor, or listing more than one subcontractor, for any portion of the work on the Project.
- (iii) The Bidder is aware and acknowledges that, if bid alternates are required, the Bidder must submit a separate, complete list of subcontractors for each such bid alternate.
- (iv) All subcontractors that the Bidder will use, if awarded a contract for work on the Project, are listed on the following Attachment Sheet(s), and the Bidder represents and warrants that each such subcontractor shall be duly and appropriately licensed by the Contractors State License Board of the State of California prior to commencing any of the Work.
- (v) The Bidder is aware and acknowledges that, not later than 24 hours following the bid deadline, the Bidder must submit to the District, in writing, the address, telephone number, and contact person's first and last name, for each listed subcontractor.
- (vi) The Bidder is aware and acknowledges that, if awarded a contract for work on the Project, the Bidder shall not, without the District's written consent: (i) substitute any subcontractor in place of a listed subcontractor; (ii) permit any subcontract for work on the Project to be assigned or transferred; (iii) allow any such work, labor or service to be performed by anyone other than the applicable listed subcontractor; or (iv) sublet or subcontract any of the work in excess of one-half (½) of one percent (1%) of Bidder's total bid for which the Bidder did not list a subcontractor.

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

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

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

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

**Note:** This certification page must be accompanied by the list of subcontractors on the following attachment sheet. Make and use copies of the attachment sheet, as necessary to list additional subcontractors.

## SUBCONTRACTOR LISTING -- ATTACHMENT SHEET

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Bidding Contractor:** \_\_\_\_\_

**Attachment Sheet** \_\_\_\_\_ **of** \_\_\_\_\_

---

1. Subcontractor Name: \_\_\_\_\_ CSLB License No.: \_\_\_\_\_  
Location of Business: \_\_\_\_\_  
Portion of Work: \_\_\_\_\_

2. Subcontractor Name: \_\_\_\_\_ CSLB License No.: \_\_\_\_\_  
Location of Business: \_\_\_\_\_  
Portion of Work: \_\_\_\_\_

3. Subcontractor Name: \_\_\_\_\_ CSLB License No.: \_\_\_\_\_  
Location of Business: \_\_\_\_\_  
Portion of Work: \_\_\_\_\_

4. Subcontractor Name: \_\_\_\_\_ CSLB License No.: \_\_\_\_\_  
Location of Business: \_\_\_\_\_  
Portion of Work: \_\_\_\_\_

5. Subcontractor Name: \_\_\_\_\_ CSLB License No.: \_\_\_\_\_  
Location of Business: \_\_\_\_\_  
Portion of Work: \_\_\_\_\_

6. Subcontractor Name: \_\_\_\_\_ CSLB License No.: \_\_\_\_\_  
Location of Business: \_\_\_\_\_  
Portion of Work: \_\_\_\_\_

7. Subcontractor Name: \_\_\_\_\_ CSLB License No.: \_\_\_\_\_  
Location of Business: \_\_\_\_\_  
Portion of Work: \_\_\_\_\_

8. Subcontractor Name: \_\_\_\_\_ CSLB License No.: \_\_\_\_\_  
Location of Business: \_\_\_\_\_  
Portion of Work: \_\_\_\_\_

9. Subcontractor Name: \_\_\_\_\_ CSLB License No.: \_\_\_\_\_  
Location of Business: \_\_\_\_\_  
Portion of Work: \_\_\_\_\_

10. Subcontractor Name: \_\_\_\_\_ CSLB License No.: \_\_\_\_\_  
Location of Business: \_\_\_\_\_  
Portion of Work: \_\_\_\_\_

### CERTIFICATION REGARDING CONTRACTOR REGISTRATION

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Bidding Contractor ("Bidder"):** \_\_\_\_\_

The undersigned hereby certifies, subject to penalty for perjury pursuant to the laws of the State of California, that the following is true and correct:

- (i) I am a duly-authorized representative of the Bidder and, in that capacity, I have executed this certification on behalf of the Bidder.
- (ii) The Bidder is aware and acknowledges that, on and after March 1, 2015, and except as authorized by Business and Professions Code Section 7029.1 and Public Contract Code Section 20103.5, no contractor may bid on a public works project unless the contractor is, and no subcontractor may be listed in any bid for a public works project unless the subcontractor is, currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5; and the District will reject the bid submitted by the Bidder if it fails to ensure compliance with such requirements.
- (iii) The Bidder is aware and acknowledges that, on and after April 1, 2015, no contractor or subcontractor may be awarded a contract for work on a public works project, or may perform any work on a public works project, unless the contractor or subcontractor is currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5.
- (iv) The Bidder is aware and acknowledges that, notwithstanding anything to the contrary, if at any time during the performance of the Work, the Contractor or any of its Subcontractors is not duly registered pursuant to Labor Code Section 1725.5 (including, without limitation, if the registration expires or the DIR revokes the registration), the District may cancel the Contract and/or replace the Contractor or Subcontractor with a contractor or subcontractor that is duly registered pursuant to Labor Code Section 1725.5.
- (v) The Bidder and each Subcontractor listed in the Subcontractor Listing submitted by the Bidder (each a "Listed Subcontractor") are duly registered with the DIR pursuant to Labor Code Section 1725.5.
- (vi) Evidence (in the form described in the note below) that the Bidder and each Listed Subcontractor are duly registered with the DIR pursuant to Labor Code Section 1725.5 is attached to this certification.

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

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

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

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

**Note:** This certification must be accompanied by print-outs of the applicable screens on the DIR website evidencing that the Bidder and all Listed Subcontractors are currently registered pursuant to Labor Code Section 1725.5.

## CERTIFICATION REGARDING CONTRACT DOCUMENTS

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Bidding Contractor ("Bidder"):** \_\_\_\_\_

The undersigned hereby certifies, subject to penalty for perjury pursuant to the laws of the State of California, that the following is true and correct:

- (i) I am a duly-authorized representative of the Bidder and, in that capacity, I have executed this certification on behalf of the Bidder.
- (ii) I have sufficient knowledge, experience, and/or resources to have undertaken the activities and reached the conclusions described and set forth in this Certification Regarding Contract Documents.
- (iii) The Bidder has thoroughly examined and developed an understanding of all of the Contract Documents relating to the work required to complete the Project or the portion thereof to be performed by the Bidder if awarded a contract for such work, including, without limitation, Notice Inviting Bids, Instructions for Bidders, Construction Services Agreement, General Conditions, Special Conditions, Required Bidding Forms, Required Contract Forms, Required Project Forms, any Addenda, and Drawings and Specifications.
- (iv) The Bidder had the opportunity, prior to submitting a bid for the Work, to seek from the Architect an interpretation of any and all conflicts, omissions or other discrepancies in any of the Contract Documents that the Bidder discovered or discerned during its review of the Contract Documents.
- (v) The Bidder is aware and acknowledges that no person or entity is authorized to provide any oral interpretation of any provision of the Contract Documents, and no oral interpretation of the Contract Documents shall be binding on the District.
- (vi) Because it has had the opportunity to seek interpretations of the Contract Documents, and by submitting a bid for the Work, the Bidder shall be deemed and construed to have no doubts as to the meaning of the Contract Documents or the nature or scope of such work.
- (vii) The Bidder is aware and acknowledges that the Project is a "public work" and/or "public project" for purposes of various provisions of law and, because the Contract Documents do not include comprehensive statements of all requirements of law applicable to public works and public projects, the Bidder must know and understand (and shall be deemed and construed to know and understand) all requirements of law applicable to or in connection with the Work.
- (viii) The Bidder is aware and acknowledges that the Contract Documents specify the construction delivery method being used to implement the Project, the District may contract with others for work in connection with the Project in addition to the work to be performed by the Bidder if awarded a contract in connection with the Project, and such work by the Bidder will be subject to coordination with any such work by others.

Section 00 40 00

- (ix) The Bidder is aware and acknowledges that the Contract Documents specify a time period, deadline or procedure for determining the time for completion of the various portions and/or all of the work required to complete the Project and, by submitting a bid for the Work, the Bidder agrees and accepts that such time period, deadline or procedure is sufficient and reasonable.
- (x) The Bidder is aware and acknowledges that, if the District awards a contract to the Bidder for or in connection with the Project, the Contract Documents, collectively and as duly amended, shall constitute the final, complete and exclusive statement of the terms of the agreement between the District and the Bidder relating to the performance of the Work.
- (xi) The Bidder is aware and acknowledges that, if the District awards a contract to the Bidder for or in connection with the Project, neither any failure by the Bidder or the undersigned to have undertaken the activities described in this Certification Regarding Contract Documents, nor the falsity of any acknowledgment or certification by the undersigned set forth in this Certification Regarding Contract Documents, shall relieve Bidder from any obligations set forth in the Contract Documents.

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

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

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

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



### CERTIFICATION REGARDING BIDDER REFERENCES

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Bidding Contractor ("Bidder"):** \_\_\_\_\_

The undersigned hereby certifies, subject to penalty for perjury pursuant to the laws of the State of California, that the following is true and correct:

- (i) I am a duly-authorized representative of the Bidder and, in that capacity, I have executed this certification on behalf of the Bidder.
- (ii) The Bidder is aware and hereby acknowledges that the District may investigate and determine whether the Bidder is a "responsible" bidder, based on such information as may be available for such purposes, including, without limitation, the bidder references set forth on the attachment sheet to this certification, information provided by other school districts and public agencies for which the Bidder has performed any public works, information provided by regulatory agencies, credit reports, financial statements, and public records.
- (iii) In the last five years, the Bidder (acting as a prime contractor) has entered into the following number of contracts to perform construction services on public-projects undertaken by California public school districts (*enter number*): \_\_\_\_\_
- (iv) In the last five years, the Bidder (acting as a subcontractor) has entered into the following number of contracts to perform construction services on public-projects undertaken by California public school districts (*enter number*): \_\_\_\_\_
- (v) The reference information for the Bidder's five most recent contracts for public-projects undertaken by California public school districts in the last five years is specified on the attachment sheet to this certification, and such information is complete, true and correct.
- (vi) The Bidder acknowledges and agrees that, in connection with determining whether the Bidder is a responsible bidder, the District may seek additional information from the Bidder and/or may seek clarification of any information provided by the Bidder, and, upon request, the Bidder shall promptly provide such information and/or clarification to the District.

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

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

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

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

**Note:** This certification page must be accompanied by the reference information on the following attachment sheet.

## CERTIFICATION REGARDING BIDDER REFERENCES -- ATTACHMENT SHEET

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Bidding Contractor:** \_\_\_\_\_

---

1. School District: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Project Name: \_\_\_\_\_ Contract Date: \_\_\_\_\_  
Bidder Status (check one):  Prime Contractor  Subcontractor Contract Amount: \_\_\_\_\_  
Type/Scope of Work: \_\_\_\_\_

2. School District: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Project Name: \_\_\_\_\_ Contract Date: \_\_\_\_\_  
Bidder Status (check one):  Prime Contractor  Subcontractor Contract Amount: \_\_\_\_\_  
Type/Scope of Work: \_\_\_\_\_

3. School District: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Project Name: \_\_\_\_\_ Contract Date: \_\_\_\_\_  
Bidder Status (check one):  Prime Contractor  Subcontractor Contract Amount: \_\_\_\_\_  
Type/Scope of Work: \_\_\_\_\_

4. School District: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Project Name: \_\_\_\_\_ Contract Date: \_\_\_\_\_  
Bidder Status (check one):  Prime Contractor  Subcontractor Contract Amount: \_\_\_\_\_  
Type/Scope of Work: \_\_\_\_\_

5. School District: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Project Name: \_\_\_\_\_ Contract Date: \_\_\_\_\_  
Bidder Status (check one):  Prime Contractor  Subcontractor Contract Amount: \_\_\_\_\_  
Type/Scope of Work: \_\_\_\_\_

### CERTIFICATION REGARDING IRAN CONTRACTING ACT

(Public Contract Code Section 2200 *et seq.*)

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Bidding Contractor ("Bidder"):** \_\_\_\_\_

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that the following is true and correct:

- (i) I am a duly-authorized representative of the Bidder and, in that capacity, I have executed this certification on behalf of the Bidder.
- (ii) The appropriate box is checked immediately below (check only one box), and the statement relating to the Bidder's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) following such box is true and correct.
  - The Bidder is not:
    - (i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
    - (ii) a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.
  - The District has exempted the Bidder from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the District will be unable to obtain the goods and/or services to be provided pursuant to the Contract.
  - The maximum total amount payable to the Bidder in connection with the Project, as of the date of this certification, does not exceed one million dollars (\$1,000,000.00).

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

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

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

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

**Note:** In accordance with Public Contract Code Section 2205, false certification of this form may result in civil penalties equal to the greater of \$250,000 or twice the Contract Amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

**GENERAL PROVISIONS**

**TABLE OF CONTENTS**

	<u>Page</u>
<b>PART 1</b>	<b>ACKNOWLEDGMENT, ORGANIZATION AND INTERPRETATION OF GENERAL PROVISIONS..... GP-1</b>
1.1	Contractor Acknowledgment of General Provisions..... GP-1
1.2	Organization of General Provisions..... GP-1
1.3	Guides for Interpreting General Provisions..... GP-1
1.4	Locations of Definitions of Capitalized Terms..... GP-1
<b>PART 2</b>	<b>DISTRICT ADMINISTRATION OF THE CONTRACT ..... GP-6</b>
2.1	Status of Authorized District Officers..... GP-6
2.2	Status of District Contract Representatives ..... GP-6
2.3	General Authority of District Contract Representatives ..... GP-6
2.4	Avoiding Conflicts of Interests ..... GP-7
2.5	Services and General Authority of Architect..... GP-7
2.6	Services and General Authority of Project Manager..... GP-7
2.7	Services and General Authority of Inspector of Record ..... GP-8
2.8	General Authority to Reject Non-Conforming Work..... GP-8
2.9	General Authority to Stop or Suspend Work ..... GP-8
2.10	Contractor Must Ensure Access to the Work..... GP-9
2.11	Contractor Must Provide Information Upon Request..... GP-9
2.12	Communications from Contractor ..... GP-9
2.13	Communications to and through Contractor ..... GP-9
2.14	Contractor Retains Responsibility for Work..... GP-10
2.15	Contractor Responsibility for Additional Professional Services ..... GP-10
<b>PART 3</b>	<b>CONTRACTOR ADMINISTRATION OF THE CONTRACT ..... GP-10</b>
3.1	Status of Contractor..... GP-10
3.2	Contractor Solely Responsible for Work ..... GP-11
3.3	General Responsibilities of Contractor ..... GP-11
3.4	Requirements for Job Superintendent..... GP-12
3.4.1	No Work if Job Superintendent Not Present..... GP-12
3.4.2	Selection and Replacement of Job Superintendent ..... GP-12
3.4.3	Job Superintendent Must be Exclusive to the Work ..... GP-12
3.4.4	Responsibilities and Authority of Job Superintendent ..... GP-12
3.5	Requirements for Subcontractors..... GP-13
3.5.1	Written Subcontracts Required..... GP-13
3.5.2	Subcontractors Have No Contractual Privity with District..... GP-13
3.5.3	Subcontractors Must be Appropriately Licensed ..... GP-13
3.5.4	District Approval of Subcontractors ..... GP-13
3.6	Prohibition Against Unlawful Discrimination ..... GP-13
3.7	Contractor Must Provide for Own Communications..... GP-14
3.8	Contractor Must Maintain Reference Materials at Project Site..... GP-14
3.9	Contractor Must Prepare Record Drawings and Specifications ..... GP-14
3.9.1	Changes to be Illustrated..... GP-14
3.9.2	Method of Illustrating ..... GP-15
3.9.3	Timing and Approval of Updates ..... GP-15

**GENERAL PROVISIONS**

**TABLE OF CONTENTS**

	<u>Page</u>
3.9.4 Responsibility for Accuracy.....	GP-16
3.10 Contractor Must Implement Document Control System .....	GP-16
3.11 Contractor Must Maintain Records of the Work .....	GP-16
3.12 State Review and Audit of Records of the Work.....	GP-16
3.13 Contractor Responsible for Subcontractor Compliance.....	GP-16
<b>PART 4 THE CONTRACT AND CONTRACT DOCUMENTS .....</b>	<b>GP-17</b>
4.1 Scope and Coverage of Contract.....	GP-17
4.2 Construing the Contract Documents.....	GP-17
4.3 Interpretation of Drawings .....	GP-17
4.3.1 Purpose and Scope .....	GP-17
4.3.2 Scaled and Numerical Dimensions .....	GP-17
4.3.3 Notes and Schedules .....	GP-18
4.3.4 Typical Details.....	GP-18
4.3.5 Approximations .....	GP-18
4.4 Interpretation of Specifications .....	GP-18
4.4.1 Purpose and Scope .....	GP-18
4.4.2 Discretionary Determinations .....	GP-18
4.4.3 Industry or Governmental Standards and Specifications .....	GP-18
4.4.4 Fragmented or Truncated Wording.....	GP-18
4.4.5 Titles and Captions .....	GP-19
4.4.6 Singular and Plural Senses.....	GP-19
4.4.7 Gender .....	GP-19
4.5 Addenda .....	GP-19
4.6 Deferred Approvals .....	GP-19
4.7 Work to be Inferred from Contract Documents.....	GP-19
4.8 Geotechnical and Soils Reports.....	GP-19
4.8.1 Not Part of Contract Documents .....	GP-19
4.8.2 Specifications Govern .....	GP-20
4.8.3 No Warranty of Information.....	GP-20
4.9 Contractor to Know and Understand Applicable Law .....	GP-20
4.10 Pre-Construction Review of Contract Documents .....	GP-20
4.11 Notice After Pre-Construction Review .....	GP-20
4.12 Ongoing Review of Contract Documents .....	GP-21
4.13 Requests for Information Regarding the Work or the Contract Documents .....	GP-21
4.13.1 Submittal to Inspector of Record .....	GP-21
4.13.2 Each RFI Must be Submitted Timely and in Good Faith .....	GP-21
4.13.3 Architect Review and Response to RFI .....	GP-21
4.14 Costs of Erroneous or Non-Conforming Work .....	GP-22
4.15 Ownership and Rights to Contract Documents.....	GP-22
4.16 Use of Contract Documents .....	GP-22
4.17 Return of Contract Documents to District .....	GP-22
<b>PART 5 SHOP DRAWINGS, DEFERRED APPROVALS AND OTHER SUBMITTALS .....</b>	<b>GP-23</b>
5.1 General Requirements for Submittals.....	GP-23

**GENERAL PROVISIONS**

**TABLE OF CONTENTS**

	<u>Page</u>
5.2	Requirements for Timely Submittals..... GP-23
5.3	Requirements for Identifying Submittals ..... GP-23
5.4	Required Quantities of Submittal Materials ..... GP-23
5.5	Contractor Must Identify Deviations from Contract Requirements..... GP-24
5.6	Contractor Must Review and Verify All Submittals ..... GP-24
5.7	Contractor Must Provide Preliminary Materials Lists ..... GP-24
5.8	Requirements for Shop Drawings ..... GP-24
5.9	Requirements for Samples..... GP-25
5.10	Requirements for Deferred Approvals..... GP-25
5.11	Scope of Submittal Review and Approval ..... GP-26
5.12	Contractor Must Correct and Resubmit Rejected Submittals ..... GP-26
5.13	No Work or Deliveries Permitted Absent Approved Submittals ..... GP-26
<b>PART 6</b>	<b>INSURANCE REQUIREMENTS..... GP-27</b>
6.1	Insurance a Condition Precedent to Commencing the Work..... GP-27
6.2	Optional Owner-Controlled Insurance Program ..... GP-27
6.3	Optional District All-Risk Insurance..... GP-27
6.4	Insurance Requirements Absent an OCIP ..... GP-27
6.5	Minimum Types and Amounts of Insurance Coverage ..... GP-28
6.5.1	Commercial General Liability Insurance ..... GP-28
6.5.2	Vehicle Liability Insurance ..... GP-28
6.5.3	Workers' Compensation Insurance ..... GP-28
6.5.4	Professional Liability Insurance ..... GP-28
6.5.5	Contractor All-Risk Insurance ..... GP-29
6.6	Umbrella Coverage..... GP-30
6.7	Contractor Insurance Shall be Primary ..... GP-30
6.8	Insurer Standards..... GP-30
6.9	Designation of Additional Insureds ..... GP-30
6.10	Cross-Liability and Waivers of Subrogation ..... GP-30
6.11	Premiums, Deductibles and Self-Insured Retentions..... GP-31
6.12	Evidence of Coverage..... GP-31
6.13	Mandatory Notice from Insurer of Change in Coverage ..... GP-31
6.14	District Review and Approval of Insurance Policies ..... GP-31
6.15	Additional Required and/or Optional Insurance..... GP-32
6.16	Subcontractor Insurance..... GP-32
6.17	Compliance with Safety Programs ..... GP-32
6.18	Failure to Maintain Required Insurance..... GP-32
6.19	Insurance Coverage Not a Limitation on Liability ..... GP-32
<b>PART 7</b>	<b>PERFORMANCE AND PAYMENT BONDING REQUIREMENTS..... GP-33</b>
7.1	Surety Bonds a Condition Precedent to Commencing the Work ..... GP-33
7.2	Delivery of Surety Bonds..... GP-33
7.3	Forms of Surety Bonds ..... GP-33
7.4	Penal Sums of Surety Bonds..... GP-33
7.5	Surety Qualifications..... GP-33

**GENERAL PROVISIONS**

**TABLE OF CONTENTS**

	<u>Page</u>
7.6 Surety Obligations Not Affected by Changes in Work.....	GP-33
<b>PART 8 PERFORMANCE OF THE WORK GENERALLY.....</b>	<b>GP-34</b>
8.1 Contractor Must Furnish Everything Required .....	GP-34
8.2 Contractor Responsible for Permits and Fees.....	GP-34
8.3 Contractor Must Comply with Applicable Laws .....	GP-34
8.4 Contractor Must Implement Quality Control Procedures.....	GP-34
8.5 Contractor Must Appropriately Coordinate and Time the Work .....	GP-35
8.6 Contractor Must Furnish Sufficient and Skilled Workforce.....	GP-35
8.7 Contractor Must Confine Work to Designated Areas .....	GP-35
8.8 Requirements for Accessing the Project Site .....	GP-35
8.9 District Responsible for Utility Easements and Rights of Entry.....	GP-36
8.10 District to Furnish any Necessary Survey of Project Site.....	GP-36
8.11 Contractor Responsible for Construction Surveying .....	GP-36
8.12 Contractor Must Preserve Survey Monuments and Markers .....	GP-36
8.13 NPDES Permit and SWPPP.....	GP-36
8.13.1 District to Obtain Coverage .....	GP-36
8.13.2 Implementation and Compliance .....	GP-36
8.13.3 Consequences of Failure to Comply .....	GP-37
8.14 Contractor Must Comply with Run-Off Control Requirements.....	GP-37
8.15 Contractor Must Not Disturb Run-Off Control Measures .....	GP-37
8.16 Contractor Must Protect Site and Existing Improvements.....	GP-37
8.17 Requirements for Cutting and Patching of Work.....	GP-37
8.18 Requirements for Cutting, Drilling or Attaching to Structural Members .....	GP-38
8.19 District Responsibility to Provide for Testing and Inspection .....	GP-38
8.20 Contractor Must Give Timely Notice of Testing and Inspections.....	GP-38
8.21 District May Require Special or Additional Testing or Inspection .....	GP-39
8.22 Contractor Responsibility for Costs of Testing and Inspections.....	GP-39
8.23 Contractor Must Correct Non-Conforming Work .....	GP-39
8.24 Contractor Must File Verified Reports .....	GP-40
8.25 Contractor Must File Daily Reports.....	GP-40
8.26 Contractor Must Control Noise and Dust.....	GP-40
8.27 Contractor Must Clean Work Areas .....	GP-40
8.28 Consequences of Failure by Contractor to Clean Work Areas .....	GP-40
<b>PART 9 COORDINATION WITH WORK BY OTHERS.....</b>	<b>GP-41</b>
9.1 Contractor Must Ascertain Impacts of Work by Others.....	GP-41
9.2 Contractor Must Accommodate Partial Occupancy by District .....	GP-41
9.3 Contractor Must Coordinate with Work by Others.....	GP-41
9.4 Contractor Must Inspect Certain Work by Others for Deficiencies.....	GP-42
<b>PART 10 PROJECT SITE DECORUM.....</b>	<b>GP-42</b>
10.1 Performance of Work at Operating School Facilities .....	GP-42
10.2 Prohibition Against Contact with Students and Other Minors.....	GP-42
10.3 Procedures to Prevent Contact with Students.....	GP-43

**GENERAL PROVISIONS**

**TABLE OF CONTENTS**

	<u>Page</u>
10.3.1	Significance of Requirements ..... GP-43
10.3.2	Criminal-History Background Checks..... GP-43
10.3.3	Responsibility for Subcontractor Compliance ..... GP-43
10.3.4	Alternatives to Fingerprinting and Background Checks ..... GP-43
10.4	Consequences of Violating Prohibition Against Contact..... GP-44
10.5	Identification or Security Badges ..... GP-44
10.6	Prohibition Against Workers Leaving Vicinity of Their Work ..... GP-44
10.7	Prohibition Against Unfit Workers ..... GP-44
10.8	Requirements for Courteous and Professional Conduct..... GP-44
10.9	Dress Code and Appearance Requirements..... GP-45
10.10	Requirements for Use of Restrooms..... GP-45
10.11	Control of Break-Time Activities ..... GP-45
10.12	Prohibition Against Drugs (including Alcohol) and Tobacco ..... GP-45
10.13	Prohibition Against Unnecessary Noise ..... GP-46
10.14	Limitations on Access to Project Site ..... GP-46
10.15	Parking at the Project Site..... GP-46
10.16	Use of Vehicles and Equipment at the Project Site..... GP-46
10.17	Prohibition Against Displays on Vehicles and Equipment..... GP-46
10.18	No District Responsibility for Vehicles or Equipment ..... GP-47
10.19	Prohibition Against Animals at Project Site..... GP-47
10.20	Contractor to Require Compliance ..... GP-47
10.21	Consequences of Non-Compliance ..... GP-47
<b>PART 11</b>	<b>PROJECT SITE SAFETY ..... GP-47</b>
11.1	General Safety-Related Responsibilities of the Contractor..... GP-47
11.2	Required Safety Programs..... GP-48
11.3	Designation and Duties of Safety Officers..... GP-48
11.3.1	Contractor Safety Officer..... GP-48
11.3.2	Subcontractor Safety Officer ..... GP-49
11.4	Required Safety Measures ..... GP-49
11.5	Contractor Must Not Impose Unsafe Loads..... GP-49
11.6	Design and Use of Temporary Structures and Equipment..... GP-49
11.7	Trench Safety Plans ..... GP-50
11.8	Other Safety Requirements..... GP-50
11.9	Contractor Response to Emergency Situations..... GP-50
11.10	Required Reporting of Accidents, Injuries and Damage ..... GP-51
11.10.1	Contractor Accident Reports ..... GP-51
11.10.2	Subcontractor Accident Reports ..... GP-51
11.11	Notice and Correction of Non-Compliance ..... GP-51
11.12	Contractor Liability..... GP-51
11.13	Compliance a Condition Precedent to Payment ..... GP-52
<b>PART 12</b>	<b>COMPLIANCE WITH LABOR LAWS..... GP-52</b>
12.1	Contractor Must Comply with Prevailing Wage Laws ..... GP-52
12.2	Copies of Prevailing Wage Rates..... GP-52



**GENERAL PROVISIONS**

**TABLE OF CONTENTS**

	<u>Page</u>
12.3	Penalties for Violations of Prevailing Wage Laws ..... GP-52
12.4	Compliance Monitoring and Enforcement..... GP-52
12.5	Prohibition Against Debarred Subcontractors ..... GP-53
12.6	Employment of Apprentices ..... GP-53
12.7	Limitations on Daily Hours of Work ..... GP-53
12.8	Requirements for Payroll Records ..... GP-53
12.9	Contractor Must Know and Comply with All Labor Laws ..... GP-53
<b>PART 13</b>	<b>TIME FOR COMPLETION AND DELAYS ..... GP-54</b>
13.1	Time is of the Essence ..... GP-54
13.2	Pre-Construction Activities ..... GP-54
13.3	Proposed Master Construction Schedule..... GP-54
	13.3.1 Submittal Requirements..... GP-54
	13.3.2 Schedule Coverage ..... GP-54
	13.3.3 Minimum Required Elements..... GP-55
	13.3.4 Approval by Project Manager..... GP-55
13.4	Normal Weather Deemed Foreseeable ..... GP-55
13.5	Time for Deferred Approvals Deemed Included in Schedule ..... GP-55
13.6	Modification of Master Construction Schedule ..... GP-56
	13.6.1 Updates and Revisions ..... GP-56
	13.6.2 Other Modifications ..... GP-56
13.7	Issuance of Notice to Proceed ..... GP-56
13.8	Commencement and Diligent Performance of Work..... GP-56
13.9	Times During Workday When Work May be Performed ..... GP-57
	13.9.1 Work During Regular Working Hours ..... GP-57
	13.9.2 Permissive Work Outside of Regular Working Hours ..... GP-57
	13.9.3 Mandatory Work Outside Regular Working Hours..... GP-57
13.10	Mandatory Notice of Anticipated Delay ..... GP-57
13.11	Mandatory Notice of Actual Delay ..... GP-58
13.12	Review of Facts and Circumstances Resulting in Delay..... GP-58
13.13	Requests for Additional Time and/or Compensation for Delays..... GP-58
13.14	Change Orders Deemed Not to Cause or Create Delays ..... GP-58
13.15	Delays Resulting from Abnormal Weather ..... GP-58
13.16	Extensions of Time for Performance of the Work..... GP-59
13.17	No Compensation for Certain Delays..... GP-59
13.18	Compensation for Delays Caused by District ..... GP-59
13.19	Compensation for Delays Caused by Contractor ..... GP-60
13.20	No Compensation for Delays Having Concurrent Causes ..... GP-60
13.21	Liquidated Damages for Delays in Completing Project ..... GP-60
13.22	Damages Incurred by District Pursuant to Other Contracts..... GP-61
13.23	Contractor Claims Arising from Delays ..... GP-61
<b>PART 14</b>	<b>MATERIALS AND EQUIPMENT ..... GP-61</b>
14.1	Types and Quality of Materials and Equipment..... GP-61
14.2	Contractor to Furnish Sufficient Materials and Equipment ..... GP-62

**GENERAL PROVISIONS**

**TABLE OF CONTENTS**

	<u>Page</u>
14.3	Storage and Protection of Materials and Equipment ..... GP-62
14.4	Authority to Request Substitution of Specified Items..... GP-62
14.5	Procedures and Conditions for Requesting Substitution of Specified Items ..... GP-62
14.6	Contractor Must Substantiate Requests for Substitution ..... GP-63
14.6.1	Contractor Has Sole Responsibility..... GP-63
14.6.2	Timing for Providing Substantiating Information ..... GP-63
14.6.3	Nature of Substantiating Information ..... GP-63
14.6.4	Adequacy of Substantiating Information..... GP-64
14.6.5	Contractor Certification..... GP-64
14.7	District Discretion to Approve Requests for Substitution ..... GP-64
14.8	Conditional Approval of Requests for Substitution..... GP-64
14.9	Contractor Responsible for Impacts and Costs of Substitution ..... GP-64
14.10	Disapproval of Requests for Substitution ..... GP-65
14.11	Purchase and Ownership of Materials and Equipment ..... GP-65
<b>PART 15</b>	<b>HAZARDOUS EQUIPMENT, MATERIALS AND SUBSTANCES ..... GP-65</b>
15.1	Use of Hazardous Materials in Connection with the Work..... GP-65
15.2	Hazard Communication Program..... GP-66
15.3	Contractor Prohibited from Using Asbestos ..... GP-66
15.4	Contractor Deemed Fully Aware of the Dangers of Asbestos..... GP-66
15.5	Consequences of Violating Prohibition Against Asbestos..... GP-66
15.6	District to Arrange for Necessary Asbestos Remediation ..... GP-67
15.7	Discovery of Hazardous Materials During Performance of the Work..... GP-67
15.8	Discovery of Hazardous Materials in Excavations Deeper Than Four Feet ..... GP-67
15.9	Delays Resulting from Discovery of Hazardous Materials..... GP-67
15.10	Contractor Responsibility for Releases of Hazardous Substances ..... GP-68
<b>PART 16</b>	<b>EXCAVATIONS AND UTILITIES ..... GP-68</b>
16.1	Contractor Must Locate Underground Utilities and Installations ..... GP-68
16.2	Contractor Must Contact Regional Notification Center ..... GP-68
16.3	Main or Trunkline Utilities Not Identified in Contract Documents ..... GP-69
16.4	Responsibility for Cost of Relocating Utility Facilities ..... GP-69
16.5	Contractor Must Obtain and Pay for Utility Services ..... GP-69
16.6	Contractor Must Coordinate with Utility Companies ..... GP-70
16.7	Contractor Must Have Permit for Excavations..... GP-70
16.8	Contractor Must Protect Adjacent Improvements ..... GP-70
16.9	Trench Safety Plans for Trenches Deeper Than Five Feet..... GP-70
16.10	Differing Conditions in Excavations Deeper Than Four Feet..... GP-70
<b>PART 17</b>	<b>CHANGES IN THE WORK ..... GP-71</b>
17.1	Authorization Required for Changes in the Work..... GP-71
17.1.1	District Approval of Changes Required..... GP-71
17.1.2	DSA Approval of Certain Changes..... GP-71
17.1.3	Direction to Proceed With Changes ..... GP-71
17.1.4	Responsibility for Unauthorized Changes..... GP-71

**GENERAL PROVISIONS**

**TABLE OF CONTENTS**

	<u>Page</u>
17.2	Changes Required by Change Order ..... GP-72
17.3	Changes Required By Architect Field Directive ..... GP-72
17.4	Changes Required By Unilateral Change Order ..... GP-72
17.5	Mandatory Notice of Disagreement Regarding Contract Price or Time ..... GP-72
17.6	Consequences of Failure to Provide Mandatory Notice ..... GP-73
17.7	Changes Requested by the District ..... GP-73
17.8	Changes Requested by the Contractor ..... GP-73
17.9	Determining Affect of Change on Contract Price ..... GP-74
17.10	Determining Change Order Cost Based on Time and Materials ..... GP-74
17.11	Determining Change Order Cost Based on Lump Sum Proposal..... GP-74
17.12	Determining Change Order Cost Based on Unit Pricing ..... GP-75
17.13	Cost Components to be Included in All Estimates ..... GP-75
17.14	Deductive or Reduced Change Order Costs ..... GP-76
17.15	Discounts and Refunds Deducted from Change Order Costs..... GP-76
17.16	Substantiation of Subcontractor Pricing Included in Estimates ..... GP-77
17.17	Substantiation of Time and Materials and Unit-Price Costs ..... GP-77
	17.17.1 Requirement for Notice..... GP-77
	17.17.2 Requirements for Daily Time and Materials Reports ..... GP-77
	17.17.3 Requirements for Separate Accounting Records..... GP-77
17.18	Changes Required Based on Bid Alternates ..... GP-77
17.19	Change Orders Include Full and Final Compensation ..... GP-78
17.20	Alterations to Directives and Change Orders Prohibited ..... GP-78
17.21	District Not Liable for Non-Conforming Work..... GP-78
<b>PART 18</b>	<b>FINAL INSPECTION AND COMPLETION OF WORK ..... GP-78</b>
18.1	Contractor Must Determine When Work is Complete..... GP-78
18.2	Contractor Must Complete Prerequisites Before Inspection ..... GP-78
18.3	Contractor’s Initial Request for Final Inspection..... GP-80
18.4	Requirements for Re-Inspection of Work ..... GP-80
18.5	Determination that Work is Substantially Complete ..... GP-80
18.6	Contractor Must Timely Complete Remaining Work ..... GP-80
18.7	Contractor Request for Final Walk-Through ..... GP-80
18.8	Contractor Responsible for Certain Inspection Costs ..... GP-81
18.9	Acceptance of the Completed Project ..... GP-81
<b>PART 19</b>	<b>CLOSE-OUT OF THE WORK ..... GP-81</b>
19.1	Close-Out Submittals are Prerequisite to Final Payment ..... GP-81
19.2	Record Drawings and Specifications ..... GP-81
19.3	Project-Related Documents ..... GP-82
19.4	Equipment Operations and Maintenance Manuals ..... GP-82
	19.4.1 Required Contents..... GP-82
	19.4.2 Required Format..... GP-82
	19.4.3 Required Correction and Certification..... GP-82
19.5	Special Guarantees and Warranties..... GP-82
19.6	Identification-Tag Log ..... GP-83

**GENERAL PROVISIONS**

**TABLE OF CONTENTS**

	<u>Page</u>
19.7	Keys for Doors, Panels, Cabinets, Et Cetera ..... GP-83
19.8	Tools, Spare Parts, Et Cetera ..... GP-83
19.9	DSA Close-Out Materials ..... GP-83
19.10	Contractor Guarantee ..... GP-83
19.11	Other Contract Document Close-Out Requirements ..... GP-83
<b>PART 20</b>	<b>CONTRACTOR GUARANTEE OF WORK ..... GP-84</b>
20.1	No Waiver of District Rights ..... GP-84
20.2	Contractor’s General Guarantee of Work ..... GP-84
20.3	Limitations on Contractor Guarantee ..... GP-84
20.4	Applicable Guarantee Periods..... GP-84
20.5	Specific Guarantee Periods for HVAC and Roofing ..... GP-84
20.6	Manufacturer and Other Third-Party Guarantees ..... GP-85
20.7	Guarantee Work by Contractor..... GP-85
20.8	District Performance of Guarantee Work ..... GP-85
20.9	Two-Year Extended Guarantee Period After Guarantee Work ..... GP-85
20.10	Warranty of Title to Work..... GP-85
<b>PART 21</b>	<b>PROGRESS PAYMENTS AND FINAL PAYMENT ..... GP-86</b>
21.1	Maximum Amount Payable to Contractor ..... GP-86
21.2	Contractor Must Propose a Schedule of Values..... GP-86
21.3	Contractor Must Obtain Approval of Schedule of Values ..... GP-87
21.4	Contractor Must Monitor and Update Schedule of Values..... GP-87
21.5	Payment for On-Site Materials Not Incorporated into Work..... GP-88
21.6	Payment for Specially Manufactured Items Stored Off-Site ..... GP-88
21.7	Contractor Must Arrange Progress Payment Review Meetings..... GP-88
21.8	Contractor Submittal of Progress Payment Requests ..... GP-89
21.8.1	Timing and Content of Progress Payment Request ..... GP-89
21.8.2	Materials to be Submitted with Progress Payment Request..... GP-90
21.8.3	Final Progress Payment Request ..... GP-90
21.8.4	Copies of Progress Payment Requests and Supporting Materials..... GP-90
21.9	Requirement for Progress Payment Waivers and Releases ..... GP-91
21.10	Summary of Public Contract Code Section 20104.50..... GP-91
21.11	Contractor Compliance a Condition Precedent ..... GP-91
21.12	Review by Project Manager and Inspector of Record ..... GP-91
21.13	Architect Decisions Regarding Progress Payment Requests ..... GP-92
21.13.1	Architect Review of Recommendations ..... GP-92
21.13.2	Notice of Approval or Disapproval ..... GP-92
21.13.3	Certification of Payment Upon Approval ..... GP-92
21.13.4	Rejection and Resubmittal of Progress Payment Requests..... GP-92
21.14	Withholding of Retention from Payments to Contractor ..... GP-92
21.15	Additional Deductions and Withholdings ..... GP-93
21.15.1	Authority and Reasons ..... GP-93
21.15.2	Amount and Application..... GP-94

**GENERAL PROVISIONS**

**TABLE OF CONTENTS**

	<u>Page</u>
21.16 District Payment of Construction Progress Payments .....	GP-94
21.17 Final Payment of Retention.....	GP-95
21.18 District Issuance of Joint Checks .....	GP-95
21.19 District Does Not Waive Rights by Inspecting, Approving or Paying .....	GP-95
21.20 Contractor Must Timely Pay Subcontractors .....	GP-96
21.21 Stop Notices and Liens .....	GP-96
21.22 Unconditional Waivers and Releases After Final Payment .....	GP-96
<b>PART 22</b>	
<b>TERMINATION AND OTHER REMEDIES .....</b>	<b>GP-97</b>
22.1 Cause for Termination of Contractor’s Right to Perform Work .....	GP-97
22.2 Opportunity to Cure and Termination for Cause .....	GP-97
22.3 Surety and District Rights to Perform Work After Termination for Cause .....	GP-98
22.4 District Performance of Work After Termination for Cause .....	GP-98
22.5 Contractor Compensation After Termination for Cause .....	GP-98
22.6 Termination for Convenience of Contractor’s Right to Perform Work .....	GP-99
22.7 Contractor Must Cease Work Upon Termination for Convenience .....	GP-99
22.8 Documenting Costs After Termination for Convenience .....	GP-99
22.9 Compensation After Termination for Convenience .....	GP-99
22.10 Termination by the Contractor for Cause .....	GP-100
22.11 Documenting Costs After Termination by Contractor for Cause .....	GP-100
22.12 Remedies for Default Other Than Termination .....	GP-100
22.13 Declaring Contractor a Non-Responsible Bidder.....	GP-101
<b>PART 23</b>	
<b>INDEMNIFICATION OF DISTRICT AND OTHERS .....</b>	<b>GP-101</b>
23.1 Indemnification of District and its Representatives .....	GP-101
23.2 Contractor Defense of District and its Representatives.....	GP-102
23.3 Indemnification of Officers, Employees, and Agents of District Indemnitees .....	GP-102
23.4 Limitation on Contractor Indemnification Obligations .....	GP-102
23.5 Contractor Must Ensure Subcontractors Indemnify District .....	GP-102
<b>PART 24</b>	
<b>CLAIMS AND LEGAL PROCEEDINGS.....</b>	<b>GP-103</b>
24.1 Requirements and Procedures for Filing Claims Are Mandatory.....	GP-103
24.2 Mandatory Time Limits for Filing of Claims.....	GP-103
24.3 Content of Claims and Substantiating Materials.....	GP-103
24.4 Mandatory Certification of Claims Subject to Penalty of Perjury .....	GP-103
24.5 Prerequisites for Filing Delay Claims .....	GP-104
24.6 Method of Filing Claims .....	GP-104
24.7 Procedures Applicable to Claims Seeking \$375,000 or Less .....	GP-104
24.8 District Requests for Additional Information .....	GP-104
24.9 Procedures for Initial Review of Claim by Architect.....	GP-104
24.10 Approval of Claim After Initial Architect Review.....	GP-105
24.11 Disapproval of Claim After Initial Architect Review .....	GP-105
24.12 Initiation of Mandatory Informal Claim-Resolution Efforts .....	GP-105
24.13 Documentation of Compromise.....	GP-105
24.14 Architect Ruling if Claim Remains Unresolved .....	GP-105

**GENERAL PROVISIONS**

**TABLE OF CONTENTS**

	<u>Page</u>
24.15	Conditions Precedent to Initiating Subsequent Actions ..... GP-106
24.16	Contractor Must Continue Work While Claims Pending ..... GP-106
24.17	Resolving Disputes Through Binding Arbitration ..... GP-106
24.18	Resolving Disputes in Court of Competent Jurisdiction ..... GP-107
24.19	Neither Party’s Remedies are Limited..... GP-107
24.20	Applicable Law and Venue ..... GP-107
<b>PART 25</b>	<b>MISCELLANEOUS PROVISIONS</b> ..... GP-107
25.1	Entire Understanding and Agreement ..... GP-107
25.2	Provisions Required by Law Deemed Included ..... GP-107
25.3	Execution of Documents in Counterparts ..... GP-108
25.4	Captions and Headings..... GP-108
25.5	No Third-Party Beneficiaries of Contract ..... GP-108
25.6	Circumscribed Right to Assign Contract ..... GP-108
25.7	Waiver of Contract Requirements ..... GP-108
25.8	Requirements of Contract are Severable ..... GP-108
25.9	Assignment of Anti-Trust Claims ..... GP-109
25.10	Service of Demands and Other Notices ..... GP-109
25.11	Public Inquiries and Complaints..... GP-109
25.12	District Notice of Third-Party Claims ..... GP-109

**PART 1**  
**ACKNOWLEDGMENT, ORGANIZATION, AND**  
**INTERPRETATION OF GENERAL PROVISIONS**

**1.1 Contractor Acknowledgment of General Provisions.** These General Provisions are an integral component of the Contract Documents. By entering into the Contract, the Contractor: (i) acknowledges that it had the opportunity prior to submitting its bid for the Work to review and seek clarification of any and all provisions of these General Provisions from the District, Architect, and/or Project Manager; and (ii) acknowledges and agrees that the Contractor shall be deemed and construed to have read and that it fully understands these General Provisions. The Contractor shall not disclaim either knowledge of, or the meaning and effect of, any term or provision of these General Provisions and shall strictly abide by their meaning and intent. The Contractor further acknowledges that these General Provisions include requirements for including various provisions in the Contractor's contracts with its Subcontractors. **THE CONTRACTOR MUST PROVIDE A COPY OF THESE GENERAL PROVISIONS TO EACH SUBCONTRACTOR AND SHALL REQUIRE IN EACH OF ITS SUBCONTRACTS THAT THE SUBCONTRACTOR ALSO MUST READ AND UNDERSTAND THESE GENERAL PROVISIONS.**

**1.2 Organization of General Provisions.** These General Provisions are organized according to general subject matter. However, requirements applicable to any particular item, material, service, scope, *et cetera*, may be included in multiple provisions of these General Provisions. Therefore, unless expressly stated otherwise, the requirements of any one provision in these General Provisions shall not be deemed or construed to govern or apply exclusively over other provisions in these General Provisions applicable to the same item, material, service, scope, *et cetera*. The provisions of these General Provisions are also organized based on a numbering system in which: (i) Parts (e.g., Part 3) may be subdivided into Sections (e.g., Section 3.5); and (ii) Sections may be subdivided into Subsections (e.g., Subsection 3.5.1). Lists (i.e., enumerations of items) are set forth in these General Provisions using Romanette symbols (i.e., i, ii, iii, iv, *et cetera*).

**1.3 Guides for Interpreting General Provisions.** As used in these General Provisions, "shall" and "must" shall be deemed and construed as mandatory, and "may" shall be deemed and construed as permissive. If any pronoun, term or phrase in these General Provisions is stated in either the masculine or feminine sense (e.g., "materialman"), the pronoun, term or phrase, unless otherwise required by context, shall be interpreted as including both or either of such genders. Unless specified otherwise, any reference in these General Provisions to a number of "days," "months," or "years" shall mean, respectively, calendar days, months or years. Unless specified otherwise, any reference in these General Provisions to a number of "hours," "days," "weeks," "months" or "years" shall mean, respectively, consecutive hours, days, weeks, months or years. Language in these General Provisions to the effect that the Contractor or other person or entity is to provide or furnish something, or words to the same or similar effect, shall be deemed to mean that the thing must be "provided, complete in place," "furnished and installed," or otherwise incorporated into the Work and/or used as necessary to complete the Work and/or administer the Contract in accordance with the Contract Documents. For the convenience of the reader and in order to shorten the length of these General Provisions, capitalized terms are used in these General Provisions to designate defined terms. Each term or phrase that is not capitalized or defined shall be construed in accordance with the meaning commonly associated with such term or phrase within the State and region within which the Project is located.

**1.4 Locations of Definitions of Capitalized Terms.** For the convenience of the reader, the following table specifies the location in these General Provisions and other Contract Documents of the definitions of certain capitalized terms used in these General Provisions. The following table may not include all such capitalized terms and, therefore, should not be considered to be a comprehensive list of all such defined terms.

<b><i>Defined Term</i></b>	<b><i>Location of Definition in General Provisions</i></b>	<b><i>Location of Definition in Other Contract Documents</i></b>
Abnormal Weather	Section 13.15	
Accident Report	Subsection 11.10.1	
Addenda	Section 4.5	
Architect*	Section 2.2	*Identified in Special Provisions
Architect Field Directive	Section 17.3	
Asbestos Remediation	Section 15.5	
Authorized Contractor Officer		Section 16, Instructions For Bidders
Authorized District Officer	Section 2.1	
Bulletin	Subsection 4.13.3	
Cal-OSHA	Section 11.4	
CCR		Section 2, Instructions For Bidders
Certificate of Insurance	Section 6.12	
Certification Regarding Readiness For Inspection	Section 18.3	
Certification of Payment	Subsection 21.13.3	
Change Order	Section 17.2	
Change Order Cost	Section 17.8	
Change Order Request	Section 17.8	
Claim	Section 24.1	
Clarification	Subsection 4.13.3	
Commencement Date		Section 4, Construction Services Agreement
Compensable Delay	Section 13.18	
Conduct Rules	Section 10.20	
Construction Change Directive	Subsection 17.1.3	
Construction Progress Payment	Section 21.16	
Contract	Section 4.1	



<b><i>Defined Term</i></b>	<b><i>Location of Definition in General Provisions</i></b>	<b><i>Location of Definition in Other Contract Documents</i></b>
Contract Documents	Section 4.1	
Contractor All-Risk Policy	Subsection 6.5.5	
Contractor Guarantee	Section 20.2	
Contract Price		Section 5, Construction Services Agreement
Contract Time		Section 4, Construction Services Agreement
County	Section 7.5	
Deferred Approval	Section 5.10	
District All-Risk Policy	Section 6.3	
District Board	Section 2.1	
District Indemnitee	Section 23.1	
Drawings	Subsection 4.3.1	
Emergency	Section 3.7	
Employer Liability Policy	Section 6.5.3	
EPA	Section 15.6	
FCD	Section 17.1.2	
Guarantee Period	Section 20.4	
Guarantee Work	Section 20.7	
HCP	Section 15.2	
Inspector of Record	Section 2.2	
Insurance Policy / Insurance Policies	Section 6.4	
Interpretation	Subsection 4.13.3	
Job Superintendent	Subsection 3.4.1	
Liability Policy	Section 6.5.1	
Master Construction Schedule	Subsection 13.3.1	
MSDS	Section 15.2	

## Section 00 72 00

<b><i>Defined Term</i></b>	<b><i>Location of Definition in General Provisions</i></b>	<b><i>Location of Definition in Other Contract Documents</i></b>
Non-Compensable Delay	Section 13.17	
Notice of Actual Delay	Section 13.11	
Notice of Anticipated Delay	Section 13.10	
Notice of Award		Section 29, Instructions For Bidders
Notice of Completion	Section 18.9	
Notice of Intent to Terminate for Cause	Section 22.2	
Notice of Termination for Cause	Section 22.2	
Notice of Termination for Convenience	Section 22.6	
Notice to Proceed		Section 4, Construction Services Agreement
NPDES	Section 8.13	
OCIP	Section 6.2	
OSHA	Section 11.4	
Payment Bond	Section 7.2	
PCC Claims Procedures	Section 24.7	
Performance Bond	Section 7.2	
Pre-Construction Activities	Section 13.2	
Preliminary Materials List	Section 5.7	
Prevailing Wage Laws	Section 12.1	
Professional Liability Policy	Section 6.5.4	
Progress Payment Request	Subsection 21.8.1	
Progress Payment Review Meeting	Section 21.7	
Project		Notice Inviting Bids
Project Acceptance Date	Section 18.9	
Project Manager*	Section 2.2	* Identified in Special Provisions
Project Site		Section 6, Instructions For Bidders
Rain Day	Section 13.4	

## Section 00 72 00

<b><i>Defined Term</i></b>	<b><i>Location of Definition in General Provisions</i></b>	<b><i>Location of Definition in Other Contract Documents</i></b>
Record Drawings and Specifications	Subsection 3.9.1	
Record Drawings Change Log	Subsection 3.9.3	
Records of the Work	Section 3.11	
Recovery Schedule	Section 13.8	
Regular Working Hours		Section 14, Special Provisions
Remaining Work	Section 18.5	
Request for Proposal / RFP	Section 17.7	
Retention	Section 21.14	
RFI	Subsection 4.13.1	
Safety Officer	Subsection 11.3.1	
Safety Program	Section 11.2	
Sample	Section 5.9	
Schedule of Values	Section 21.2	
Shop Drawing	Section 5.8	
Sole-Source Item		Section 8, Special Provisions
Specifications	Subsection 4.4.1	
Specified Item	Section 14.4	
State	Section 3.12	
Subcontract	Subsection 3.5.1	
Subcontractor	Subsection 3.5.1	
Substantial Completion Date	Section 19.1	
Surety Bonds	Section 7.3	
SWPPP	Section 8.13	
Trench Safety Plan	Section 11.7	
Vehicle Liability Policy	Section 6.5.2	
Work		Section 2, Construction Services Agreement

<i>Defined Term</i>	<i>Location of Definition in General Provisions</i>	<i>Location of Definition in Other Contract Documents</i>
Work by Others		Section 1, Instructions For Bidders
Workers Compensation Policy	Section 6.5.3	

**PART 2**  
**DISTRICT ADMINISTRATION OF THE CONTRACT**

**2.1 Status of Authorized District Officers.** The staff member(s) and/or officer(s) of the District who are authorized to represent the District in connection with the Contract and the Project are identified in the Special Provisions (each an “Authorized District Officer”). The District may at any time change any Authorized District Officer, and the District will provide notice of any such change to the Contractor. The Contractor must not rely on any notice, order or other communication from the District that is not signed, given or directed by an Authorized District Officer, and even then, the Contractor must be aware of the limitations on authority of any Authorized District Officer as set forth in these General Provisions. The governing board of the District (“District Board”) may have delegated to one or more Authorized District Officers the authority to approve changes in the Work costing up to a specific dollar amount and/or an amount not in excess of the limitations set forth in Public Contract Code Section 20118.4. The Contractor shall be responsible for verifying whether the District Board has delegated any such approval authority, as well as any limitations on such approval authority. **EXCEPT AS EXPRESSLY PROVIDED IN THESE GENERAL PROVISIONS WITH RESPECT TO ARCHITECT FIELD DIRECTIVES, NO DISTRICT OFFICER, STAFF MEMBER, CONSULTANT, CONTRACTOR OR OTHER PERSON (REGARDLESS OF WHETHER SUCH PERSON IS AN AUTHORIZED DISTRICT OFFICER) HAS THE ABILITY OR AUTHORITY TO ORDER ANY CHANGE IN THE WORK OR ANY OF THE DRAWINGS, SPECIFICATIONS OR OTHER CONTRACT DOCUMENTS ABSENT ACTION BY THE DISTRICT BOARD TO APPROVE THE CHANGE, WHETHER DIRECTLY OR BY DELEGATION OF AUTHORITY.**

**2.2 Status of District Contract Representatives.** In connection with the Project, the District has contracted, or will contract, for the services of: (i) an architect, engineer, or other design professional responsible for designing and obtaining approvals for the Project, interpreting the Drawings and Specifications for the Project, and performing general observation of the Work and any Work by Others (“Architect”), and the Architect is identified in the Special Provisions; (ii) a professional management consultant responsible for administering the Contract on behalf of the District and for monitoring and facilitating completion of the Work, any Work by Others, and the Project (“Project Manager”), and the Project Manager is identified in the Special Provisions; and (iii) a certified inspector responsible for general observation of the Work and any Work by Others (“Inspector of Record”). The District may, from time to time, contract with other consultants who will provide services in connection with the Work and/or the Project, including, without limitation, any special inspectors required for specific aspects of the Work, such as masonry, welding and painting inspectors. The Architect, Project Manager, Inspector of Record and any other District consultants shall be representatives of the District for purposes of some or all of the planning, design, bidding, construction and close-out of the Project. The District may terminate its contract with any District consultant and may enter into one or more contracts for services in substitution of and/or in addition to those terminated.

**2.3 General Authority of District Contract Representatives.** The Architect, Project Manager and Inspector of Record shall have authority to act on behalf of the District to the extent provided in the Contract Documents or as otherwise determined by the District. The Contractor shall be responsible for

understanding the scope of authority possessed by each of the Architect, Project Manager and Inspector of Record in connection with the Work and the Project. If, after good-faith and reasonable review of the Contract Documents, the Contractor needs clarification of the scope of authority of any District contract representative, the Contractor may submit a written request for clarification to the Project Manager, who will forward the request to the District for response. The Contractor and each Subcontractor, materialman and other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work shall, within the time specified, comply with all instructions, directions, and other requirements of the Architect, Project Manager, Inspector of Record and other consultant that are within the respective scopes of authority of such District representatives.

**2.4 Avoiding Conflicts of Interests.** For all purposes of the Contract, each of the Architect, Project Manager, Inspector of Record, and any special inspectors and other District contract representatives, and each of their employees, consultants and sub-consultants, is solely and exclusively a representative of the District and is not and may not be a partner, officer, employee, agent or representative of the Contractor or any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things pursuant to the Contract. If the Contractor or any Subcontractor, materialman, or other person or entity that furnishes labor, materials, services, goods or other things in connection with the Work sends any correspondence (e.g., letter, memorandum, facsimile, e-mail, *et cetera*) to any such District contract representative, the sender must provide a complete copy of the correspondence and all enclosures, attachments, exhibits, *et cetera*, to the District. The Contractor must not solicit or offer any act, compensation or other consideration of any type or form, from or to any such District contract representative, or act in any other manner that would result in, or create the appearance of, a conflict of interest for any such District contract representative. The Contractor also must not solicit or offer any act, compensation or other consideration of any type or form, from or to any District officer, employee, or agent, or act in any other manner that would result in, or create the appearance of, a conflict of interest for any such District officer, employee or agent.

**2.5 Services and General Authority of Architect.** The Architect, with the assistance of the Project Manager, will provide services in accordance with the agreement between the District and the Architect, including, without limitation: (i) administering the Contract Documents; (ii) observing the Work at intervals sufficient to become generally familiar with the progress and quality of the Work; (iii) determining if the Work is being performed in accordance with the Contract Documents; (iv) advising the District regarding compliance with the Contract Documents; and (v) interpreting and deciding matters related to performance of the Work and requirements of the Contract Documents. The Architect's decisions as to matters within the Architect's scope of authority, including, without limitation, matters relating to aesthetic effect, shall be final for the purposes of the Contractor proceeding with the Work.

**2.6 Services and General Authority of Project Manager.** The Project Manager, with the assistance of the Architect, will provide services in accordance with the agreement between the District and the Project Manager, including, without limitation: (i) providing administrative, management and related services necessary to coordinate the Work of the Contractor with the work of any other contractors and with the activities and responsibilities of the Architect, the Project Manager and the District, in order to ensure completion of the Project in accordance with the District's objectives for cost, time and quality; (ii) scheduling and conducting pre-construction, construction, and progress meetings to discuss such matters as procedures, progress problems and scheduling; (iii) determining whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and endeavoring to guard against defects and deficiencies in the Work; (iv) advising the District and the Architect with respect to Work that does not or may not conform to requirements of the Contract Documents; (v) making recommendations to the Architect regarding any special inspection or testing of any Work that does not or may not conform to the Contract Documents; (vi) consulting with the Architect and District if the Contractor requests interpretations of the

meaning and intent of the Drawings and Specifications, and assisting in the resolution of questions that may arise; (vii) receiving documentation from the Contractor and its Subcontractors as may be required pursuant to the Contract Documents; (viii) establishing and implementing procedures for expediting the processing, review and approval of shop drawings, product data sheets, samples and other submittals; (ix) preparing, maintaining and monitoring the Project schedule and all critical path items; and (x) to the extent required, providing and removing temporary utilities, fencing, barricades, planking, sanitary facilities and similar temporary facilities for the Project Site.

**2.7 Services and General Authority of Inspector of Record.** The Inspector of Record will be responsible for continuously observing the Work in accordance with the requirements of Title 24 of the CCR. The Contractor shall not perform any portion of the Work absent knowledge by the Inspector of Record that the Work is to occur, and the Contractor shall not perform any of the Work that is to occur on the Project Site if the Inspector of Record is not present on the Project Site. The Contractor may not perform any of the Work on federal or State holidays observed by the Inspector of Record, regardless of whether the Contractor or its Subcontractors observe such federal or State holidays. The Contractor shall, on an ongoing basis, keep the Inspector of Record fully informed regarding the progress and manner of the Work and the type and character of materials and equipment incorporated into the Work. The Contractor shall provide written notice to the Inspector of Record not later than forty-eight hours in advance of each special or other inspection required in connection with the Work.

**2.8 General Authority to Reject Non-Conforming Work.** Each of the Architect, Project Manager and Inspector of Record has the authority to reject Work that does not conform to any requirement of the Contract Documents. If any of the Architect, Project Manager or Inspector of Record identifies Work that potentially does not or will not conform to any requirement of the Contract Documents, or otherwise determines that it is necessary or advisable in order to ensure compliance with requirements of the Contract Documents, they may recommend to the District that it require additional inspection or testing of Work, whether such Work is then fabricated, installed or completed. The costs of any such additional inspection or testing shall be paid as provided in Section 8.21 of these General Provisions. In no event shall the District, Architect, Project Manager or Inspector of Record be liable to the Contractor, or to any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work, on account of any failure by the Architect, Project Manager or Inspector of Record to identify and/or reject any Work that does not or will not conform to requirements of the Contract Documents, and no such failure shall be deemed or construed to relieve the Contractor from its obligation to complete the Work in accordance with the Contract Documents.

**2.9 General Authority to Stop or Suspend Work.** Each of the District, Architect, Construction Manager and Inspector of Record has the authority to stop or suspend some or all of the Work if: (i) they determine in their reasonable judgment that conditions are unsuitable for proceeding with the Work, including, without limitation, if harm or damage to persons or property reasonably may result if the Work were to proceed; (ii) the Contractor fails to correct defective Work as directed; or (iii) the Contractor fails to carry out the Work in a manner that ensures it will be completed in accordance with the Contract Documents. The Project Manager also has the authority to suspend the Work, in whole or in part, for such periods as the Project Manager may deem necessary if: (i) necessary to coordinate the Work with the work of the District or separate contractors; or (ii) the Contractor fails to supply a sufficient amount of skilled labor or suitable materials or equipment for some or all of the Work. The Contractor shall immediately comply with, and shall cause each Subcontractor to immediately comply with, each order by the District, Architect, Project Manager and/or Inspector of Record to stop or suspend the Work. The Project Manager shall issue any and all orders to resume stopped or suspended Work, and the Contractor shall not permit the stopped or suspended portion of the Work to resume until so ordered. In no event shall the District, Architect, Project Manager or Inspector of Record be liable to the Contractor, or to any Subcontractor, materialman, or other

person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work, on account of any failure by the District, Architect, Project Manager or Inspector of Record to identify situations in which the Work arguably should or could have been stopped or suspended, and no such failure shall be deemed or construed to relieve the Contractor from its obligation to complete the Work in accordance with the Contract Documents.

**2.10 Contractor Must Ensure Access to the Work.** The District, Architect, Project Manager and Inspector of Record shall at all times have unrestricted access to any and all portions of the Work, whether completed or in progress, and whether located on or off the Project Site. The Contractor must ensure that: (i) such unrestricted access is available at all times; (ii) safe and proper facilities are available as necessary to permit such access; and (iii) the activities and operations of the Contractor and each Subcontractor are conducted in a manner that permits safe and proper access.

**2.11 Contractor Must Provide Information Upon Request.** Upon request, the Contractor shall promptly furnish to the District, Architect, Project Manager and/or Inspector of Record such information as may be necessary for any of them to fully and adequately perform their duties in connection with the Project. The amount of time that the Contractor takes to provide requested information shall be commensurate with the type and scope of information requested, but in each case shall not exceed a reasonable amount of time or such time as may result in any delay to the critical path of the Work or the Project.

**2.12 Communications from Contractor.** Except as otherwise provided in the Contract Documents, after award of the Contract to the Contractor, if the Contractor, or any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work, desires to communicate (including, without limitation, providing requested information) with the District, the Architect, or any of the Architect's consultants, the Contractor must submit such communication in writing to the Project Manager, who will forward the communication to the District and other appropriate party or parties. Notwithstanding the foregoing, if the Contractor determines that special circumstances warrant direct communications with the District, the Contractor may submit such communication in writing directly to the District.

**2.13 Communications to and through Contractor.** As they determine necessary or convenient, the District, the Architect, any of the Architect's consultants, and the Project Manager may communicate verbally or in writing with the Contractor. With respect to normal day-to-day administration of the Contract, if the District, the Architect or any of the Architect's consultants desire to communicate with any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work, the Project Manager will submit such communication in writing to the Contractor, who shall forward the communication to the appropriate Subcontractor, materialman, or other person or entity. Any communication intended for a Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work shall be deemed given and effective upon delivery to the Contractor. Notwithstanding the foregoing, if the District determines that any direct communication with any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work is necessary or convenient, the District may cause such communication to be submitted in writing directly to such Subcontractor, materialman, or other person or entity, and will send a copy of such communication to the Contractor. Nothing in this Section 2.13 shall be deemed or construed to prohibit the Project Manager, the Inspector of Record or any special inspector from directly communicating with any employee or other representative of any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work, who is or that is present at the Project Site or other location where any portion of the Work is to be performed.

**2.14 Contractor Retains Responsibility for Work.** Except as expressly provided in the Contract Documents, the District, Architect, Project Manager and/or Inspector of Record shall have no control over and shall not be responsible for: (i) the construction means, methods, techniques, and procedures employed by the Contractor in connection with the Work; (ii) the fabrication, procurement, shipment, delivery, receipt or installation of any materials, equipment, work or services incorporated into the Work; (iii) safety precautions and/or safety programs required in connection with the Work; (iv) the failure of the Contractor or any Subcontractor to carry out Work in accordance with the Contract Documents; or (v) acts or omissions of the Contractor or any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work. Neither performance by the Architect, Project Manager and/or Inspector of Record of their respective duties in connection with the Project, nor approval or disapproval by the Architect, Project Manager and/or Inspector of Record of any portion of the Work, shall be deemed or construed to: (i) limit the Contractor's responsibility for overseeing and controlling all aspects of the Work; (ii) relieve the Contractor of the responsibility to ensure full compliance with all requirements of the Contract Documents; or (iii) relieve the Contractor from responsibility for correction of subsequently discovered defects.

**2.15 Contractor Responsibility for Additional Professional Services.** If, due to any request, act, failure or default of the Contractor in connection with the Work or the performance pursuant to the Contract Documents by or on behalf of the Contractor, it is necessary for the District to provide or obtain professional services in addition to what otherwise would be required in connection with the administration of the Contract, the District shall be entitled to reimbursement from the Contractor for any and all costs of such additional services. The District may deduct such costs from any amounts otherwise due to the Contractor in accordance with the Contract Documents or, if such amounts are insufficient, the Contractor shall pay the difference to the District. The District's right of reimbursement pursuant to this Section is independent from and in addition to, and shall not be deemed or construed as a waiver or release of, any other rights or remedies the District may have pursuant to the Contract Documents or applicable law, including, without limitation, the right of the District to assess liquidated damages as permitted by the Contract Documents. By way of example, and not as a limitation, the causes that may lead to the necessity for the District to provide or obtain additional professional services may include: (i) defects or deficiencies in the Work; (ii) failure of the Contractor to comply with any requirement of the Contract Documents; (iii) evaluation, processing and acts taken in furtherance of requests for substitutions of products, materials, equipment; (iv) evaluation, processing and acts taken in furtherance of requests for substitution of Subcontractors; (v) evaluation, processing and acts taken in connection with Claims submitted by the Contractor related to Work not authorized by Change Order, Construction Change Directive or Architect Field Directive; (vi) failure of the Contractor to prosecute and complete the Work in a timely manner consistent with the requirements of the Contract Documents; (vii) testing, adjusting, balancing and start-up of equipment in excess of the amounts customarily associated with such equipment; (viii) review of any submittal more than twice (i.e., an initial and follow-up review) as described in Part 5 herein.

### **PART 3**

#### **CONTRACTOR ADMINISTRATION OF THE CONTRACT**

**3.1 Status of Contractor.** For all purposes of the Contract, the Contractor shall be deemed and construed to be an independent contractor, not an officer, employee, partner, consultant, agent or other representative of the District. In addition, each Subcontractor, materialman, and other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work shall be deemed and construed to be solely and exclusively a representative of the Contractor, not an officer, employee, partner, consultant, agent or other representative of the District. Therefore, the District shall in no event be responsible or liable for any acts, omissions, liabilities or other obligations of the Contractor or any



Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work. Except as expressly authorized in writing by the District or expressly permitted by the Contract Documents, neither the Contractor nor any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work shall act as an agent or other representative of the District, or cause, suffer or permit anyone at any time to have or continue in any such apparent belief.

**3.2 Contractor Solely Responsible for Work.** Except as expressly provided in the Contract Documents, the Contractor shall be solely responsible and liable for: (i) the construction means, methods, techniques, and procedures employed by the Contractor in connection with the Work; (ii) as applicable, the fabrication, procurement, quality, quantity, shipment, delivery, receipt and installation of any materials, equipment, work or services incorporated into the Work; (iii) safety precautions and/or safety programs required in connection with the Work; (iv) the failure of the Contractor or any Subcontractor to carry out Work in accordance with the Contract Documents; and (v) acts or omissions of the Contractor or any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work. Without limiting the foregoing, the Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the performance of the Work, and all Work shall be solely at the Contractor's risk with the exception of damage to the Work in excess of five percent of the Contract Price caused by any tidal wave or earthquake in excess of 3.5 on the Richter Scale (which exception shall apply only if the damaged portion of the Work had been constructed or otherwise performed in accordance with the Contract Documents). The Contractor shall not be deemed or construed to be relieved, to any extent, from any responsibility for performance of any obligation pursuant to the Contract Documents because such obligation is being or will be performed by any Subcontractor.

**3.3 General Responsibilities of Contractor.** Without limiting or conditioning any responsibilities the Contractor has pursuant to the Contract Documents, and except as expressly provided in the Contract Documents, the Contractor shall:

- (i) Employ or otherwise maintain on-site and off-site staff sufficient to appropriately administer the Contract;
- (ii) Procure all materials, equipment, services and other things as necessary to complete the Work within the time, and in accordance with all other requirements of, the Contract Documents;
- (iii) Continuously provide such force of skilled and fit workers as necessary to complete the Work within the time, and in accordance with all other requirements of, the Contract Documents;
- (iv) Continuously supervise and direct the Work using the Contractor's best skill and attention;
- (v) Perform no Work absent knowledge by the Inspector of Record that the Work is to occur;
- (vi) Perform the Work in conformance with all requirements of the Contract Documents and any shop drawings, product data sheets, samples, *et cetera*, that are approved in accordance with the Contract Documents;
- (vii) Perform the Work in accordance with all applicable laws, regulations, rules, ordinances, and other governmental and quasi-governmental requirements, including, without limitation, applicable building codes;

- (viii) Control and be solely responsible for scheduling and sequencing the various portions and elements of the Work;
- (ix) Control and be solely responsible for the means, methods, techniques and procedures for completing the Work;
- (x) Coordinate and sequence the Work with any and all Work by Others in order to avoid any delays in either the Work or such Work by Others, as well as any delays in completing the Project;
- (xi) Control and be responsible for all quality control in connection with the Work; and
- (xii) Immediately correct Work that does not conform to the Drawings, Specifications or other Contract Documents.

**3.4 Requirements for Job Superintendent.**

**3.4.1 No Work if Job Superintendent Not Present.** At all times during which any portion of the Work is being performed, the Contractor shall have a superintendent for purposes of the Work ("Job Superintendent") present on the Project Site. No portion of the Work that is to occur on the Project Site may commence or continue to be performed if the Job Superintendent is not present at the Project Site, including, without limitation, at any time the Contractor is seeking approval of a replacement Job Superintendent.

**3.4.2 Selection and Replacement of Job Superintendent.** Prior to commencing any portion of the Work, the Contractor shall provide to the District, in writing, the name and qualifications of the person who will serve as the Job Superintendent. The District, in its reasonable discretion, may approve or disapprove of any Job Superintendent or may require that the Contractor replace any Job Superintendent. The Contractor also may request that the District permit the Contractor to replace any Job Superintendent. The Contractor shall not replace a Job Superintendent unless: (i) the District requires replacement of a Job Superintendent; (ii) the District consents to a request by the Contractor to replace a Job Superintendent; or (iii) a Job Superintendent leaves or is terminated from his or her employment with the Contractor. If it becomes necessary to replace a Job Superintendent, the Contractor shall provide in writing to the District the name and qualifications of a proposed replacement, who shall be subject to District approval as provided herein.

**3.4.3 Job Superintendent Must be Exclusive to the Work.** The Contractor must employ the Job Superintendent as a full-time employee. During the course of the Work, the Contractor shall dedicate the Job Superintendent on a full-time and exclusive basis to the Work, and the Job Superintendent shall not provide services in connection with any other work or project.

**3.4.4 Responsibilities and Authority of Job Superintendent.** The Job Superintendent shall be the Contractor's representative for all purposes of the Work, and shall oversee, direct, and be responsible for the Contractor's operations on the Project Site and the performance of the Work. The Job Superintendent shall receive and accept all directives and other communications given to the Contractor by the District, Architect, Project Manager or Inspector of Record, which communications shall be binding on the Contractor as if given directly to the Contractor. During the course of the Work, only the Job Superintendent shall be permitted to submit any RFI, regardless of whether the request originated with the Contractor or any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work. Each and every act and decision of the Job Superintendent shall be deemed and construed to be an act and decision of the Contractor and shall bind the Contractor. Prior to commencing any portion of the Work, the Contractor must take whatever action(s) as may be necessary to authorize the Job Superintendent to the extent provided in this Subsection 3.4.4.

**3.5 Requirements for Subcontractors.**

**3.5.1 Written Subcontracts Required.** For purposes of the Contract, each person and entity that will perform, pursuant to direct or indirect agreement with the Contractor (i.e., of any tier), any portion of the Work or supply, manufacture or fabricate any materials, equipment, and/or other things to be specially designed, made and/or worked in connection with the Work is referred to in these General Provisions as a "Subcontractor." The Contractor shall enter into appropriate, written contracts with each Subcontractor that will furnish any such labor, materials, services or other things through direct agreement with the Contractor (each a "Subcontract"). Each Subcontract shall: (i) bind the Subcontractor to the requirements of the Contract Documents to the extent of the Work to be performed by such Subcontractor; (ii) provide that nothing in the Subcontract shall be deemed or construed to constitute a limitation or waiver of any right of the District pursuant to the Contract Documents; (iii) provide that the District is an intended third-party beneficiary of the Subcontract; and (iv) provide that, upon termination of the Contractor's right to perform the Work, the District may, in its sole discretion, assume the Subcontract in order to continue the Work to be performed by such Subcontractor. Prior to entering into a Subcontract, the Contractor shall provide to the Subcontractor a copy of at least the portion of the Contract Documents to which the Subcontractor will be bound. Within five days of entering into any Subcontract, the Contractor must provide to the District a copy of the Subcontract, including, without limitation, any exhibits and/or attachments thereto.

**3.5.2 Subcontractors Have No Contractual Privity with District.** Unless the District assumes a particular Subcontract after terminating the Contractor's right to perform the Work, nothing in the Contract Documents or any Subcontract shall be deemed or construed to create any contractual relationship between the District and any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work. The District shall have no obligation to ensure the payment of money to any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work, except as may be required by law and except for Subcontracts assumed by the District as described above in this Section 3.5. The Contractor is and shall remain fully responsible and liable to the District for all acts and omissions of any and all Subcontractors, materialmen, and other persons or entities that furnish any labor, materials, services, goods or other things in connection with the Work, and their respective contractors, employees, agents and other representatives.

**3.5.3 Subcontractors Must be Appropriately Licensed.** Each Subcontractor that will perform any portion of the Work, to the extent required by law, must be duly and appropriately licensed by the Contractors State License Board prior to commencing such portion of the Work.

**3.5.4 District Approval of Subcontractors.** The District's consent to or approval of any Subcontractor (regardless of whether resulting from a request by Contractor for consent to substitution of a Subcontractor) shall in no event be deemed or construed to constitute a waiver or release of the Contractor's obligations pursuant to the Contract Documents. The Contractor shall not permit any portion of the Work to be performed by any person or entity in substitution of a Subcontractor originally listed by the Contractor unless the Contractor first obtains the District's consent to substitution in accordance with Public Contract Code Section 4100 *et seq.* In no event shall the District's consent to the substitution of a Subcontractor be deemed or construed to constitute a basis for any increase in the Contract Price or extension of the Contract Time.

**3.6 Prohibition Against Unlawful Discrimination.** In connection with the Contract and the performance of the Work, including, without limitation, in regard to their employment practices, the Contractor and each Subcontractor of every tier must comply with, and must not discriminate or provide

preferential treatment in violation of, any and all applicable federal, State and other anti-discrimination laws, rules, regulations and requirements, as amended from time to time, including, but not limited to:

- (i) The Fair Employment and Housing Act (Cal. Gov. Code Section 12900 *et seq.*);
- (ii) The Unruh Civil Rights Act (Civil Code Section 51 *et seq.*);
- (iii) California Government Code Section 11135 *et seq.*;
- (iv) California Labor Code Section 1101 *et seq.*;
- (v) California Labor Code Section 1735;
- (vi) The Federal Civil Rights Act of 1964 (42 U.S.C. Section 2000e *et seq.*);
- (vii) The Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*);
- (viii) The Age Discrimination in Employment Act (29 U.S.C. Section 621 *et seq.*);
- (ix) The Rehabilitation Act of 1973 (29 U.S.C. Section 701 *et seq.*); and
- (x) Presidential Executive Order 11246.

**3.7 Contractor Must Provide for Own Communications.** The Contractor and each Subcontractor, materialman, and other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work shall provide their own means of communication, including, without limitation, any telephones, facsimile machines, radio communications devices, satellite connections, internet connections, *et cetera*. Except in the event of an Emergency, in no event may the Contractor, or any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work, use any communication systems or facilities of the District, Architect, Project Manager and/or Inspector of Record. For purposes of these General Provisions, an "Emergency" is defined as a sudden, unexpected occurrence that creates a clear and imminent danger and that requires immediate action to prevent or mitigate any injury to any person (including death) or any damage to, or loss of, property or essential public services.

**3.8 Contractor Must Maintain Reference Materials at Project Site.** The Contractor shall maintain in good order at the Project Site: (i) one copy each of the current versions of Title 19 (Public Safety), Title 21 (Public Works), and Title 24 (Building Standards Code) of the CCR; (ii) the Record Drawings and Specifications, the Record Drawings Change Log, and copies of all Addenda, Bulletins, Interpretations, Clarifications, Change Orders, Architect Field Directives, Construction Change Directives, and other documents that modify, illustrate or explain the Contract; and (iii) one copy each of all approved shop drawings, product data sheets, samples, and similar submittals of the Contractor. The Contractor must continuously update or otherwise maintain current versions of such reference materials. Upon request, the Contractor must make any or all such reference materials available to the District, Architect, Project Manager and/or Inspector of Record.

**3.9 Contractor Must Prepare Record Drawings and Specifications.**

**3.9.1 Changes to be Illustrated.** During the course of performing the Work, and subject to any instructions or directions from the Architect, the Contractor must carefully and accurately illustrate, locate, dimension, note or otherwise describe on one full-size set of the Drawings and Specifications ("Record

Drawings and Specifications”) any and all deviations, corrections, deletions, additions, enhancements, expansions and/or clarifications of, from, or to the Work initially prescribed or shown, including, without limitation, any and all: (i) Work performed or completed differently than as initially shown or required; (ii) changes ordered pursuant to Architect Field Directives and/or Change Orders; (iii) Work performed in accordance with any Deferred Approvals; (iv) revisions to the Drawings and Specifications authorized during the course of the Work; (v) authorized substitutions of Specified Items; (vi) materials and/or products selected or approved for incorporation into the Work, including, without limitation, if the Specifications permit the Contractor to select among two or more brands or types of materials or equipment; (vii) final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant elements of the Work; and (viii) all existing improvements, including, without limitation, any existing substructures, encountered during the performance of the Work that were not demolished or otherwise removed or relocated. No portion of the Work shall be permanently sealed or covered until all required information relating to such portion of the Work has been recorded for purposes of preparing the Record Drawings and Specifications.

**3.9.2 Method of Illustrating.** All changes illustrated on the Record Drawings and Specifications must be prepared by an experienced and qualified design professional or draftsman. All changes must be illustrated in red ink (or other method approved by the Architect) and must employ dimensioning techniques and other drafting standards that are consistent with those used in the Contract Documents. If the Drawings and Specifications are not of sufficient size, scale or detail to appropriately illustrate the as-built Work, the Contractor must furnish its own drawings showing appropriate details and dimensions, which shall be included as part of the Record Drawings and Specifications. If shop drawings are used to illustrate portions of the as-built Work, the applicable portions of the Record Drawings and Specifications must be marked to reference such shop drawings. Changes, supplemental information and notes must be recorded in blank areas of the Record Drawings and Specifications, such as page margins or the backs of opposite pages, or on separate sheets of paper inserted into the Record Drawings and Specifications. As-built changes to text must include lining out any superseded text so that it is still legible and can be compared to the inserted text. The cover sheet for each submittal of updated or revised Record Drawings and Specifications and/or Record Drawings Change Log must identify the person who illustrated the changes or revisions, and the date such changes or revisions were made; and such information shall also be included on each applicable sheet of the Record Drawings and Specifications and Record Drawings Change Log. The Architect or Project Manager may provide a standard certification block for use by the Contractor in submitting updates to the Record Drawings and Specifications and/or Record Drawings Change Log.

**3.9.3 Timing and Approval of Updates.** The Contractor must: (i) promptly, but in no event less than once per week, update the Record Drawings and Specifications to reflect any and all deviations, corrections, deletions, additions, enhancements, expansions, clarifications and other changes made since the previous update; and (ii) maintain an updated written log noting, in chronological order, each change made to the Record Drawings and Specifications, the person who made such change, and the date such change was made (“Record Drawings Change Log”). The Contractor must submit for approval, in triplicate, at the applicable Progress Payment Review Meeting, all changes to Record Drawings and Specifications and all entries to the Record Drawings Change Log made since the Contractor submitted the immediately preceding Progress Payment Request. Each update of the Record Drawings and Specifications and the Record Drawings Change Log is subject to approval by the Architect, the Project Manager and the Inspector of Record. If any revisions to any updated Record Drawings and Specifications or Record Drawings Change Log are required, the Contractor must promptly make such revisions and identify on the cover sheet for the revisions the person who made the revisions and the date such revisions were completed. The approval of the updated Record Drawings and Specifications and Record Drawings Change Log, and certification by the Contractor that the updated Record Drawings and Specifications fully and accurately reflect the Work as actually completed and in progress as of the end of the period covered by the associated

Progress Payment Request, shall be condition precedents to payment to the Contractor pursuant to such Progress Payment Request.

**3.9.4 Responsibility for Accuracy.** The purpose of the Record Drawings and Specifications is to constitute an exact “as-built” record of the Work and, at all times after completion of the Work, the Contractor shall be responsible and liable for any and all inaccuracies in the Record Drawings and Specifications attributable to any failure by the Contractor to comply with the requirements of this Section 3.9. In connection with its oversight responsibilities for the Project, the Project Manager may require reasonable different or modified procedures for compliance with this Section 3.9.

**3.10 Contractor Must Implement Document Control System.** The Contractor must establish and implement an electronic document-control system for all documents prepared, received or obtained in connection with the Work, including, without limitation, all internal and external correspondence, project manuals and other documents, Drawings, Specifications, Change Orders, Construction Change Directives, Architect Field Directives, shop drawings, product data sheets, submittals, approvals, RFIs, Bulletins, Interpretations, Clarifications, responses to RFIs, invoices, payment receipts, conditional waivers, unconditional waivers, punch-lists, *et cetera*.

**3.11 Contractor Must Maintain Records of the Work.** The Contractor shall prepare, update and maintain on file, in its principal office, records of the Work containing all significant documentation related to the Work (“Records of the Work”), including, without limitation, copies of each Contract Document, Change Order, Architect Field Directive, Construction Change Directive, Shop Drawing, product data sheet, Sample, submittal, approval, RFI, Bulletin, Interpretation, Clarification, invoice, payment receipt, conditional waiver, unconditional waiver, punch-list, *et cetera*. The Contractor shall organize and maintain the Records of the Work in a logical manner, based on subject matter and/or portion of the Work and chronologically. The Contractor shall require in each Subcontract that the Subcontractor prepare, update and maintain on file in its principal offices, such Records of the Work as are consistent with the requirements of this Section 3.11.

**3.12 State Review and Audit of Records of the Work.** In accordance with Government Code Section 8546.7, the State of California (“State”) has the right to examine, review, audit and/or copy the Records of the Work during the three-year period following final payment to the Contractor pursuant to the Contract. In addition, the District, DSA, SAB and OPSC each hereby has the right to examine, review, audit and/or copy the Records of the Work during the four-year period following final payment to the Contractor pursuant to the Contract. Therefore, the Contractor shall preserve and retain all such Records of the Work for a period of four years commencing upon final payment to the Contractor pursuant to the Contract or, if an examination, review or audit is commenced but not completed within such four-year period, until such examination, review or audit has been completed. The Contractor, upon request, shall make the Records of the Work available for the purposes described in this Section 3.12 at all reasonable times during the period the Contractor is required to preserve and maintain the Records of the Work. In each Subcontract, the Contractor shall require that the Subcontractor preserve and retain its Records of the Work, and make those Records of the Work available for examination, review, audit and/or copying, to the same extent as is required of the Contractor pursuant to this Section 3.12.

**3.13 Contractor Responsible for Subcontractor Compliance.** Each Subcontractor and other person or entity on, at or in the vicinity of the Project Site on account of the Work must comply with all applicable provisions of these General Provisions (including, without limitation, standards of behavior), notwithstanding that: (i) various obligations set forth in these General Provisions are characterized as the Contractor’s obligations; or (ii) the Contractor is expressly responsible in accordance with various provisions of these General Provisions for including certain obligations in its agreements with Subcontractors and others. The Contractor must ensure that each Subcontractor is aware of and understands: (i) the respective

authority of the District, Architect, Project Manager and Inspector of Record pursuant to the Contract Documents; and (ii) all general requirements set forth in these General Provisions and other Contract Documents that are applicable to the Subcontractor. In no event shall the failure of any such Subcontractor to have any such awareness and/or understanding be deemed or construed to constitute a basis or excusable cause for any extension of the Contract Time or increase in the Contract Price. The Contractor shall be responsible and liable for any and all costs and/or delays arising from any failure by the Contractor to comply with the foregoing obligations.

**PART 4**  
**THE CONTRACT AND CONTRACT DOCUMENTS**

**4.1 Scope and Coverage of Contract.** The “Contract” and “Contract Documents” are hereby defined as all documents that establish the entire understanding and agreement between the District and the Contractor, regardless of when prepared or entered into, including, without limitation, the documents described in Section 3 of the Construction Services Agreement. The Contract represents the entire and integrated agreement between the District and the Contractor and supersedes any and all prior negotiations, representations, or agreements, whether written or oral. The Contract may be amended only in writing authorized by the District or as otherwise provided in the Contract Documents. The Contract Documents at any particular time shall be construed to include any then duly-authorized Change Orders, Architect Field Directives and other amendments to the Contract Documents. The Contract Documents shall not be deemed or construed to create a contractual relationship with or between any parties other than the District and the Contractor.

**4.2 Construing the Contract Documents.** The Contract Documents are intended to be complementary and, as described herein, inclusive of the Work to be completed by the Contractor. The Contract Documents are to be construed collectively as a whole; therefore, any item of Work required by any one or more of the Contract Documents, but not required by others, shall be provided by Contractor as if specifically required by each of the Contract Documents. However, if there is an inconsistency in the requirements of the Contract Documents, then: (i) the Construction Services Agreement shall be deemed and construed to govern over the Special Provisions; (ii) the Special Provisions shall be deemed and construed to govern over these General Provisions; (iii) these General Provisions shall be deemed and construed to govern over the Drawings and Specifications; (iv) the Specifications shall be deemed and construed to govern over the Drawings as to materials, workmanship, and installation procedures; and (v) a requirement in the Specifications that is more stringent, requires a higher quality and/or requires a greater quantity shall be deemed and construed to govern over other requirements in the Specifications.

**4.3 Interpretation of Drawings.**

**4.3.1 Purpose and Scope.** The Architect has prepared and/or approved graphic and pictorial illustrations in connection with the Project that show the design, location, and scope of certain portions of the Work and the Project, generally including plans, elevations, sections, details, schedules, and diagrams (“Drawings”). As applicable to the Work, the Drawings are intended to generally illustrate in a graphical manner certain portions of the Work to be performed by Contractor. The Drawings do not illustrate all of the Work that is to be performed by the Contractor. Although the Drawings are intended to illustrate portions of the Work that cannot readily or adequately be described in the Specifications, the Drawings may illustrate requirements that could have been described in the Specifications.

**4.3.2 Scaled and Numerical Dimensions.** Drawings illustrating a portion of the Work that are larger in scale than other Drawings illustrating that portion of the work shall govern over the smaller scale Drawings. However, in no event shall the Contractor perform, or permit to be performed, any of the Work

based on scaled Drawings, and the Contractor shall perform the Work based only on any specified numerical dimensions. If a numerical dimension is not specified in the Contract Documents, the Contractor shall request such numerical dimension in writing to the Architect. Within a reasonable time after request, and to the extent necessary and appropriate, the Architect will issue an Architect Field Directive or other written directive to the Contractor setting forth the requested numerical dimension.

**4.3.3 Notes and Schedules.** Subject to any described limitations, any general notes set forth in the Drawings shall: (i) apply to all other portions of the Drawings; and (ii) any schedules set forth in the Drawings shall be interpreted as complementary with notes and other portions of the Drawings.

**4.3.4 Typical Details.** Subject to any described limitations, any details of any items or parts of the Work set forth in the Drawings shall be interpreted as typical for the Work and, if other items or parts of the Work of essentially the same construction are shown in outline only, the typical detail shall apply to such outlined Work.

**4.3.5 Approximations.** Any information illustrated or otherwise set forth in the Drawings relating to soils, groundwater or other surface or subsurface conditions, or to surface or subsurface elevations, shall be interpreted as approximate only, and the Contractor shall be responsible for inspecting and verifying the actual conditions of the Project Site.

**4.4 Interpretation of Specifications.**

**4.4.1 Purpose and Scope.** The Architect has prepared and/or approved written requirements for materials, equipment, construction systems, quality, workmanship, services and other things to be furnished in connection with the Work and the Project ("Specifications"). The Specifications are intended to generally describe the Work to be performed by Contractor. The Specifications do not describe all of the Work that is to be performed by the Contractor. Although the Specifications are intended to describe requirements that cannot readily or adequately be illustrated on the Drawings, including, without limitation, the types, qualities, and methods of installation of the various materials and equipment required for the Work, the Specifications may describe requirements that could have been illustrated on the Drawings.

**4.4.2 Discretionary Determinations.** Except as expressly provided otherwise, if the Specifications indicate that a discretionary determination is required (e.g., "to be selected," "as directed," "as required," *et cetera*), the Contractor shall seek a determination from the Architect.

**4.4.3 Industry or Governmental Standards and Specifications.** Except as expressly provided otherwise, any reference to a standard or specification established or published by any society, institute, association, or governmental authority shall be deemed and construed to be a reference to such organization's standard or specification in effect as of the date the District awards the Contract to the Contractor. If any such standard or specification is subsequently modified, the Contractor may seek the Architect's approval to perform the Work in accordance with the modified standard or specification. Each standard and specification referenced in the Specifications is hereby incorporated as a part of the Specifications, and, subject to any specified limitations, the Contract Documents shall be interpreted as if the standard or specification was set forth, in full, in the Specifications.

**4.4.4 Fragmented or Truncated Wording.** As a means of limiting the length of the Specifications while still conveying sufficient information, provisions of the Specifications may be written in a fragmented or truncated format, including, without limitation, use of incomplete phrases or sentences. In each such case, to the extent necessary, the full meaning of the fragmented or truncated wording shall be inferred from context. The omission of any word, phrase, pronoun, *et cetera* in any provision of a



Specification shall not be deemed or construed to limit or affect the interpretation of other provisions in the same or any other Specification in which the word, phrase, pronoun, *et cetera* is not omitted.

**4.4.5 Titles and Captions.** The titles and captions set forth in the Specifications are included for convenience of the reader only and shall not be deemed or construed to establish, define or limit the content or meaning of the Specifications, including, without limitation, which trades must comply with any particular Specification.

**4.4.6 Singular and Plural Senses.** Unless context requires otherwise, words, terms or phrases used in the Specifications in the singular sense shall be deemed and construed to include the plural sense, and visa versa (e.g., use of the phrase “any Specification” shall be interpreted also as “any Specifications”).

**4.4.7 Gender.** If any word, term or phrase in the Specifications is stated in either the masculine or feminine sense, the word, term or phrase, unless otherwise required by context, shall be interpreted as including both or either of such genders (e.g., use of the phrase “his work” shall be interpreted to include also “her work”).

**4.5 Addenda.** Prior to award of the Contract to the Contractor, the Architect may have issued one or more written addenda to direct changes in, provide additional detail for, or otherwise explain the Work as described in or required by the Drawings, Specifications or other Contract Documents (“Addenda”). All Addenda shall be deemed and construed to be part of the Contract Documents. To the extent applicable to the same portion or element of the Work, Addenda shall govern over all other Contract Documents and, unless specified otherwise, subsequent Addenda shall govern over prior Addenda.

**4.6 Deferred Approvals.** If the Contract Documents include any Drawings or other requirements for any materials, equipment, processes or other items of any nature that are specified as requiring or being subject to Deferred Approval, the Drawings and other requirements are intended for purposes of illustration and information only, and, unless stated otherwise in the Contract Documents, the Contractor shall be responsible for the design and approval of each item requiring Deferred Approval as provided in Section 5.10 of these General Provisions.

**4.7 Work to be Inferred from Contract Documents.** The Drawings, Specifications and other Contract Documents may not specifically illustrate or describe every item of Work required to complete the Contractor’s scope of work and to deliver to the District a complete Project. The Contract Documents are intended to sufficiently describe the Work required so that the Contractor may determine the materials, labor, services and other things of any nature required for the proper execution and completion of the Work, including, without limitation, any requirements for materials, labor, services or other things that should be inferred from the Contract Documents. Therefore, in addition to completing all Work as expressly illustrated or described in the Contract Documents, the Contractor shall be responsible for providing all materials, labor, services, and other things of any nature necessary to complete the Work as may be inferred from the Contract Documents so that, in conjunction with any Work by Others, the District receives a fully complete and operational Project as intended.

**4.8 Geotechnical and Soils Reports.**

**4.8.1 Not Part of Contract Documents.** The District or Architect may determine that obtaining geotechnical services and/or a soils report is required or advisable in connection with the Project. In such event, the District, at its expense, may provide copies of the geotechnical and/or soils reports to the Contractor. However, if the District provides any such report to the Contractor, the report in no event shall be deemed or construed to be part of the Contract Documents, and such report shall be deemed and

construed as being provided solely for the convenience of, and as supplementary information to, the Contractor. The information included in any such report shall be deemed and construed as approximate only, and the Contractor shall be responsible for inspecting and verifying the actual conditions of the Project Site.

**4.8.2 Specifications Govern.** Geotechnical and/or soils reports provided by the District in connection with the Project may include information and recommendations related to soils, groundwater and/or other surface and subsurface conditions of the Project Site. However, because such geotechnical and/or soils reports are for information purposes, not part of the Contract Documents, the Contractor shall perform all earthwork and soils-related portions of the Work in conformance with the Drawings, Specifications and other Contract Documents, not as recommended in such reports.

**4.8.3 No Warranty of Information.** The District shall not be deemed or construed to have made any representation or warranty as to the information or recommendations set forth in any geotechnical and/or soils reports provided by the District in connection with the Project, or as to the soils, groundwater, or other surface and subsurface conditions of the Project Site. The Contractor shall be responsible for inspecting and verifying the actual conditions of the Project Site and, in connection with the Work, shall be deemed and construed to have conducted an independent investigation of the surface and subsurface conditions of the Project Site.

**4.9 Contractor to Know and Understand Applicable Law.** The Contractor is hereby required to, and shall be deemed for all purposes of the Contract to, be aware of, know and understand all laws, ordinances, codes, rules, regulations and other governmental requirements applicable to public works projects generally and applicable to the Work specifically. Therefore, each and every provision of law required by law, ordinance, rule, regulation or other applicable governmental requirement to be set forth in the Contract Documents that, for any reason, is omitted from, or is incorrectly set forth in, the Contract Documents, shall be deemed to be properly set forth in the Contract Documents, and the Contract shall be construed and enforced as though such omitted or incorrect provision were properly and correctly set forth in the Contract Documents.

**4.10 Pre-Construction Review of Contract Documents.** Prior to when required to initially proceed with the Work, the Contractor shall complete a careful and detailed review of all Contract Documents in order to: (i) determine and confirm all materials, labor, services and other things of any nature required to fully complete the Work in accordance with the Contract Documents; (ii) determine whether the Contractor perceives any errors, inconsistencies, conflicts, ambiguities, omissions, or lack of sufficient detail or explanation in the Drawings, Specifications or other Contract Documents; (iii) determine whether the requirements of the Drawings, Specifications and other Contract Documents conform with all laws, ordinances, codes, rules, regulations and other governmental requirements applicable to the Work, including, without limitation, Title 21 and Title 24 of the CCR, applicable building codes, and utility-company requirements. Neither the requirements of this Section 4.10, nor any delay by the Contractor in complying with such requirements, shall be deemed to relieve the Contractor from complying with requirements for commencing and/or completing the Work, and Contractor shall schedule and complete its Pre-Construction Activities to accommodate the review required pursuant to this Section 4.10.

**4.11 Notice After Pre-Construction Review.** If, as a result of its review pursuant to Section 4.10 of these General Provisions, the Contractor perceives: (i) any error, inconsistency, conflict, ambiguity, omission, or lack of sufficient detail or explanation in the Drawings, Specifications or other Contract Documents; or (ii) that any of the Drawings, Specifications or other Contract Documents do not conform in all respects with all laws, ordinances, codes, rules, regulations and other governmental requirements applicable to the Work; then, prior to commencing any portion of the Work, the Contractor shall provide written notice

thereof to the District, Architect, and Project Manager. Within a reasonable time after notice, and to the extent necessary and appropriate, the Architect will issue an Architect Field Directive or other written directive to the Contractor setting forth a correction or clarification of the matters specified in the notice.

**4.12 Ongoing Review of Contract Documents.** The Contractor shall maintain on an ongoing basis such knowledge and understanding of the Contract Documents as necessary for full and timely compliance therewith. At any time during the course of the Work, if the Contractor perceives any error, inconsistency, conflict, ambiguity, omission, or lack of sufficient detail or explanation in the Drawings, Specifications or other Contract Documents, or any non-conformance of the Drawings, Specifications or other Contract Documents with all laws, ordinances, codes, rules, regulations and other governmental requirements applicable to the Work, then the Contractor shall provide written notice to the District, Architect, and Project Manager. The Contractor shall provide such notice promptly after discovering any problem with the Contract Documents, so that the matter may be addressed without any resulting delay in the Work or Work by Others. Within a reasonable time after receipt of such notice, and to the extent necessary and appropriate, the Architect will issue an Architect Field Directive or other written directive to the Contractor setting forth a correction or clarification of the matters specified in the notice.

**4.13 Requests for Information Regarding the Work or the Contract Documents.**

**4.13.1 Submittal to Architect.** The Contractor may submit a written request for information regarding the Work or the Contract Documents (each an "RFI") at any time the Contractor reasonably: (i) does not understand any requirement of the Contract Documents relating to the performance of the Work; (ii) is not sure or believes that the Contract Documents do not sufficiently detail or describe a portion of the Work; or (iii) otherwise believes that information or an interpretation of the Contract Documents is necessary to permit the Contractor to proceed with the Work. The Contractor must submit each RFI to the Inspector of Record, who shall promptly forward the RFI to the Architect along with any comments the Inspector of Record may have in regard to the RFI, with a copy thereof to the District. The Contractor must submit an RFI sufficiently in advance as will avoid and/or prevent any delays in the Work or any Work by Others. Therefore, the Contractor must review and understand the requirements for each of the various portions of the Work sufficiently in advance of undertaking such portions of the Work so that, if necessary, the Contractor can timely submit an RFI. Each RFI must: (i) be in writing on the "Request for Information" form included in the Required Project Forms; (ii) sufficiently identify the specific portion of the Contract Documents that is the subject of the RFI, including, without limitation, Drawing and detail number, Specification section, page number, *et cetera*; (iii) describe in reasonable detail what the Contractor does not understand, what the Contractor believes is not sufficiently detailed or provided for, or other matter that is the subject of the RFI; and (iv) describe the Contractor's interpretation or suggested resolution of the matter that is the subject of the RFI.

**4.13.2 Each RFI Must be Submitted Timely and in Good Faith.** The Contractor must submit each RFI in good faith, and must not abuse the RFI process, including, without limitation, by requesting that the Architect provide information that is equally available to the Architect and the Contractor. The Contractor shall be responsible and liable for any and all costs and/or delays, including, without limitation, costs of additional professional services incurred by the District, arising from any failure by the Contractor to comply with the requirements of Subsection 4.13.1 of these General Provisions.

**4.13.3 Architect Review and Response to RFI.** The Architect may return an RFI to the Contractor for clarification or additional information if the RFI does not set forth information reasonably sufficient for the Architect to fully understand the Contractor's question or issue. The Architect will respond in writing to each sufficiently-detailed RFI, considering any comments received from the Inspector of Record, within ten days or such other reasonable time as will be dependent on the number of then-pending RFIs, the complexity of the issues raised by any RFIs, the relative importance or priority of the RFIs, *et cetera*.

Although the name or title of the responses to RFIs may vary, the Architect's response may be in the form of a bulletin describing information relative to the Work (each a "Bulletin"), an interpretation of the meaning of a specific requirement applicable to the Work (each an "Interpretation"), or a clarification of a specific requirement applicable to the Work (each a "Clarification"). (Note also that the Architect may issue Bulletins, Interpretations and Clarifications in circumstances other than in response to RFIs.) The Architect will provide copies of the response to an RFI to the District, the Project Manager and the Inspector of Record. If the response by the Architect indicates that a change in the Work is required, such change shall be implemented by means of Change Order if the Architect determines that an adjustment to the Contract Time and/or Contract Price is required, or by means of an Architect Field Directive if no such adjustment is required. **IF THE CONTRACTOR REASONABLY BELIEVES THAT THE IMPLEMENTATION OF ANY BULLETIN, INTERPRETATION, OR CLARIFICATION WILL REQUIRE AN ADJUSTMENT OR FURTHER ADJUSTMENT TO THE CONTRACT TIME AND/OR CONTRACT PRICE THAT IS NOT REFLECTED IN A CORRESPONDING CHANGE ORDER, THE CONTRACTOR MAY PROVIDE NOTICE AS PROVIDED IN SECTION 17.5 OF THESE GENERAL PROVISIONS.**

**4.14 Costs of Erroneous or Non-Conforming Work.** If, at any time during the course of the Work, the Contractor or any Subcontractor performs, or permits the performance of, any portion of the Work that is affected by or relates to any provision of the Contract Documents that the Contractor knows or reasonably should have known: (i) is erroneous, inconsistent, conflicting, ambiguous, omitted, or not sufficiently detailed or explained (including, without limitation, and notwithstanding any approval by the Architect, any materials, equipment, processes or other items for which the designs or Specifications were submitted by or on behalf of the Contractor); or (ii) does not conform with any applicable law, ordinance, code, rule, regulation or other governmental requirement; then the Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction, without increase or adjustment to the Contract Price or the time for performance, if: (i) the work was performed without the Contractor having first notified and sought written directive(s) from the District, Architect, and Project Manager as described in Sections 4.11 and/or 4.12 of these General Provisions; or (ii) the work was performed contrary in any manner to the instructions, Addenda or other written directive(s) of the Architect, Project Manager or District.

**4.15 Ownership and Rights to Contract Documents.** For all purposes related to the Contract, the Drawings, Specifications and other Contract Documents are deemed to be and shall remain the property of the District. Except for the District and, as may be provided by its agreement with the District, the Architect, no person or entity (including, without limitation, the Contractor and anyone performing any work or services pursuant to the Contract on behalf of the Contractor) may own or claim a copyright in the Drawings, Specifications or other Contract Documents.

**4.16 Use of Contract Documents.** The Contractor and each Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work may use the Drawings, Specifications and other Contract Documents only to the extent necessary for the proper execution of the Work, including, without limitation, applications and submittals to governmental agencies in connection with seeking approvals for some or all of the Work. Neither the Contractor, nor any other person or entity other than the District, may use the Drawings, Specifications or other Contract Documents for any purpose other than in connection with the Work, including, without limitation, any work on the Project that is outside the scope of the Work.

**4.17 Return of Contract Documents to District.** The Contractor shall ensure that any and all copies of the Drawings, Specifications and other Contract Documents provided to the Contractor, or to any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work, are maintained in a reasonable and useable condition. Upon final completion and acceptance of the Project in accordance with Section 18.9 of these General Provisions, the

Contractor must return to the District all such copies of the Drawings, Specifications and other Contract Documents, except that the Contractor may retain one complete set of the Drawings, Specifications and other Contract Documents for the Contractor's records.

**PART 5**  
**SHOP DRAWINGS, DEFERRED APPROVALS AND OTHER SUBMITTALS**

**5.1 General Requirements for Submittals.** The Contractor is responsible for submitting to the Architect any and all Shop Drawings, Samples, Deferred Approvals, and other submittals required pursuant to the Contract Documents, including, without limitation, any submittals prepared or otherwise provided by or on behalf of any Subcontractor. A Subcontractor may provide a submittal directly to the Architect only upon written consent of the Architect obtained by the Contractor, but the Contractor shall retain responsibility for full compliance with the requirements of this Part 5. The Contractor must submit each submittal accompanied by a separate transmittal letter for each submittal item or group of items for which a submittal is required pursuant to the Contract Documents. Each submittal, and the transmittal letter and other information submitted with the submittal, must be legible in all respects. All Shop Drawings, Samples, Deferred Approvals, and other submittals required pursuant to the Contract Documents shall be deemed and construed to become property of the District upon submittal to the Architect pursuant to this Part 5. The Contractor may not use the submittal process, as set forth in this Part 5, in lieu of complying with the procedures for substitution set forth in Part 14 of these General Provisions, to request substitution of any equipment, material or other item, or any service or process, required pursuant to the Contract Documents.

**5.2 Requirements for Timely Submittals.** The Contractor shall be responsible for determining when it must submit each Shop Drawing, Sample, Deferred Approval or other submittal required pursuant to the Contract Documents, including consideration of time required for review and approval by the Architect. The Contractor shall initiate such contacts with the Architect as necessary for the Contractor to determine the amount of time required for approval of each submittal. The Contractor must ensure that any and all Shop Drawings, Samples and other submittals required pursuant to the Contract Documents have been submitted to the Architect within: (i) the time(s) specified in the Contract Documents (including, without limitation, the Master Construction Schedule) or otherwise by the Architect; (ii) within thirty-five days of the date of the Notice of Award if the Contract Documents or Architect do not specify a time for submittal; or (iii) such earlier time(s) as the Contractor determines necessary to avoid any delay in the progress of the Work or any Work by Others. The Contractor shall be fully responsible and liable for any delay in completion of the Work and/or the Project arising from any failure by the Contractor to timely submit any required submittal(s) to the Architect, and the District shall not grant any extension of time for performance of the Work on account of any such failure by the Contractor.

**5.3 Requirements for Identifying Submittals.** In addition to any other mandatory or permissive information, the Contractor must specify on each submittal and associated transmittal letter: (i) the names of the Contractor and any Subcontractor that will be responsible, in whole or in part, for performing the Work described or illustrated in the submittal; (ii) the name and/or number assigned for purposes of identifying the Project; (iii) the date the submittal and each revision thereof has been conveyed to the Architect; and (iv) the section of the Specifications or other portion of the Contract Documents that requires the submittal. If it is not physically possible for the Contractor to specify the foregoing information directly on the submittal (e.g., on a Sample), the Contractor shall attach a tag or label to the submittal that contains such information. If the Architect returns a submittal to the Contractor for revision, the Contractor must specify on each such revision the numeric or alpha-numeric identifier assigned to that submittal.

**5.4 Required Quantities of Submittal Materials.** Each submittal that includes any Shop Drawing must include: (i) one reproducible sepia and five prints of each Shop Drawing; and (ii) two reproducible copies of all other accompanying materials and information. Each submittal that includes any Sample must include: (i) two identical copies of the Sample; and (ii) two reproducible copies of all other accompanying materials and information. Each submittal of any Deferred Approval must include: (i) one reproducible sepia and five prints of each drawing included in the Deferred Approval; and (ii) two reproducible copies of all other accompanying materials and information. With respect to any other submittals required pursuant to the Contract Documents, if the quantity of materials to be submitted is not specified, the Contractor shall submit the number of copies of the materials as directed by the Architect.

**5.5 Contractor Must Identify Deviations from Contract Requirements.** If a Shop Drawing, Sample, Deferred Approval or other submittal required pursuant to the Contract Documents does not conform in every respect with all requirements of the Specifications and other Contract Documents (including, without limitation, any qualification of, modification of, or other deviation from such requirements), such deviation must be expressly identified and explained in detail in the submittal, noted in the accompanying transmittal letter, and, as applicable, identified by “clouding” on the submittal.

**5.6 Contractor Must Review and Verify All Submittals.** Prior to submittal to the Architect, the Contractor must review each Shop Drawing, Sample, Deferred Approval or other submittal required pursuant to the Contract Documents and verify that: (i) all materials, measurements, standards, requirements, and other information constituting, or set forth in, the submittal are consistent with, and satisfy all requirements of, the Contract Documents (or expressly describe in detail any deviations from such requirements); (ii) the Work described or illustrated in or by the submittal is fully coordinated and consistent with all other portions of the Work and any Work by Others; and (iii) the Work described or illustrated in or by the submittal can be performed within the time(s) required pursuant to the Contract Documents. The Contractor must represent and warrant that it has undertaken and completed such review and verification by including written or stamped language to that effect, approved or provided by the Architect, and signed and dated by the Contractor, on each Shop Drawing, Sample, Deferred Approval and other submittal required pursuant to the Contract Documents (or an accompanying transmittal letter, if not physically possible to write or stamp, sign and date a submittal).

**5.7 Contractor Must Provide Preliminary Materials Lists.** Within ten days of the date of the Notice of Award or prior to the Commencement Date, whichever is sooner, the Contractor must submit to the Architect, for approval, preliminary lists of the equipment, products and materials proposed to be incorporated into the Project (each a “Preliminary Materials List”). The Contractor must submit a separate Preliminary Materials List for the Contractor and each Subcontractor, based on their respective portions of the Work. The Contractor need submit only one copy of each Preliminary Materials List, but each must be capable of being reproduced (copied) without significant decrease in legibility. Prior to submitting a Preliminary Materials List for a Subcontractor to the Architect, the Contractor shall have reviewed and confirmed that the items specified in the Preliminary Materials List encompass all equipment, products and materials within the scope of that Subcontractor’s portion of the Work. The approval by the Architect of any Preliminary Materials List is one step in the submittal process for the Project and shall not be deemed or construed to be in lieu of requirements in the Contract Documents for submittal of Shop Drawings, Samples, Deferred Approvals and/or other information. The Contractor must reserve space on each Preliminary Materials List for the Architect’s and the Contractor’s stamps and/or signatures indicating approval of the Preliminary Materials List.

**5.8 Requirements for Shop Drawings.** As required pursuant to the Contract Documents, the Contractor must submit to the Architect any and all drawings and other information necessary to illustrate, expand upon, and otherwise explain in detail such portions of the Work as are generally described in the

Drawings and Specifications and that are to be manufactured or fabricated (e.g., equipment, structural steel, *et cetera*) and incorporated into the Project (each a "Shop Drawing"). The Shop Drawings must explain the manufacture, fabrication, structure, standards, dimensions, layout and/or installation of such portions of the Work (including, without limitation, compliance with or variance from requirements of the Drawings and Specifications) in such manner and in such detail as will permit approval by the Architect and understanding by those performing the Work as to how the portions of the Work detailed in the Shop Drawings will coordinate and fit with other portions of the Work and with any Work by Others. The Contractor must accompany each Shop Drawing with, as applicable, any and all manufacturer drawings, instructions, catalog cut-sheets, performance data, and other descriptive information as required for the Architect to determine that the Work described in the Shop Drawing will satisfy the requirements of the Contract Documents. The Contractor must reserve space on each Shop Drawing for the Architect's and the Contractor's stamps and/or signatures indicating approval of the Shop Drawing.

**5.9 Requirements for Samples.** As required pursuant to the Contract Documents or otherwise reasonably required by the Architect, the Contractor must submit to the Architect, for approval, any and all physical samples of materials, devices, instruments and/or equipment, or portions thereof, as are generally described in the Drawings and Specifications and that are to be incorporated into the Project (each a "Sample"). The Samples must physically demonstrate the type, quality, texture, finish, color and/or other characteristic(s) of the item for which the Sample is required, in such manner and in such detail as will permit approval by the Architect and understanding by those performing the Work as to how such item, upon completion of the Project, should appear, function, coordinate and/or fit with other items making up the Project. If the Contract Documents require that a Sample illustrate or demonstrate a range of any particular characteristic(s) of any material or product, the range must be sufficiently broad to fairly and fully represent reasonable and possible variations of such characteristic(s). The Contractor must accompany each Sample with, as applicable, any and all manufacturer labels, instructions, catalog cut-sheets, performance data, and other descriptive information as required for the Architect to determine that the characteristic illustrated or demonstrated by the Sample will satisfy or otherwise conform with the requirements of the Contract Documents and the Architect's aesthetic and other decisions. The Contractor must reserve space on the tag or label attached to the Sample, and on the associated transmittal letter, for the Architect's and the Contractor's stamps and/or signatures indicating approval of the Sample.

**5.10 Requirements for Deferred Approvals.** The Drawings and Specifications may specify that certain portions of the design of the Work (e.g., fire-sprinkler systems, bleachers, elevator, skylights, *et cetera*) and approval thereof by the Architect, DSA, or others has been deferred (each a "Deferred Approval"). Deferred Approvals may be required for items that the Architect could not specify in full detail prior to a specific manufacturer and/or product being identified and approved in accordance with the Contract Documents, or for other reasons. With respect to each Deferred Approval for which it is responsible, the Contractor must prepare and submit the Deferred Approval in accordance with the directions of the Architect and requirements of the Contract Documents, including, without limitation, any performance specifications and/or loading criteria for the item(s) within the scope of the Deferred Approval. Each Deferred Approval must comply with all applicable requirements of CCR Title 21 (including, without limitation, Section 17) and CCR Title 24 (including, without limitation, Section 4-317). The Contractor must reserve space on each drawing and associated specifications included in a Deferred Approval for the DSA's, Architect's and Contractor's stamps and/or signatures indicating approval of the Deferred Approval. In obtaining such Deferred Approvals, the Contractor shall ensure that all applications, designs, drawings, specifications, submittal, *et cetera* comply with all applicable laws, ordinances, codes, rules, regulations and other governmental requirements, including, without limitation, requirements of the DSA and the State Fire Marshall. Unless stated otherwise in the Contract Documents, the Contractor shall be responsible for paying all fees, costs and other expenses necessary to obtain such Deferred Approvals. Neither the requirements of this Section 5.10, nor any delay by the Contractor in complying with such requirements, shall be deemed to

relieve the Contractor from complying with requirements for commencing and/or timely completing the Work, and Contractor shall schedule and complete its activities to accommodate the requirements of this Section 5.10. The Contractor shall not be granted an extension of time, and may be assessed liquidated damages, if the Contractor is responsible for any failure to obtain any required Deferred Approval and such failure results in a delay in the critical-path of the Work or any Work by Others.

**5.11 Scope of Submittal Review and Approval.** The Architect shall review all Shop Drawings, Samples and other submittals required pursuant to the Contract Documents and, as applicable, require additional information, require correction and resubmittal, and/or approve the submittals. In its sole discretion, the District may require that the Project Manager also review and approve all submittals. The scope of review and approval by the Architect (and, if applicable, the Project Manager) shall be limited to: (i) matters of aesthetics; (ii) as required, determining that designs were prepared by appropriately licensed design professionals; (iii) determining general conformance with the design concept(s) for the Work and the Project; (iv) determining general conformance with requirements of the Contract Documents; and (v) other matters as required by law. In no event shall the review and/or approval of any submittal be deemed or construed to: (i) constitute verification or approval of any specific dimensions, field conditions or quantities; (ii) constitute a comprehensive analysis and verification that the submittal is free of all errors and deficiencies; (iii) relieve the Contractor from responsibility for any deviation in the submittal from the requirements of the Contract Documents that was not expressly stated in the submittal as being a deviation from such requirements; (iv) relieve the Contractor from responsibility for any error or deficiency in the submittal not within the scope of review and approval; (v) relieve the Contractor from responsibility for any deficiency in the Work, any failure to coordinate or ensure that the item(s) fit with other portions of the Work or any Work by Others, or any other failure to perform the Work in accordance with the Contract Documents; or (vi) relieve the Contractor from any responsibility for violation of any patent or other right of any person or entity.

**5.12 Contractor Must Correct and Resubmit Rejected Submittals.** If the Architect determines that any submittal is incomplete, contains any material error or other deficiency, or has been only superficially reviewed by the Contractor, the Architect may return the submittal to the Contractor with a notation describing the needed correction(s) and the time within which the submittal must be corrected and resubmitted to the Architect. The Contractor must make all corrections required by the Architect and must resubmit the revised submittal to the Architect within the time specified by the Architect. The Contractor must specifically highlight and/or direct the Architect's attention (e.g., in writing, by "clouding," *et cetera*) to all revisions made to the submittal since it was last returned to the Contractor by the Architect, in such manner as will permit the Architect to easily discern revisions to the submittal. If the Contractor revises and resubmits a submittal, but has failed to properly, appropriately or reasonably make any correction(s) to the submittal as directed by the Architect, or if the revisions to the submittal have revealed or contain additional errors or deficiencies, with the result that the Architect requires further correction of the submittal (i.e., after an initial review and one follow-up review), the reasonable cost of the professional services for the additional review(s) of the submittal shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor pursuant to the Contract.

**5.13 No Work or Deliveries Permitted Absent Approved Submittals.** In no event may the Contractor commence any portion of the Work that requires any Shop Drawing, Sample or other submittal pursuant to the Contract Documents, unless and until the Architect has reviewed and approved the submittal in accordance with this Part 5. In addition, if DSA approval is required for any submittal, the Contractor may not commence the portion of the Work requiring the submittal unless and until: (i) the Architect has obtained the required DSA approval; or (ii) the Architect directs the Contractor, in writing, to commence such portion of the Work. The Contractor must ensure that all such portions of the Work are performed and completed in accordance with all Shop Drawings, Samples, Deferred Approvals and other submittals required pursuant to,



and approved by the Architect in accordance with, the Contract Documents. The District, the Architect, the Project Manager and/or the Inspector of Record may reject any Work performed, and/or any materials, products or other things delivered to the Project Site and/or incorporated into the Work or the Project, in violation of the requirements of this Section 5.13.

**PART 6**  
**INSURANCE REQUIREMENTS**

**6.1 Insurance a Condition Precedent to Commencing the Work.** Timely compliance by the Contractor with all applicable requirements of this Part 6 shall be deemed and construed as a condition precedent to the Contractor commencing any portion of the Work. However, in no event shall the Contractor's compliance, failure to comply, or failure to timely comply, with the requirements of this Part 6 be deemed or construed to relieve the Contractor of any of its responsibilities pursuant to the Contract Documents, including, without limitation, the requirement to commence the Work on the Commencement Date. The Contractor shall be responsible for all damages and costs incurred by the District arising from any failure by the Contractor to comply or to timely comply with the requirements of this Part 6.

**6.2 Optional Owner-Controlled Insurance Program.** If the Special Provisions so provide, the District will implement an "Owner Controlled Insurance Program" ("OCIP") for the Project, and the Contract Documents will have included requirements for the Contractor to provide qualifying and enrollment information. In the event an OCIP will apply to the Project, the Contractor must at all times comply with all applicable OCIP requirements set forth in the Special Provisions and any applicable Supplementary Special Provisions. In the event an OCIP will apply to the Project, the Contractor shall not be required to procure the Insurance Policies pursuant to Section 6.5 of these General Provisions; provided, however, that: (i) except as provided in Section 6.3 of these General Provisions, the Contractor still must procure the Contractor All-Risk Policy; and (ii) notwithstanding the foregoing, the Contractor must procure all of the Insurance Policies pursuant to Section 6.5 of these General Provisions if the OCIP does not take effect, the OCIP does not become applicable to the Project, the OCIP is terminated after taking effect, or the Contractor or a sufficient number of its Subcontractors do not qualify for enrollment and/or participation in the OCIP.

**6.3 Optional District All-Risk Insurance.** If the Special Provisions so provide, the District will obtain, and will maintain in force at all times prior to the Project Acceptance Date, a policy of builder's all-risk insurance with such coverages, deductibles, and endorsements as the District, in its reasonable discretion, determines appropriate ("District All-Risk Policy"). If the District will have the District All-Risk Policy in effect, the Contractor shall not be required to procure the Contractor All-Risk Policy described in Subsection 6.5.5 of these General Provisions. The District All-Risk Policy will name as additional insureds the District, Contractor, Subcontractors, other contractors working on the Project, and others as the District, in its reasonable discretion, determines appropriate. The District and the Contractor hereby waive all subrogation rights against each other and all other persons and/or entities covered by the District All-Risk Policy, but only to the extent of coverage provided by the District All-Risk Policy. The District All-Risk Policy shall also waive the insurer's rights of subrogation against such persons and/or entities. A waiver of subrogation shall be effective with respect to each such person or entity regardless of whether the person or entity: (i) has a right to indemnification; (ii) has an obligation to indemnify any other person or entity; (iii) paid any premium for the District All-Risk Policy; or (iv) has an insurable interest in the property. The Contractor must comply with all requirements of the District All-Risk Policy applicable to the performance of the Work. If the Contractor incurs any loss in excess of an applicable deductible, the Contractor must provide written notice to the Project Manager within twenty-four hours after discovering the loss. If a deductible applies, the Contractor shall be responsible for all losses up to the deductible amount set forth in the Special Provisions.

**6.4 Insurance Requirements Absent an OCIP.** The Contractor must obtain and have in effect each and every policy of insurance required pursuant to Section 6.5 of these General Provisions (each an “Insurance Policy” and, collectively, the “Insurance Policies”) within: (i) seven days after the date of the Notice to Proceed or prior to the Commencement Date, whichever is sooner, if the Special Provisions indicate that the District will not implement the OCIP; or (ii) seven days after receipt of notice from the District or the OCIP administrator that, as applicable, the OCIP will not take effect, the OCIP will not be applicable to the Project, the OCIP is being terminated, or the Contractor or a sufficient number of its Subcontractors do not qualify for enrollment and/or participation in the OCIP. The Contractor must maintain each such Insurance Policy in full force and effect at all times prior to (and, as provided herein with respect to certain insurance coverage, for the required period after) the Project Acceptance Date.

**6.5 Minimum Types and Amounts of Insurance Coverage.**

**6.5.1 Commercial General Liability Insurance.** The Contractor shall obtain and maintain a policy of broad-form commercial general liability insurance, written on an “occurrence” basis (“modified occurrence” and “claims-made” are not acceptable), with a combined single limit of not less than the amount specified in the Special Provisions, providing coverage for all activities related to or undertaken in connection with the Work (“Liability Policy”). If an aggregate limit applies to the Liability Policy, not less than the amount specified in the Special Provisions as the applicable portion of such aggregate must apply specifically and exclusively to the Work and the Project. Unless expressly agreed by the District in writing, the Liability Policy must include, as a minimum, coverage for: (i) bodily injury, disease, sickness and death; (ii) property damage (broad form); (iii) personal injury/advertising injury; (iv) premises/operations liability; (v) products/completed-operations liability; (vi) explosion, collapse and underground (UCX) (i.e., exclusion deleted); (vii) sudden or accidental discharge of contaminants or pollutants; (viii) contractual liability assumed by the Contractor pursuant to the Contract Documents; and (ix) independent contractor’s liability. The Contractor must keep the Liability Policy in full force and effect for at least one year after the date of final payment to the Contractor pursuant to Section 21.17 of these General Provisions or the Project Acceptance Date, whichever occurs later, to ensure that coverage for products-completed operations remains in effect for at least such one-year period.

**6.5.2 Vehicle Liability Insurance.** The Contractor shall obtain and maintain a policy of business vehicle liability insurance with a combined single limit, per occurrence, of not less than the amount specified in the Special Provisions (“Vehicle Liability Policy”). If an aggregate limit applies to the Vehicle Liability Policy, not less than the amount specified in the Special Provisions as the applicable portion of such aggregate must apply specifically and exclusively to the Work and the Project. The Vehicle Liability Policy must include coverage for owned, hired and non-owned vehicles.

**6.5.3 Workers’ Compensation Insurance.** The Contractor shall obtain and maintain a policy of workers’ compensation insurance in accordance with Section 3700 *et seq.* of the Labor Code and other applicable laws, regulations and requirements (“Workers Compensation Policy”) and a policy of employers’ liability insurance with limits of not less than one million dollars per incident (“Employer Liability Policy”). Within seven days of the date of the Notice of Award or prior to the Commencement Date, whichever is sooner, the Contractor must complete, execute and submit to the District the “Certification Regarding Workers Compensation” form included in the Required Contract Forms.

**6.5.4 Professional Liability Insurance.**

**6.5.4.1 Contractor.** In connection with the Contractor having responsibility, whether directly or indirectly through any Subcontractor, for any design, engineering or similar professional services in accordance with the Contract Documents (e.g., design of fire sprinklers, shoring, falsework, scaffolding, *et cetera*), the Contractor shall obtain and maintain a policy of professional liability (errors and omissions) insurance (“Professional Liability Policy”) providing coverage in an amount not less than the

amount specified in the Special Provisions for each claim and in the aggregate. Notwithstanding Section 6.4 of these General Provisions: (i) the Contractor must have the Professional Liability Policy in full force and effect prior to commencing any such professional services; (ii) each renewal or replacement of the Professional Liability Policy must have a retroactive date that is prior to the date the Contractor commenced any such professional services; and (iii) as a condition to final payment pursuant to the Contract, the Contractor must obtain at its cost a supplemental extended reporting period (tail) applicable to the Professional Liability Policy for a period of not less than four years after the Substantial Completion Date.

**6.5.4.2 Subcontractors.** In addition to the Contractor obtaining and maintaining the Professional Liability Policy, the Contractor must require and ensure that each of its Subcontractors having responsibility for any design, engineering or similar professional services in connection with the Project obtains and maintains a policy of professional liability (errors and omissions) insurance (“Subcontractor Professional Liability Policy”) providing coverage in an amount not less than the amount specified in the Special Provisions for each claim and in the aggregate. Notwithstanding anything else to the contrary: (i) each such Subcontractor must have its Subcontractor Professional Liability Policy in full force and effect prior to commencing any such professional services; (ii) each renewal or replacement of the Subcontractor Professional Liability Policy must have a retroactive date that is prior to the date the Subcontractor commenced any such professional services; and (iii) as a condition to final payment to the Contractor pursuant to the Contract, the Subcontractor must obtain at its cost a supplemental extended reporting period (tail) applicable to the Subcontractor Professional Liability Policy for a period of not less than two years after the Substantial Completion Date; provided that, upon request of the Contractor, the District in its discretion may waive the requirement for some or all of the tail coverage with respect to any Subcontractor whose professional services relate solely to temporary work (e.g., shoring, falsework, or scaffolding).

**6.5.5 Contractor All-Risk Insurance.** If the Special Provisions provide that the Contractor must obtain such insurance, the Contractor must procure a policy of builder’s all-risk insurance, written on a non-reporting, completed value basis, providing coverage for all of the Work in an amount not less than the greater of (i) the full estimated replacement cost of the Work or (ii) the Contract Price (“Contractor All-Risk Policy”). The Contractor All-Risk Policy must apply, at a minimum, to: (i) completed Work; (ii) Work in progress; (iii) temporary structures and improvements; (iv) materials, supplies and equipment stored on the Project Site; (v) materials, supplies and equipment stored at off-site locations or in transit; and (vi) operational and performance testing, commissioning and start-up. The Contractor All-Risk Policy must cover: (i) losses arising from causes that include, without limitation, fires, windstorms, lightening, explosions, theft, earth movement (including but not limited to earthquake, landslide, and subsidence), collapse, and water damage; (ii) costs associated with clean-up, demolition, repair or other correction of covered losses, including, without limitation, fees for necessary architectural, engineering and other professional services; and (iii) all ensuing or consequential losses attributable to causes of loss excluded under the Contractor All-Risk Policy, including, without limitation, faulty design or workmanship. The Contractor All-Risk Policy must be endorsed for extended coverage, vandalism, malicious mischief, and theft, including theft of materials not then incorporated into the Work. Any exclusion of losses attributable to faulty design or workmanship shall not exceed the total costs the District would have incurred to repair or otherwise correct the fault if it had been discovered prior to the loss having occurred. The Contractor All-Risk Policy must name or be endorsed to name the District, the Architect, the Project Manager, the Inspector of Record, the Contractor, and each Subcontractor, as additional insureds. The Contractor All-Risk Policy also must name the District as loss payee, including, without limitation, for the purposes of any tax-exempt bond proceeds used to fund the Project, and the District shall be deemed to be the owner of all work and materials on the Project Site or stored for use on the Project Site. The Contractor must maintain the Contractor All-Risk Policy in full force and effect at all times prior to the Project Acceptance Date. The payment by the District of any Construction Progress Payments, in and of itself, shall not be deemed or construed to: (i) create an insurable interest for

the District; or (ii) relieve the Contractor of responsibility it otherwise may have for losses arising from any direct physical loss, damage, or destruction incurred prior to final completion and acceptance of the Project in accordance with Section 18.9 of these General Provisions.

**6.6 Umbrella Coverage.** The District, in its sole discretion, may approve or disapprove of a request by the Contractor to satisfy portions of the coverage requirements for the Insurance Policies specified in Section 6.5 of these General Provisions (excluding the Workers Compensation Policy) by means of additional umbrella policy of insurance. Any such umbrella policy must: (i) follow the form of the underlying Insurance Policies; (ii) provide coverage at least as broad as the underlying Insurance Policies; and (iii) provide coverage in excess of the coverage of the underlying Insurance Policies, without gaps in coverage limits. Both the District and the Contractor must be named as insureds pursuant to the umbrella policy. In no event shall: (i) the aggregate coverage (including umbrella) be less than the coverage that would otherwise be available pursuant to the separate policies specified in such Section 6.5; or (ii) terms of coverage be impaired or otherwise provide less protection than would otherwise be available pursuant to the separate policies specified in such Section 6.5. The District may impose any other conditions or requirements on or for the umbrella policy that the District determines are reasonable.

**6.7 Contractor Insurance Shall be Primary.** The coverages provided by each of the Liability Policy, the Vehicle Liability Policy, and the Contractor All-Risk Policy shall be primary and not contributing with respect to any insurance or self-insurance programs covering the District, the District Board, any individual members of the District Board, or the District's officers, employees, agents or consultants.

**6.8 Insurer Standards.** Each Insurance Policy must be issued by one or more insurers licensed to do business in this State and having an A.M. Best Company rating (Best's Rating) of not less than an "A," a "Ratings Outlook," if assigned, of either stable or positive, and Financial Size Category of not less than "X." If a "Ratings Outlook" has been assigned to any such insurer that is not either stable or positive, the District may consider the insurer's Ratings Outlook and all other relevant factors in determining whether the insurer is satisfactory, and, if the District reasonably determines that there may be a significant risk in accepting an Insurance Policy issued by such insurer, then, upon request of the District, the Contractor must obtain such Insurance Policy through another insurer that satisfies the standards set forth in this Section.

**6.9 Designation of Additional Insureds.** The Liability Policy, the Vehicle Liability Policy, and the Contractor All-Risk Policy, each must name or be endorsed to name the District, the Architect, the Project Manager, and the Inspector of Record, as additional insureds. All endorsements specifying additional insureds for any of the Insurance Policies shall be ISO Form CG 20 10 11 85 or an equivalent endorsement reasonably acceptable to the District. Each additional insured endorsement shall include a "primary insurance clause" stating to the effect that: "The insurance afforded by this policy for the benefit of the additional insureds shall be primary insurance, and any insurance maintained by the additional insureds shall be excess and non-contributory with the insurance provided hereunder." The coverage provided to the additional insureds must be at least as broad as the coverage provided to the Contractor and may not contain any additional exclusionary language or limitations applicable only to the additional insureds.

**6.10 Cross-Liability and Waivers of Subrogation.** Each of the Liability Policy, the Vehicle Liability Policy, and the Contractor All-Risk Policy, must: (i) be endorsed with a cross-liability endorsement (separation of insureds) and include a waiver of the insurer's rights of subrogation against the other insureds or additional insureds. Each of the Workers Compensation Policy and the Employer Liability Policy must be endorsed to include a waiver of the insurer's rights of subrogation against the District. A waiver of subrogation shall be effective with respect to each applicable person or entity regardless of whether the person or entity: (i) has a right to indemnification; (ii) has an obligation to indemnify any other person or entity; (iii) paid any premium for the applicable insurance; or (iv) has an insurable interest in any property.

To the extent required pursuant to Part 23 of these General Provisions, the Contractor shall indemnify and defend the District, the Architect, the Project Manager, and the Inspector of Record, against any and all subrogation claims arising from any of the Insurance Policies.

**6.11 Premiums, Deductibles and Self-Insured Retentions.** The Contractor shall be solely responsible and liable for paying any and all premiums and other costs incurred in obtaining and maintaining the Insurance Policies, including, without limitation, any and all renewal premiums. Subject to written approval by the District, which the District may grant or withhold in its reasonable discretion, one or more of the Liability Policy, the Vehicle Liability Policy, and the Contractor All-Risk Policy may be subject to deductibles or self-insured retentions. The Contractor shall be solely responsible and liable for any and all such deductibles and self-insured retentions. To the extent required pursuant to Part 23 of these General Provisions, the Contractor shall indemnify and defend the District, the Architect, the Project Manager, and the Inspector of Record, against any and all claims arising from such premiums, deductibles and/or self-insured retentions.

**6.12 Evidence of Coverage.** For each Insurance Policy required pursuant to this Part 6, the Contractor shall provide a certificate of insurance evidencing that the Insurance Policy is in effect (each a "Certificate of Insurance"). Each Certificate of Insurance must: (i) be executed by a duly-authorized officer, agent or other representative of the insurer; (ii) include an original handwritten signature of the insurer's representative, not a stamped or printed signature; and (iii) must certify the names of the insured, any additional insureds, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance. The Contractor must provide to the District an updated Certificate of Insurance for each renewal of an Insurance Policy not less than thirty days prior to any expiration of the Insurance Policy. Each renewal and replacement of any Insurance Policy that is permitted by these General Provisions to be written on a "claims made" basis must have a retroactive date that is prior to the date the Contractor was initially required to have such insurance policy in effect pursuant to this Part 6. In each case that a Certificate of Insurance sets forth language to the effect that it "does not amend, extend or alter the coverage" of the Insurance Policy, or that the coverage available pursuant to the Insurance Policy "is subject to all of the terms, exclusions, and conditions of the policy," the Contractor must provide to the District a certified copy of the Insurance Policy and all associated endorsements, riders, *et cetera* concurrently with providing the Certificate of Insurance to the District. The foregoing shall not be deemed or construed to limit or qualify the Contractor's obligation to comply with requirements of Section 6.14 of these General Provisions relating to the time(s) within which the Contractor must provide such documents to the District.

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

**6.14 District Review and Approval of Insurance Policies.** Within the time(s) required pursuant to Section 6.4, Subsection 6.5.4.1 and/or Subsection 6.5.4.2 of these General Provisions for the Contractor to have any required Insurance Policy in effect, the Contractor must provide to the District a certified copy of such Insurance Policy and all associated Certificates of Compliance, endorsements, riders, *et cetera*. Each Insurance Policy and associated other documents shall be subject to review and approval by the District in regard to compliance with the requirements of this Part 6. No such review by the District, and no failure by the District to undertake any such review, shall be deemed or construed to be an assumption of liability by

the District or to constitute a waiver of any non-compliance by the Contractor with the requirements of this Part 6.

**6.15 Additional Required and/or Optional Insurance.** In addition to maintaining in effect all other insurance coverage required pursuant to this Part 6, the Contractor, at all times during the performance of the Work or as otherwise required by law, shall obtain or otherwise have in effect any and all other insurance coverage that the Contractor is required to maintain in accordance with applicable laws, regulations and/or other governmental requirements. The Contractor also may obtain or otherwise have in effect any and all other insurance coverages that the Contractor determines are necessary in light of prudent business practices, including, without limitation, coverages in excess of the amounts required pursuant to the Contract. The Contractor shall be responsible for obtaining its own insurance coverage for tools, equipment and materials not intended to be incorporated into the Work or the Project. The Contractor shall be solely responsible for any and all premiums, deductibles, self-insured retentions, losses, *et cetera* attributable to any additional required and/or optional insurance coverage described in this Section.

**6.16 Subcontractor Insurance.** The Contractor shall require in each Subcontract that the Subcontractor also obtain and maintain insurance coverage consistent with the Insurance Policies required pursuant to this Part 6. However, if the Special Provisions do not specify lesser per-occurrence and/or aggregate limit(s) for a Subcontractor's coverage, the District, in its reasonable discretion, may approve lesser limit(s) if consistent with a limited scope of work and limited potential for loss attributable to the Subcontractor's work, as justified by information provided to the District. The Contractor shall be responsible for ensuring that any and all Subcontractors are insured in accordance with this Part 6, or as otherwise approved by the District, and for providing all documentation of the Subcontractors' insurance coverage (i.e., Insurance Policies, Certificates of Insurance, *et cetera*) to the District within the time(s) required pursuant to this Part 6. To the extent required pursuant to Part 23 of these General Provisions, the Contractor shall indemnify and defend the District, the Architect, the Project Manager, and the Inspector of Record, against any and all claims arising from the failure of any Subcontractor to obtain and maintain the insurance required pursuant to this Part 6. All Subcontractor insurance coverage shall be subject to review and approval as described in Section 6.14 of these General Provisions.

**6.17 Compliance with Safety Programs.** The Contractor, and each Subcontractor, materialman, and other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work, must at all times comply with the requirements of any and all applicable Safety Programs, insurer's property protection or conservation recommendations, *et cetera*, in order to assist in minimizing claims, damages and losses in connection with the Work and the Project.

**6.18 Failure to Maintain Required Insurance.** If the Contractor or any Subcontractor fails to maintain any required Insurance Policy in full force and effect consistent with the requirements of this Part 6, the District may purchase or otherwise obtain such insurance, and the District shall deduct the cost thereof from one or more Construction Progress Payments, without recourse by the Contractor.

**6.19 Insurance Coverage Not a Limitation on Liability.** The requirements set forth in this Part 6, including, without limitation, the types and limits of insurance coverage specified, are not intended to and shall not in any manner be deemed or construed to limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to the Contract Documents. However, insurance proceeds received by either the District or the Contractor attributable to claims or damages for which the other party is responsible shall serve to offset the responsible party's liability, on account of such claims or damages, to the party receiving the proceeds. The Contractor shall be solely responsible for paying any loss amount, or portion thereof, that is subject to an applicable deductible or self-insured retention requirement.

**PART 7**  
**PERFORMANCE AND PAYMENT BONDING REQUIREMENTS**

**7.1 Surety Bonds a Condition Precedent to Commencing the Work.** Timely compliance by the Contractor with all requirements of this Part 7 shall be deemed and construed as a condition precedent to the Contractor commencing any portion of the Work. However, in no event shall the Contractor's compliance, failure to comply, or failure to timely comply, with the requirements of this Part 7 be deemed or construed to relieve the Contractor of any of its responsibilities pursuant to the Contract Documents, including, without limitation, the requirement to commence the Work on the Commencement Date. The Contractor shall be responsible for all damages and costs incurred by the District arising from any failure by the Contractor to comply or to timely comply with the requirements of this Part 7.

**7.2 Delivery of Surety Bonds.** Within seven days of the date of the Notice to Proceed or prior to the Commencement Date, whichever is sooner, the Contractor must provide to the District: (i) a material and labor payment bond to ensure satisfaction of any claims of materials suppliers and of mechanics and laborers employed in connection with the Work ("Payment Bond"); and (ii) a bond to ensure faithful (including, without limitation, timely) performance by the Contractor of its obligations pursuant to the Contract Documents ("Performance Bond").

**7.3 Forms of Surety Bonds.** The Payment Bond and the Performance Bond (each a "Surety Bond") must be issued using the "Payment Bond" and "Performance Bond" forms included in the Required Contract Forms; provided, however, that the District will approve revisions to a Surety Bond to the extent required to ensure compliance with applicable laws. Each of the Surety Bonds must name the District as the entity to which the Contractor and the surety are bound. Neither of the Surety Bonds shall have a stated expiration date, and each shall remain in effect at all times that the Contractor has any obligation pursuant to the Contract.

**7.4 Penal Sums of Surety Bonds.** Each of the Surety Bonds initially must have a penal sum equal to the Contract Price. If the Contract Price is increased in accordance with the Contract Documents, then, within seven days after such increase, the Contractor must increase the amount of each of the Surety Bonds to equal the total increased Contract Price. In addition, the Contractor shall review and renew or amend either or both of the Surety Bonds within seven days after receiving notice from the District that either or both have become insufficient.

**7.5 Surety Qualifications.** Each of the Surety Bonds must be issued by a surety that is authorized and admitted to transact business in the State in accordance with Code of Civil Procedure Section 995.120. Each of the Surety Bonds must be signed by the duly-authorized representatives of both the Contractor and the surety, and the signatures must be notarized. In addition, the Contractor must attach to each Surety Bond: (i) a printout from the website of the California Department of Insurance confirming that the surety is an admitted surety insurer; or (ii) a certificate from the Clerk of the county in which the Project Site is located ("County") that the surety is an admitted surety insurer. Should any surety lose its status as a State-admitted surety, the Contractor shall immediately provide written notice thereof to the District, and the District shall make no further payments to the Contractor pursuant to the Contract Documents until such time as the surety regains its status or the Contractor obtains and the District qualifies and approves a substitute surety.

**7.6 Surety Obligations Not Affected by Changes in Work.** No change in the Work or the Project, extension of time for performance of the Work or any Work by Others, or other action permitted pursuant to the Contract shall be deemed or construed to, in any manner or respect, release the Contractor or any surety

that has issued one or both of the Surety Bonds from their respective obligations pursuant to the Surety Bonds, and each such surety shall be deemed to have waived notice of such changes, extensions and other actions.

**PART 8**  
**PERFORMANCE OF THE WORK GENERALLY**

**8.1 Contractor Must Furnish Everything Required.** Except to the extent the Contract Documents expressly provide otherwise, the Contractor must obtain, furnish, or otherwise make available or have in effect, all at its own cost, any and all labor and other services, materials (including, without limitation, any that will not be incorporated into the Work), systems and building equipment, tools, construction equipment and machinery, heat, air conditioning, water, electricity, other utilities, transportation, temporary and permanent facilities, permits and licenses, layout, surveys and other things as are necessary or convenient for the Contractor to undertake and properly complete the Work in accordance with the Contract Documents, including, without limitation, all assemblies and systems specified in the Contract Documents and anything that is not specified in, but that reasonably may be inferred from, the Contract Documents as described in Section 4.7 of these General Provisions. The Contractor shall be solely responsible and liable for paying all applicable federal, State, and local taxes and other charges assessed or levied on or in connection with such labor, materials, and other services and things. For purposes of the Contract, the Work includes each and every obligation described or otherwise specified in the Contract Documents that must be undertaken, performed and completed by the Contractor in connection with the Project, including, without limitation: (i) any Work inferred as provided in Section 4.7 of these General Provisions; and (ii) any Work performed on behalf of the Contractor by any Subcontractor or other person or entity.

**8.2 Contractor Responsible for Permits and Fees.** Except for initial DSA approval of the Drawings and Specifications, the Contractor shall not assume that the District or some other Party has obtained any and all permits, licenses, approvals, and inspections, or paid any and all fees and other costs, necessary for the Contractor to perform the Work. The Contractor must ascertain for itself whether any permits, licenses, approvals or inspections must be obtained, or any fees or other costs paid, in order for the Contractor to properly and legally perform the Work. Unless the Contract Documents expressly provide otherwise, the Contractor must complete the application processes (including, as required, obtaining the signature of an Authorized District Officer on any such application) and obtain all permits, licenses and similar authorizations that are necessary for or in connection with performance of the Work, including, without limitation, any construction, encroachment, or other permits necessary for off-site improvements and utility facilities. The Contractor shall be responsible for ensuring that it and each Subcontractor has applied for, obtained, and maintains in effect at all times during the performance of the Work, any and all permits and licenses as are required by law to be in effect in connection with performance of the Work. As between the District and the Contractor, the Contractor shall be solely responsible for paying the costs of all such permits, licenses, and authorizations, including, without limitation: (i) fees for any business, contractor's, or other license or permit required for the Contractor to conduct its business; (ii) any filing and plan-check fees for Deferred Approvals or other approvals that the Contractor must obtain in accordance with the Contract Documents; and (iii) any royalties and/or license fees arising from the use of any material, machine, method or process used in performing the Work.

**8.3 Contractor Must Comply with Applicable Laws.** At all times during and in connection with performance of the Work, the Contractor must fully comply with, give any and all notices required by, and undertake any and all actions required pursuant to, all applicable federal, State and local laws, ordinances, rules, regulations, and lawful orders of public authorities, including, without limitation, applicable building, mechanical, plumbing, fire and other codes. The Contractor shall be solely responsible and liable for any



failure to comply with such requirements in connection with the Work, and shall bear the cost of any and all delays and/or additional work arising from any such failure, including without limitation, any costs and/or delays arising from any stop-work order issued by the DSA as a result of the Contractor failing to perform the Work in compliance with applicable law.

**8.4 Contractor Must Implement Quality Control Procedures.** All Work performed must result in sound, high-quality construction that meets or exceeds the requirements of: (i) the Contract Documents; (ii) typical standards for construction of public schools in the State; and (iii) all applicable materials and/or equipment manufacturer's standards and specifications. The Contractor must ensure that all elements, assemblies and other parts of the Work fit properly and well with each other and with any Work by Others. The Contractor must develop, implement and, at all times during the performance of the Work, continuously apply and enforce written quality-control procedures as a means of ensuring that the Work is performed in accordance with all requirements of the Contract Documents. The scope and detail of the quality control procedures will be dependent on the nature and scope of the various portions of the Work. The quality control procedures are subject to reasonable approval by the Project Manager, which approval the Contractor must obtain prior to commencing any portion of the Work. In the case of limited scope and appropriate nature of any portion of the Work, the Project Manager in its reasonable discretion may waive the requirement that quality control procedures be set forth in writing, but no such waiver shall be deemed or construed to relieve the Contractor of any of its other obligations pursuant to the Contract Documents.

**8.5 Contractor Must Appropriately Coordinate and Time the Work.** The Contractor shall be solely responsible for: (i) appropriately and adequately coordinating and timing the various portions of the Work to ensure that all Work is properly completed within the time(s) required pursuant to the Master Construction Schedule; and (ii) determining that portions of the Work completed or in the process of being completed are sufficient and ready for subsequent portions of the Work. The Contractor must coordinate, time and perform all portions of the Work so as to avoid and/or prevent any interference with any Work by Others. The Contractor shall be solely responsible and liable for any costs and/or delays arising from any failure of the Contractor to appropriately and adequately coordinate and time the performance of the various portions of the Work.

**8.6 Contractor Must Furnish Sufficient and Skilled Workforce.** The Contractor must at all times furnish a sufficient number of workers to ensure that the Work is efficiently and timely undertaken and completed in accordance with all milestones set forth in the Master Construction Schedule. The Contractor shall permit the Work to be performed only by workers who are appropriately qualified and skilled in the work assigned to them. Notwithstanding the foregoing, apprentices may perform portions of the Work if enrolled in an appropriate apprenticeship program and appropriately supervised at all times during performance of such portions of the Work.

**8.7 Contractor Must Confine Work to Designated Areas.** The Contractor must confine all activities, materials, equipment and other things that occur or are present on, at or in the vicinity of the Project Site to specific areas where the Work is then occurring and within such other areas or limits as specified by the Project Manager or any applicable law, rule, regulation, ordinance, permit, or order of governmental entity with competent jurisdiction.

**8.8 Requirements for Accessing the Project Site.** The Contractor and every other person or entity: (i) must enter and exit the Project Site only through construction entrances and exits designated by the Project Manager; (ii) must access the Project Site or Work to be performed in the vicinity of the Project Site following only the specific route(s) over the local public streets, if any, designated by the Project Manager or any governmental entity with competent jurisdiction; and (iii) comply with all requirements

applicable to delivery or transport of materials, supplies and/or equipment, including, without limitation, requirements for reduced speed and covering of loads.

**8.9 District Responsible for Utility Easements and Rights of Entry.** Unless the Contract Documents expressly provide otherwise, the District, at its cost, shall be responsible for granting or obtaining any temporary or permanent easements, rights of entry, or similar rights for utility company facilities or similar purposes necessary in connection with the Work. The Contractor shall be responsible for requesting, sufficiently in advance to avoid or prevent any delay in the Work or any Work by Others, that the District grant or obtain each such necessary easement, right of entry and/or similar right.

**8.10 District to Furnish any Necessary Survey of Project Site.** The Contractor must provide written notice to the Project Manager if the Contractor reasonably determines that a legal description and/or survey of the boundaries of the Project Site is necessary for performance of the Work. If the District thereafter concurs that a legal description and/or survey of the Project Site is reasonably necessary for performance of the Work, the District, at its cost, shall furnish such legal description and/or within a reasonable time cause such survey to be performed, if not previously done, and provided to the Contractor.

**8.11 Contractor Responsible for Construction Surveying.** The Contractor must, at its cost, timely schedule, perform and/or cause the performance of all surveying, field measurements, staking, *et cetera*, required for purposes of any grading, site work and construction to be performed in connection with the Work.

**8.12 Contractor Must Preserve Survey Monuments and Markers.** At all times prior to completion of the Work, the Contractor must employ reasonable caution to avoid removing, dislocating, covering or otherwise disturbing any survey monuments, stakes, markers, devices, or implements. In the event any such monument, stake, marker, device, or implement is disturbed by any person on, at or in the vicinity of the Project Site on account of the Work, regardless of whether due to negligence, accident or other cause, the Contractor shall be solely responsible and liable for all costs and/or delays attributable to such disturbance, including, without limitation, costs of replacement and/or other correction by a licensed land surveyor or registered civil engineer and any necessary compliance with requirements to file records thereof with appropriate governmental authorities.

**8.13 NPDES Permit and SWPPP.**

**8.13.1 District to Obtain Coverage.** The District shall be responsible for obtaining any required coverage for the Project from the State Water Resources Control Board under the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities ("NPDES Permit"), including, without limitation, filing the required "Permit Registration Documents," which includes a Notice of Intent, Storm Water Pollution Prevention Plan ("SWPPP"), and other compliance related documents. The District may contract with a consultant for the preparation and processing of some or all of such documents, including, without limitation, the SWPPP.

**8.13.2 Implementation and Compliance.** If NPDES Permit requirements are applicable to the Project, the Contractor must not commence work on the Project until the District has provided a copy of the NPDES Permit and the SWPPP to the Contractor, and it shall be the Contractor's responsibility to incorporate such requirements into all subcontracts on the Project. The Contractor shall be responsible for implementing and complying with the provisions of the NPDES Permit and the SWPPP, including, without limitation, the standard provisions, monitoring and reporting requirements as required by the NPDES Permit. The Contractor shall provide copies of all reports and monitoring information to the District, Architect and Project Manager. The Contract Price shall be deemed and construed to include compensation to the Contractor for all costs of compliance with specified requirements of the NPDES Permit and SWPPP. The

Contractor shall be responsible for removal and clean-up of all run-off and other control measures upon completion of the Work.

**8.13.3 Consequences of Failure to Comply.** Failure to comply with the NPDES Permit is in violation of federal and State law. The Contractor shall be solely responsible and liable for any and all costs and/or delays arising from any failure of the Contractor to comply with any of the requirements described in this Section.

**8.14 Contractor Must Comply with Run-Off Control Requirements.** At all times during performance of the Work, the Contractor must comply with all federal, State and local governmental and quasi-governmental requirements providing for control of erosion, run-off, drainage and/or discharges into any storm-drain systems and/or watercourses, including, without limitation, all applicable requirements of any city, County and/or flood-control district, and any NPDES Permit and SWPPP applicable to the Work and/or the Project. The Contractor must ascertain for itself the requirements applicable to the Work and the Project, but the Project Manager will have copies of the applicable NPDES Permit and SWPPP available for review at the Project Site. The Contractor shall be solely responsible and liable for any and all costs and/or delays arising from any failure of the Contractor to comply with any of the requirements described in this Section 8.14.

**8.15 Contractor Must Not Disturb Run-Off Control Measures.** Except to the extent the Project Manager consents in writing, the Contractor must not remove, relocate, damage, destroy or otherwise disturb any on-site or off-site erosion and/or run-off control measures established in connection with the Project. The Contractor must replace and/or restore any such control measures disturbed by any person or entity on, at or in the vicinity of the Project Site on account of the Work. The Contractor shall be solely responsible and liable for any and all costs and/or delays arising from any failure of the Contractor to comply with any of the requirements described in this Section 8.15.

**8.16 Contractor Must Protect Site and Existing Improvements.** At all times prior to completion of the Work, the Contractor must adequately secure, preserve and protect all: (i) completed and in-progress portions of the Work; (ii) materials and equipment used in connection with the Work; (iii) all Work by Others and other existing improvements in the immediate vicinity of, affected by, or receiving any portion(s) of, the Work; and (iv) the portion(s) of the Project Site in the vicinity of the Work. The foregoing shall be deemed to require, among other things, that the Contractor: (i) install barricades around any shrubs or trees that the Contract Documents or the Project Manager require to be preserved or protected, but that may be adversely affected by performance of the Work; (ii) drain, remove or otherwise mitigate any water, mud, dust, debris, *et cetera*, as necessary for proper performance of the Work; (iii) avoid driving over, parking on, and placing any loads (including, without limitation, stabilization legs of cranes or other equipment) on, any curbs, gutters and sidewalks on, at or in the vicinity of the Project Site; and (iv) avoid overloading any completed or partially completed building, structural members or elements, or other improvements, with workers, materials and/or equipment. The Project Manager may require that the Contractor promptly repair, replace or otherwise correct any damage to property caused by the Contractor or any other person or entity performing any of the Work or, alternatively, the Project Manager may cause any such damaged property to be repaired, replaced or otherwise corrected by another party at the Contractor's expense. The Contractor shall be solely responsible and liable for any costs and/or delays arising from any failure of the Contractor to provide adequate security, preservation and protection as provided herein.

**8.17 Requirements for Cutting and Patching of Work.** The Contractor must obtain the written consent of the Architect prior to cutting and/or patching any completed portions of the Work, any Work by Others, or existing improvements on, at or in the vicinity of the Project Site. The Architect may impose reasonable conditions on any such approval as relate to the appearance, quality, functionality, integrity

and/or safety of the Work and any Work by Others. In undertaking any such activities, the Contractor must adequately protect all other completed or in-progress portions of the Work, any Work by Others, the Project Site, and off-site improvements and properties in the vicinity of such activities. The Contractor shall be solely responsible and liable for any and all costs and/or delays arising from any cutting and/or patching that is performed without consent of the Architect, performed contrary to direction or instructions of the Architect, or is otherwise defective or improperly performed, including, without limitation, any costs and/or delays arising from the need to obtain Architect, DSA and/or other approvals. If the District or the Architect determines that any patch does not reasonably match the appearance, quality or functionality of the adjacent Work or any Work by Others, or otherwise fails to conform to requirements of the Architect or the Contract Documents, the District may require that the Contractor, at its sole cost, remove and replace the patch and/or refinish or replace, to the extent necessary, the Work or any Work by Others that was patched.

**8.18 Requirements for Cutting, Drilling or Attaching to Structural Members.** Except as expressly provided in the Contract Documents, the Contractor must obtain the written consent of the Architect prior to cutting, boring or drilling into, or attaching anything onto, any structural members or elements, including, without limitation, columns, shear walls, trusses, *et cetera*. The Contractor must resolve any doubt regarding whether an improvement is a structural member or element by consulting with the Architect. The Architect may impose reasonable conditions on any such approval as relate to the appearance, quality, functionality, integrity and/or safety of the Work and any Work by Others. In undertaking any such activities, the Contractor must adequately protect all other completed or in-progress portions of the Work and any Work by Others. The Contractor shall be solely responsible and liable for any and all costs and/or delays arising from any such activities that are performed without consent of the Architect, performed contrary to direction or instructions of the Architect, or are otherwise defective or improperly performed, including, without limitation, any costs and/or delays arising from the need to obtain Architect, DSA and/or other approvals.

**8.19 District Responsibility to Provide for Testing and Inspection.** Except as the Contract Documents may provide in any particular case, the District, at its cost, shall obtain, furnish or otherwise provide for all testing and inspections of the Work and any materials, equipment and/or assemblies to be incorporated therein, as required pursuant to the Contract Documents and applicable laws, ordinances, rules, regulations, and orders of governmental entities with competent jurisdiction. The District, the Project Manager, the Inspector of Record and/or the entity performing any test shall select each sample of materials that must be tested, not the Contractor. The Contractor must not: (i) incorporate into the Work any materials and/or equipment that are required to be tested and/or inspected prior to such materials and/or equipment having been tested and approved; or (ii) close or otherwise make inaccessible any assembly or assemblies that must be tested prior to being closed or otherwise becoming inaccessible.

**8.20 Contractor Must Give Timely Notice of Testing and Inspections.** The Contractor must provide written notice to the Project Manager and the Inspector of Record sufficiently in advance of when it is necessary for any required testing or inspection to occur, in order to: (i) permit the District to arrange for such testing or inspection, including, without limitation, if materials and/or equipment are required to be inspected at the place of manufacture or other source of supply; and (ii) avoid and/or prevent any delays in performing the Work and any Work by Others. If the Contractor closes, covers or otherwise constructs any portion of the Work or an assembly incorporated therein prior to such portion of the Work being inspected as required, the Project Manager may require that the Contractor open, uncover or otherwise deconstruct that portion of the Work in order to permit the required inspection(s) to occur. In such event, the Contractor shall be solely responsible and liable for any costs and/or delays arising from the need to open, uncover or deconstruct such portion of the Work and to thereafter replace or otherwise correct such portion of the Work.

**8.21 District May Require Special or Additional Testing or Inspection.** If the District, the Architect, the Project Manager, the Inspector of Record and/or any governmental entity with competent jurisdiction determines it necessary or advisable, the District may require special or additional testing and/or inspection, not otherwise required, of any portion of the Work and/or any materials and/or equipment incorporated or to be incorporated therein. To the extent required, the Contractor must open, uncover, or deconstruct any portions of the Work or any assemblies incorporated therein in order to reveal hidden portions of the Work. If the special or additional testing and/or inspection reveals that the Work conforms to all requirements of the Contract Documents, the District shall be responsible for the cost of the testing and/or inspection and for costs incurred by the Contractor, as required, to open, uncover, or deconstruct any portions of the Work and, thereafter, correct such Work and any Work by Others disturbed by the additional testing and/or inspection. If the special or additional testing and/or inspection reveals that the Work does not substantially conform to all requirements of the Contract Documents, the Contractor shall be solely responsible for the cost of the testing and/or inspection and for costs incurred by the Contractor, as required, to open, uncover or deconstruct any portions of the Work and, thereafter, correct such Work and any Work by Others disturbed by the additional testing and/or inspection.

**8.22 Contractor Responsibility for Costs of Testing and Inspections.** The Contractor shall be solely responsible and liable for paying all costs attributable to any testing and/or inspection if: (i) the Contract Documents require that the Contractor pay such costs; (ii) the Contractor provided notice requesting the testing and/or inspection, but the applicable Work, materials, equipment and/or assemblies were not ready to be tested and/or inspected at the indicated time; (iii) the testing and/or inspection was necessary because the applicable Work, materials, equipment and/or assemblies previously failed required testing and/or inspection; (iv) the testing and/or inspection had to be performed outside the hours of a normal eight-hour workday on any Monday through Friday, excluding holidays, because the Contractor, for any reason except as excused by the District in writing, performed any portion of the Work outside the hours of a normal eight-hour workday; or (v) the testing and/or inspection occurred outside a fifty mile radius of the Project Site. In no event shall any consent by the District or the Project Manager to performance of any portion(s) of the Work outside the hours of a normal eight-hour workday be deemed or construed to constitute consent by the District to pay costs attributable to testing and/or inspection of such portion(s) of the Work that must occur outside the hours of a normal eight-hour workday. To the extent additional services are required in connection with any such testing and/or inspections, the costs payable by the Contractor shall include, without limitation, costs of the Architect's, Project Manager's and Inspector of Record's services attributable to the testing and/or inspections.

**8.23 Contractor Must Correct Non-Conforming Work.** The District may require that the Contractor remove any Work, materials and/or equipment that is(are) inferior, defective or otherwise fail(s) to conform to requirements of the Contract Documents, regardless of whether already incorporated into the Work, and correct the Work using proper materials and/or equipment. Upon request, the Contractor must provide to the Project Manager such documentary evidence (e.g., invoices, receipts, purchase orders, *et cetera*) as reasonably evidences the type and quality of any materials and/or equipment that is to be or that has been incorporated into the Work. The Contractor, without extension of the Contract Time or increase in the Contract Price, shall be solely responsible and liable for all costs of such removal and replacement, as well as all other costs to bring the Work into compliance with the Contract Documents. If the Contractor fails to timely remove and replace any inferior or defective materials and/or equipment, or fails to otherwise bring the Work into compliance with the Contract Documents, the District may do so, and the cost thereof shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor pursuant to the Contract. If the District is required to undertake any such actions, the District may sell any materials that it removes from the Work and, if any, the proceeds thereof less the District's costs of sale, transport, *et cetera*, shall be a credit that will offset monies withheld from the Contractor.

**8.24 Contractor Must File Verified Reports.** From time to time during the performance of the Work, and at any other time required by the DSA, the Contractor, and each other person or entity performing any portion of the Work required by law, must prepare and file with the DSA any and all verified reports required pursuant to Education Code Section 17309, Section 36 of CCR Title 21, and Section 4-366 of CCR Title 24. Verified reports must be prepared on form(s) prescribed by the DSA and specify, based on the personal knowledge of the person preparing the report, that the Work during the period covered by the report has been performed and materials have been used and installed in every material respect in compliance with the duly approved Drawings and Specifications, and setting forth such detailed statements of fact as shall be required.

**8.25 Contractor Must File Daily Reports.** For each day on which any portion of the Work is performed, regardless of the scope or amount of such Work, the Contractor must provide to the Project Manager a report describing all activities in connection with performance of the Work that day, listing all workers performing any Work that day and their respective trades, experience levels and employers, and any equipment or materials delivered and/or installed or incorporated into the Work that day. For each safety meeting conducted in connection with the Project, the Contractor must prepare, and must submit with the daily report for the day the safety meeting occurred, reasonably detailed minutes and a sign-in or attendance sheet for the safety meeting.

**8.26 Contractor Must Control Noise and Dust.** At all times during performance of the Work, the Contractor must ensure that all construction equipment used in connection with the Work are properly fitted with appropriate and adequate noise-reduction devices or mechanisms, and that all such devices and mechanisms are properly and well maintained. The Contractor must comply with any and all federal, State and local governmental laws, ordinances, rules, regulations and other requirements applicable to noise originating or emanating from construction sites and activities, e.g., the Noise Control Program (Title 40, Code of Federal Regulations, Part 204). The Contractor also must take all such actions as are necessary to prevent dust and/or debris attributable to the Work from blowing into, or otherwise creating a nuisance or polluting, any other areas on or off the Project Site. At any time the Contractor is or will be performing any portion of the Work while school is in session, and the District determines that noise or dust originating or emanating from the Work is unreasonably disturbing students and/or teachers, the District may require that the Contractor stop such portion of the Work and reschedule such activities during hours that will not cause any such unreasonable disturbance. If the Work is to be performed at any time school is in session, the risk of the District stopping the Work on account of any such unreasonable disturbance shall be deemed and construed as foreseeable, and the Contractor in no such event shall be entitled to an extension of the Contract Time or an increase in the Contract Price.

**8.27 Contractor Must Clean Work Areas.** The Contractor, at all times, must keep the Project Site free of trash, debris, dust, excess water, excess materials, unused equipment, *et cetera* attributable to the Work, and shall maintain the Project Site and all structures or other improvements in a clean and orderly condition. Each day during the course of the Work, the Contractor shall: (i) clean the areas in which the Work is or was being performed, together with any other areas affected by such Work (including, without limitation, adjacent streets, sidewalks, gutters, *et cetera*), break areas, lunch areas, *et cetera*; and (ii) remove from the Project Site and properly and legally dispose of all trash, debris, dust, excess water, excess materials, *et cetera* resulting or arising from performance of the Work. If the Project Manager or Inspector of Record determines that trash, debris, dust, excess water, excess materials, unused equipment, *et cetera* resulting or arising from performance of the Work is a potential safety hazard, upon request, the Contractor shall immediately remove the items or matter creating the hazard and clean the vicinity thereof.

**8.28 Consequences of Failure by Contractor to Clean Work Areas.** If at any time the Contractor fails to timely comply with its responsibilities pursuant to Section 8.27 of these General Provisions, the

District or Project Manager may cause such responsibilities to be fulfilled by others, and the cost thereof shall be a charge to the Contractor and/or deducted from amounts otherwise payable to the Contractor pursuant to the Contract. If the Contractor or other contractor working on the Project disputes responsibility for cleanup of the Project Site: (i) the District or Project Manager may cause necessary cleanup to be performed; (ii) the District shall allocate the cost of such cleanup among the Contractor and others that the District determines should have been responsible for the cleanup; and (iii) the cost thereof allocated to the Contractor shall be a charge to the Contractor and/or deducted from amounts otherwise payable to the Contractor pursuant to the Contract.

**PART 9**  
**COORDINATION WITH WORK BY OTHERS**

**9.1 Contractor Must Ascertain Impacts of Work by Others.** The District, in its sole discretion, may enter into other contracts to provide for Work by Others in connection with the Project, or may perform some or all of any Work by Others using its own forces. In addition, the District, in its sole discretion, may provide for phasing of various portions of the Project. The Contractor must ascertain for itself the overall scope and nature of the Project, the scope and nature of any Work by Others required to complete the Project and the potential impacts of any Work by Others on the coordination, timing, scheduling, and performance of the Work, including, without limitation, the impacts of any phasing of the Project. The Contractor must accommodate all such potential impacts, and shall be deemed and construed to have accommodated all such potential impacts, when: (i) preparing the proposed Master Construction Schedule; (ii) coordinating, timing, and scheduling the Work; and (iii) performing the Work. If the work on the Project by any other contractor causes or results in any unreasonable delay and/or unreasonably increases the cost of performing the Work, the Contractor's sole remedy for damages, including delay damages, shall be to seek compensation from the contractor whose work caused or resulted in such delays and/or increased costs, not from the District.

**9.2 Contractor Must Accommodate Partial Occupancy by District.** Subject to the provisions of this Section 9.2, the District shall have the right to occupy and/or use any completed or partially completed portion of the Project. The District and Contractor shall attempt to agree in writing as to their respective responsibilities for payments, security, maintenance, heat, utilities, damage to the Work, insurance, correction of the Work, commencement of guarantee periods, *et cetera*. In the event the District and Contractor are not able to so agree, the District may issue a unilateral Change Order to provide for such occupancy and/or use. Immediately prior to any such partial occupancy and/or use, the District, Architect, Project Manager, Inspector of Record, and Contractor shall jointly inspect the portion of the Project to be occupied and/or used in order to determine and record the status and condition of the Work. The Contractor must make all reasonable efforts to accommodate any such partial occupancy and/or use by the District. Unless set forth in a written agreement or unilateral Change Order, the partial occupancy and/or use of any portion of the Project that includes any portion of the Work shall not constitute acceptance of Work that does not conform with the requirements of the Contract Documents. In no event shall performance of any Work by Others be deemed or construed to constitute partial occupancy and/or use by the District in accordance with this Section 9.2.

**9.3 Contractor Must Coordinate with Work by Others.** In no circumstances shall the Contractor be deemed or construed to have exclusive occupancy of any portion of the Project Site, the Project, or any property in the vicinity of the Project that is under the control of the District or any other governmental or quasi-governmental entity. The Contractor must coordinate the Work with any Work by Others, and, to the extent required, must properly match, connect to, and/or build upon such Work by Others. The Contractor must not unreasonably interfere with or delay any Work by Others, or unreasonably refuse to permit those

performing any Work by Others to: (i) receive deliveries of and/or store any materials, equipment or supplies; (ii) access the various areas on, at or in the vicinity of the Project Site in, at, or on which the Work is located or being performed; or (iii) perform the Work by Others, including, without limitation, matching, connecting to, or building upon, any portion of the Work. Upon request, the Contractor must meet with the Project Manager, the Inspector of Record, and/or others as the District determines necessary or advisable, for purposes of coordinating the various activities of the Contractor and those performing any Work by Others. The Contractor must notify the Project Manager if the performance of any Work by Others is unreasonably interfering with, or likely will unreasonably interfere with, the performance of the Work, and the Project Manager in all such cases shall ascertain whether it is possible for the Work and such Work by Others to proceed simultaneously or whether it is necessary to prioritize the performance of the Work and such Work by Others. Any such prioritization shall be deemed and construed to be a normal incident of the Project, and the District shall not be responsible or liable for direct or indirect delays, costs and/or expenses incurred by the Contractor on account of such prioritization.

**9.4 Contractor Must Inspect Certain Work by Others for Deficiencies.** If the proper performance or results of any portion of the Work depends to any extent on the proper performance or results of any Work by Others (including, without limitation, if the Contractor must match, connect to, or build upon, such Work by Others), then, prior to commencing such portion of the Work, the Contractor must measure and otherwise inspect that Work by Others, and compare the results of that Work by Others with the requirements of the Contract Documents, to ensure that the Work can be properly performed. The Contractor must perform each such inspection sufficiently in advance to avoid and/or prevent any delay in the Work or any Work by Others. The Contractor must immediately provide written notice to the Architect, the Project Manager and the Inspector of Record if the Contractor reasonably believes that any Work by Others upon which the Work is dependent is materially defective, deficient, improper or otherwise does not conform to requirements of the Contract Documents, and thereby precludes proper performance of the Work. The Contractor shall be deemed and construed to have fully accepted any and all Work by Others as fit and proper for purposes of performance of the subsequent Work if: (i) the Contractor fails to inspect, or fails to adequately inspect, such Work by Others; or (ii) the Contractor does not provide notice that such Work by Others is materially defective, deficient, improper or otherwise does not conform to requirements of the Contract Documents, and thereby precludes proper performance of the Work.

## **PART 10 PROJECT SITE DECORUM**

**10.1 Performance of Work at Operating School Facilities.** If the Work or any portion thereof is to be performed at any existing and operating school facility, the Contractor and each Subcontractor and other person or entity on, at or in the vicinity of the Project Site on account of the Work must: (i) become informed of and take into account the age and maturity of the students on the Project Site; (ii) control their behavior accordingly; (iii) coordinate, schedule and perform any Work that may cause inconvenience, interference or other disturbance of any classes or other school operations during times that will eliminate or minimize the disturbance; (iv) enclose the area in which the Work is to occur with a substantial barricade or take other safety precautions as directed by the Project Manager; and (v) comply with directions from the District and/or the Project Manager regarding the timing and performance of the Work that are intended to avoid unnecessarily disturbing school operations.

**10.2 Prohibition Against Contact with Students and Other Minors.** Regardless of whether Section 10.3 of these General Provisions is made effective, no person who is at, on or in the vicinity of the Project Site on account of the Work, even if such person has never been convicted of any serious or violent felony, may converse or otherwise interact with any student or other minor-aged individual. The foregoing



prohibition shall not apply to the extent reasonably necessary: (i) in the event of an Emergency; (ii) in the event the student or other minor-aged individual is accompanied by a parent, guardian, District staff member, or other adult who initiates the interaction (e.g., to ask for directions, to ask what is being constructed, *et cetera*); or (iii) when directing any minor-aged individual who is not authorized to be present on the Project Site to leave the Project Site. Each person who is at, on or in the vicinity of the Project Site on account of the Work shall attempt to keep to a minimum any contact initiated as provided in the foregoing clauses (ii) and (iii). Upon being directed to do so, if any individual not authorized to be present on the Project Site refuses or fails to leave the Project Site, the person who so directed the individual to leave must immediately inform the Project Manager. Each person at, on or in the vicinity of the Project Site on account of the Work shall fully comply with all procedures and other requirements established by the District and/or Project Manager and intended to limit contact with others.

### **10.3 Procedures to Prevent Contact with Students.**

**10.3.1 Significance of Requirements.** This Section 10.3 shall be applicable to the Contract only if the Special Provisions so provide. If this Section 10.3 is applicable, it is because the District has determined that persons assigned to the Work or who otherwise will be present at, on or in the vicinity of the Project Site on account of the Work may have more than "limited contact" with minor-aged students.

**10.3.2 Criminal-History Background Checks.** The Contractor, in conformance with Education Code Section 45125.1, shall require and be responsible for ensuring that each person who will be at, on or in the vicinity of the Project Site on account of the Work shall comply with all California Department of Justice guidelines and requirements relating to fingerprinting and criminal-history background checks. The Contractor must complete, execute and submit to the District the "Certification Regarding Employee Background Checks" form included in the Required Project Forms, to thereby certify that no person assigned to the Work or who otherwise will be present at or on the Project Site has been convicted of any serious or violent felonies (as described in Education Code Section 45122.1). The Contractor must attach to the executed certification a list of all persons to whom the certification applies. The Contractor shall prohibit and prevent each and every person who will be at, on or in the vicinity of the Project Site on account of the Work (including not only all persons assigned to the Work directly by the Contractor, but also all persons assigned to the Work by any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work) from being present at, on or in the vicinity of the Project Site unless and until the Contractor provides the required certification including such person to the District.

**10.3.3 Responsibility for Subcontractor Compliance.** The Contractor shall require in each Subcontract that, if the Subcontractor will assign any person to the Work or otherwise will cause or permit any person to be present at or on the Project Site, the Subcontractor must cooperate in regard to, and fully comply with, the requirements of this Section 10.3. The Contractor may on that basis delegate responsibility for compliance with this Section 10.3 to any such Subcontractor; however, the Contractor at all times retains full responsibility and/or liability for such compliance or lack thereof.

**10.3.4 Alternatives to Fingerprinting and Background Checks.** Upon request of the Contractor with respect to any particular situation and/or limited duration of time, the District in its sole discretion may consent to the Contractor implementing measures intended to protect the District's minor-aged students, which measures would be in lieu of the Contractor complying with Subsections 10.3.2 and 10.3.3 herein. Subject to District approval, such alternative measures might include, but are not necessarily limited to: (i) installing a physical barrier to limit contact between students and the employees and other representatives of the Contractor, Subcontractors, and others present on or at the Project Site on account of the Work; (ii) providing for the continuous supervision and monitoring of specific employees, representatives and others by an employee of the Contractor who has received fingerprint clearance from the California

Department of Justice; or (iii) providing for the surveillance of such employees, representatives and others by a District employee. The Contractor must implement any such approved alternative measures at no additional cost to the District, and the Contractor shall be responsible for ensuring compliance with such alternative measures by or with respect to all persons assigned to the Work or who otherwise will be present at, on or in the vicinity of the Project Site on account of the Work.

**10.4 Consequences of Violating Prohibition Against Contact.** Due to the possible adverse consequences of contact with students and other minor-aged individuals, any failure by the Contractor to ensure compliance with the requirements of Section 10.2 or, if applicable, Section 10.3 of these General Provisions, shall be deemed and construed to constitute a material breach of the Contract, upon which the District, in its sole discretion, may immediately terminate the Contract without any further compensation to Contractor and/or pursue all other rights and remedies it may have against the Contractor pursuant to law or the Contract.

**10.5 Identification or Security Badges.** The Project Manager may implement requirements for persons present at, on or in the vicinity of the Project Site on account of the Work to wear identification or security badges. In such event, each such person must comply with all requirements for producing, procuring or obtaining such badges, and each such person must wear the assigned badge at all times while at, on or in the vicinity of the Project Site, in a visibly noticeable location on the front, upper body of such person. Upon request, the Project Manager may consent to a person wearing his or her badge in an alternate location or by alternate means (e.g., lanyard, clip, *et cetera*) if reasonably necessary to ensure the safety of such person or the visibility of the badge. Any person in need of a replacement badge may obtain a replacement subject to paying a fee covering the District's costs of providing the replacement badge. If the Project Manager implements requirements for wearing badges, no person without a badge, or who refuses or fails to wear his or her badge, will be permitted to enter or remain at, on or in the vicinity of the Project Site. Upon final completion of the Work, the Contractor shall return, or cause to be returned, to the Project Manager all badges issued in connection with the Work, which shall be a prerequisite to final payment to the Contractor pursuant to the Contract.

**10.6 Prohibition Against Workers Leaving Vicinity of Their Work.** Each person at, on or in the vicinity of the Project Site on account of the Work must remain in the immediate vicinity of the portion of the Work he or she is to perform, and must not stray to other areas of the Project Site. The foregoing shall not be construed to prohibit any such person from accessing, as reasonably necessary, his or her work area(s), restrooms, any designated lunch area, or any designated parking area.

**10.7 Prohibition Against Unfit Workers.** No unfit person may, and the Contractor must not permit any unfit person to: (i) perform any portion of the Work; or (ii) be present at, on or in the vicinity of the Project Site. For purposes of this Section 10.7, a person shall be deemed unfit if: (i) the person is not appropriately skilled for the tasks or work assigned to such person (other than designated apprentices working under the supervision of designated journeymen or other authorized supervisors); (ii) the person fails to comply with any rule or requirement set forth in the Contract Documents; or (iii) the person creates any safety hazard or unreasonably fails to recognize any apparent safety hazard that might jeopardize that person or other persons or property.

**10.8 Requirements for Courteous and Professional Conduct.** Each person at, on or in the vicinity of the Project Site for any reason, including, without limitation, any worker arriving for or departing from his or her work shift, shall at all times act in a courteous and professional manner. Each such person is hereby prohibited from: (i) acting in any violent, overly-aggressive or other anti-social manner, including, without limitation, fighting, hitting or striking of any other person or property, yelling or screaming, obscene gestures, leering, touching of any other person in a manner that violates any law, *et cetera*; (ii) using any word or

language that is profane, demeaning, derogatory, sexually explicit, misogynistic, racially- or ethnically-biased, *et cetera*; (iii) making any lewd, obscene or otherwise indecent gestures, including, without limitation, “flipping off” any other person or thing; and (iv) taunting or inappropriately teasing any other person if likely or intended to annoy, harass, anger, or cause any other adverse emotional reaction by or of any person. No person may bring or keep on or in the vicinity of the Project Site, or any other place where any portion of the Work is to be performed, any gun, switchblade, or other knife with a blade greater than two inches in length (except that the Project Manager may permit knives with longer blades if reasonably necessary for performance of the Work).

**10.9 Dress Code and Appearance Requirements.** Each person at, on or in the vicinity of the Project Site on account of the Work must use and/or wear clothing and protective attire (e.g., hard-hats, eye-wear, boots, gloves, *et cetera*) as appropriate for the situation and/or the Work being performed, and such clothing and attire must be clean at the start of such person’s work shift. No person at, on or in the vicinity of the Project Site on account of the Work may wear: (i) any shirt that does not fully cover the person’s upper torso and shoulders (e.g., a tank-top or midriff shirt) as an only or as an outer layer of clothing; (ii) any tennis, athletic or similar type shoes; (iii) any flip-flops or other types of sandals; or (iv) any short pants or cut-offs. No person at, on or in the vicinity of the Project Site on account of the Work may wear or display any shirt, pants, hat or other garment, or any necklace, bracelet or other accessory, or any other thing of any nature that depicts, illustrates, states, describes, advertises or promotes: (i) any material or message that is obscene, violent, suggestive, derogatory, demeaning, sexual, misogynistic, racially- or ethnically-biased, *et cetera*; or (ii) any drug, alcohol, tobacco, or other controlled substance prohibited to minors.

**10.10 Requirements for Use of Restrooms.** If the Project Manager is not responsible for providing portable or other restroom facilities at the Project Site, the Contractor shall be responsible for providing portable restroom facilities (including, without limitation, hand-washing area and soap) for use by all persons at, on or in the vicinity of the Project Site on account of the Work. Each such person shall comply with any posted instructions or rules relating to use of the restroom facilities at, on or in the vicinity of the Project Site. In no circumstances may any such person urinate, defecate or expectorate (i.e., spit) anywhere at, on or in the vicinity of the Project Site other than into a urinal or toilet inside a restroom facility.

**10.11 Control of Break-Time Activities.** The Contractor shall control the break-time activities of all persons present on the Project Site on account of the Work. The Contractor shall ensure that break areas are cleaned after each break and that all refuse (including, without limitation, soda cans, food wrappers and containers, plastic bottles, and un-eaten food) are placed in appropriate trash or recyclable-materials receptacles. No person may bring onto, or keep in the vicinity of, the Project Site any glass bottle or other glass container. The Contractor shall encourage recycling and, if not the responsibility of the Project Manager, shall provide containers for the recycling of materials in connection with its activities at the Project Site.

**10.12 Prohibition Against Drugs (including Alcohol) and Tobacco.** All District properties, including, without limitation, the Project Site, are “drug-free” workplaces and, therefore, the Contractor is hereby made subject to the requirements of Government Code Sections 8350 *et seq.*, the Drug-Free Workplace Act of 1990. In addition, all District properties, including, without limitation, the Project Site, are “tobacco-free” workplaces. No person at, on or in the vicinity of the Project Site on account of the Work may: (i) engage in the unlawful manufacture, dispensation, possession or use (including being under the influence) of any illegal or controlled substance; (ii) possess or use any alcoholic beverage; (iii) use any legal substance that results or likely will result in serious or significant impairment of normal abilities; or (iv) smoke, inhale, chew or otherwise use or consume tobacco products. Within seven days of the date of the Notice of Award, the Contractor must complete, execute and submit to the District the “Certification Regarding Drug-Free Workplace” and the “Certification Regarding Tobacco-Free Workplace” forms included

in the Required Contract Forms. Due to the possible adverse consequences of the foregoing activities, any failure by the Contractor to ensure compliance with the requirements of this Section 10.12 shall be deemed and construed to constitute a material breach of the Contract, upon which the District, in its sole discretion, may immediately terminate the Contract, without any further compensation to Contractor, and pursue all other rights and remedies it may have against the Contractor pursuant to law or the Contract.

**10.13 Prohibition Against Unnecessary Noise.** No person at, on or in the vicinity of the Project Site on account of the Work shall make any loud and/or unnecessary noises, except loud noises reasonably resulting from performance of the Work. No person at, on or in the vicinity of the Project Site on account of the Work may: (i) use any radio, portable CD player, or other similar device, regardless of the volume at which it is used; (ii) use any I-Pod, MP-3 player or similar device (including, without limitation, if the device is a component of a cellular telephone or similar device) not typically audible to other than the user; or (iii) wear any earplugs or headphones for entertainment or other non-Work or non-safety purposes. The foregoing shall not be deemed or construed to prohibit the use of cellular telephones, walkie-talkies or other radio-communications devices for communications necessary in connection with the Work.

**10.14 Limitations on Access to Project Site.** Except as authorized by the Project Manager, no person not then-required in connection with the performance of the Work may enter or remain in or upon the Project Site, including, without limitation, any sales-person, food vendor, or friend or relative of any person otherwise authorized to be present at or on the Project Site. All persons entering onto or exiting from the Project Site in any personal or work vehicle or equipment shall use only the ingress and egress routes established by the Project Manager and must not cross-over any boundaries or limit-lines established by the Project Manager.

**10.15 Parking at the Project Site.** The Project Manager may or may not designate an area at, on or in the vicinity of the Project Site to be used for parking of personal vehicles and work vehicles and equipment not then being used in connection with the Work. If the Project Manager has designated an on-site or off-site parking area for such purposes, personal and work vehicles and equipment may be parked only in that designated parking area. Each person, who brings a personal or work vehicle or equipment to the Project Site, shall fully comply with any parking controls and/or program established by the Project Manager, including, without limitation, any requirements for furnishing license-plate information and placing parking-stickers on such vehicles or equipment. If the Project Manager has not designated an on-site or off-site parking area, then no personal or work vehicles or equipment: (i) may be parked at or on the Project Site except as expressly authorized by the Project Manager; or (ii) may be parked in the vicinity of the Project Site in any manner that is illegal or otherwise creates a safety hazard or nuisance. Upon request of the Project Manager, the Contractor shall immediately cause to be relocated any improperly parked vehicle that is owned or used by any person present at the Project Site on account of the Work.

**10.16 Use of Vehicles and Equipment at the Project Site.** The Contractor must obtain consent and directions from the Project Manager prior to using, or permitting any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work to use, any work vehicle or equipment on, at or in the vicinity of the Project Site. Any work vehicles and/or equipment so used shall be removed from the Project Site or, if applicable, shall be removed to a designated location, promptly after completion of the portion of the Work for which the vehicle or equipment is required. The Contractor shall be responsible for damage to the Project Site or any necessary repair or other work at the Project Site resulting from any such use of any vehicle or equipment, whether authorized or not.

**10.17 Prohibition Against Displays on Vehicles and Equipment.** No person may bring or keep any personal or work vehicle or equipment on or in the vicinity of the Project Site that displays any sign, decal,

sticker, bumper-sticker, or other image that depicts, illustrates, states, describes, advertises or promotes: (i) any material or message that is obscene, violent, derogatory, demeaning, sexually suggestive, misogynistic, racially- or ethnically-biased, *et cetera*; or (ii) any drug, alcohol, tobacco, or other controlled substance prohibited to minors.

**10.18 No District Responsibility for Vehicles or Equipment.** The Contractor and/or the individual owners of any personal or work vehicles or equipment at, on or at the Project Site shall be and remain responsible for the security, safety and condition of such vehicles and equipment. None of the District, Architect, Project Manager or Inspector of Record shall be responsible or liable for any theft or damage that occurs to any vehicles and/or equipment at, on or in the vicinity of the Project Site (although any such individual who steals or causes damage may be personally liable).

**10.19 Prohibition Against Animals at Project Site.** No person at, on or in the vicinity of the Project Site may bring to the Project Site, or keep at, on or in the vicinity of the Project Site, any pet or other animal, including, without limitation, any horse, dog, cat, bird, snake, lizard, insect, *et cetera*, other than an assistance animal as permitted by law. The foregoing shall be deemed and construed to prohibit having or keeping animals in any vehicles or equipment, whether in operation or parked.

**10.20 Contractor to Require Compliance.** With respect to each person present on the Project Site on account of the Work, regardless of whether such person works directly for the Contractor or any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work, the Contractor shall: (i) be solely responsible for ensuring compliance with the conduct-related rules and requirements set forth in this Part 10 of these General Provisions and elsewhere in the Contract Documents (collectively, "Conduct Rules"); (ii) strictly enforce all Conduct Rules; and (iii) maintain discipline and order at all times. In each Subcontract, the Contractor shall require that each Subcontractor: (i) fully comply with and enforce, and require that each of their respective employees, agents and other representatives fully comply with, all Conduct Rules; and (ii) provide a copy of this Part 10 (accurately translated to other languages, if necessary) to each of their respective employees, agents and other representatives who will be present at, on or in the vicinity of the Project Site on account of the Work.

**10.21 Consequences of Non-Compliance.** If the Contractor determines that any person at, on or in the vicinity of the Project Site on account of the Work has violated any Conduct Rule, the Contractor shall immediately remove such person from the Project Site and prohibit such person from returning to the Project Site. If the District, Architect, Project Manager or Inspector of Record determines that any person at, on or in the vicinity of the Project Site on account of the Work has violated any Conduct Rule, then, upon request, the Contractor shall immediately remove such person from the Project Site and prohibit such person from returning to the Project Site. The Contractor shall prohibit, and shall take appropriate steps to prevent, any person removed from the Project Site for any Conduct Rule violation from returning to the Project Site or resuming any work, duties or other responsibilities in connection with the Work. No such person may return to the Project Site, or may resume any work, duties or other responsibilities in connection with the Work, unless the District or the Project Manager consents in writing.

## **PART 11 PROJECT SITE SAFETY**

**11.1 General Safety-Related Responsibilities of the Contractor.** Without limiting any other provision of the Contract Documents, the Contractor has, and shall at all times retain, the ultimate responsibility for all of the following: (i) keeping the areas at, on and in the vicinity of the Project Site free of

safety hazards arising from performance of, or in any way connected with, the Work; (ii) performing the Work in a manner that ensures the safety of persons and property at, on or in the vicinity of the Project Site; (iii) providing all physical safety measures required in connection with the Work required to adequately protect persons and property at, on or in the vicinity of the Project Site pursuant to any legal requirement or the Contract Documents, or as necessary or advisable based on conditions in which the Work will be performed; (iv) complying with all applicable safety laws, standards, orders, rules, regulations and other requirements of any federal, State, local or other governmental or quasi-governmental entity with competent jurisdiction, including, without limitation, posting of all required information regarding protection of workers and giving of any and all required notices, warnings and disclosures; (v) protecting the Work and all materials, equipment and other things to be incorporated into the Work or used in connection with the Work, whether on or off the Project Site; and (vi) protecting property at, on or in the vicinity of the Project Site that may be affected by the Work, including, without limitation, structures, streets, sidewalks, gutters, paved areas, utilities, trees, shrubs and lawns that will not be removed or replaced in connection with the Project.

**11.2 Required Safety Programs.** The Contractor shall prepare in writing any and all safety, loss-prevention and/or injury and illness prevention plans and/or programs required in connection with the Work by the Contract Documents or by any applicable law, rule, regulation or other governmental requirement, including, but not limited to, Cal-OSHA requirements (each a "Safety Program"). The Contractor shall provide a copy of each Safety Program to the Project Manager prior to commencing any portion of the Work. The Project Manager, an insurance loss-prevention agent, and/or other District representative may implement a Safety Program in connection with the Project, in which case, the Contractor and each Subcontractor shall fully comply with all requirements of such Safety Program. As directed by the Project Manager, the Contractor shall coordinate its Safety Program procedures and requirements with those of any other Safety Programs applicable to the Project. The Contractor shall be responsible for implementing and ensuring compliance with any and all procedures, training and other requirements of each applicable Safety Program, including, without limitation, training of workers in regard to security of the Project Site and the transportation, storage and use of hazardous materials.

**11.3 Designation and Duties of Safety Officers.**

**11.3.1 Contractor Safety Officer.** Prior to commencing any portion of the Work, the Contractor shall provide, in writing to the Project Manager, the name, position or title, and resume of an individual who the Contractor proposes shall be responsible for ensuring compliance with all Safety Programs and other safety-related requirements applicable to the Work ("Safety Officer"). The person designated as the Safety Officer must be appropriately knowledgeable and experienced in fulfilling such responsibilities, and the District may in its reasonable discretion approve or disapprove of any proposed Safety Officer. Depending on the complexity and scope of the Work, and based on recommendations from the Project Manager, the District may consent to the Job Superintendent serving also as the Safety Officer, but, in such event, the District in its reasonable discretion may withdraw such consent at any time thereafter. No portion or element of the Work that is to occur at, on or in the vicinity of the Project Site may proceed if the Safety Officer is not present at or on the Project Site. The Safety Officer shall: (i) prepare and submit to the Project Manager all Safety Programs, Accident Reports, and other documentation required of the Contractor pursuant to this Part 11 of these General Provisions; (ii) attend construction-progress meetings, and attend and/or conduct safety-related meetings, as required by the Project Manager or the Safety Programs; (iii) cooperate with the Project Manager in regard to coordinating Safety Programs and other safety-related requirements applicable to the Work and other portions of the Project; (iv) ensure effective implementation and compliance with all on-site safety-related responsibilities of the Contractor pursuant to this Part 11 of these General Provisions; (v) monitor all weather and other conditions affecting the Work; (vi) convey all necessary safety information and requirements to all employees and other representatives of the Contractor and each Subcontractor, as required by the Project Manager or the Safety Programs; and (vii) cooperate with

each other person and entity, as required by the District, Project Manager or the Safety Programs, in the event of any accident, injury, damage or loss.

**11.3.2 Subcontractor Safety Officer.** In each Subcontract, the Contractor shall require that the Subcontractor: (i) designate in writing to the Project Manager a Safety Officer with responsibility for enforcing the Safety Programs on behalf of the Subcontractor; (ii) require that its Safety Officer attend all safety-related meetings as required by the Project Manager or the Safety Programs; (iii) require that its Safety Officer fully cooperate with the Contractor's Safety Officer and with the Project Manager in regard to coordinating and implementing Safety Programs and other safety-related requirements applicable to the Work and other portions of the Project; (iv) require that its Safety Officer convey all necessary safety information and requirements to all employees and other representatives of the Subcontractor, as required by the Project Manager or the Safety Programs; (v) require that its Safety Officer prepare and submit to the Project Manager any Accident Reports required of the Subcontractor pursuant to Section 11.10 of these General Provisions; and (vi) require that its Safety Officer fully cooperate with each other person and entity, as required by the District, Project Manager or the Safety Programs, in the event of any accident, injury, damage or loss.

**11.4 Required Safety Measures.** To the extent required by an applicable Safety Program, any applicable law, rule, regulation, ordinance or other governmental requirement, or the Project Manager, or as dictated by the conditions and progress of the Work, the Contractor shall: (i) post applicable safety regulations; (ii) erect and maintain physical safety measures as necessary for protection of persons and property at, on or in the vicinity of the Project Site, including, without limitation, signs, lights and other warning devices, audible devices for protection of the blind, cones and other directional aids, canopies, nets, scaffolding, supports, rails, and barriers; (iii) relocate physical safety measures as necessary to maintain safe working conditions and paths of travel at, on or in the vicinity of the Project Site; (iv) employ security forces for protection of persons and property at, on or in the vicinity of the Project Site; (v) give written notice of construction activities and hazards to owners and users of adjacent properties and to utility companies; and (vi) maintain fully-stocked and adequate first-aid supplies at the Project Site consistent with U.S. Department of Labor, Occupational Safety and Health Administration ("OSHA") and DIR's Division of Occupational Safety and Health ("Cal-OSHA") requirements.

**11.5 Contractor Must Not Impose Unsafe Loads.** The Contractor must not impose any load (including, without limitation lateral or surcharge loads) on any temporary or permanent structure, equipment or other work or thing that is on, at or in the vicinity of the Project Site, if the load will exceed safe limits or reasonably might result in damage to the structure or equipment, any other property or thing, or the Project Site. In no event shall the Contractor place any stabilization leg(s) of cranes or other equipment, cribbing, bracing, *et cetera*, on any curb, gutter, sidewalk or similar improvement on, at or in the vicinity of the Project Site, without the express written consent of the Project Manager. No such consent shall be deemed or construed to relieve the Contractor from its responsibility and liability for damage caused by the Contractor's activities.

**11.6 Design and Use of Temporary Structures and Equipment.** The Contractor shall be solely responsible and liable for the design, construction, integrity and use, in accordance with all applicable laws, ordinances, rules, regulations, and orders of governmental entities with competent jurisdiction, of any and all temporary structures, equipment and other things used in the performance of the Work, including, without limitation, any scaffolding, hoists, cribbing, shoring, and bracing. The Contractor must ensure that all temporary structures, equipment and other things are designed, constructed, used and removed in such manners as will not damage the Work, any Work by Others, the Project Site or other property or things in the vicinity of the temporary item, including, without limitation, accommodating natural earth movement, high winds, and shaking and vibrations caused by construction activities. The Contractor shall be solely

responsible and liable for any and all costs and/or liabilities arising from the design, construction and use of temporary structures, equipment and/or other things in connection with the performance of the Work.

**11.7 Trench Safety Plans.** If the Contract Price exceeds \$25,000, then, prior to undertaking the excavation of any trench that will or reasonably might be five feet or more in depth, the Contractor must submit to the Project Manager a detailed plan showing the design of the shoring, bracing, sloping or other mechanisms for protection of workers and others from collapse or cave-in of the trench (“Trench Safety Plan”). Without limiting any other requirement applicable to contents of a Trench Safety Plan, each Trench Safety Plan must also: (i) provide for safe means for workers, as necessary, to enter and exit the trench; (ii) consider active and surcharge loads, and specify minimum required distances between the trench edges and adjacent buildings, embankments, subsurface utilities, construction equipment, spoils, *et cetera*; and (iii) provide for daily inspection of the trench by a competent person prior to each work shift and after any change in existing conditions. Each Trench Safety Plan must be prepared by an appropriately skilled, experienced and licensed civil or structural engineer, who must certify that the Trench Safety Plan complies with minimum requirements of all applicable Construction Safety Orders of Cal-OSHA. If a Trench Safety Plan varies from the standards established by applicable Construction Safety Orders, the Contractor must obtain Cal-OSHA approval of the Trench Safety Plan. The Contractor shall not commence the excavation of a trench within the scope of this Section 11.7 until the Contractor has provided (and the District has accepted) the applicable Trench Safety Plan and a copy of the excavator’s current and valid Cal-OSHA Construction Activity Permit. Neither anything in this Section 11.7 nor any review and/or acceptance by the District of any Trench Safety Plan shall be deemed or construed to relieve the Contractor from responsibility for providing shoring, bracing, sloping, or other mechanisms adequate to protect workers and others on, at or in the vicinity of the Project Site in connection with any trench to be excavated by or on behalf of the Contractor.

**11.8 Other Safety Requirements.** The Contractor and each Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work shall comply with all other reasonable safety-related directives that the District or the Project Manager may, from time to time, deem necessary or convenient for ensuring safety of any persons or property at, on or in the vicinity of the Project Site, including, without limitation, efforts by the Project Manager to coordinate responsibilities for safety precautions and programs between the Contractor and one or more other parties providing work or services in connection with the Project.

**11.9 Contractor Response to Emergency Situations.** In the event of an Emergency that endangers or reasonably might endanger the health, safety or welfare of any person(s) or property, the Contractor shall take such action the Contractor, in its discretion, determines is necessary to prevent the threatened damage or injury to person(s) or property, including, without limitation, rendering first aid to any injured person. If the Contractor reasonably believes that it is entitled to an adjustment in the Contract Price or extension of the Contract Time on account of the Contractor’s response to an Emergency, within five days after the Contractor takes action in response to the Emergency, the Contractor may submit a request for Change Order to the Project Manager. However, in no event shall the Contractor be entitled to an increase in the Contract Price or an extension of the Contract Time on account of an Emergency arising from the acts, omissions, negligence or willful misconduct, or from causes within the reasonable control of, the Contractor or any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work.



**11.10 Required Reporting of Accidents, Injuries and Damage.**

**11.10.1 Contractor Accident Reports.** The Contractor must file a written report with the Project Manager as provided in this Section 11.10 (each an "Accident Report") in each case in which, due to any cause: (i) any significant accident occurs (regardless of whether any injury or damage occurs), any person is injured (including death), or any property on, at or in the vicinity of the Project Site is damaged, in connection with the performance of the Work or by any person at, on or in the vicinity of the Project Site on account of the Work, and regardless of whether such portion of the Work is being or to be performed by the Contractor or any Subcontractor; or (ii) the Contractor renders aid to any person as described in Section 11.9 of these General Provisions. Each Accident Report shall include all information relevant to the injury or damage, including, but not limited to: (i) identification of the person(s) injured or the property damaged; (ii) the extent or scope of the injury or damage; (iii) all known facts regarding when, where and how the incident occurred; (iv) identification of, and statements by, all persons who witnessed or were involved in the incident; (v) the weather and other conditions existing at the time and location of the incident; and (vi) other information deemed relevant in connection with the incident. The Contractor shall provide an Accident Report to the Project Manager within twenty-four hours of the incident detailed in the Accident Report. In addition, if the incident resulted in the serious injury of any person (something more than a minor cut, scratch or bruise) or substantial damage to any property (estimated to be in excess of \$500), the Contractor shall contact the Project Manager immediately by telephone to report the incident.

**11.10.2 Subcontractor Accident Reports.** In each Subcontract, the Contractor shall require that the Subcontractor: (i) file with the Project Manager a written Accident Report containing all the information described in Subsection 11.10.1 in each case that an accident, injury or damage occurs in connection with any Work being performed by the Subcontractor or involves any person at, on or in the vicinity of the Project Site on account of the Work being or to be performed by the Subcontractor; (ii) file each Accident Report with the Project Manager within twenty-four hours of the incident detailed in the Accident Report; (iii) contact the Project Manager immediately by telephone to report the incident if it resulted in the serious injury of any person (something more than a minor cut, scratch or bruise) or substantial damage to any property (estimated to be in excess of \$500).

**11.11 Notice and Correction of Non-Compliance.** If, at any time, the Contractor is not in compliance with the requirements of this Part 11, or if the Contractor or any Subcontractor has created an actual or potential hazard to the health or safety of any person or property at, on or in the vicinity of the Project Site, then the District, the Project Manager, or other public agency with competent jurisdiction (including, without limitation, Cal-OSHA) may provide written notice thereof to the Contractor. Upon receipt of such notice, the Contractor shall immediately undertake action to correct or cure the non-compliance or actual or potential hazard specified in the notice. If the Contractor fails to correct or cure, or fails to implement reasonable efforts to correct or cure, any non-compliance or actual or potential hazard within twenty-four hours after receipt of notice or within such other time as specified in the notice, the District may, but shall not be obligated to, correct or cure the non-compliance or actual or potential hazard, and the cost thereof shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor pursuant to the Contract.

**11.12 Contractor Liability.** In no event shall the failure by any party to provide notice to the Contractor of any non-compliance or actual or potential hazard in accordance with Section 11.11 of these General Provisions be deemed or construed to relieve the Contractor from any responsibility or liability whatsoever attributable to such non-compliance or actual or potential hazard. Unless and only to the extent set forth in the Contract Documents, the District assumes no responsibility or liability for the physical condition or safety of the Project Site, any ongoing or completed construction thereon, or any equipment, supplies or materials present at, on or in the vicinity of the Project Site.

**11.13 Compliance a Condition Precedent to Payment.** As a condition precedent to payment of invoices submitted by the Contractor, each such invoice must be accompanied by written certification by the Contractor under penalty of perjury that: (i) all required Safety Program(s) and other requirements of this Part 11 have been implemented and remain in effect; and (ii) that the Contractor has continuously administered and enforced such requirements during the period covered by the invoice.

**PART 12**  
**COMPLIANCE WITH LABOR LAWS**

**12.1 Contractor Must Comply with Prevailing Wage Laws.** The Contractor must be, and shall be deemed and construed to be, aware of and understand the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, and Title 8 of the CCR, Section 16000 *et seq.* (collectively, “Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. The Project is a “public works” project, as defined by the Prevailing Wage Laws, and the Contractor must perform all of the Work as a public works project. The Contractor must fully comply, and must ensure full compliance by all Subcontractors and other persons and entities as required, with all applicable Prevailing Wage Laws.

**12.2 Copies of Prevailing Wage Rates.** The Project Manager has obtained from the Director of Industrial Relations the general prevailing rate of per-diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification, or type of worker needed to perform the Work, in effect as of the date the District sought bids or proposals for the Work. Prior to commencing any portion of the Work, the Contractor must obtain a copy of such prevailing rates of per-diem wages from the Project Manager. The Contractor must make copies of the prevailing rates of per-diem wages for each craft, classification or type of worker needed to perform the Work available to interested parties upon request, and must post copies at the Contractor’s principal place of business and at the Project Site.

**12.3 Penalties for Violations of Prevailing Wage Laws.** In accordance with Labor Code Section 1775, the Contractor and any Subcontractor shall forfeit, as a penalty to the District, not more than \$200 and, subject to limited exceptions, not less than certain amounts specified by law, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of the DIR for the work or craft in which the worker is employed. The Contractor or the applicable Subcontractor shall pay to each worker the difference between such stipulated prevailing wage rate and the amount paid to the worker for each calendar day or portion thereof for which the worker was paid less than the applicable prevailing wage rates.

**12.4 Compliance Monitoring and Enforcement.** The Contractor acknowledges that, in applicable circumstances, the DIR will provide certain services in connection with the Project, in accordance with the California Labor Code, Section 16450 *et seq.* of CCR Title 8 and/or other applicable law. In any event, the Contractor and all Subcontractors, at no additional cost to the District, must comply with any and all applicable labor-related requirements, regardless of how implemented, including, without limitation, requirements for payment of wages in accordance with the Prevailing Wage Laws, maintenance, inspection and submittal (electronically, as required) of payroll records, interviewing of workers, *et cetera*. The Contractor, at no additional cost to the District, must cooperate with the DIR, the District, and any District consultants in connection with labor-law compliance matters. The Contractor must post all job-site notices required by law in connection with the Work, including, without limitation, postings required by DIR regulations. The Contractor must make all Subcontractors aware of the foregoing requirements and must require that the Subcontractors comply with all labor-related requirements at no extra cost to the District.

The District will coordinate and conduct any mandatory pre-construction conference, and the Contractor and each of its Subcontractors must attend such conference in order to ensure they are aware of applicable labor-law requirements.

**12.5 Prohibition Against Debarred Subcontractors.** No Subcontractor may perform any portion of the Work if the Subcontractor is ineligible to perform work on a public works project pursuant to Section 1777.1 or Section 1777.7 of the Labor Code. Any contract relating to a public works project entered into by the Contractor and any such "debarred" party is void as a matter of law, and a debarred party may not receive any public money for performing work as a contractor or subcontractor on any public works project. The Contractor must refund to the District any public money that has been paid to a debarred party in connection with the Work. The Contractor shall be responsible for the payment of wages to workers of any debarred party that is allowed to perform any of the Work.

**12.6 Employment of Apprentices.** The Contractor and each Subcontractor shall be responsible for compliance with the provisions of law relating to employment of apprentices, including, without limitation, Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code. As provided by Labor Code Section 1777.7, violations of Labor Code Section 1777.5 may result in forfeiture not to exceed \$100 for each full calendar day of non-compliance. Information regarding apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards of the DIR ("DAS"). **IF THE CONTRACT FALLS WITHIN THE JURISDICTION OF SECTION 1777.5, THE CONTRACTOR MUST NOTIFY THE DISTRICT NOT MORE THAN TWENTY-FOUR HOURS AFTER RECEIVING THE NOTICE OF AWARD.**

**12.7 Limitations on Daily Hours of Work.** Except as provided in this Section, the Contractor and each Subcontractor shall not permit any person performing any of the Work to work more than eight hours during any one calendar day or more than forty hours during any one calendar week. The Contractor and any Subcontractor shall forfeit, as a penalty to the District, \$25 for each worker employed in the execution of the Work by the Contractor or the Subcontractor who is required or permitted to work more than eight hours in any one calendar day or forty hours in any calendar week in violation of Sections 1810 through 1815, inclusive, of the Labor Code. However, notwithstanding the foregoing, in accordance with Labor Code Section 1815, the Contractor or a Subcontractor may permit a worker to work in excess of eight hours per day, or forty hours per week, if all work in excess of such limits is compensated at a rate not less than one and one half times the worker's basic rate of pay.

**12.8 Requirements for Payroll Records.** The Contractor and each Subcontractor must comply with all applicable provisions of Labor Code Sections 1776 and 1812, which relate to preparing and maintaining accurate payroll records, and making such payroll records available for review and copying by the District, the DIR's Division of Labor Standards Enforcement, and DAS. The payroll records must be certified, maintained at the principal offices of the Contractor, and made available as required pursuant to Labor Code Section 1776. The Contractor must inform the District of the location at which the payroll records are located, including the street address, city, and county, and must, within five working days, provide a notice of any change of location and address. The Contractor and any Subcontractor that fails to timely comply with requests for certified payroll records shall forfeit, as a penalty to the District, \$100 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, and, in addition to penalties as provided by law, may be subject to debarment pursuant to Labor Code Section 1771.1. In addition, the Contractor and each Subcontractor must comply with Labor Code Section 1771.4(a)(3), which relates to providing the payroll records directly to the Labor Commissioner.

**12.9 Contractor Must Know and Comply with All Labor Laws.** The Contractor shall be responsible and liable for ascertaining, knowing, understanding and complying with all labor-related laws,

rules, regulations, ordinances, and other governmental requirements applicable to the Project, including, without limitation all such requirements specifically cited in this Part 12. If any provision of this Part 12 conflicts with, or is not a complete statement of, any provision of the applicable requirements, such provision of the applicable requirements shall be deemed, respectively, to govern over or to expand on the provisions of this Part 12, and the Contractor and each Subcontractor shall be required to comply in all respects with such provision of the applicable requirements. To the extent required pursuant to Part 23 of these General Provisions, the Contractor shall indemnify, defend and hold-harmless the District, the Architect, the Project Manager and the Inspector of Record, with respect to any failure or alleged failure to comply with this Part 12 or any laws, rules, regulations, ordinances, and other governmental requirements applicable to the matters addressed in this Part 12, by the Contractor, any Subcontractor, or any other person or entity that must comply in connection with the Work.

**PART 13**  
**TIME FOR COMPLETION AND DELAYS**

**13.1 Time is of the Essence.** Time is of the essence with respect to each time period for performance of an obligation set forth in, or to be determined in accordance with, or to be performed pursuant to, the Contract Documents. The Contractor must undertake, perform and complete all portions of the Work in strict accordance with milestones and time period(s) specified in the Master Construction Schedule as it may be modified from time to time pursuant to the Contract Documents.

**13.2 Pre-Construction Activities.** After receipt of the Notice of Award, the Contractor shall undertake all activities necessary for Contractor to commence performance of the Work on the date specified in the Notice of Award (or if none, in the Special Provisions) as the anticipated date for issuance of the Notice to Proceed (“Pre-Construction Activities”). The Pre-Construction Activities shall include, without limitation: (i) reviewing the Contract Documents pursuant to Section 4.10 of these General Provisions; (ii) consulting and cooperating with the District and the Project Manager in regard to developing coordinated construction schedules for the Project, including for both the Work and any Work by Others; (iii) coordinating use of the Contractor’s workforce, equipment and administrative resources; (iv) coordinating use of each Subcontractor’s workforce, equipment and administrative resources; and (v) arranging procurement and delivery of any long-lead-time items. Notwithstanding the foregoing, during the Pre-Construction Activities period, the Contractor shall consult with the Project Manager and obtain the District’s and Project Manager’s concurrence prior to actually ordering any long-lead-time items.

**13.3 Proposed Master Construction Schedule.**

**13.3.1 Submittal Requirements.** Within ten days of the date of the Notice of Award or prior to the Commencement Date, whichever is sooner, the Contractor must submit to the Project Manager a proposed critical-path-method schedule that includes all the elements required by this Section and that provides for completion of all portions of the Project in accordance with the time(s) permitted pursuant to the Contract (“Master Construction Schedule”). The Master Construction Schedule must be prepared using software approved in advance by the Project Manager. In addition to providing a printed “hard” copy of the Master Construction Schedule to the Project Manager, the Contractor must provide an electronic copy of the Master Construction Schedule to the Project Manager in such format (e.g., CAD, .pdf, *et cetera*) as directed by the Project Manager.

**13.3.2 Schedule Coverage.** The Master Construction Schedule must provide for a logical and orderly progression of the Work to completion within the Contract Time and must specify time for accomplishing all activities and events needed for completion of the Project, including, without limitation: (i)

review and approval of submittals; (ii) procurement and delivery of equipment and materials having long-lead-times; (iii) obtaining all required Deferred Approvals; (iv) mobilizing on the Project Site; (v) delays resulting from anticipated Rain Days; (vi) performance of the Work and other activities of the Contractor (including its Subcontractors); (vii) performance of any Work by Others; (viii) building and systems start-up, testing and balancing; (ix) equipping and furnishing included within the scope of the Work; and (x) requirements, if any, for priority occupancy of portions of the Project.

**13.3.3 Minimum Required Elements.** The Contractor must specify at least the following elements in the Master Construction Schedule: (i) a single critical path of activities for the Work and any Work by Others; (ii) all milestones for “critical” and “constraining” or “controlling” activities as determined by the Contractor, Architect and/or Project Manager; (iii) a duration of not more than twenty days for any one activity; (iv) earliest and latest dates for commencement of each activity; (v) earliest and latest dates for completion of each activity; (vi) “float” time, if any, for each activity and for the Project overall; (vii) order deadlines for long-lead-time items; (viii) delivery dates for critical or special equipment and/or materials; (ix) dates for providing all submittals to the Architect; (x) dates by which each of the Deferred Approvals must be obtained; and (xi) portions of the Work to be performed by any Subcontractor that must be completed prior to commencement of any portions of the Work by any other Subcontractor.

**13.3.4 Approval by Project Manager.** The Project Manager will review the Master Construction Schedule and may, as necessary, return it to the Contractor for correction or other revision, including, without limitation, any revisions necessary to accommodate Work by Others. If the Project Manager requires revisions, the Contractor shall correct or otherwise revise the Master Construction Schedule and return it to the Project Manager within 72 hours. Upon approving the Master Construction Schedule, the Contractor must sign and submit to the Project Manager a copy of the “Certification Regarding Master Construction Schedule” form included in the Required Project Forms, and, thereafter, the Master Construction Schedule may be changed only as provided in these General Provisions. The approval of the Master Construction Schedule in accordance with the foregoing and submittal of the executed Certification Regarding Master Construction Schedule shall be conditions precedent to the Contractor receiving any payment for the Work pursuant to the Contract Documents.

**13.4 Normal Weather Deemed Foreseeable.** Because normal seasonal weather conditions are foreseeable, the Contractor must accommodate in the proposed Master Construction Schedule the anticipated number of work days during which performance of the Work cannot occur or continue due to normal seasonal weather conditions (each a “Rain Day”). The number of Rain Days included in the Master Construction Schedule shall be determined by reference to weather data compiled by the National Oceanic and Atmospheric Administration (“NOAA”) that establishes the normal seasonal weather conditions for the general location of the Project Site and the time(s) of the year(s) during which the Work will be performed. However, even if fewer Rain Days would be included in the Master Construction Schedule based on NOAA weather data, the Contractor shall include in the Master Construction Schedule not less than three Rain Days for each month of October and November and at least four Rain Days for each month of December, January, February and March. Notwithstanding the foregoing, Rain Days shall be included in the Master Construction Schedule only to the extent the performance of the Work can be adversely affected by inclement weather (e.g., sheltered work that can continue regardless of weather shall not require an allocation of Rain Days), and any question regarding allocation of Rain Days shall be directed to and resolved by the Project Manager prior to the Contractor submitting the proposed Master Construction Schedule.

**13.5 Time for Deferred Approvals Deemed Included in Schedule.** The Contractor must accommodate in the proposed Master Construction Schedule all time required to obtain any and all Deferred Approvals that are the responsibility of the Contractor pursuant to the Contract Documents. The Contractor must allow sufficient time to obtain all required Deferred Approvals as necessary to avoid any adverse affect

on the critical-path schedule for the Project, and the Contractor shall be deemed to have considered all possible delays and damages that might arise in connection with efforts to obtain such Deferred Approvals. The proposed Master Construction Schedule must specify the date by which the Contractor must obtain each required Deferred Approval.

**13.6 Modifications to Master Construction Schedule.**

**13.6.1 Updates and Revisions.** Not less than once per month and consistent with requirements of Section 21.8 of these General Provisions, the Contractor must update and, as necessary, revise the approved Master Construction Schedule to accommodate authorized changes in the Work and/or Contract Time, as well as any other authorized modifications to the Master Construction Schedule. Each update of the Master Construction Schedule must, at a minimum, note any changes to the elements specified in Subsection 13.3.3 of these General Provisions, together with actual commencement and completion dates for the activities included in the Master Construction Schedule. The Contractor must submit copies of each such updated and/or revised Master Construction Schedule for review and approval by the District, Architect and Project Manager, with the copies sent to the Project Manager being in both electronic-file format and printed hard-copy as provided in Subsection 13.3.1 of these General Provisions. Each updated and/or revised Master Construction Schedule shall be subject to the same procedures for review and approval as are described in Subsection 13.3.4 of these General Provisions and applicable to the initially-proposed Master Construction Schedule, including, without limitation, requirements for the Contractor to correct or otherwise revise the Master Construction Schedule.

**13.6.2 Other Modifications.** The Master Construction Schedule shall be subject to reasonable modification by the District from time to time during the course of construction of the Project, due to changes in the Project, coordination of the various trades and/or contractors performing work on the Project, circumstances beyond the control of the District, *et cetera*, and such modifications may result in the Master Construction Schedule not including any float that previously had been included in the Master Construction Schedule. The Master Construction Schedule, as it may be so modified, shall govern with respect to the time(s) within which all and each of the various portions of the Work must be completed.

**13.7 Issuance of Notice to Proceed.** Within sixty days of the date of the Notice of Award, the District will issue a Notice to Proceed. However, the District and the Contractor may agree that the District shall defer issuing the Notice to Proceed for one or more specific periods of time after expiration of the sixty-day period following award of the Contract. In such event, if the District and the Contractor agree that any additional compensation is to be paid to the Contractor as a result of the delayed issuance of the Notice to Proceed, such additional compensation shall be set forth in a Change Order.

**13.8 Commencement and Diligent Performance of Work.** The Contractor must commence performance of the Work on the Commencement Date and, thereafter, must diligently perform all acts and cause to be done all other things necessary to complete the Project within the time period(s) specified in the Master Construction Schedule, including, without limitation: (i) performing all required Work; (ii) obtaining all required services; (iii) providing an adequate workforce at all times; and (iv) providing sufficient quantities of equipment, materials and supplies when needed. If the performance of the Work falls behind schedule, the Contractor must provide to the Project Manager a proposed revision to the Master Construction Schedule that clearly specifies how the Contractor will bring the Work back into conformance with the time for completion required pursuant to the Contract Documents ("Recovery Schedule"). Each Recovery Schedule shall be subject to the same procedures for review and approval as are set forth in Subsection 13.3.4 of these General Provisions and applicable to the initially-proposed Master Construction Schedule, including, without limitation, requirements for the Contractor to correct or otherwise revise the Recovery Schedule. Upon approval of the Recovery Schedule, it shall become the Master Construction Schedule and the Contractor, at

no additional cost to the District, must accelerate the Work and/or do all other things as necessary to complete the Project within the time specified in such Master Construction Schedule.

**13.9 Times During Workday When Work May be Performed.**

**13.9.1 Work During Regular Working Hours.** Except as otherwise provided in this Section 13.9 or specifically required by the District or the Project Manager, and subject to all provisions of Part 12 of these General Provisions, the Contractor must perform the Work that is to occur on, at or in the vicinity of the Project Site only during Regular Working Hours. If the Contractor performs any Work on any days or at any times other than Regular Working Hours, regardless of whether pursuant to Subsection 13.9.2 of these General Provisions or Subsection 13.9.3 of these General Provisions, the Contractor shall be responsible and liable for compliance with all requirements of Part 12 of these General Provisions.

**13.9.2 Permissive Work Outside of Regular Working Hours.** If the Contractor desires to perform any portion of the Work on, at or in the vicinity of the Project Site on any days or at any times other than during Regular Working Hours, or for more than eight working hours per day, the Contractor must obtain the written consent of the Project Manager, the Inspector of Record and/or any specialty inspector, and, if necessary, any city, County and other governmental agencies having competent jurisdiction. The Contractor may request such consent for the Contractor's convenience, including, without limitation, because the Contractor desires to accelerate the Work in order to comply with requirements of the Master Construction Schedule. The Contractor shall be responsible for paying any and all additional or increased management, supervision, inspection and other costs incurred by the District attributable to: (i) the Contractor performing any of the Work on, at or in the vicinity of the Project Site on any days or at any times other than Regular Working Hours, or for more than eight working hours per day, based on consent obtained pursuant to this Subsection 13.9.2; (ii) the Contractor performing any Work at a location that is not on, at or in the vicinity of the Project Site on any days or at any times other than Regular Working Hours; or (iii) the District requiring that the Contractor perform any of the Work on any days or at any times other than Regular Working Hours for any reason that is the fault of, caused by, or otherwise the responsibility of, the Contractor. Any such amounts payable by the Contractor shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor pursuant to the Contract.

**13.9.3 Mandatory Work Outside Regular Working Hours.** The Contractor must perform portion(s) of the Work on any days or at any times other than Regular Working Hours if: (i) such requirement is set forth in the Contract Documents; or (ii) the Contractor is so required by the District for any reason that is not the fault of, caused by, or otherwise the responsibility of, the Contractor. If the District requires performance of the Work outside Regular Working Hours pursuant to the foregoing clause (ii), the District shall be responsible for paying any and all additional or increased management, supervision, inspection and other costs incurred by the District in connection with such portion(s) of the Work.

**13.10 Mandatory Notice of Anticipated Delay.** At any time the Contractor anticipates that a delay in the performance of the Work will occur, regardless of the cause of the delay, the Contractor must immediately provide written notice of the anticipated delay to the Project Manager ("Notice of Anticipated Delay"). A Notice of Anticipated Delay must set forth the cause(s) of the anticipated delay and be accompanied by documentation reasonably evidencing and supporting the Contractor's position with respect to the cause(s) of the anticipated delay. Upon receipt of a Notice of Anticipated Delay, the District, the Project Manager and/or the Architect may take any such reasonable actions as necessary to prevent or minimize the anticipated delay. A Notice of Anticipated Delay shall in no event be deemed or construed to satisfy the requirement for, or be provided in lieu of, any Notice of Actual Delay to be provided pursuant to Section 13.11 of these General Provisions.

**13.11 Mandatory Notice of Actual Delay.** Within five days of the beginning of any delay in the performance of the Work, regardless of the cause of the delay, and regardless of whether the delay is then ongoing, the Contractor must provide written notice of the delay to the Project Manager (“Notice of Actual Delay”). If the Contractor provides a Notice of Actual Delay later than five days after the beginning of a delay: (i) the Contractor shall be deemed and construed to have waived and released any right to an extension of time or to additional compensation attributable to any time more than five days prior to the date the Project Manager receives the Notice of Actual Delay; and (ii) the District may hold the Contractor responsible for any delays and/or increased costs that the District reasonably might have mitigated had the District received a timely Notice of Actual Delay. A Notice of Actual Delay must set forth the cause(s) of the delay and be accompanied by documentation reasonably evidencing and supporting the Contractor’s position with respect to the cause(s) of the delay. **THE GIVING OF A NOTICE OF ACTUAL DELAY IN CONNECTION WITH A DELAY SHALL BE DEEMED AND CONSTRUED AS A MANDATORY PREREQUISITE FOR ANY EXTENSION OF TIME AND/OR ADDITIONAL COMPENSATION TO THE CONTRACTOR ON ACCOUNT OF SUCH DELAY.**

**13.12 Review of Facts and Circumstances Resulting in Delay.** Upon receipt of a Notice of Actual Delay and all related documentation, the District, the Architect and/or the Project Manager will investigate the facts and circumstances relating to the delay. The Project Manager may request that the Contractor provide any additional or more detailed information regarding the delay, which the Contractor must provide within five days of request.

**13.13 Requests for Additional Time and/or Compensation for Delays.** The Contractor must submit each request for an extension of time and/or additional compensation on account of a delay in accordance with the provisions of the Contract Documents relating to Change Orders. The Contractor must submit such Change Order Request within fourteen days of providing the associated Notice of Actual Delay, regardless of whether the delay is then ongoing, and any failure to timely submit the Change Order Request shall be deemed and construed as a waiver and release by the Contractor of any rights to an extension of time and/or additional compensation on account of the delay. Each such Change Order Request must: (i) clearly specify that the Contractor is seeking an extension of time and/or additional compensation on account of a delay and in accordance with this Part 13; (ii) reference the Notice of Actual Delay (including date) previously provided in connection with the delay; and (iii) be accompanied by any additional evidentiary or supporting information not provided with the Notice of Actual Delay. If the Contractor fails to provide any such additional information with the Change Order Request, the Contractor shall be deemed and construed to have waived its rights to thereafter provide any such information, except for any information substantiating and justifying the amount of time for an extension and/or the amount of any additional compensation attributable to a delay that was ongoing at the time the Contractor submitted the Change Order Request. **THE CONTRACTOR’S COMPLIANCE WITH THE FOREGOING PROCEDURAL REQUIREMENTS IN CONNECTION WITH A DELAY SHALL BE DEEMED AND CONSTRUED AS A MANDATORY PREREQUISITE FOR ANY EXTENSION OF TIME OR ADDITIONAL COMPENSATION TO THE CONTRACTOR ON ACCOUNT OF SUCH DELAY, AND FOR FILING OF A RELATED CLAIM IN ACCORDANCE WITH PART 24 OF THESE GENERAL PROVISIONS.**

**13.14 Change Orders Deemed Not to Cause or Create Delays.** As provided in Section 17.19 of these General Provisions, in no event shall any approved Change Order, either by itself or cumulatively with other Change Orders, be deemed or construed to create or be the cause of any delay or, unless specifically stated in such Change Order, to constitute the basis for any extension of time to perform the Work.

**13.15 Delays Resulting from Abnormal Weather.** The Contractor shall bear the risk attributable to all normal seasonal weather conditions, including, without limitation, precipitation, temperatures, winds, amount of daylight, *et cetera*. The Contractor shall not be entitled to an extension of time to complete the Work on account of Rain Days within the number specified in the Master Construction Schedule, and any



such Rain Days not actually used to compensate for inability to perform the Work due to inclement weather shall be considered float for the Project. The Contractor shall be entitled to an extension of time to complete the Work only if the performance of the Work is delayed as a result of inclement weather in an amount, frequency, or duration in excess of the number of Rain Days determined pursuant to Section 13.4 of these General Provisions and included in the Master Construction Schedule pursuant to Section 13.3 of these General Provisions (“Abnormal Weather”). The District shall grant to the Contractor an extension of time for performance of the Work subject to the Contractor establishing, based on sufficient proof, that: (i) the weather conditions constituted Abnormal Weather, i.e., were in excess of “normal” Rain Days; (ii) the delay was caused by the Abnormal Weather; and (iii) the delay affected the critical-path activities of the Work.

**13.16 Extensions of Time for Performance of the Work.** If the District grants the Contractor an extension of time for performance of the Work, the extension shall be proportionate to the actual delay in the performance of the Work, e.g., a half-day extension for a half-day delay. In determining if extensions of time for performance of the Work are necessary on account of a delay, the District shall consider whether portions of the Work were able to continue despite other portion(s) of the Work being delayed, and any extension of time for performance of the Work shall apply only to the portion(s) of the Work affected by the delay, not to other portions of the Work.

**13.17 No Compensation for Certain Delays.** Neither the District nor any person or entity acting on its behalf shall be required to pay any additional compensation to the Contractor or shall otherwise be liable for any costs attributable to a delay (each a “Non-Compensable Delay”) if: (i) the cause of the delay was beyond the control of and without the fault of the District; (ii) the delay was reasonable under the circumstances involved; or (iii) the delay was within the contemplation of the District and the Contractor. Non-Compensable Delays may include, among others, delays arising from: (i) any act of nature, including, without limitation, fire, flood, storm, earthquake or other event or condition not directly caused by any person; (ii) any health Emergency, including, without limitation, any epidemic and/or quarantine; (iii) any act or omission of any governmental, quasi-governmental, or publicly-regulated entity, including, without limitation, any utility company; (iv) any war or any other act of a public enemy; (v) any riot, insurrection or other civil disturbance or disobedience; (vi) any strike, embargo, interruption in transportation services, or other labor-related action; (vii) any act or omission of the Contractor or any of its Subcontractors, employees or agents; or (viii) any act or omission by any person over whom the District has no control or for whom the District has no legal responsibility. The Contractor’s sole and exclusive remedy in the event of a Non-Compensable Delay shall be to seek an extension of time for performance of the Work.

**13.18 Compensation for Delays Caused by District.** The Contractor shall be entitled to compensation from the District on account of a delay in the performance of the Work (each a “Compensable Delay”) only if: (i) the District caused or otherwise was responsible for the delay; (ii) the delay was unreasonable under the circumstances involved; and (iii) the delay was not within the contemplation of the District and Contractor. A delay shall not be considered to be a Compensable Delay to the extent the delay was caused, contributed to, or continued by the Contractor or any Subcontractor or other party or entity under the control or direction of, or otherwise performing any work or services on behalf of, the Contractor. A delay shall be considered a Compensable Delay only to the extent the delay adversely affects a portion of the Work that is a critical-path item as described in the Master Construction Schedule then in effect, and the District shall not be required to pay any compensation whatsoever to the Contractor (including, without limitation, any extended overhead, general-conditions costs, impact costs, and/or out-of-sequence costs) in the absence of any such adverse affect on the critical-path of the Work. For purposes of the Contract, delays within the contemplation of the District and the Contractor shall be deemed and construed to include, without limitation, delays attributable to: (i) normal seasonal weather conditions; (ii) coordination of the Work with any Work by Others; (iii) work on the Project that must be completed prior to some or all of the Work being commenced or completed; (iv) discovery of hazardous materials (including, without limitation,

asbestos) if the Work or the Project involves or relates to the presence, repair, modification, rehabilitation, reconstruction, demolition, removal or other accommodation of existing structures, utilities, or other improvements; (v) the location, time of year and other conditions in which the Work is to be performed; and (vi) other matters typically attendant to construction projects of the same general type and scope as the Project. Subject to the Contractor's compliance with applicable requirements of this Part 13, and based on sufficient proof provided by the Contractor or otherwise obtained by or provided to the District, the District shall pay additional compensation to the Contractor for each Compensable Delay. Additional compensation payable to the Contractor on account of a delay for which the District is responsible may accommodate, without limitation, costs attributable to any disruption of, interference with, or need to accelerate, the Work. Any such additional compensation shall be set forth in and authorized by an applicable Change Order.

**13.19 Compensation for Delays Caused by Contractor.** The District shall be entitled to compensation from the Contractor on account of delays in the performance of the Work or performance of any Work by Others, if such delays: (i) have been caused by or are attributable to any fault or negligence of the Contractor or any employee, agent, Subcontractor or other person or entity acting on behalf of the Contractor; or (ii) arise from any failure by the Contractor to timely perform the Work in accordance with requirements of the Contract Documents. For purposes of this Section, the Contractor shall be deemed and construed to have allowed and scheduled adequate time for all activities required in connection with performance of the Work in accordance with the Contract Documents. The foregoing shall be construed to mean, e.g., that the Master Construction Schedule has taken into account and accommodated all potential delays, by governmental agencies or others having authority over Deferred Approvals or other requirements specified in the Contract Documents, in granting any approval that the Contractor is responsible for obtaining. Therefore, except as provided in this Section, the Contractor shall be deemed and construed to be at fault for, among other matters, any failure by the Contractor to timely: (i) complete the Pre-Construction Activities; (ii) obtain and provide to the District all Surety Bonds required pursuant to the Contract Documents; (iii) obtain or otherwise have in effect all Insurance Policies required pursuant to the Contract Documents; (iv) obtain Deferred Approvals for which the Contractor is responsible pursuant to the Contract Documents; (v) schedule inspections of the Work as necessary; and/or (vi) undertake and complete the Work in strict accordance with milestones and time period(s) specified in the Master Construction Schedule as it may be modified pursuant to this Part 13. The Contractor shall not be deemed to be at fault for delays resulting from any tidal waves or earthquakes in excess of 3.5 magnitude; provided that any damaged portion of the Work had been constructed or otherwise performed in accordance with the Contract Documents. Compensation payable to the District on account of a delay for which the Contractor is responsible may accommodate, without limitation, costs attributable to any disruption of, interference with, or need to accelerate, the Work or any Work by Others arising from the delay. Any such compensation to the District shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor pursuant to the Contract.

**13.20 No Compensation for Delays Having Concurrent Causes.** Notwithstanding anything to the contrary, to the extent the District and the Contractor concurrently cause or are otherwise responsible for a delay in the performance of the Work (i.e., both are equally and contemporaneously responsible), then neither the District nor the Contractor shall be entitled to recover additional compensation or other costs attributable to the delay.

**13.21 Liquidated Damages for Delay in Completing Project.** The District and the Contractor hereby expressly agree that it is impracticable and extremely difficult to ascertain the actual damages and costs the District will incur on account of a delay in completion of the Project or a phase or portion thereof for which the Contractor is responsible. Such damages could include, among others, those arising from the District being unable to timely have exclusive possession of, or to timely commence operations of, the Project or any phase or portion thereof. Therefore, to the extent the Contractor is responsible pursuant to this Part

13 for compensating the District on account of a delay in completing the Project or a phase or portion thereof, the Contractor shall pay to the District the amount of liquidated damages specified in the Special Provisions for each day (or portion thereof) of such delay. The District and the Contractor each hereby expressly agree that such liquidated damages amount constitutes fair and reasonable compensation to the District for such delay, regardless of whether such amount is at any time determined not to constitute actual full-compensation. The District shall provide invoices to the Contractor for any and all liquidated damages payable by the Contractor. If the Contractor does not pay the amounts of such invoices to the District when due, the District may deduct the unpaid amounts from any monies due or to become due to the Contractor in accordance with the Contract Documents and/or may pursue such other remedies as are permitted by law or the Contract. Because this Section applies only to damages incurred by the District due to delay in completion of the Project or phase or portion thereof for which the Contractor is responsible, nothing in this Section shall be deemed or construed to limit or preclude any right of the District to recover additional or other damages or costs if such right is expressly set forth elsewhere in any of the Contract Documents, including, without limitation, as provided in Section 2.15, Section 8.3, Section 13.22, Section 15.5, Section 15.10 and Subsection 17.1.4 of these General Provisions.

**13.22 Damages Incurred by District Pursuant to Other Contracts.** Notwithstanding anything to the contrary, if the District is required, pursuant to any other contract entered into by the District in connection with the Project, to pay any damages (whether liquidated or otherwise) and/or costs (whether fixed by a court of competent jurisdiction or otherwise), and the District would not have been responsible for such damages and/or costs but for a delay that is the fault of, caused by, or otherwise the responsibility of, the Contractor, then, in addition to paying any required liquidated damages to the District, the Contractor shall be responsible for paying all such other damages and costs incurred by the District. The District shall provide invoices to the Contractor for any and all such damages and costs incurred by the District. If the Contractor does not pay the amounts of such invoices to the District when due, the District may deduct the unpaid amounts from any monies due or to become due to the Contractor in accordance with the Contract Documents or may pursue such other remedies as are permitted by law or the Contract.

**13.23 Contractor Claims Arising from Delays.** IF THE CONTRACTOR DISPUTES ANY DETERMINATION MADE BY OR ON BEHALF OF THE DISTRICT IN REGARD TO THE CAUSE OF, RESPONSIBILITY FOR, EXTENSION OF TIME ATTRIBUTABLE TO, OR ADDITIONAL COMPENSATION ATTRIBUTABLE TO, ANY DELAY IN THE PERFORMANCE OF THE WORK, THEN, SUBJECT TO COMPLIANCE WITH THE REQUIREMENTS OF SECTIONS 13.10 THROUGH 13.13, INCLUSIVE OF THESE GENERAL PROVISIONS, THE CONTRACTOR MAY FILE A CLAIM IN ACCORDANCE WITH PART 24 OF THESE GENERAL PROVISIONS.

## **PART 14 MATERIALS AND EQUIPMENT**

**14.1 Types and Quality of Materials and Equipment.** Except as permitted in accordance with the Contract Documents, including, without limitation, any authorized substitutions, any and all materials or equipment to be incorporated as a permanent part of the Work must be of the type and quality specified in the Contract Documents. If the Contract Documents do not specify a particular quality of any materials or equipment, the Contractor must furnish and incorporate materials and equipment of the highest quality commercially available. Except to the extent set forth in the Contract Documents, any and all materials and/or equipment to be incorporated as permanent part(s) of the Work must be newly manufactured or produced, i.e., no previously used, recycled, and/or refurbished materials and/or equipment may be incorporated into the Work.

**14.2 Contractor to Furnish Sufficient Materials and Equipment.** In order to ensure that the Work is efficiently and timely undertaken and completed in accordance with all milestones set forth in the Master Construction Schedule, the Contractor must at all times furnish sufficient quantities of all materials and equipment required to perform the Work, including, without limitation, all materials and equipment, the need for which may reasonably be inferred from the Contract Documents. Within such times as will ensure that the Work can be completed in accordance with the milestones set forth in the Master Construction Schedule, the Contractor must order and/or purchase, and deliver or cause to be delivered to the Project Site, all materials and equipment required to perform the Work. Upon request, the Contractor must furnish to the Project Manager such documentary evidence (e.g., invoices, receipts, purchase orders, *et cetera*) as reasonably evidences that the Contractor has timely ordered required materials and/or equipment. The Contractor must monitor and track all orders for such materials and equipment, and must promptly take corrective action in the event the delivery of any such materials or equipment is delayed. The Contractor must provide written notice to the Project Manager and the Inspector of Record of each delivery to the Project Site of any materials and/or equipment to be incorporated into the Work, and must permit the Project Manager and/or the Inspector of Record to inspect any or all such materials and/or equipment. The Contractor must promptly remove from the Project Site any and all materials and/or equipment that the Project Manager and/or the Inspector of Record determine do not conform to applicable requirements of the Contract Documents.

**14.3 Storage and Protection of Materials and Equipment.** The Contractor shall be responsible for safely and securely storing and protecting all materials and equipment prior to incorporation into the Work. The Contractor must arrange and coordinate the storage type(s) and location(s) on, at or in the vicinity of the Project Site with the Project Manager. The Contractor must maintain, at the Project Site, an accurate written inventory of all such materials and equipment, and upon request must make the inventory available for review by the Project Manager. The Contractor shall not remove from the Project Site, or use for purposes other than the Work, any materials or equipment ordered, purchased or otherwise intended for incorporation into the Work without the express written approval of the Project Manager, including, without limitation, any materials or equipment that the Contractor believes are surplus or otherwise in excess of what is needed for the Work.

**14.4 Authority to Request Substitution of Specified Items.** Except as the Contract Documents expressly provide, any material, product, service or thing described in the Contract Documents as being required in connection with the Work and designated by specific brand or trade name (each a "Specified Item") shall be deemed and construed to set forth the minimum requirements for such Specified Item and to be followed by the words "or equal." To the extent permitted pursuant to Section 14.5 of these General Provisions, the Contractor may offer in place of any Specified Item any substitute item that the Contractor can demonstrate is equal or better in all material respects to the Specified Item and that will adequately and fully accomplish the intended aesthetics, purposes and/or functions of the Specified Item. The District in no event shall be required to permit substitution of any Sole-Source Item that, in accordance with Public Contract Code Section 3400, was specified in order to: (i) field test or conduct an experiment to determine the suitability of the Specified Item for future use; (ii) match other products in use on a particular public improvement either completed or in the course of completion; (iii) obtain a necessary item that is only available from one source; or (iv) respond to an Emergency. In no event shall the Contractor substitute any item in place of a Specified Item unless and until the Contractor obtains written approval in accordance with Sections 14.4 through 14.10, inclusive, of these General Provisions.

**14.5 Procedures and Conditions for Requesting Substitution of Specified Items.** Any requests for substitution of a Specified Item made by the Contractor prior to submitting its bid for the Work must have been submitted in accordance with the procedures described in the Instructions For Bidders. The Contractor may request substitution of a Specified Item after it has submitted its bid for the Work only if the Specified

Item becomes commercially unavailable after the Contractor submitted such bid. The Contractor in such event must provide documentation to the Project Manager that reasonably evidences that the Specified Item is no longer commercially available. An increase in the cost of a Specified Item shall not be deemed or construed to have made the Specified Item commercially unavailable. The Project Manager may independently verify whether the Specified Item is no longer commercially available. Absent a Specified Item becoming commercially unavailable, the District, in its sole discretion, may, but is not required to, consent to the Contractor submitting a post-bid request for substitution of the Specified Item only upon a showing of good cause by the Contractor, as determined by the District. The Contractor must submit to the Project Manager an executed original copy and one photocopy of each request for substitution of a Specified Item, using copies of the "Request to Substitute Specified Item" form included in the Required Project Forms. Only the Contractor, and not any Subcontractor or other person or entity, may request substitution of a Specified Item.

**14.6 Contractor Must Substantiate Requests for Substitution.**

**14.6.1 Contractor Has Sole Responsibility.** The Contractor shall be solely responsible for providing to the Project Manager such exemplary and/or documentary information as will reasonably substantiate that a proposed substitute item is equal or better in all material respects to the Specified Item, will adequately and fully accomplish the intended aesthetics, purposes and/or functions of the Specified Item, and otherwise satisfies all requirements of Sections 14.4 through 14.10, inclusive, of these General Provisions. The Contractor must submit two copies of each such item of substantiating information. Only the Contractor, and not any Subcontractor or other person or entity, may submit information intended to substantiate a request for substitution of a Specified Item.

**14.6.2 Timing for Providing Substantiating Information.** With respect to pre-bid requests for substitution, the Contractor must provide, or must have provided, all information substantiating a request for substitution of a Specified Item to the Project Manager within the time(s) provided in the Instructions For Bidders. With respect to any post-bid request for substitution, the Contractor must provide such information to the Project Manager concurrently with the corresponding Request to Substitute Specified Item.

**14.6.3 Nature of Substantiating Information.** The information provided by the Contractor to substantiate a proposed request for substitution of a Specified Item must include, without limitation, all available information relevant to whether the proposed substitute item will or will not: (i) comply with all requirements of the Specifications; (ii) be equal to or better than the Specified Item in all material respects, including, without limitation, with respect to durability and expected useful life of the substitute item; (iii) be consistent with the design and intended aesthetics of the Work and the Project; (iv) fit with, or require any change in the construction of, the Work and/or the Project; (v) result in the District incurring more or less operations, maintenance and/or other costs; (vi) have replacement parts and service available at least to the same extent as the Specified Item; (vii) require any increase in the Contract Price; and (viii) require any increase in the Contract Time or modification of the Master Construction Schedule. The foregoing shall be deemed and construed to require that the Contractor must provide any and all information that would tend to indicate that a proposed substitute item is not suitable as a substitute for the Specified Item (including, without limitation, specifically pointing out any characteristic of the proposed substitute item that does not satisfy any requirement of the Specifications), and the Contractor shall have breached its obligations pursuant to the Contract if it intentionally or negligently fails to provide all of such information. The types or forms of information submitted by the Contractor in connection with a request for substitution of a Specified Item must include, without limitation, all illustrations, specifications, catalog cut-sheets, manufacturer's brochures and other documentation that describe the characteristics, quality and aesthetics of the proposed substitute item.

**14.6.4 Adequacy of Substantiating Information.** The District may reject any request for substitution of a Specified Item if the Contractor fails to provide information that is reasonably sufficient and adequate to permit the District to substantiate the suitability of the proposed substitute item. The District may, but shall not be required to, request that the Contractor provide additional information regarding any request by the Contractor for substitution of a Specified Item.

**14.6.5 Contractor Certification.** The Contractor shall not request approval of a proposed substitute item unless the Contractor has a reasonable and good-faith belief that the proposed substitution can be approved in accordance with the requirements of Sections 14.4 through 14.10, inclusive, of these General Provisions. The Contractor must execute the certification set forth on the Request to Substitute Specified Item, subject to penalty of perjury, that the Contractor: (i) has made all reasonable efforts to obtain all information relevant to the request for substitution of the Specified Item; (ii) has provided all of such information with the Request to Substitute Specified Item; (iii) reasonably and in good faith believes that the proposed substitute item is equal or better in all material respects to the Specified Item, will adequately and fully accomplish the intended aesthetics, purposes and/or functions of the Specified Item, and otherwise satisfies all requirements of Sections 14.4 through 14.10, inclusive, of these General Provisions; and (iv) the Prime Contractor will pay all costs pursuant to Sections 4.8 and 4.9 of these General Provisions.

**14.7 District Discretion to Approve Requests for Substitution.** The District, in its sole discretion and after consultation with the Architect and/or the Project Manager, shall determine whether a proposed substitute item: (i) is equal or better in all material respects to the Specified Item; (ii) will adequately and fully accomplish the intended aesthetics, purposes and/or functions of the Specified Item; and (iii) otherwise satisfies all requirements of Sections 14.4 through 14.10, inclusive, of these General Provisions. Upon determining that a proposed substitute item satisfies all of the foregoing conditions, the District shall approve the request for substitution. The District, in its sole discretion, may, but is not required to, approve a request for substitution of a Specified Item despite the proposed substitute item not fully satisfying all of the foregoing conditions. If the District approves a request for substitution of a Specified Item, the approval and all terms and conditions thereof shall be set forth in a Change Order, and execution of such Change Order by the Contractor shall be a condition to it taking or having any effect.

**14.8 Conditional Approval of Requests for Substitution.** The District reasonably may impose conditions on any approval of any request for substitution, including, without limitation, requirements for the Contractor: (i) to compensate the District (or for a reduction in the Contract Price) on account of any projected increase in operations, maintenance or other costs to be incurred by the District or on account of any lesser utility of the substitute item in comparison to the Specified Item; or (ii) to provide to the District an extended warranty on the substitute item or some other assurance of the compatibility, fitness, quality, durability, or performance of the substitute item. The foregoing shall not be deemed or construed to require that the District approve any proposed substitute item that is not equal or better in all material respects to the Specified Item.

**14.9 Contractor Responsible for Impacts and Costs of Substitution.** In connection with each request for substitution of a Specified Item, the Contractor shall bear all risks of, and be solely responsible and liable for: (i) any failure by the Contractor to request the substitution sufficiently in advance to avoid or prevent any delay in the Work or any Work by Others; (ii) any reasonable delay arising from the need to obtain approval of a proposed substitute item from the District, Architect and/or Project Manager; (iii) any costs incurred by the District, including, without limitation, administrative costs and costs of professional services of the Architect and/or Project Manager, attributable to any incomplete or unreasonable submission associated with the request; and (iv) any delays or additional costs arising from the need to procure the substitute item. In addition, except with respect to requests for substitution of a Specified Item that is legitimately and reasonably no longer commercially available, in connection with each request for

substitution of a Specified Item, the Contractor shall bear all risks of, and be solely responsible and liable for: (i) any delays arising from the need to obtain approval of a proposed substitute item from the DSA and/or other governmental entity with competent jurisdiction; (ii) any costs of professional design services necessary to process and obtain any required approvals by the DSA and/or any other governmental entity with competent jurisdiction; (iii) any costs of professional design services necessary to redesign or otherwise ensure coordination of the proposed substitute item with other portions of the Work or any Work by Others; and (iv) any costs or additional work or services necessary to fit the substitute item with adjoining portions of the Work attributable to use of the substitute item.

**14.10 Disapproval of Requests for Substitution.** If the District disapproves a pre-bid request for substitution of a Specified Item, the Contractor must provide the Specified Item (unless the Specified Item is no longer commercially available), without any extension of the Contract Time or increase in the Contract Price. If the District disapproves either a pre-bid or post-bid request for substitution of a Specified Item that is no longer commercially available, then, within such time as will avoid or prevent any delay in the Work or any Work by Others, the Contractor must submit an alternate proposal for substitution of the Specified Item in accordance with Sections 14.4 through 14.10, inclusive, of these General Provisions.

**14.11 Purchase and Ownership of Materials and Equipment.** The Contractor shall be solely responsible and liable for ensuring that the sellers and suppliers of any and all materials and/or equipment to be incorporated into the Work, and all applicable federal, State, and local taxes and other charges levied or assessed on or in connection with such materials and/or equipment, are paid when due. The District typically is exempt from federal excise taxes and, upon request, the District will provide, but will not warrant the effect of, written certification of such exemption. The Contractor shall not purchase or furnish in connection with the Work any materials or equipment subject to any chattel mortgage, conditional sale, or other interest of the seller or supplier in such materials or equipment. The Contractor shall retain ownership of, and responsibility for, all materials and equipment that the Contractor will incorporate into or otherwise use in connection with the Work unless and until such materials and equipment are incorporated into the Work and the Project has been fully completed and accepted in accordance with Section 18.9 of these General Provisions.

## **PART 15 HAZARDOUS EQUIPMENT, MATERIALS AND SUBSTANCES**

**15.1 Use of Hazardous Materials in Connection with the Work.** If the Contractor reasonably must use explosives or other hazardous equipment, materials or substances in order to adequately complete the Work, the Contractor must provide written notice to, and obtain the consent of, the Project Manager at least seven days prior to bringing such hazardous items onto the Project Site, unless the Project Manager waives such seven-day requirement. Such notice must identify the hazardous items and specify the date(s) the items will be used, the location on the Project Site where the items will be used, whether the items will be stored on the Project Site and, if storage is required, the proposed location and means of adequate and secure storage. The Project Manager may impose conditions on any such approval for use of hazardous equipment, materials or substances to ensure safety and protect the Work, Project and Project Site, and any such use must comply in all respects with applicable laws, rules, regulations, ordinances and orders of governmental entities with competent jurisdiction. If storage of any hazardous items at the Project Site is required, the Contractor must coordinate the location and means of storage with the Project Manager and local public officials with competent jurisdiction. The Contractor shall be solely responsible and liable in all respects for the safe, appropriate and lawful use, handling, and storage in connection with the Work of any hazardous equipment, materials and/or substances.

**15.2 Hazard Communication Program.** The Contractor must comply with all requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code Section 25249.5 *et seq.*), commonly referred to as "Proposition 65," that are applicable to a "person in the course of doing business." Prior to commencing any portion of the Work, and as required by and in accordance with Cal-OSHA regulations and other applicable laws and regulations, the Contractor must develop a written hazard communication program ("HCP") that specifies, among other required matters, criteria for: (i) labeling and/or other forms of warning in regard to hazardous substances to be used in connection with performance of the Work; (ii) making available all required material safety data sheets ("MSDS") for such substances; and (iii) informing and training employees in regard to dangers and proper handling of such substances. The Contractor shall implement, maintain and enforce its HCP at all times prior to full completion of the Work. As required by law, and in addition to fulfilling any other applicable requirements in connection with performance of the Work, the Contractor must: (i) develop and provide to the Project Manager an adequate list of hazardous substances brought onto or kept at the Project Site; (ii) make required MSDS available in a readily-accessible place at the Project Site; (iii) comply with requirements for giving notice to all persons who may be exposed to any chemical known to the State to cause cancer, including, without limitation, ensuring that any such substances brought onto or kept on the Project Site properly labeled; and (iv) ensure that all persons working with or in the vicinity of any such substances are informed of applicable hazards and trained in proper use and handling of such substances.

**15.3 Contractor Prohibited from Using Asbestos.** Notwithstanding Section 15.1 of these General Provisions, in no circumstances may the Contractor use or incorporate into the Work any asbestos or asbestos-containing materials, or use or employ in connection with the Work any equipment, tools, clothing or other things that contain or incorporate asbestos or asbestos-containing materials. For purposes of the foregoing: (i) "asbestos" means any naturally occurring fibrous hydrated mineral silicate, including, without limitation, chrysotile, crocidolite, amosite, fibrous tremolite, fibrous anthophyllite, and fibrous actinolite; and (ii) "asbestos-containing materials" means materials or products formed by mixing asbestos fibers with other materials, such as cement, rock wool, plaster, cellulose, clay, vermiculite, perlite, adhesive, *et cetera*. Within seven days of the date of the Notice of Award, the Contractor must complete, execute and submit to the Project Manager the "Certification Regarding Asbestos" form included in the Required Contract Forms.

**15.4 Contractor Deemed Fully Aware of the Dangers of Asbestos.** The Contractor shall be deemed and construed for all purposes of the Contract to have undertaken the Work with full knowledge of the currently-accepted standards, hazards, risks and liabilities associated with asbestos and asbestos-containing materials. Therefore, the Contractor shall be solely responsible and liable for: (i) safely and appropriately performing, in accordance with applicable requirements, any Work that involves or relates to asbestos or asbestos-containing materials, including, without limitation, any repair, modification, rehabilitation, reconstruction, demolition, removal or other accommodation of existing structures, utilities, or other improvements; and (ii) avoiding and/or preventing use in connection with the Work, or incorporation into the Work, of any asbestos or asbestos-containing materials in violation of the prohibition set forth in Section 15.3 of these General Provisions. To the extent provided in Part 23 of these General Provisions, the Contractor shall indemnify, defend and hold-harmless the District, the Architect, the Project Manager, and the Inspector of Record, with respect to any and all costs and other liabilities, including, without limitation, attorneys' fees, arising from the failure of the Contractor to comply with the foregoing.

**15.5 Consequences of Violating Prohibition Against Asbestos.** In the event the Contractor incorporates into the Work any asbestos or asbestos-containing materials, otherwise is responsible for asbestos contamination on, at or in the vicinity of the Project Site, or otherwise violates the prohibition against asbestos set forth in Section 15.3 of these General Provisions, the Contractor shall be solely responsible and liable for any and all costs and/or delays attributable to: (i) correction of the Work; (ii) any and all investigations, analyses, removals, abatements, decontaminations or other actions necessary to



correct the violation (“Asbestos Remediation”), including, without limitation, costs incurred by the District for additional administrative and professional services and for laboratory services, consultants, and contractors; and (iii) any injury to any person and/or damage to any property arising or alleged to have arisen from the violation.

**15.6 District to Arrange for Necessary Asbestos Remediation.** The District shall arrange for performance of any necessary Asbestos Remediation. Any Asbestos Remediation must be performed in accordance with all applicable laws, regulations, ordinances and other governmental requirements, under the direct supervision of a qualified asbestos consultant who is accredited or certified by the Environmental Protection Agency (“EPA”). The District, in its sole discretion, shall select the asbestos consultant. The asbestos consultant, subject to District approval, will select a qualified contractor to perform the Asbestos Remediation. The Asbestos Remediation contractor must be experienced, knowledgeable, and accredited or certified by the EPA. No Asbestos Remediation shall be deemed complete or accepted until all asbestos contamination and/or asbestos-containing materials are eliminated or reduced to acceptable levels, as reasonably determined by the asbestos consultant.

**15.7 Discovery of Hazardous Materials During Performance of the Work.** If, during performance of the Work, the Contractor encounters materials that the Contractor reasonably believes to be asbestos or a hazardous substance, and the asbestos or hazardous substance has not been rendered harmless, the Contractor must continue the Work in unaffected areas reasonably believed to be safe, but must immediately cease the Work in the area affected and report the condition, in writing, to the Project Manager. In such event, and subject to the provisions of Section 15.6 of these General Provisions in the case of asbestos, the District shall obtain the services of an independent and qualified person or company to identify the materials suspected as being asbestos or some other hazardous material, and to determine whether removal or some other corrective measures are required to render the materials harmless. The Contractor may resume work on the affected area only upon a determination that: (i) the material identified by the Contractor is not asbestos or some other hazardous material; (ii) such materials are not harmful and removal or other measures are not necessary; or (iii) removal or other measures necessary to render the materials harmless have been completed in accordance with applicable law. Any required asbestos-related work (defined in Health and Safety Code Section 25914.1) and/or hazardous substance removal (defined in Business and Professions Code Section 7058.7) that is not disclosed in the Contract Documents shall be performed pursuant to a separate District contract.

**15.8 Discovery of Hazardous Materials in Excavations Deeper Than Four Feet.** If the Work involves digging any trenches or other excavations that extend deeper than four feet below the surface, and the Contractor, while performing such excavation, discovers any material that the Contractor believes may be 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, the District and the Contractor must comply with the provisions of Section 16.10 of these General Provisions.

**15.9 Delays Resulting from Discovery of Hazardous Materials.** To the extent the Work or any Work by Others involves or relates to the presence, repair, modification, rehabilitation, reconstruction, demolition, removal or other accommodation of existing structures, utilities, or other improvements, the District and the Contractor shall be deemed and construed, for purposes of Public Contract Code Section 7102 and otherwise, to have anticipated that asbestos and/or other hazardous substances (including without limitation, lead, and petroleum distillates and/or by-products) may exist or be discovered during the course of the Work that may delay or otherwise disrupt the performance of the Work. In such event, the Contractor’s sole remedy for any delay attributable to the investigation, analysis, removal, abatement, decontamination and/or other actions necessary to correct such condition shall be an extension of time, unless the delay continues for more than ninety days past the date the hazardous materials were discovered,

in which case the Contractor shall be entitled to additional compensation, as provided in Section 13.18 of these General Provisions, for the period in excess of ninety days.

**15.10 Contractor Responsibility for Releases of Hazardous Substances.** If any person on, at or in the vicinity of the Project Site on account of the Work dumps, pours, spills, buries, places, discharges or otherwise releases any hazardous materials, waste or substances into or onto the Project Site or property in the vicinity of the Project Site, whether intentionally or otherwise, the Contractor shall be solely responsible and liable for any and all costs and/or delays attributable to such release, including, without limitation: (i) costs of any necessary correction of the Work; (ii) any and all investigations, analyses, removals, abatements, decontaminations or other actions necessary to correct such release, including, without limitation, costs incurred by the District for additional administrative and professional services and for laboratory services, consultants, and contractors; and (iii) any injury to any person and/or damage to any property arising or alleged to have arisen from the violation. To the extent provided in Part 23 of these General Provisions, the Contractor shall indemnify, defend and hold-harmless the District, the Architect, the Project Manager, and the Inspector of Record, with respect to any and all costs and other liabilities, including, without limitation, attorneys' fees, arising from any such release.

## **PART 16 EXCAVATIONS AND UTILITIES**

**16.1 Contractor Must Locate Underground Utilities and Installations.** Except as the Contract Documents expressly indicate otherwise in any particular case, the existence, locations and, if available, depths of underground utilities, facilities and/or installations indicated in the Contract Documents as being on, at or in the vicinity of the Work and/or the Project Site are: (i) based on records available to the District, not on surveys or excavations prepared or performed by the District; and (ii) are to be considered approximate, not exact. The District may, but shall not be deemed or construed to be required to, indicate in the Contract Documents the location of service laterals and/or appurtenances within the vicinity of the Work if the presence of such utilities can be inferred from the presence of other visible facilities, such as buildings, meters, junction boxes, *et cetera*. Prior to commencing any excavation in connection with the Work or any other activity that reasonably might damage underground utilities, facilities or installations, the Contractor must: (i) thoroughly inspect the vicinity of the Work for above-ground facilities, such as buildings, meters, junction boxes, *et cetera*, that might indicate the presence of underground service mains, trunklines, laterals or appurtenances; (ii) determine the exact location of any underground utilities, facilities and installations within an indicated approximate location, using air-vacuum excavation (i.e., potholing) techniques (or an underground-utility locating service to perform such services); (iii) immediately report to the Project Manager any utilities, facilities or installations located in the vicinity of the Work that are not indicated in the Contract Documents or are in a location materially different from the location indicated in the Contract Documents; and (iv) provide a written report to the Project Manager describing the exact location of all underground utilities, facilities and installations within the vicinity of the Work, including a diagram thereof, if necessary to adequately describe such exact locations. The Contractor must coordinate with and obtain the consent of the Project Manager prior to conducting any air-vacuum excavation (or any underground-utility locating service performing such services) on, at or in the vicinity of the Project Site.

**16.2 Contractor Must Contact Regional Notification Center.** If the Work involves any trenching, boring, tunneling, digging or other excavation, the Contractor shall be solely responsible and liable for compliance with all applicable requirements of Government Code Sections 4216 through 4216.9, and with all requirements of the Contractors State License Board relating to such Government Code provisions. As required, the Contractor must, prior to commencing any excavation, contact the appropriate Regional

Notification Center and obtain an Underground Service Alert identification number and provide such identification number to the Project Manager. The Contractor must contact the Regional Notification Center for any necessary revalidation of the identification number, prior to it expiring. If the Contractor will be excavating within the approximate location of any subsurface installation, except as agreed by the Project Manager that use of hand-tools will be acceptable, the Contractor must provide written notice to the operator(s) of the subsurface installation of the Contractor's intent to use, and make reasonable attempts to obtain such operator(s) consent for use of, air-vacuum excavation techniques (i.e., potholing) to determine the exact location of the subsurface installation. The Contractor shall be responsible for any and all additional costs and/or delays in the Work or any Work by Others arising from any failure by the Contractor to timely comply with the requirements described in this Section.

**16.3 Main or Trunkline Utilities Not Identified in Contract Documents.** In accordance with Government Code Section 4215, if the Contractor, while performing the Work, discovers utility facilities not identified by the District in the Contract Documents, the Contractor shall immediately provide written notice to the District and the applicable utility company. The public utility, if it owns the utility facilities, shall have the sole discretion to perform any necessary repairs or relocation work or to permit the Contractor to do such repairs or relocation work at a reasonable price. The District shall not be required 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, meter and junction boxes, on or adjacent to the Project Site. The District shall be responsible for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project Site, if such utilities are not identified by the District in the Contract Documents. The District shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such main or trunkline utility facilities not indicated in the Drawings and Specifications with reasonable accuracy, and for equipment used in connection with the Work necessarily idled during such work. The Contractor shall not be assessed liquidated damages for delay in completion of the Work, when such delay was caused by the failure of the District or the owner of the utility to provide for removal or relocation of such main or trunkline utility facilities. The provisions of this Section 16.3 shall not be deemed or construed to preclude the District from requiring changes in the Work that will eliminate the need to remove and/or relocate any utility facilities.

**16.4 Responsibility for Cost of Relocating Utility Facilities.** The Contractor shall be solely responsible and liable for all costs to locate, repair, remove, relocate and/or protect any and all utility facilities (including, without limitation, main and trunkline facilities, service laterals, and appurtenances) as may be required in connection with the Work, except to the extent: (i) the Contractor can provide reasonable documentary evidence, satisfactory to the District, that the owner of the utility facilities has concurred that it is responsible for and will pay such costs; and/or (ii) the District is responsible in accordance with Section 16.3 of these General Provisions for the costs relating to main or trunkline utility facilities not indicated in the Drawings and Specifications with reasonable accuracy.

**16.5 Contractor Must Obtain and Pay for Utility Services.** Unless the Contract Documents expressly provide otherwise, the Contractor must submit required applications, arrange, and pay all fees for: (i) all temporary utility connections and service facilities required in connection with performance of the Work; (ii) all utilities consumed in connection with performance of the Work; and (iii) all permanent utility connections and service facilities included within the scope of the Work. The Contractor must give written notice to the Project Manager not less than five days prior to installation, in connection with the Work, of any utility meter or other similar equipment on, at or in the vicinity of the Project Site that is to be owned by the applicable utility company, not by the District. The District shall reimburse to the Contractor the actual documented cost, without any increase for overhead, profit or other costs or charges by the Contractor, of connection fees for permanent utilities that will serve the completed Project.

**16.6 Contractor Must Coordinate with Utility Companies.** Sufficiently in advance in order to avoid and/or prevent any delay in the Work or any Work by Others, the Contractor must coordinate each portion of the Work involving or requiring construction of, or connection to, utility facilities (including, without limitation, any relocation of facilities) with the applicable utility company. In any case that the owner of a utility has the option of performing any required work, but such owner permits the Contractor to perform such work, the Contractor must perform such work in compliance with all requirements of such owner.

**16.7 Contractor Must Have Permit for Excavations.** The Contractor must not commence any excavations required in connection with the Work until the Contractor or the appropriate Subcontractor has: (i) applied for and obtained all necessary permits for the excavations, including, without limitation, any OSHA and Cal-OSHA permits; (ii) provided a copy of each such permit to the Project Manager; and (iii) posted a copy of each such permit in a prominent location on the Project Site. The Contractor must immediately notify the Project Manager in writing if any such permit is revoked prior to the District issuing a Notice of Completion for the Work.

**16.8 Contractor Must Protect Adjacent Improvements.** The Contractor shall be solely responsible and liable for protecting all completed and in-progress Work, any Work by Others, the Project Site, and all on-site and off-site improvements and properties, in the vicinity of each excavation undertaken in connection with the Work. The foregoing shall be deemed to require that the Contractor, among other things, ensure that improvements and properties in the vicinity of the excavation are protected from settlement, loss of lateral support, *et cetera*.

**16.9 Trench Safety Plans for Trenches Deeper Than Five Feet.** If the Contract Price exceeds \$25,000, then prior to undertaking the excavation of any trench that will or reasonably might be five feet or more in depth, the Contractor must comply with all requirements of Section 11.7 of these General Provisions relating to Trench Safety Plans. Neither the foregoing nor the provisions of Section 11.7 of these General Provisions shall be deemed or construed to impose tort liability upon the District.

**16.10 Differing Conditions in Excavations Deeper Than Four Feet.** If the Work involves digging any trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (i) material discovered during such excavation that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the Project Site differing from those indicated in information made available to the Contractor before it submitted its bid for the Work; or (iii) unknown physical conditions at the Project Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. The District shall promptly investigate any such conditions identified by the Contractor. If the District determines that such conditions exist and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of the Contract, the District shall issue a Change Order or Construction Change Directive in accordance with the procedures set forth in these General Provisions. In the event a dispute arises between the District and the Contractor in regard to whether any such condition actually exists, or causes a decrease or increase in the Contractor's cost of, or time required for, performance of the Contract, the Contractor shall not be excused from completing all Work in accordance with the milestones set forth in the Master Construction Schedule, but shall proceed with all Work to be performed pursuant to the Contract Documents. However, the Contractor shall retain all rights in such regard as provided by law or the Contract, and the Contractor may file a Claim in accordance with the Contract Documents.

**PART 17**  
**CHANGES IN THE WORK**

**17.1 Authorization Required for Changes in the Work.**

**17.1.1 District Approval of Changes Required.** The Contractor must perform all Work in strict accordance with the DSA approved Drawings and Specifications and other Contract Documents, as those may from time to time be amended, supplemented, or otherwise modified. Except for the District and except to the extent of the Architect's authority to issue Architect Field Directives, no person or entity (including, without limitation, the Architect, Project Manager and Inspector of Record) has the unilateral authority to order any changes in the Work or to make any changes in the Drawings, Specifications or other Contract Documents. Absent a duly-authorized Change Order, Construction Change Directive or Architect Field Directive, the Contractor must not change the Work, or permit any changes in the Work to occur, including, without limitation, any substitution, addition, omission, deviation or other change. Notwithstanding anything to the contrary, in order to be valid and enforceable against the District, each Change Order and Construction Change Directive must have been approved by the District Board directly or, as described in Section 2.1 of these General Provisions, the District Board must have delegated to the Authorized District Officer the authority to approve such Change Order or Construction Change Directive.

**17.1.2 DSA Approval of Certain Changes.** In circumstances in which the DSA must approve changes to the Work, the Architect will be responsible for obtaining any such DSA approval. The DSA presently may approve changes in the Work by means of: (i) a Field Change Document ("FCD") process pursuant to which the DSA may approve changes prior to District Board approval; or (ii) a change order process that, for purposes of the DSA, may include any number of previously approved FCDs and/or Change Orders issued in accordance with the Contract Documents. The Architect may seek FCD approval of any Construction Change Directive, Architect Field Directive, or other document describing the Work or changes in the Work. Because FCDs and Change Orders may be grouped together for purposes of obtaining DSA approval, a "change order" as approved by the DSA will not necessarily correspond in reference-number or content to Change Orders issued pursuant to the Contract Documents.

**17.1.3 Direction to Proceed With Changes.** An Authorized District Officer may determine that it is necessary, in order to prevent delays in the Work, to direct the Contractor to proceed with changes in the Work that are included in a proposed Change Order, but the Change Order has not yet been approved or ratified by the District Board. In such event, the Authorized District Officer, to the extent so authorized, may issue written instructions to the Contractor to implement and proceed with such changes (each a "Construction Change Directive"). However, in no event may the Contractor receive any payment on account of any Work performed pursuant to a Construction Change Directive until the District Board has approved or ratified the corresponding Change Order.

**17.1.4 Responsibility for Unauthorized Changes.** Except to the extent a Change Order expressly identifies and/or describes specific deviations from the requirements of the Specifications or other Contract Documents, the Work to be performed pursuant to the Change Order must conform in all respects to the requirements of the Specifications and other Contract Documents. Regardless of whether an unauthorized change in the Work occurs in connection with any Change Order, the Contractor shall be responsible for any and all costs and/or delays attributable to unauthorized changes in the Work from what is required pursuant to the Contract Documents, including, without limitation, all costs of any replacement or other correction of the Work and all costs incurred by the District for additional administrative and professional services in connection with such correction. In addition, the Contractor shall be deemed and

construed to have waived any and all rights to any compensation for any change in the Work that was not duly authorized prior to being commenced or otherwise implemented.

**17.2 Changes Required by Change Order.** Subject to the provisions of this Part 17 and other requirements of the Contract Documents, the District may at any time issue an amendment to the Contract for purposes of ordering change(s) in the Work to be performed pursuant to the Contract, adjustment(s) in the Contract Price and/or Contract Time, or other change(s) in the requirements of the Contract (each a "Change Order"). As provided in this Part 17, a Change Order may be unilateral if issued without approval by the Contractor or mutual if the District and the Contractor have both approved the Change Order. The Architect shall prepare each Change Order and, upon taking effect, a Change Order shall constitute one of the Contract Documents and shall be subject to all other applicable provisions of the Contract Documents as if originally included therein. In no event shall any Change Order be deemed or construed to invalidate the Contract. The Contractor must implement the changes specified in a Change Order promptly or by such time as specified in the Change Order. The Contractor must perform all work necessary to complete any change(s) specified in a Change Order in accordance with all provisions of the Contract, except as any such provisions are expressly modified by the Change Order.

**17.3 Changes Required by Architect Field Directive.** At any time and without invalidating the Contract, the Architect may issue a written directive requiring any minor changes in the Work that are consistent with the intent of the Contract Documents and that do not require an adjustment in the Contract Price or Contract Time (each an "Architect Field Directive"). An Architect Field Directive will be substantially in the form included in the Required Project Forms. An Architect Field Directive must be signed by the District, the Architect, and the Project Manager, in order to be valid and binding on the Contractor. Upon taking effect, an Architect Field Directive shall constitute one of the Contract Documents and shall be subject to all other applicable provisions of the Contract Documents as if originally included therein. The Contractor's approval of an Architect Field Directive shall not be required, and the Contractor must implement each minor change specified in an Architect Field Directive promptly or by such time as specified in the Architect Field Directive.

**17.4 Changes Required by Unilateral Change Order.** At any time and without invalidating the Contract, the District may issue a Change Order to require any changes in the Work that are within or consistent with the general scope of the Contract and/or the Project. In order to be binding on the Contractor, each such unilateral Change Order must be signed by the District, the Architect, and the Project Manager. The Contractor's approval of a unilateral Change Order shall not be required, and the Contractor must implement each change specified in a unilateral Change Order promptly or by such time as specified therein. The District may, but shall not be required to, issue a unilateral Change Order in any case that the District and the Contractor have been unable to agree on the terms of a requested mutual Change Order. A unilateral Change Order may direct that any Work pursuant to the Change Order be performed on a time-and-materials, lump-sum, or unit-price basis. **IF THE CONTRACTOR DISAGREES WITH ANY OF THE TERMS OF A UNILATERAL CHANGE ORDER THAT THE CONTRACTOR DID NOT SIGN TO INDICATE ACCEPTANCE OF SUCH CHANGE ORDER, THE CONTRACTOR MAY PROVIDE NOTICE AS PROVIDED IN SECTION 17.5 OF THESE GENERAL PROVISIONS.**

**17.5 Mandatory Notice of Disagreement Regarding Contract Price or Time.** The Contractor may provide written notice to the District, the Architect and the Project Manager if the Contractor: (i) reasonably believes that the implementation of any Bulletin, Interpretation or Clarification will require an adjustment to the Contract Price and/or Contract Time that is not set forth in a corresponding Change Order; (ii) reasonably believes that it is entitled to an adjustment of the Contract Price and/or Contract Time on account of a change required pursuant to an Architect Field Directive; or (iii) reasonably disagrees with the adjustment to the Contract Price and/or the Contract Time, if any, set forth in a unilateral Change Order. Any such notice

must set forth in reasonable detail all bases asserted by the Contractor in support of its position that it is entitled to an adjustment of the Contract Price and/or Contract Time, or that any specified adjustment of the Contract Price and/or Contract Time is not adequate. **THE CONTRACTOR MUST PROVIDE SUCH NOTICE PRIOR TO COMMENCING ANY WORK OR OTHERWISE IMPLEMENTING THE APPLICABLE BULLETIN, INTERPRETATION, CLARIFICATION, ARCHITECT FIELD DIRECTIVE OR UNILATERAL CHANGE ORDER, OR WITHIN THREE DAYS OF THE ISSUANCE OF SUCH DOCUMENT, WHICHEVER IS SOONER.**

**17.6 Consequences of Failure to Provide Mandatory Notice.** The purpose of the written notice required pursuant to Section 17.5 of these General Provisions is to permit the District to evaluate the Contractor's bases for believing that it is entitled to an adjustment, or a further adjustment, to the Contract Price and/or Contract Time and, as appropriate: (i) order any such adjustment or further adjustment to the Contract Price and/or Contract Time; (ii) order the Contractor to proceed without any adjustment or further adjustment to the Contract Price and/or Contract Time; (iii) modify the Work and/or the Project to resolve the matter; or (iv) forego a change in the Work and/or the Project. Therefore, if the Contractor fails to provide such notice prior to commencing any work or otherwise implementing any change required pursuant to an applicable Bulletin, Interpretation, Clarification, Architect Field Directive or unilateral Change Order, or fails to provide such notice within three days of the issuance of the Bulletin, Interpretation, Clarification, Architect Field Directive or unilateral Change Order, whichever is sooner, the Contractor shall be deemed and construed to have waived any and all rights to any adjustment in the Contract Price and/or Contract Time on account thereof. **THE GIVING OF AN APPLICABLE NOTICE PURSUANT TO SECTION 17.5 OF THESE GENERAL PROVISIONS SHALL BE A CONDITION PRECEDENT TO THE CONTRACTOR HAVING ANY RIGHT, WHETHER PURSUANT TO A CLAIM FILED IN ACCORDANCE WITH PART 24 OF THESE GENERAL PROVISIONS OR OTHERWISE, TO SEEK OR OBTAIN AN ADJUSTMENT (OR FURTHER ADJUSTMENT) OF THE CONTRACT PRICE AND/OR CONTRACT TIME ON ACCOUNT OF AN APPLICABLE BULLETIN, INTERPRETATION, CLARIFICATION, ARCHITECT FIELD DIRECTIVE OR UNILATERAL CHANGE ORDER.**

**17.7 Changes Requested by the District.** The District may at any time request that the Contractor propose any adjustments to the Contract Price and/or Contract Time attributable to any change(s) in the Work or other requirements of the Contract desired by the District (each a "Request for Proposal" or "RFP"). The Architect shall prepare each RFP in writing and submit it to the Contractor with all information reasonably necessary to permit the Contractor to determine the nature and scope of the proposed change(s), including, without limitation, any Drawings and Specifications. Within seven days of receipt of an RFP, and without additional compensation, the Contractor must provide to the District, the Architect and the Project Manager a written proposal setting forth any proposed adjustments to the Contract Price and/or Contract Time that the Contractor reasonably believes are appropriate considering the nature and scope of the proposed change(s). Each proposal that includes a proposed adjustment to the Contract Price must be accompanied by an estimate of the effect (whether additive or deductive) of the change(s) on the Contract Price ("Change Order Cost") detailed by one of the methods specified in Section 17.9 of these General Provisions. Each proposal that includes a proposed adjustment to the Contract Time must set forth the impact of the proposed change(s) on any milestones and on the critical path of the Work as set forth in the Master Construction Schedule, not just specify an increase in the number of days desired for completion of all Work. The District may accept the Contractor's proposal in regard to a Change Order, may attempt to negotiate terms for a Change Order that are different from those proposed by the Contractor, or may determine not to further pursue the change(s) originally desired by the District. If the District and the Contractor are able to agree on all terms of a Change Order, the Architect will prepare the Change Order to include all such terms.

**17.8 Changes Requested by the Contractor.** The Contractor may at any time request that the District issue a Change Order to provide for adjustments to the Contract Price and/or Contract Time attributable to any change(s) in the Work or other requirements of the Contract desired by, or required of,

the Contractor (each a "Change Order Request"). The Contractor may, not as a limitation, base a Change Order Request on a Claim asserted by the Contractor. The Contractor must prepare each Change Order Request in writing and must submit it to the District, the Architect and the Project Manager with: (i) all information reasonably necessary to permit the District, Architect and Project Manager to determine the nature and scope of the proposed change(s); and (ii) the proposed adjustments to the Contract Price and/or Contract Time, if any, that the Contractor reasonably believes are appropriate considering the nature and scope of the proposed or other change(s). The Contractor must submit each Change Order Request a sufficient time in advance of when the change must be implemented in order to avoid and/or prevent any delay in the Work or the Project. Each Change Order Request that includes a proposed adjustment to the Contract Price must be accompanied by an estimate of the Change Order Cost detailed in accordance with one of the methods specified in Section 17.9 of these General Provisions. Each Change Order Request that includes a proposed adjustment to the Contract Time must set forth the impact of the proposed or other change(s) on any milestones and on the critical path of the Work as set forth in the Master Construction Schedule, not just specify an increase in the number of days desired for completion of all Work. The District may agree to the terms set forth in a Change Order Request, may attempt to negotiate terms for a Change Order that are different from those proposed by the Contractor, or may determine not to agree to the Change Order Request. If the District and the Contractor are able to agree on all terms of a Change Order Request, the Architect will prepare the Change Order to include all such terms.

**17.9 Determining Affect of Change on Contract Price.** In response to an RFP or in connection with a Change Order Request, the Contractor must prepare a written estimate of the Change Order Cost, which must include a complete itemization of all materials, labor and other costs, whether additive or deductive, that affect the Contract Price, including, without limitation, estimates of hours of labor required, wage rates, material quantities, unit prices, *et cetera*. The District in its sole discretion may require that the Contractor provide any estimate of the Change Order Cost, or some portion thereof, on: (i) a "time and materials" basis as described in Section 17.10 of these General Provisions; (ii) a lump-sum basis as described in Section 17.11 of these General Provisions; and/or (iii) a unit-price basis as described in Section 17.12 of these General Provisions. Upon request, the Contractor must furnish to the Architect and the Project Manager such information as reasonably substantiates wage rates, bond premiums or other amounts included in an estimate. No work may be performed on a time-and-materials basis or unit-price basis if the cost thereof will exceed the ten percent limit set forth in Public Contract Code Section 20118.4, and the District may include in any Change Order providing for completion of required change(s) on either such basis a condition on payment that the final Change Order Cost not exceed such limit.

**17.10 Determining Change Order Cost Based on Time and Materials.** In the event the District requests that an estimate of a Change Order Cost, or portion thereof, be prepared on a time-and-materials basis, the Contractor must provide an itemization of the estimated costs of all time, materials and equipment necessary to complete the required change(s). Each unit-price estimate must include the cost components and conform to all associated requirements specified in Section 17.13 of these General Provisions, except that the Contractor must make reasonable and good-faith efforts to estimate and include in the estimate the maximum number of hours of labor in the various job classifications, and the maximum quantities of materials, required to complete the required change(s) on a time-and-materials basis.

**17.11 Determining Change Order Cost Based on Lump Sum Proposal.** In the event the District requests that an estimate of a Change Order Cost, or portion thereof, be prepared on a lump-sum basis, the Contractor must provide an itemization of the costs of all time, materials and equipment necessary to complete the proposed change(s). Each lump-sum estimate must include the cost components and conform to all associated requirements specified in Section 17.13 of these General Provisions as being applicable to time-and-materials estimates. Upon being approved by the Parties, a lump-sum estimate shall in all circumstances be deemed and construed to be the agreed Change Order Cost regardless of the total time,



number of hours of labor, quantities of materials, *et cetera*, actually required to complete or otherwise implement the proposed change(s).

**17.12 Determining Change Order Cost Based on Unit Pricing.** In the event the District requests that an estimate of a Change Order Cost, or portion thereof, be prepared on the basis of unit-prices, the Contractor must provide an itemization of the costs of all time, materials and equipment necessary to complete each logical, defined or specified unit of the proposed change(s). The Contractor must make reasonable and good-faith efforts to estimate the maximum number of each logical, defined or specified unit required to complete the proposed change(s) on a unit-price basis. Each unit-price estimate must include the cost components and conform to all associated requirements specified in Section 17.13 of these General Provisions as being applicable to time-and-materials estimates. Upon being approved by the Parties, a unit-price estimate shall in all circumstances be deemed and construed to be the Change Order Cost for each unit, regardless of the number or cost of such units actually required to complete or otherwise implement the proposed change(s).

**17.13 Cost Components to be Included in All Estimates.** The District and/or the Project Manager may require that reasonable additional or modified cost components or information be included in any necessary cost estimate, but, otherwise, each estimate prepared by the Contractor in response to an RFP or in connection with a Change Order Request must include the following cost components and conform to all associated requirements specified below:

- (i) Labor Costs: Itemize all job classifications for labor necessary to complete the proposed change(s), direct hourly wage rates, and the estimated total number of hours in each job classification required to complete the change(s). Separately itemize any employer-paid payroll taxes, insurance, benefits and other costs attributable to such labor. Do not include off-site management, supervision and/or administration in this cost component, as the compensation for such costs shall be deemed to be included within the Contractor's general markup.
- (ii) Materials Costs: Itemize (in sufficient detail to identify) all materials necessary to complete the proposed change(s), quantities required, taxes, and any delivery costs. The amounts itemized in this cost component must be reduced by the full amount of any credits and/or discounts given in connection with obtaining the materials, as described in Section 17.15 of these General Provisions.
- (iii) Equipment Costs: Itemize all equipment necessary to complete the proposed change(s), hourly costs of rental or operations, and total number of hours required. Separately itemize any rented or leased equipment from any owned equipment. Separately itemize any equipment cost that is based on a per-load amount. Do not include in this cost component any hand tools, equipment with a value of less than \$1,000, or equipment with a daily rental rate of less than \$500, as the compensation for such items shall be deemed to be included within the Contractor's general markup. Also do not include in this cost component the rental of any equipment if other suitable equipment already is available at the Project Site, unless the use of such equipment would unreasonably delay the Work or any Work by Others.

- (iv) Subtotal: Calculate the sum total of the labor, materials, and equipment costs determined in accordance with the foregoing clauses (i), (ii) and (iii).
- (v) General Markup: Specify an amount, in no event in excess of twelve and one-half percent of the subtotal amount calculated in accordance with the foregoing clause (iv), which shall be deemed and construed to fully compensate the Contractor for overhead, profit and all other direct and indirect costs (other than bond markup) attributable to the proposed change(s), including, without limitation, any and all costs of research; negotiations; preparation of estimates and other documents; insurance; home-office overhead; on-site and off-site supervision; interference, delay, acceleration and other affects on the Work; guarantees; protection facilities; materials handling; supplies; safety equipment; and hand tools, equipment with a value of less than \$1,000, and equipment with a daily rental rate of less than \$500. Notwithstanding the foregoing, any portion of the work necessary to complete the proposed change(s) to be performed by any Subcontractor must not include a markup by the Subcontractor in excess of ten percent, or a markup by the Contractor in excess of five percent, of the total labor, materials and equipment included within such subcontracted work.
- (vi) Bond Markup: Specify an amount, in no event in excess of one percent of the subtotal amount calculated in accordance with the foregoing clause (iv), to compensate the Contractor for any additional bonding costs incurred in connection with the work necessary to complete the proposed change(s). Do not include any such amount if no additional bonding costs will be incurred.
- (vii) Change Order Cost: Calculate the total Change Order Cost, which shall be the sum total of the subtotal amount calculated in accordance with the foregoing clause (iv), the general markup specified in accordance with the foregoing clause (v), and any bond markup specified in accordance with the foregoing clause (vi).

**17.14 Deductive or Reduced Change Order Costs.** Any RFP or Change Order Request may propose any reduction in the amount and/or scope of the Work, regardless of whether the RFP or Change Order Request also proposes any additional or increased amount and/or scope of the same or other portions of the Work. In such event, the estimate prepared by the Contractor in response to the RFP or in connection with the Change Order Request must include the same cost components and conform to all associated requirements specified in Section 17.13 of these General Provisions, except that the estimate must determine the deduction from the Contract Price attributable to the reduction in the amount and/or scope of the Work. If an RFP or Change Order Request specifies only deductive changes(s), the Change Order Cost in its entirety will represent a deduction from the Contract Price. When both deductive change(s) and additive change(s) are specified in an RFP or Change Order Request, the Change Order Cost shall be based on the net affect on itemized costs, including, without limitation, general markup and bond markup.

**17.15 Discounts and Refunds Deducted from Change Order Costs.** The Contractor must make reasonable efforts to obtain or otherwise secure any and all discounts, rebates, refunds and/or offsets that may be available with respect to materials, equipment and supplies necessary, or no longer necessary, in connection with any change(s) in the Work or other requirements of the Contract. The Contractor must include in each estimate prepared in accordance with Section 17.13 of these General Provisions any such discounts, rebates, refunds and/or offsets as reasonably may be available. In the case of any change(s)

completed on a time-and-materials basis or a unit-price basis, the Contractor must document any and all discounts, rebates, refunds and/or offsets as provided in Section 17.17 of these General Provisions.

**17.16 Substantiation of Subcontractor Pricing Included in Estimates.** If an estimate includes any work by a Subcontractor of any tier or materials provided by any materialman, the Contractor must furnish to the Architect and the Project Manager: (i) a detailed estimate, prepared and signed, as applicable, by the Subcontractor or materialman, of the cost for labor, material, equipment, markup, *et cetera*; and (ii) such information as reasonably substantiates wage rates, bond premiums or other amounts included in the estimate, including, without limitation, any markup by the Subcontractor.

**17.17 Substantiation of Time and Materials and Unit-Price Costs.**

**17.17.1 Requirement for Notice.** The Contractor must not commence performance of any portion of the Work authorized to be performed on a time-and-materials basis or a unit-price basis unless the Contractor gives notice at least twenty-four hours in advance to the Project Manager and the Inspector of Record that such Work will be commencing, so that they may be present during performance of such Work.

**17.17.2 Requirements for Daily Time and Materials Reports.** The Contractor must obtain the Inspector of Record's signature on a copy of the "Daily Time and Materials Report" form included in the Required Project Forms for each day during the performance of the Work, specifying: (i) the identification number assigned to that portion of the Work; (ii) the location and description of such Work; (iii) the job classifications, names and social security numbers of the workers performing such Work; (iv) the materials used in performing such Work; and (v) the equipment used in performing such Work, other than tools and equipment included within the Contractor's general markup. The Contractor must: (i) obtain the Inspector of Record's signature the day Work described on a Daily Time and Materials Report is performed, or, if agreed by the Inspector of Record, the following day; and (ii) provide a copy of each Daily Time and Materials Report to the Inspector of Record upon obtaining his or her signature, or allow the Inspector of Record to copy the Daily Time and Materials Report at such time. Upon request, the Contractor must also submit any other relevant information as the District may require, including, without limitation, copies of wage rates as included in certified payroll records, receipts, payment invoices, shipping invoices, bills of lading, *et cetera*. If the Contractor fails to provide documentary evidence or other information sufficient to substantiate the amount and/or costs of Work performed on a time-and-materials basis or unit-price basis, the District, in its reasonable discretion, may determine such amounts and/or costs. **IN ORDER TO AVOID ANY VIOLATION OF PUBLIC CONTRACT CODE SECTION 20118.4, THE CONTRACTOR MUST PROVIDE WRITTEN NOTICE TO THE PROJECT MANAGER IF AND WHEN THE COST OF ANY WORK PERFORMED ON A TIME-AND-MATERIALS BASIS REACHES SEVENTY-FIVE PERCENT OF THE CHANGE-ORDER LIMIT SPECIFIED IN SECTION 20118.4, i.e., SEVENTY-FIVE PERCENT OF THE GREATER OF \$15,000 OR TEN PERCENT OF THE ORIGINAL CONTRACT PRICE.**

**17.17.3 Requirements for Separate Accounting Records.** If the Contractor performs any Work (whether pursuant to the original Contract, any Change Order, or otherwise) on a time-and-materials basis or a unit-price basis, the Contractor must adequately document all labor, materials and equipment used and/or consumed in connection with such Work. The Contractor must prepare and maintain separate cost-accounting records, in accordance with generally-accepted accounting standards and principles, for each portion of the Work performed on a time-and-materials basis or unit-price basis, and shall make such accounting records available to the District, the State, and other parties to the same extent as required pursuant to the Contract Documents for other accounting records related to the Work.

**17.18 Changes Required Based on Bid Alternates.** Notwithstanding anything to the contrary, the District may issue a Change Order to require any change(s) in the Work or in other requirements of the Contract as specified in any additive or deductive alternates included in the Contractor's bid. If the

Contractor fails to agree to a Change Order that would implement any such additive or deductive alternate, the District may issue a unilateral Change Order to implement the required change(s).

**17.19 Change Orders Include Full and Final Compensation.** Except as expressly set forth in any particular Change Order, each Change Order shall be deemed and construed to include all adjustments to the Contract Price and/or Contract Time attributable to the work and/or other change(s) required pursuant to the Change Order, including, without limitation, any and all extensions of time and overhead, acceleration costs, profit, general conditions costs, expenses, and other direct and indirect costs and expenses of such work and/or changes. In addition, each Change Order shall be deemed and construed to include all necessary adjustments attributable to cumulative impacts of that and any and all preceding Change Orders, whether such impacts relate to scheduling, productivity or other matters. By signing a Change Order, the Contractor shall be deemed and construed to have waived any and all Claims and rights to any adjustments to the Contract Price and/or Contract Time other than as are set forth in the Change Order, and the Contractor may not thereafter attempt to hold the District responsible for any interference, delay, acceleration, or other affect on the Work and/or additional costs attributable to the change(s) required pursuant to the Change Order. The foregoing shall not be deemed to preclude compensation to the Contractor on a time-and-materials, unit-price or similar basis if authorized pursuant to a Change Order.

**17.20 Alterations to Directives and Change Orders Prohibited.** The Contractor must not alter any Architect Field Directive, Construction Change Directive or executed Change Order, and no such alteration shall be valid or binding in any respect whatsoever on the District or any other party. The Contractor must perform the change(s) required pursuant to any such Architect Field Directive, Construction Change Directive or executed Change Order in strict accordance with the provisions therein, and shall be responsible and liable for any and all costs and/or delays arising from any failure by the Contractor to so perform.

**17.21 District Not Liable for Non-Conforming Work.** The Contractor shall be responsible and liable for, and District shall not be liable and shall not pay for, any change in the Work if such change is necessary as a consequence of any Work that was negligently performed, is defective, or otherwise does not conform with requirements of the Contract Documents, whether because the Contractor failed to properly coordinate, schedule or supervise such portion of the Work or for any other reason that is not the result of the active negligence or willful misconduct of the District or any of its contract representatives.

## **PART 18 FINAL INSPECTION AND COMPLETION OF WORK**

**18.1 Contractor Must Determine When Work is Complete.** The Contractor shall be solely responsible for determining when the Work or any portion thereof is complete, and the Contractor must base any such determination on adequate reviews and inspections of the Work by the Contractor's own forces, rather than relying on representations by any Subcontractor or others. Based on such reviews and inspections, the Contractor must prepare "punch-lists" of items to perform prior to the Work being deemed complete. The Contractor must provide copies of each such punch-list to the Project Manager and the Inspector of Record, and must promptly perform or cause to be performed each item on such punch-lists. At such time as the Contractor reasonably believes that the Work is substantially complete and that all prerequisites set forth in Section 18.2 of these General Provisions have been completed, the Contractor may request an inspection of the Work in accordance with Section 18.3 of these General Provisions.

**18.2 Contractor Must Complete Prerequisites Before Inspection.** Prior to requesting any inspection, the Contractor, based on its own reviews and inspections as provided in Section 18.1 of these General Provisions, must confirm that, to the extent required by the Contract Documents or the Contractor is

otherwise responsible (e.g., repair of damage arising from the Work), all of the following have been satisfactorily performed and completed:

- (i) All general construction and all other elements of the Work have been substantially completed, and the Contractor has completed or caused to be completed all items included on the Contractor's punch-lists;
- (ii) All water, gas, sewer, electric and other utility facilities, service connections and re-connections, meters, *et cetera*, have been installed and/or completed, tested, and are fully and properly functioning;
- (iii) All safety and alarm systems, equipment, fixtures, *et cetera*, have been completed and are fully functioning;
- (iv) All mechanical, plumbing, electrical and other building systems, equipment, fixtures, *et cetera*, have been installed, completed, balanced and tested, and are fully and properly functioning, and all testing and balance reports have been provided to the Project Manager;
- (v) All electrical circuits, panels, disconnect switches, *et cetera*, are properly labeled;
- (vi) All irrigation systems (including, without limitation, timers and pop-up sprinklers) have been completed, tested and are fully and properly functioning, and all planting (including, without limitation, all sod or other turf planting) has been installed and is established;
- (vii) All operating instructions for any and all systems, equipment and other things have been properly posted, affixed, *et cetera*, as required pursuant to the Contract Documents;
- (viii) All District personnel as required pursuant to the Contract Documents have been adequately instructed and/or trained with respect to the characteristics, maintenance and operation of safety, alarm, mechanical, plumbing, electrical and other systems, and the Contractor has prepared and provided to the Project Manager a complete list of the names of District personnel instructed and/or trained, the building system(s) and type of instruction and/or training involved, the locations at which such instruction and/or training occurred, and the dates on which such instruction and/or training occurred;
- (ix) All doors and windows, including locks, catches and other hardware, have been installed and adjusted, and are fully and properly functioning, with all temporary protective films or other coverings removed, tops and bottoms of doors sealed, all glass and similar surfaces cleaned and streak-free; all finished metal surfaces polished and streak-free;
- (x) All painting and special finishes have been applied and have dried or otherwise cured or been completed;
- (xi) All damage, as required by the Contract Documents or necessary as a consequence of the Work, has been repaired and/or replaced, including, without limitation, any broken glass replaced; and
- (xii) All cleanup as required by the Contract Documents or necessary as a consequence of the Work has been completed, including, without limitation: cleanup pursuant to Section 8.27 of these General Provisions; hard-surface floors waxed and polished; carpets vacuumed; dirt, marks, stains, scratches,

superfluous labels, and other foreign matter removed; tools and equipment removed from Project Site; and bare (dirt) areas of Project Site cleaned and raked.

**18.3 Contractor's Initial Request for Final Inspection.** At such time as the Contractor reasonably believes that the Work is substantially complete and that all prerequisites set forth in Section 18.2 of these General Provisions have been completed, the Contractor must complete, execute and submit to each of the District, Architect, Project Manager and Inspector of Record a copy of: (i) a written notice that all Work has been completed and is ready for final inspection; and (ii) the "Certification Regarding Readiness For Inspection" form included in the Required Project Forms. The District, Architect, Project Manager and Inspector of Record will perform such inspection within ten days following receipt of notice and certification from the Contractor, and the Project Manager will notify the Contractor regarding the date and approximate time such inspection is to commence. The Contractor must conduct the examinations of the Work in a logical and sequential manner in order to facilitate an efficient and thorough inspection.

**18.4 Requirements for Re-Inspection of Work.** If it is determined after the inspection described in Section 18.3 of these General Provisions, or after any subsequent re-inspection of the Work pursuant to this Section 18.4, that the Work is not substantially complete, the District, Architect and/or Project Manager will provide written notice to the Contractor describing the incomplete and/or unsatisfactory portions of the Work. The Contractor must complete and/or correct all such Work within a reasonable time, not to exceed any time limit specified in the notice to the Contractor. Upon completing and/or correcting all such Work, Contractor must submit a new notice and a new Certification Regarding Readiness For Inspection as described in Section 18.3 of these General Provisions, and the re-inspection of the Work shall occur in accordance with the procedures set forth in that Section. The new Certification Regarding Readiness For Inspection must expressly state, in addition to other required elements, that the previously incomplete and/or unsatisfactory portions of the Work have been completed and/or corrected in accordance with the Contract Documents. Nothing shall be deemed or construed to require that any re-inspection of the Work be limited to only any incomplete and/or unsatisfactory portions of the Work previously identified and/or other portions of the Work affected thereby.

**18.5 Determination that Work is Substantially Complete.** If it is determined after any inspection or re-inspection of the Work pursuant to Section 18.3 or Section 18.4 of these General Provisions that the Work is substantially complete, the District, Architect and/or Project Manager will provide written notice of such determination to the Contractor. In such event, the District, Architect, Project Manager and/or Inspector of Record will also prepare and provide to the Contractor a punch-list of any minor items of the Work that must be completed and/or corrected in order for the Work to be fully completed and accepted by the District ("Remaining Work").

**18.6 Contractor Must Timely Complete Remaining Work.** The Contractor must complete any and all Remaining Work within fourteen days of receiving the punch-list described in Section 18.5 of these General Provisions. If the Contractor fails to complete and/or correct the Remaining Work within the permitted fourteen-day period, the District may: (i) withhold from the final payment to Contractor an amount equal to 150% of the Architect's estimate of the total cost to correct and/or complete all Remaining Work; and (ii) cause such Remaining Work to be completed and/or corrected and, thereafter, deduct the costs thereof from the amount withheld.

**18.7 Contractor Request for Final Walk-Through.** At such time as the Contractor reasonably believes that all Remaining Work has been adequately completed, the Contractor must provide a written request to the District, Architect, Project Manager and Inspector of Record for a final walk-through inspection. The Project Manager will coordinate and schedule the final walk-through inspection. The purpose of the final walk-through inspection will be to confirm that all Remaining Work has been completed

in accordance with the Contract Documents or as otherwise required. At such time as the District, Architect, Project Manager and Inspector of Record determine that all Remaining Work has been completed in accordance with the Contract Documents or as otherwise required, and any and all other requirements of the Contract Documents have been satisfied, the District will provide written notice thereof to the Contractor. The District will recommend that the District Board accept the Work as complete only as provided in Section 18.9 of these General Provisions.

**18.8 Contractor Responsible for Certain Inspection Costs.** In requesting any walk-through or other inspection of the Work or any portion thereof, the Contractor must have a good-faith belief that the Work or portion thereof has been fully and properly completed and is ready for inspection, based on the Contractor's own reviews and inspections of the Work performed in accordance with Section 18.1 of these General Provisions. The Contractor shall be solely responsible and liable for any and all costs (including, without limitation, costs of Architect, Project Manager and/or Inspector of Record services, administrative costs, consultant fees, transportation costs, *et cetera*) if the Contractor at any time requests an inspection of any portion of the Work and: (i) it is reasonably apparent that such portion of the Work is not complete and ready for inspection; (ii) in the reasonable opinion of the District, Architect, Project Manager or Inspector of Record, the Contractor is using the inspection as a means to define or determine the scope of such Work or the scope of the uncompleted portions of such Work; (iii) in the reasonable opinion of the District, Architect, Project Manager and/or Inspector of Record, the Contractor is using the inspection as a means to accelerate the Work of any Subcontractor; (iv) the Work fails to pass the inspection due to any negligence or misconduct of the Contractor or any Subcontractor or other person or entity on, at or in the vicinity of the Project Site on account of the Work; (v) Work noted as incomplete and/or unsatisfactory during a prior inspection is not reasonably complete and/or satisfactory upon re-inspection; or (vi) the Work is not ready for inspection and it is reasonably apparent that, for any other reason, the Contractor did not request the inspection in good faith. Any such costs shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor pursuant to the Contract.

**18.9 Acceptance of the Completed Project.** After the entirety of the Project has received final walk-through inspection approval, the completed Project must be accepted by action of the District Board. The District will cause a "Notice of Completion" for the Project to be recorded within fifteen days after the date the District Board takes such action to accept the Project (herein, the "Project Acceptance Date").

## **PART 19 CLOSE-OUT OF THE WORK**

**19.1 Close-Out Submittals are Prerequisite to Final Payment.** Within ten days of receiving notice in accordance with Section 18.5 of these General Provisions that the Work is substantially complete ("Substantial Completion Date"), the Contractor must submit to the Project Manager all documents and other things required pursuant to this Part 19 that are within or associated with the scope of the Work, or are otherwise to be provided in connection with the Work. The requirements of this Part 19 shall be deemed and construed to be in addition to, and not in lieu of, any and all other close-out requirements set forth in the Contract Documents. Notwithstanding anything to the contrary, the District shall not be required to make the final payment to the Contractor in accordance with the Contract unless and until the Contractor submits to the Project Manager all documents and other things required pursuant to this Part 19.

**19.2 Record Drawings and Specifications.** The Contractor must obtain final approval of the Record Drawings and Specifications from the Architect, Project Manager and Inspector of Record. After obtaining such approval, the Contractor must employ a competent draftsman to: (i) transfer the as-built information to Drawings on electronic files using the most current version of AutoCAD or other commonly-

used program as directed or approved by the Architect; and (ii) prepare a complete set of as-built Drawings on transparent sepia or, if approved by the Architect, reproducible bond paper. Upon completing the electronic as-built Drawings and the sepia as-built Drawings, the Contractor must submit to the Project Manager: (i) three copies of the Record Drawings and Specifications approved by the Inspector of Record that have been certified by the Contractor as being complete and fully and accurately representing the as-built condition of the Work; (ii) an archive-quality "CD" containing the as-built Drawings as electronic files; and (iii) the complete set of sepia or bond-paper copies of the as-built Drawings.

**19.3 Project-Related Documents.** The Contractor must prepare and submit to the Project Manager two sets of archive-quality CDs, each identical and each containing indexed electronic copies of any and all Contract Documents, Addenda, Change Orders, Architect Field Directives, Construction Change Directives, other documents that modify the Contract, approved shop drawings, product data sheets, samples, other submittals of the Contractor, RFIs, RFPs, Change Order Requests, Claims, correspondence, and other documents generated during the course of the Work or otherwise in connection with the Work.

**19.4 Equipment Operations and Maintenance Manuals.**

**19.4.1 Required Contents.** The Contractor must obtain and submit to the Project Manager four complete sets of: (i) manufacturer's manuals and/or instructions for operation, maintenance and repair of any and all systems, equipment, assemblies, and similar things incorporated into the Work, including, without limitation, any parts lists; (ii) any and all reports and other information resulting from any required commissioning, testing, balancing, *et cetera*, of such systems, equipment and other things; (iii) information (including, without limitation, contractor's license numbers, business license numbers, current addresses, telephone and facsimile numbers, and e-mail addresses) identifying any and all Subcontractors and/or vendors associated with the purchase, installation, commissioning, testing and/or guarantee of such systems, equipment and other things; (iv) manufacturer guarantees and/or warranties for such systems, equipment, assemblies and other things; (v) assignments of all guaranties and warranties from Subcontractors, materialmen and other persons and entities that furnished any labor, materials, services, goods or other things in connection with the Work; and (vi) any other associated information required by the Contract Documents.

**19.4.2 Required Format.** The Contractor must have each set of the documents described in Subsection 19.4.1 of these General Provisions collated into one or more white-colored three-ring binders, in a logical and sequential order, with each manual or other section of information marked with labeled tabs, and an index of the tabs included in the front of each binder. To the extent possible, all information relating to any one system, piece of equipment, or other thing must be grouped together in a logical manner. The spine of each binder also must have a label that specifies the project title and number, identifies the contents of the binders as "Equipment Operations and Maintenance Manuals," specifies the set and binder number (e.g., "Set 1, Binder 1," "Set 1, Binder 2," *et cetera*).

**19.4.3 Required Correction and Certification.** The Contractor must certify in writing that each set of binders is complete, accurate, and covers all of the Work, and such certification must be included immediately after the index page in each binder, and must be separately tabbed and indexed. Upon receipt, the Project Manager shall review the binders. If the Project Manager determines that the binders are not complete or otherwise must be corrected, the Project Manager will return all sets of the binders to the Contractor for correction. The Contractor must correct, re-certify, and return all four sets of binders to the Project Manager within five days.

**19.5 Special Guarantees and Warranties.** The Contractor must submit to the Project Manager, to the extent not included in the submittals required pursuant to Section 19.4 of these General Provisions, any and all: (i) special guaranties and warranties required by the Contract Documents; and (ii) assignments of



guaranties and warranties from Subcontractors, materialmen and others required by the Contract Documents. The Contractor must label, tab and otherwise organize such information so that the systems, equipment and/or other things to which they apply can easily and unambiguously be identified.

**19.6 Identification-Tag Log.** The Contractor must submit to the Project Manager a log or schedule of any and all equipment, valves, pipes, connections, meters and/or other things that are required by the Contract Documents or any applicable law, rule, regulation, ordinance or other governmental requirement to be tagged or labeled. The Contractor must label, tab and otherwise organize such information so that the systems, equipment and/or other things to which they apply can easily and unambiguously be identified.

**19.7 Keys for Doors, Panels, Cabinets, Et Cetera.** If not expressly set forth in the Contract Documents in any particular case, the Contractor must submit to the Project Manager two sets of keys for each door, access panel, cabinet, gate, equipment cover, and other thing having any locking mechanism and/or capable of being locked. Each key must be securely attached to a fob or have some other means of securely attaching a label, other than attaching a label directly to the key. The description on the fob or label of each key must adequately identify the key, and all keys must be logged on a keying schedule or index that will permit the District to easily and unambiguously identify the doors, equipment and/or other things that are opened or operated by the keys. If the Specifications provide for electronic "key card" or similar systems, the Contractor must comply with all requirements of the Contract Documents or the Project Manager relating to identifying, logging or scheduling, and providing key cards or similar items to the District.

**19.8 Tools, Spare Parts, Et Cetera.** The Contractor must submit to the Project Manager any and all tools, spare parts, "attic" stock, *et cetera*, required pursuant to the Contract Documents. The Contractor must label, tab and otherwise organize such items so that the systems, equipment and/or other things to which they apply can easily and unambiguously be identified. In the event any spare parts, attic stock, or other item(s) reasonably would be too large, too heavy or in too great a quantity, to physically submit to the Project Manager, the Contractor must, subject to approval by the Project Manager, specify, on a log or schedule, all such items and their respective storage locations on the Project Site, and provide four copies of such log or schedule to the Project Manager.

**19.9 DSA Close-Out Materials.** The Contractor must, as applicable, obtain, complete and/or prepare, and must submit to the Project Manager, any and all forms, records and/or other documents required by the DSA in connection with close-out by the DSA of the Work and/or the Project. If the Contractor has questions as to what DSA requirements are applicable, the Contractor may contact the DSA or may request through the Project Manager that the Architect advise the Contractor as to DSA requirements. However, in no event shall the District, Architect, Project Manager or the Inspector of Record be responsible or liable for inaccurate or incorrect information provided to the Contractor if the Architect provided such information in good faith.

**19.10 Contractor Guarantee.** The Contractor must complete, execute and submit to the Project Manager a copy of the "Certification Regarding Contractor Guarantee" form included in the Required Project Forms.

**19.11 Other Contract Document Close-Out Requirements.** The Contractor, to the extent not already described in this Part 19, must as applicable obtain, complete and/or prepare, and must submit to the Project Manager, any and all close-out submittals and/or information required pursuant to any other requirement of the Contract Documents.

**PART 20**  
**CONTRACTOR GUARANTEE OF WORK**

**20.1 No Waiver of District Rights.** In no event shall any payment to the Contractor, provision of the Contract Documents, Notice of Completion, or use or occupancy of any portion of the Work or the Project, be deemed or construed: (i) to relieve the Contractor of any responsibility and/or liability for any defective or improper systems, equipment, materials or other things incorporated into the Work or for faulty workmanship in performing the Work; (ii) to constitute acceptance by the District, without recourse, of any Work not performed in accordance with the Contract Documents and all laws, rules, regulations, ordinances and other governmental and quasi-governmental requirements applicable to the Work; or (iii) to constitute a waiver of any right the District has to hold the Contractor responsible and/or liable for any such Work.

**20.2 Contractor's General Guarantee of Work.** In addition to any other guarantees or warranties of the Contractor pursuant to the Contract Documents, the Contractor hereby guarantees that, during the applicable Guarantee Period: (i) all Work shall have been performed in accordance with all requirements of the Contract Documents and shall be free of defective or improper systems, materials and other things, and free of faulty workmanship; and (ii) if it is determined during the applicable Guarantee Period that any Work does not conform to the requirements of the foregoing clause (i), the Contractor will repair, replace or otherwise correct the affected portion of the Work as provided in this Part 20 ("Contractor Guarantee"). Without limiting the foregoing, the Contractor Guarantee shall be deemed and construed to guarantee against any and all defects that may arise from any error or fault in any design(s) for which the Contractor was responsible in accordance with the Contract Documents, including, without limitation, any design provided by or through any Subcontractor or other person or entity in connection with the Work. No failure by the Inspector of Record or any other party to inspect or properly inspect any portion of the Work shall be deemed or construed to limit or otherwise condition the Contractor's responsibilities and/or liabilities pursuant to the Contractor Guarantee.

**20.3 Limitations on Contractor Guarantee.** The Contractor Guarantee does not guarantee against damage to the Work: (i) caused by the District or any persons or entities other than the Contractor or any Subcontractor or other person or entity on, at or in the vicinity of the Project Site on account of the Work; (ii) resulting from a lack of reasonable maintenance after the Substantial Completion Date; or (iii) resulting from changes to the Work performed by any persons or entities for whom the Contractor is not directly or indirectly responsible, unless the changes were performed in accordance with the Contract Documents and/or instructions or directions provided by the Contractor.

**20.4 Applicable Guarantee Periods.** Except as the Contract Documents otherwise provide, the Contractor Guarantee shall be and remain in effect at all times during the period ("Guarantee Period") that commences on the Substantial Completion Date and ends on the sooner of: (i) the date that is one year after the Project Acceptance Date; or (ii) the date that is two years after the Substantial Completion Date. The foregoing definition of the Guarantee Period shall be deemed and construed to apply to the Work generally, and shall not be deemed or construed to supersede or limit any provision of the Contract Documents that specifically requires a longer Guarantee Period. In no event shall any applicable Guarantee Period serve as a limitation with respect to latent defects in the Work, which remain subject to applicable statute(s) of limitation.

**20.5 Specific Guarantee Periods for HVAC and Roofing.** The Guarantee Period for all heating, ventilation and air conditioning equipment, controls, *et cetera*, shall start when such portion of the Work first commences and shall end on the sooner of: (i) the date that is two years after the Project Acceptance Date; or (ii) three years after the Substantial Completion Date. The Guarantee Period for all roofing materials,

membranes, sheet-metal, *et cetera*, shall start when such portion of the Work first commences and shall end on the date that is five years after the Substantial Completion Date.

**20.6 Manufacturer and Other Third-Party Guarantees.** The Contractor Guarantee shall be deemed and construed to apply to the Work generally, and in no event: (i) shall the Contractor Guarantee be deemed or construed to limit, in any manner, any manufacturer or other third-party guarantee or warranty (including, without limitation, any that have a longer applicable Guarantee Period); or (ii) shall any such manufacturer or other third-party guarantee or warranty relieve the Contractor from its responsibilities and/or liabilities pursuant to the Contractor Guarantee. At all times while the Contractor Guarantee is in effect during an applicable Guarantee Period, but not thereafter, the Contractor must assist the District in processing any manufacturer and other third-party guarantee or warranty claims with respect to systems, equipment, materials and/or other things incorporated into the Project as part of the Work.

**20.7 Guarantee Work by Contractor.** Not later than ten days after written notice from the District, the Contractor, at no cost to the District, must repair, replace or otherwise correct: (i) any defective, improper or otherwise faulty Work that is discovered or revealed during any applicable Guarantee Period; and (ii) any systems, equipment, materials and/or other things damaged, destroyed or otherwise disturbed as a consequence of the repair, replacement or other correction of the defective, improper or faulty Work (collectively, "Guarantee Work"). All such Guarantee Work must result in a repair, replacement or other correction that satisfies all requirements of the Contract Documents or otherwise must be completed in accordance with District requirements. The Contractor must coordinate all Guarantee Work with the District in order to avoid interfering with District operations and/or endangering any person(s) at the Project Site. If the Contractor timely commences any Guarantee Work, but the Guarantee Work reasonably cannot be completed within ten days of notice from the District, the District shall permit a reasonable time for completion of the Guarantee Work, but not in excess of twenty days. The Contractor must provide written notice to the District upon completing any Guarantee Work.

**20.8 District Performance of Guarantee Work.** The District may at any time cause any required Guarantee Work to be performed, as reasonably determined by the District, if: (i) the Contractor has failed to undertake and/or complete the Guarantee Work within the time permitted pursuant to Section 20.7 of these General Provisions; or (ii) as reasonably determined by the District, an Emergency situation exists and the delay that would result from providing notice to the Contractor and permitting the Contractor to perform the Guarantee Work would endanger or further endanger any person(s) or property. The costs of any such Guarantee Work incurred by the District shall be assessed against the Contractor, and shall accrue interest at the maximum legal rate permitted in the State. In no event shall the District causing any Guarantee Work to be performed in accordance with this Section 20.8 be deemed or construed to limit or otherwise condition the responsibilities and/or liabilities of the Contractor pursuant to the Contractor Guarantee.

**20.9 Two-Year Extended Guarantee Period After Guarantee Work.** Regardless of whether any Guarantee Work is performed pursuant to Section 20.7 or Section 20.8 of these General Provisions, the applicable Guarantee Period shall be extended by the amount of time necessary to result in the Guarantee Period remaining in effect for a period of two years after the date the Guarantee Work is completed and accepted by the District. Any such extended Guarantee Period shall be applicable to: (i) the system, equipment, material and/or other thing that was repaired, replaced, or otherwise corrected; and (ii) any other of the same or substantially similar systems, equipment, materials and/or other things incorporated into the Work. The foregoing shall not be deemed or construed to result in the shortening of any Guarantee Period otherwise applicable to the Work or any portion of the Work.

**20.10 Warranty of Title to Work.** The Contractor further warrants that title to all systems, equipment, materials and other things incorporated into Work (and, as expressly agreed by the District in

writing, any such things purchased by the Contractor and to be owned by the District prior to incorporation as described in Sections 21.5 or 21.6 of these General Provisions) will pass to the District upon receipt of payment by Contractor, free and clear of all claims, liens, stop notices, security interests, charges, *et cetera* (for purposes of this Section 20.10, each a "lien"). To the extent provided in Part 23 of these General Provisions, the Contractor shall: (i) indemnify, defend and hold harmless the District against and with respect to any and all such liens; and (ii) pay any judgment for which the District is held responsible, and all related costs and expenses, including, without limitation, any attorneys' fees, arising from any actions or other legal proceedings brought to enforce any such liens. The foregoing shall not be deemed or construed to: (i) prohibit the Contractor from asserting any Claim in accordance with the Contract Documents; or (ii) require that the Contractor deliver to the District title to any utility metering devices or similar equipment owned by any public or private utility company or service and installed as part of the Work for purposes of providing permanent utilities or services to or for the Project.

**PART 21**  
**PROGRESS PAYMENTS AND FINAL PAYMENT**

**21.1 Maximum Amount Payable to Contractor.** The Contract Price, as adjusted in accordance with the provisions of the Contract Documents, shall be the maximum amount payable to the Contractor for performance of the Work or, in any case, pursuant to the Contract.

**21.2 Contractor Must Propose a Schedule of Values.**

**21.2.1** Within ten days of the date of the Notice of Award or prior to the Commencement Date, whichever is sooner, the Contractor must submit to the District, Architect, Project Manager and Inspector of Record a proposed schedule of the values allocated to the various portions of the Work ("Schedule of Values"), which must, among other things:

- (i) list the true actual cost (in dollars) of each separate activity and item included within the Work for which payment will be requested;
- (ii) specify the amounts (in dollars) of overhead, profit, any costs of "general conditions" for which the Contractor is responsible, and similar cost-items allocated to each activity and item included in the Work;
- (iii) separately itemize rough and finish work for the basic trades;
- (iv) specify individual dollar amounts for "large dollar" purchases, including, without limitation, systems, equipment, materials and/or other things to be incorporated into the Work;
- (v) allocate a dollar amount equal to not less than five percent of the Contract Price to the close-out activities specified in Part 19 of these General Provisions; and
- (vi) consistent with the approved Master Construction Schedule, specify the projected total dollar amounts payable to the Contractor each month during the course of the Work.

**21.2.2** The dollar amounts allocated for overhead, profit, general conditions costs and similar cost-items must, as noted above, be allocated in the Schedule of Values to each particular activity and item; provided that the District, in its sole discretion, may consent to general conditions costs being allocated on a pro-rata basis over the time for completion of the critical-path construction of the Work, as such critical path is set forth in the Master Construction Schedule. However, at any time the District reasonably

determines that the progress of the critical-path portion of the Work is insufficient in comparison to what is specified in the then-applicable Master Construction Schedule, the District may adjust the payment of general conditions costs to match the percentage of the Work then complete, including, without limitation, retaining appropriate portion(s) of payments otherwise due to the Contractor.

**21.2.3** The Contractor must not “front-load” the Schedule of Values by allocating increased or otherwise false dollar amounts to activities and/or items required to be performed in the early stages of the Work, and the District, in its sole discretion, may use the values allocated in the Schedule of Values as costs of activities and/or items that are eliminated from the scope of the Work.

**21.2.4** The Contractor must submit its proposed Schedule of Values with: (i) such documentary or other supporting evidence as reasonably supports and substantiates the allocations of values to the various portions of the Work; and (ii) a listing of all Subcontractors, materialmen, and other persons and entities that will be providing any labor, materials, equipment or other things for incorporation into the Work, including name, address, telephone number, facsimile number, e-mail address, State contractor license number and/or business license number, classification or type of work, material or other thing being provided, and total cost.

**21.2.5** The Contractor must submit the Schedule of Values and other information required pursuant to this Section 21.2 on such forms or software programs (e.g., Microsoft Project, Prolog, Expedition or Primavera) as approved in advance by the Project Manager.

**21.3 Contractor Must Obtain Approval of Schedule of Values.** The primary purpose of the Schedule of Values is to serve as one basis for reviewing each Progress Payment Request submitted by the Contractor. Therefore, the Schedule of Values is subject to reasonable approval by the District, Architect, Project Manager and Inspector of Record, and the District shall not be required to make any payment to the Contractor unless and until the Contractor has obtained approval of an acceptable Schedule of Values. Upon receiving the proposed Schedule of Values, the District, Architect, Project Manager and Inspector of Record shall review the Schedule of Values to determine if it: (i) encompasses all of the various portions of the Work; (ii) appropriately itemizes all activities and/or items included within the scope of the Work; and (iii) constitutes a fair and accurate allocation of the values of the various elements of the Work. The District, Architect, Project Manager and/or Inspector of Record may require that the Contractor modify the Schedule of Values as they determine are reasonably necessary. If the Schedule of Values is returned to the Contractor for any such modifications, the Contractor must modify and resubmit the Schedule of Values within two days. If the Contractor objects to any such required modification, the Contractor must, within such two-day period, provide any additional information to the District, Architect, Project Manager and Inspector of Record that the Contractor believes supports and substantiates that the modification is not necessary. The Architect’s decision regarding any such disputed modification shall be final and binding.

**21.4 Contractor Must Monitor and Update Schedule of Values.** The Contractor must update the Schedule of Values from time to time as reasonably necessary during the course of the Work, but in no event less than once per month or less than fourteen days prior to when amounts allocated in the Schedule of Values are to become due and payable. In each such update, the Contractor must identify and account for any changes in the Schedule of Values arising from delays, changes in the Work required by any Construction Change Directives or Change Orders, changes in the Master Construction Schedule, *et cetera*. The Contractor must submit each update to the Schedule of Values for approval in accordance with the requirements set forth in Section 21.3 of these General Provisions that are applicable to the initial proposed Schedule of Values.

**21.5 Payment for On-Site Materials Not Incorporated into Work.** Notwithstanding anything to the contrary, the District shall not be required to pay the Contractor for any systems, equipment, materials or other things that have been purchased by the Contractor and stored on, at or in the vicinity of the Project Site, but not incorporated into the Work. However, if the Contractor so requests, the District, in its sole discretion and subject to consultation with the Architect, Project Manager and/or Inspector of Record, may agree to pay for any such things purchased by the Contractor and properly and securely stored on the Project Site. In such event, title to such things shall be deemed and construed to pass to the District as provided in Section 20.10 of these General Provisions, but in no event shall any such agreement by the District constitute acceptance of any system, equipment, material or other thing that does not conform to all requirements of the Contract Documents. Regardless of whether or not the District purchases any system, equipment, material or other thing in accordance with this Section, the Contractor shall at all times retain full responsibility, liability and risk of loss for any and all such things stored on, at or in the vicinity of the Project Site, but not incorporated into the Work (including, without limitation, for any applicable insurance deductible or if, for any reason, such things are not covered by insurance) and for completing the Work in accordance with all applicable requirements of the Contract Documents.

**21.6 Payment for Specially Manufactured Items Stored Off-Site.** Notwithstanding anything to the contrary, the District shall not be required except as provided in this Section 21.6 to pay the Contractor for any systems, equipment, materials or other things that have been purchased by the Contractor and stored off of the Project Site. The Contractor shall retain full responsibility and liability for any such things at all times, and for completing the Work in accordance with all applicable requirements of the Contract Documents. However, if the Contractor so requests, the District, in its sole discretion and subject to consultation with the Architect, Project Manager and/or Inspector of Record, may agree to pay for custom-made or special order items (including, without limitation, structural steel, electrical panels, *et cetera*) stored off of the Project Site, but only if the Contractor provides documentary evidence acceptable to the District that:

- (i) the total cost of the items, plus the cost of any other systems, equipment, materials or other things stored off of the Project Site for which the District has paid, does not exceed \$100,000 or such greater amount as agreed by the District in its sole discretion;
- (ii) the items are stored in a bonded warehouse that adequately protects the items from diversion, destruction, theft and damage; are segregated from other systems, equipment materials, and other things in the warehouse; and are conspicuously labeled or marked as intended for use on the Project;
- (iii) the District has the right to inspect the items and the storage location at any reasonable time;
- (iv) the Contractor has insured the items for their full replacement value, the District is named as an additional insured, and all other terms of the insurance are acceptable to the District;
- (v) the Contractor's surety has consented to the Contractor being paid for the items prior to the items being delivered to the Project Site; and
- (vi) upon payment by the District, title to the items shall pass to the District, as evidenced by recorded financing statements, UCC searches, *et cetera*.

**21.7 Contractor Must Arrange Progress Payment Review Meetings.** The Contractor must arrange to meet at the Project Site with the Project Manager and the Inspector of Record in advance, but not more than five days in advance, of submitting each Progress Payment Request (other than the final Progress

Payment Request), to review and discuss the Work for which the Contractor intends to seek payment in such Progress Payment Request (each a "Progress Payment Review Meeting"). The Project Manager will provide notice of the date and time of each Progress Payment Review Meeting to the District and Architect, and either or both may also attend the Progress Payment Review Meeting. The Contractor must provide to the meeting attendees, at the beginning of each Progress Payment Review Meeting, a comprehensive list of the Work that the Contractor intends to include within the scope of the Progress Payment Request. Upon request, the Contractor must show such Work to the meeting attendees (including, without limitation, items not yet incorporated into the Work, but for which the Contractor intends to seek payment) and respond to relevant questions. If the District, Architect, Project Manager or Inspector of Record requests additional documentary or other support of the proposed Progress Payment Request, the Contractor must submit such documentary or other support with the Progress Payment Request submitted in accordance with Section 21.8 of these General Provisions. Such documentary or other support may include, without limitation, purchase invoices, rental receipts, delivery slips, certified payroll records, *et cetera*.

**21.8 Contractor Submittal of Progress Payment Requests.**

**21.8.1 Timing and Content of Progress Payment Request.**

**21.8.1.1** Not later than the seventh day of each month during the course of the Work or within such other time period as may be specified in the Special Provisions, the Contractor must submit to the Architect a written request for payment on account of the Work completed during (or, if not previously compensated, prior to) the immediately preceding month (each a "Progress Payment Request"). A Progress Payment Request must not include amounts attributable to Work not yet performed, and the payment amounts requested for completed Work must be consistent with values assigned to such Work in the Schedule of Values. Each Progress Payment Request must be submitted on a copy of the "Progress Payment Request" form included in the Required Project Forms or using such other form as may be approved by the District.

**21.8.1.2** The Contractor must specify in each Progress Payment Request form:

- (i) the total amount of the payment requested for the Work covered by the Progress Payment Request;
- (ii) the portion of the requested payment amount attributable to each of the activities and items, as set forth in the Schedule of Values, included in the Work covered by the Progress Payment Request;
- (iii) the portion of the requested payment amount attributable to each Subcontractor, materialman, and other person or entity that has furnished labor, material and/or equipment in connection with the Work covered by the Progress Payment Request; and
- (iv) the total balance due to each such Subcontractor, materialman and other person or entity after payment, if any, is made to them on account of the Progress Payment Request.

**21.8.1.3** As additional information intended to assist in review of Progress Payment Requests, and regardless of the Schedule of Values not including values allocated on a pro-rata basis unless the District consents, the Contractor must with each Progress Payment Request provide a reasonable, good-faith written estimate, in relation to all Work required pursuant to the Contract Documents, of:

- (i) the cumulative percentage of the Work completed as of the end of the payment period covered by the Progress Payment Request;
- (ii) the cumulative percentage of the Contract Price allocable to the Work completed as of the end of the payment period covered by the Progress Payment Request; and

- (iii) the cumulative percentage of each of the overhead, profit, general conditions costs, and similar cost-items allocable to the Work completed as of the end of the payment period covered by the Progress Payment Request.

**21.8.1.4** No Progress Payment Request shall be deemed or construed to constitute a complete and valid request for progress payment unless and until: (i) the Progress Payment Request satisfies the foregoing requirements of this Subsection 21.8.1; (ii) the Contractor submits to the Architect the Progress Payment Request and all materials required pursuant to Subsection 21.8.2 (or, if applicable, Subsection 21.8.3) of these General Provisions; and (iii) the Contractor provides copies of the Progress Payment Request and all such materials as specified in Subsection 21.8.4 of these General Provisions.

**21.8.2 *Materials to be Submitted with Progress Payment Request.*** The Contractor must submit, with each Progress Payment Request, all of the following:

- (i) an updated Master Construction Schedule showing changes from the last previously updated and approved Master Construction Schedule;
- (ii) an updated Schedule of Values covering the payment period, as adjusted on account of any updates to the Master Construction Schedule made during the payment period;
- (iii) a cumulative list of all systems, equipment, materials and other things stored off of the Project Site for which the District has paid (or upon payment, will have paid) as authorized pursuant to Sections 21.5 or 21.6 of these General Provisions as of the end of the payment period, which, for each such thing, must also identify the storage location and cost of the thing;
- (iv) copies of all permits or other governmental licenses and approvals relating to the Work that were obtained or issued during the payment period;
- (v) all information and the certification required pursuant to Subsection 3.9.3 of these General Provisions relating to as-built Work implemented during the payment period;
- (vi) if specifically requested by the Project Manager, copies of certified payroll records covering the period since the prior Progress Payment Request; and
- (vii) conditional and unconditional waivers and releases as required pursuant to Section 21.9 of these General Provisions.

**21.8.3 *Final Progress Payment Request.*** Notwithstanding the requirements set forth in Subsection 21.8.1.1 of these General Provisions relating to the timing for submitting Progress Payment Requests, the Contractor may submit a final Progress Payment Request to the Architect only after the District Board has accepted all of the Work in accordance with Section 18.9 of these General Provisions. The Contractor must specify in the final Progress Payment Request that Contractor is seeking final payment in the form of a release of all Retention. The Contractor must, as applicable, submit with the final Progress Payment Request all of the materials specified in clauses (iv) through (viii), inclusive, of Subsection 21.8.2 of these General Provisions.

**21.8.4 *Copies of Progress Payment Requests and Supporting Materials.*** At the same time that it submits any Progress Payment Request to the Architect pursuant to this Section 21.8, the Contractor must submit to each of the District, Project Manager, and Inspector of Record, a copy of the Progress



Payment Request and all materials required pursuant to Subsection 21.8.2 (or, if applicable, Subsection 21.8.3) of these General Provisions.

**21.9 Requirement for Progress Payment Waivers and Releases.** With each Progress Payment Request that it submits in accordance with this Part 21 (other than for the final Construction Progress Payment), the Contractor must also submit an executed copy of the “Conditional Waiver and Release (Progress Payment)” form included in the Required Project Forms, and, except as provided in this Section 21.9, an executed copy of the “Unconditional Waiver and Release (Progress Payment)” form included in the Required Project Forms, for each of the Contractor and each Subcontractor, materialman or other person or entity that provided any labor, services, materials or equipment in connection with the Work described in the Progress Payment Request. A person’s or entity’s Conditional Waiver and Release (Progress Payment) must conditionally waive all lien and stop notice rights against the District, the Project Site and the Project, with respect to all payments to be made to such person or entity on account of the Progress Payment Request. A person’s or entity’s Unconditional Waiver and Release (Progress Payment) must unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project Site and the Project, with respect to all payments actually made to such person or entity on account of any prior Progress Payment Request. The Contractor must submit an Unconditional Waiver and Release (Progress Payment) for any person or entity in connection with a Progress Payment Request only if such person or entity was paid any funds on account of any prior Progress Payment Request for which the person or entity has not already submitted an Unconditional Waiver and Release (Progress Payment). Each Conditional Waiver and Release (Progress Payment) and Unconditional Waiver and Release (Progress Payment) must be duly-executed and must contain an original signature of the person who has executed it.

**21.10 Summary of Public Contract Code Section 20104.50.** The State Legislature enacted Public Contract Code Section 20104.50 to ensure that contractors on certain public works projects are timely paid for their services on such projects. If a local public agency fails to pay an undisputed and properly submitted payment request within thirty days, the agency must pay interest at the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. Each agency must review payment requests as soon as practicable to determine if they are proper and suitable for payment. If a payment request is not proper, the agency must return it to the contractor within seven days, specifying in writing the reasons why it is not proper. If the agency returns an improper payment request to the contractor more than seven days after receipt, the number of days available to the agency to make payments without incurring interest will be reduced by the number of days by which the agency exceeds the seven-day return requirement. The provisions of this Part 21 encompass, among other things, the requirements of Public Contract Code Section 20104.50

**21.11 Contractor Compliance a Condition Precedent.** Upon receipt from the Contractor of a complete and valid Progress Payment Request, the District, Architect, Project Manager and Inspector of Record will concurrently commence review of the Progress Payment Request. However, notwithstanding the foregoing or anything else to the contrary, the District shall not be required to process or make any payment pursuant to any Progress Payment Request if the Contractor, at such time, has not complied with any lawful and otherwise proper direction(s) of the District, Architect, Project Manager or Inspector of Record that relates to the Work, the Project Site or the Project.

**21.12 Review by Project Manager and Inspector of Record.** Within three days after receiving a Progress Payment Request as described in Section 21.11 of these General Provisions, the Project Manager and Inspector of Record will each provide written notice to the District and Architect regarding whether they approve or disapprove the Progress Payment Request, in whole or in part. The foregoing requirement is not jurisdictional, and the Contractor shall have no recourse if the Project Manager and/or Inspector of Record fail to provide notice within the three-day period. If the Project Manager and/or Inspector of Record approve

any Progress Payment Request in its entirety, they will sign the Progress Payment Request and submit it and the notice to the District and the Architect. If the Project Manager and/or Inspector of Record approve only a portion of any Progress Payment Request, they will note the limitation on approval on the Progress Payment Request, sign it, and submit it and the notice to the District and the Architect. If the Project Manager and/or Inspector of Record disapprove any Progress Payment Request, in whole or in part, they will submit it and the notice to the District and the Architect, with a separate reasonably-detailed description of the reason(s) for recommending such disapproval.

**21.13 Architect Decisions Regarding Progress Payment Requests.**

**21.13.1 Architect Review of Recommendations.** The Architect shall review any recommendations from the Project Manager and/or Inspector of Record provided pursuant to Section 21.12 of these General Provisions. If the Project Manager and/or Inspector of Record recommend disapproval of all or a portion of any Progress Payment Request, the Architect, to the extent it deems reasonably necessary, will: (i) review the reasons the Project Manager and/or Inspector of Record have recommended disapproval; (ii) request additional information from the District, Project Manager, Inspector of Record, Contractor and/or any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work; and/or (iii) undertake such other actions as will permit the Architect to determine if there is any justifiable reason for such disapproval. The Architect's decision regarding whether any justifiable reason exists to disapprove all or a portion of a Progress Payment Request shall be final and binding.

**21.13.2 Notice of Approval or Disapproval.** Within seven days after receipt from the Contractor of a complete and valid Progress Payment Request, or as soon thereafter as reasonably practicable, the Architect will provide written notice to the District, Project Manager, Inspector of Record and the Contractor regarding whether the Architect approves or disapproves the Progress Payment Request, in whole or in part.

**21.13.3 Certification of Payment Upon Approval.** If the Architect approves any Progress Payment Request in whole or in part, the Architect will concurrently submit to the District a written certification of the amount(s), based on the percentage of completion of the Work as of the date of the Progress Payment Request, that is payable to the Contractor on account of such Work ("Certification of Payment"). Each Certification of Payment will certify, to the best of the Architect's knowledge, information, and belief, and based on the Architect's observations and inspections, and data in the Architect's possession, that all Work covered by the Progress Payment Request has been completed in accordance with the Contract Documents.

**21.13.4 Rejection and Resubmittal of Progress Payment Requests.** If the Architect disapproves all or any portion of any Progress Payment Request, then, with the notice required pursuant to Subsection 21.13.2 of these General Provisions, the Architect will return the Progress Payment Request to the Contractor with a written statement setting forth the reason(s) why it was rejected. The Contractor may correct the deficiencies in any disapproved Progress Payment Request and resubmit it without delay, but otherwise in accordance with Section 21.8 of these General Provisions. In applicable cases, the Architect will provide to the District, with the Certification of Payment for a resubmitted Progress Payment Request, a written notice specifying the number of days by which the Architect exceeded the seven-day return requirement.

**21.14 Withholding of Retention from Payments to Contractor.** In addition to any amount(s) withheld from any Construction Progress Payment in accordance with Section 21.15 of these General Provisions, the District shall withhold from each Construction Progress Payment (other than the final Construction Progress Payment) an amount equal to five percent of the total payment amount specified in

the applicable Certification of Payment as security for adequate performance under the Contract ("Retention"). Notwithstanding the foregoing, after the Work is at least fifty percent complete, if the District Board determines that the Work is satisfactorily progressing, the District Board, in its sole discretion, may pay some or all of the remaining Construction Progress Payments (other than the final Construction Progress Payment) in full to the Contractor. Subject to the District's right to withhold some or all of the Retention pursuant to Section 21.15 of these General Provisions or otherwise as provided by the Contract or applicable law, the District will pay the Retention to the Contractor, as the final Construction Progress Payment, pursuant to Section 21.17 of these General Provisions. The District shall not be required to pay any interest on any Retention withheld pursuant to this Section 21.14. Upon request and at the sole cost and expense of the Contractor, the District will permit substitution of securities in lieu of the District withholding Retention, as provided in Public Contract Code Section 22300. Subject to any restrictions in Public Contract Code Section 22300, the District shall have the right to direct or approve any or all such securities.

**21.15 Additional Deductions and Withholdings.**

**21.15.1 Authority and Reasons.** The District, in its sole discretion, may, as applicable, deduct or withhold from any Construction Progress Payment (including, without limitation, the final Construction Progress Payment), or from any other amount payable to the Contractor pursuant to the Contract, any amount(s) the District determines is(are) reasonably necessary if there is reasonable evidence that any one or more of the following situations exists:

- (i) the Contractor has failed to perform any portion of the Work, or perform any other of its obligations pursuant to the Contract, in accordance with the Contract Documents;
- (ii) the Contractor has failed to correct any defective or otherwise improper portions of the Work within a reasonable time after notice or other time required pursuant to the Contract Documents;
- (iii) the Contractor has failed to perform any portion of the Work in accordance with the Master Construction Schedule or any milestones set forth therein, or some or all of the Work most likely cannot be completed within the required time(s);
- (iv) the Contractor most likely will not be able to complete all remaining Work for the unpaid balance of the Contract Price;
- (v) the Contractor has failed to perform any portion of the Work, or otherwise perform any obligation in connection with the Work, in accordance with any applicable law, rule, regulation, ordinance or other governmental requirement, and the District or any federal, State, or local governmental agency has given notice that a penalty will, therefore, be assessed against the Contractor;
- (vi) the Contractor has failed to timely pay all amounts due to any Subcontractor, materialman or other person or entity that has provided labor, materials, services, goods or other things in connection with the Work; or any such person or entity has filed, or most likely will file, a claim, stop notice, or lien in connection with the Work;
- (vii) the Contractor has failed to pay prevailing wages as required;
- (viii) the Contractor is responsible or liable, as provided by the Contract Documents, for reimbursing costs and/or expenses incurred or advanced in connection with the Work by the District or any Subcontractor, materialman or other person or entity, including, without limitation, any testing and/or inspection costs arising from failed tests or inspections;

- (ix) the Contractor has failed to furnish or to timely furnish any information, documentation or other things required pursuant to the Contract Documents, including, without limitation, updates of the Schedule of Values, shop drawings, product data sheets, samples, verified reports, *et cetera*;
- (x) the Contractor has included false or erroneous statements or estimates in any documents or certification required pursuant to the Contract Documents, including, without limitation, any Change Order estimates and Progress Payment Requests;
- (xi) as provided in the Contract Documents or otherwise, the Contractor is responsible or liable, or most likely is responsible or liable, for damages, costs, expenses and/or other amount(s) incurred by the District or any of its contract representatives, or any Subcontractor, materialman or other person or entity, in connection with the Work or the Project; or
- (xii) the District has assessed liquidated damages against the Contractor.

**21.15.2 Amount and Application.** The District may withhold such amount(s) pursuant to Subsection 21.15.1 of these General Provisions as the District deems reasonably necessary and appropriate to protect the District or any of its contract representatives, or any Subcontractors, any materialmen and/or any other persons or entities, from any and all liabilities arising from or in connection with any one or more of the situations described in Subsection 21.15.1 of these General Provisions or as otherwise provided in the Contract Documents. The District, in its reasonable discretion, may apply any such withheld amount(s) to pay in connection with, or to otherwise satisfy or correct, any situation described in Subsection 21.15.1 of these General Provisions, or may hold such funds until such time as the Contractor resolves any and all such situations. In using any withheld amount(s) to pay or otherwise satisfy or correct any such situation, the District, to the extent necessary, shall be deemed and construed to be an agent of the Contractor, and any and all such payments shall be deemed and construed to have been paid on account of the Contract Price and shall in the same amount reduce any future payments to the Contractor pursuant to the Contract. The District shall not be required to obtain any judicial determination in regard to any situation described in Subsection 21.15.1 of these General Provisions, or in regard to any obligation in connection therewith to so pay or use any withheld amount(s). The District shall not be liable to Contractor for withholding any funds or making any payments (or for payment of interest on the amount(s) of either) done or made in good faith. The District will provide to the Contractor an accounting of any and all amount(s) withheld pursuant to this Section 21.15 and retained and/or expended by the District pursuant to this Subsection 21.15.2. At such time as all reason(s) for withholding any funds pursuant to this Section 21.15 have been resolved or corrected, the District shall release to the Contractor, if then due pursuant to the Contract, any of such funds remaining after expenditures by the District pursuant to this Subsection 21.15.2. Notwithstanding anything to the contrary, if the District has withheld funds from the Contractor because it assessed damages or other costs against the Contractor in accordance with the Contract, or because the funds were otherwise due from the Contractor to the District in accordance with the Contract, the District shall be entitled to interest at the maximum legal rate.

**21.16 District Payment of Construction Progress Payments.** After receipt from the Architect of a Certification of Payment for a Progress Payment Request submitted by the Contractor, the District shall pay to the Contractor an amount equal to the amount certified in the Certification of Payment less any amounts withheld in accordance with Sections 21.14 and/or 21.15 of these General Provisions (each a "Construction Progress Payment"). The District shall pay each such Construction Progress Payment (other than the final Construction Progress Payment) to the Contractor within thirty days after receipt from the Contractor of the complete Progress Payment Request; provided, however, that the District shall make the Construction Progress Payment to the Contractor an appropriate number of days less than thirty days if the Certification of Payment relates to a complete Progress Payment Request that was disapproved, but returned to the

Contractor more than seven days after receipt. If the District fails to timely pay an undisputed Construction Progress Payment to the Contractor, the unpaid amount shall accrue interest, at the legal rate specified in Code of Civil Procedure Section 685.010, for each day the payment is late. The District will pay the final Construction Progress Payment to the Contractor as provided in Section 21.17 of these General Provisions.

**21.17 Final Payment of Retention.** The District shall release and pay to the Contractor any and all Retention, as the final Construction Progress Payment, less any amount(s) the District deems necessary to withhold pursuant to Section 21.15 of these General Provisions, not sooner than 35 days after a Notice of Completion for the Work is recorded, but not later than 60 days after the first to occur of: (i) the District records a Notice of Completion for the Work; or (ii) "completion" of the Work is deemed to have occurred in accordance with Public Contract Code Section 7107. If some or all of the Retention is held in the form of securities, the District shall release such securities in accordance with the foregoing. As a condition precedent to the District's obligation to make the final payment, the Contractor must submit with its final Progress Payment Request an executed copy of the "Conditional Waiver and Release (Final Payment)" form included in the Required Project Forms for each of the Contractor and each Subcontractor, materialman or other person or entity that provided any labor, services, materials or equipment in connection with the Work. Each Conditional Waiver and Release (Final Payment) must be duly-executed and must contain an original signature of the person who has executed it. In the event the District releases Retention to the Contractor because completion is deemed to have occurred in accordance with Public Contract Code Section 7107, the Contractor shall not thereby be deemed or construed to have been released from its obligations pursuant to the Contract, but the Contractor may terminate the Contract for cause at any time after the prerequisites set forth in Section 22.10 of these General Provisions have been satisfied.

**21.18 District Issuance of Joint Checks.** The District, in its sole discretion, may determine that it is necessary or advisable to issue any payment to the Contractor in the form of a joint check made payable to the Contractor and any of its Subcontractors, materialmen, or other persons or entities. The joint check payees shall be responsible for the allocation and disbursement of such funds between them. Except as may be required by law, the District shall have no obligation to pay, or to ensure the payment of, any Subcontractor, materialman, or other person or entity that has furnished any labor, materials, services, goods or other things in connection with the Work. In no event shall the issuance by the District of any joint check be deemed or construed to: (i) constitute an understanding or agreement between the District and any such Subcontractor, materialman, or other person or entity, regardless of the number of joint checks issued; (ii) constitute an obligation of the District to any such Subcontractor, materialman, or other person or entity; or (iii) constitute or create any cause of action against the District by the Contractor or any such Subcontractor, materialman, or other person or entity.

**21.19 District Does Not Waive Rights by Inspecting, Approving or Paying.** In no circumstances shall any inspection and/or approval of any portion of the Work, any error or inaccuracy in any estimate or Schedule of Values, any processing of any Progress Payment Request, any issuance of a Certification of Payment, or any payment to the Contractor of any Construction Progress Payment (including, without limitation, the final Construction Progress Payment), be deemed or construed to constitute:

- (i) a release by the District of the Contractor from any of its obligations pursuant to the Contract;
- (ii) a representation by the District that any information submitted by the Contractor to substantiate any payment amount is accurate or was verified;
- (iii) a representation by the District that payments to Subcontractors, materialmen and others as required were verified or confirmed;

- (iv) a representation by the District that the Work complies in all respects with the requirements of the Contract Documents;
- (v) a representation by the District that the means, methods, techniques, sequences or procedures used in performing the Work were reviewed and/or approved;
- (vi) an approval by the District of any means, methods, techniques, sequences or procedures used in the Work;
- (vii) an approval by the District of the use of any invention, appliance, process, article, device, or material, in violation of any royalty, patent or other rights of any person or entity;
- (viii) an acceptance by the District of any Work that does not conform to the requirements of the Contract Documents;
- (ix) a waiver by the District of any right(s) it has to enforce the Contractor's obligations pursuant to the Contract, whether or not prior to final payment pursuant to Section 21.17 of these General Provisions; or
- (x) a release by the District of the Contractor or its surety or sureties from responsibility for damages arising from the Work.

**21.20 Contractor Must Timely Pay Subcontractors.** If any portion of any payment to Contractor pursuant to Section 21.16, Section 21.17, or other provision of the Contract Documents, is attributable to Work for which any Subcontractor, materialman, or other person or entity is entitled to payment, the Contractor must use such funds received from the District to pay such Subcontractor, materialman, or other person or entity to the extent of its interest in such funds. Unless agreed otherwise in writing, the Contractor must pay each such Subcontractor, materialman and other person and entity within ten days after the Contractor receives payment from the District or as otherwise required by law. If the Contractor has withheld Retention from any Subcontractor, materialman or other person or entity, then, subject to other applicable law, within seven days after receiving payment of some or all of the Retention withheld by the District, the Contractor must pay each such Subcontractor, materialman, or other person or entity their respective shares of the amount(s) received from the District. The Contractor must include the foregoing requirements in each Subcontract, in order to ensure that lower-tier Subcontractors, materialmen and other persons and entities are paid within the time periods specified in this Section 21.20.

**21.21 Stop Notices and Liens.** The Contractor has sole responsibility and liability for ensuring that no person or entity files or otherwise imposes or causes to be imposed any stop notice or lien on or in relation to the Project Site or any portion of the Work or the Project on account of any labor, services, materials, equipment or other thing that the Contractor furnishes or causes to be furnished in connection with the Work. If any such stop notice or lien is filed or otherwise imposed, and if the stop notice or lien has merit or is valid, the Contractor shall be responsible and liable for all costs and expenses incurred by the District in connection with the stop notice or lien, including, without limitation, any attorney's fees and expenses. Any such costs and expenses shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor pursuant to the Contract.

**21.22 Unconditional Waivers and Releases After Final Payment.** As a continuing obligation of the Contractor after final payment pursuant to Section 21.17 of these General Provisions, the Contractor must deliver to the District, within fourteen days following such final payment, an executed copy of the "Unconditional Waiver and Release (Final Payment)" form included in the Required Project Forms for each of

the Contractor and each Subcontractor, materialman and other person or entity that provided any labor, services, materials or equipment in connection with the Work. Each such Unconditional Waiver and Release (Final Payment) must be duly-executed and must contain an original signature of the person who has executed it. Without limiting any other rights the District may have, in the event the Contractor defaults on its obligations pursuant to this Section, the District, in its sole discretion, may initiate proceedings to declare the Contractor a non-responsible bidder for a period of up to five years from the date of such declaration.

**PART 22**  
**TERMINATION AND OTHER REMEDIES**

**22.1 Cause for Termination of Contractor's Right to Perform Work.** The Contractor shall be in default of its obligations pursuant to the Contract, and the District may terminate the Contractor's right to perform the Work for cause, if:

- (i) the Contractor refuses or fails to perform the Work or any component thereof in accordance with the Contract Documents;
- (ii) the Contractor refuses or fails to perform any portion of the Work within the time required pursuant to the Master Construction Schedule and thereby adversely affects the critical-path construction of the Project;
- (iii) the Work is not, or reasonably will not be, fully completed within the Contract Time;
- (iv) the Contractor persistently or repeatedly refuses or fails to supply enough properly skilled workers and/or proper materials;
- (v) the Contractor persistently or repeatedly is absent from the Project Site without reasonable excuse;
- (vi) the Contractor fails to timely and fully pay any Subcontractors, materialmen, or other persons or entities the funds to which they are entitled in connection with the Work;
- (vii) the Contractor or any Subcontractor, materialman or other person or entity that furnishes labor, materials, services or other things in connection with the Work unreasonably, persistently or repeatedly disregards any one or more laws, ordinances, rules, regulations, or orders of governmental entities with competent jurisdiction;
- (viii) the Contractor becomes the subject of any voluntary or involuntary bankruptcy proceeding, the Contractor assigns any significant portion of its assets for the benefit of its creditors, any court determines or declares that the Contractor is bankrupt or insolvent, or a trustee or receiver is appointed to manage or otherwise control the Contractor's assets; or
- (ix) the Contractor or any Subcontractor, materialman or other person or entity that furnishes labor, materials, services or other things in connection with the Work violates any of the material provisions of the Contract.

**Section 22.2 Opportunity to Cure and Termination for Cause.** At any time the Contractor has defaulted on its obligations pursuant to the Contract in any one or more of the ways specified in Section 22.1 of these General Provisions, the District may provide written notice to the Contractor and its surety of the District's intention to terminate the Contractor's right to perform the Work ("Notice of Intent to Terminate

for Cause”), stating in reasonable detail the reasons for the termination. The Contractor shall have ten days from receipt of a Notice of Intent to Terminate for Cause to resolve, correct or cure the reasons for termination specified in the Notice of Intent to Terminate for Cause, or to make arrangements satisfactory to the District for such resolution, correction or cure, and if the Contractor does not, the District may terminate the Contractor’s right to perform the Work by providing a written notice of termination (“Notice of Termination for Cause”) to the Contractor and its surety. A termination pursuant to this Section shall be effective immediately upon receipt by the Contractor of the Notice of Termination for Cause. Notwithstanding a termination pursuant to this Section, the Contractor and its surety shall continue to be responsible and liable, in accordance with the Contract Documents and applicable law: (i) for any and all defects in quality, damage to property, injury to any person, and other matters arising from the Work performed prior to the termination; (ii) for the costs to perform all Work remaining after the termination; and (iii) for any and all damages incurred by the District as a result of the Contractor’s default and/or termination pursuant to this Section.

**22.3 Surety and District Rights to Perform Work After Termination for Cause.** In the event the District issues a Notice of Termination for Cause, the Contractor’s surety shall have the right to take over and perform the Contract. If the surety does not (i) give the District written notice of surety’s intention to take over and commence performance of the Contract within ten days of receipt of the Notice of Termination for Cause and (ii) commence performance of the Contract within twenty days after receipt of the Notice of Termination for Cause, then the District may elect to take over and proceed to complete the Work, by separate contract or by any other means or method the District deems advisable.

**22.4 District Performance of Work After Termination for Cause.** In no event after receipt of a Notice of Intent to Terminate for Cause shall the Contractor remove from the Project Site, or suffer or permit the removal from the Project Site of, any tools, equipment, vehicles, materials, supplies, appliances, plants, or other items owned, leased or rented by the Contractor and used or employed in connection with the Work. In the event the District elects to take over the Work as specified in Section 22.3 of these General Provisions, then: (i) the District may, without liability for so doing, take possession of and use in completing the Work all such tools, equipment, vehicles, materials, supplies, appliances, plants, or other items on or at the Project Site used or employed in connection with the Work and owned, leased or rented by the Contractor; (ii) at the District’s election, any or all of the Subcontracts shall be deemed to have been assigned to the District; and (iii) the Contractor and its surety shall be liable to the District for any costs or other damages incurred by the District attributable to or arising from the District taking over the Work as provided in this Section. **THE CONTRACTOR MUST ENSURE THAT EACH OF ITS CONTRACTS WITH ITS SUBCONTRACTORS AND SURETIES INCLUDES SUCH PROVISIONS AS ARE NECESSARY TO EFFECTUATE THE REQUIREMENTS OF THIS SECTION 22.4, HOWEVER, NO FAILURE TO DO SO WILL INVALIDATE SUCH REQUIREMENTS.**

**22.5 Contractor Compensation After Termination for Cause.** In the event the Contractor’s right to perform the Work is terminated pursuant to Section 22.2 of these General Provisions, the Contract shall remain in effect. However, in such event, the Contractor shall not be entitled to receive any further payment pursuant to the Contract: (i) until the Project has been fully completed and accepted in accordance with Section 18.9 of these General Provisions; and (ii) only if the total of the cost to the District to complete the Work plus any damages as described in Section 22.2 of these General Provisions is less than the unpaid portion of the Contract Price as adjusted in accordance with the Contract. If the total of such costs and damages exceeds such unpaid portion of the Contract Price, the Contractor (or its surety) shall pay the difference to the District within thirty days of receiving an invoice for such amount from the District.



**22.6 Termination for Convenience of Contractor's Right to Perform Work.** The District, for any reason and without need for cause, may terminate the Work in whole or, from time to time, in part, regardless of the circumstances resulting in termination. By way of example and not limitation, the District may determine that termination is necessary because funding or other approvals have been rescinded, necessary funding is or becomes unavailable, the Project is substantially damaged or destroyed, a governmental authority stops the Work for an indeterminate amount of time, a ruling by a court or governmental agency significantly and adversely affects the Project, or the Work is stopped or is made impractical or infeasible for some other reason. In the event of any such determination, the District shall provide written notice to the Contractor of the termination ("Notice of Termination for Convenience"). District termination pursuant to this Section 22.6 of any or all of the Work shall not be deemed or construed to relieve the Contractor's surety of its obligations in regard to any just claims arising out of or relating to the Work. Notwithstanding a termination pursuant to this Section, the Contractor and its surety shall continue to be responsible and liable, in accordance with the Contract Documents and applicable law for any and all defects in quality, damage to property, injury to any person, and other matters arising from the Work performed prior to the termination.

**22.7 Contractor Must Cease Work Upon Termination for Convenience.** Upon receipt of a Notice of Termination for Convenience, the Contractor shall immediately proceed to: (i) stop all Work to the extent specified in the Notice of Termination for Convenience; (ii) complete any portion of the Work as specified in the Notice of Termination for Convenience in a least-cost/shortest-time manner while still maintaining the quality required pursuant to the Contract Documents; (iii) leave the terminated portion of the Work (to the extent already completed) in a safe and clean condition so that it will not pose any threat to the health or safety of any persons; (iv) terminate all Subcontracts to the extent those provide for the terminated portions of the Work, except such Subcontracts as specified in the Notice of Termination for Convenience that shall be deemed to be assigned to the District; and (v) place no further orders and make no further contracts with Subcontractors, except as necessary to complete portions of the Work not terminated.

**22.8 Documenting Costs After Termination for Convenience.** Within fourteen days after the effective date of a termination for convenience pursuant to Section 22.6 of these General Provisions, the Contractor must submit to the District all documentation required pursuant to Section 21.8 of these General Provisions to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the termination. In addition, within twenty-one days after the effective date of any such termination, the Contractor must submit to the District such documentation as reasonably details and substantiates costs reasonably incurred by the Contractor solely as a result of the termination for convenience. All of the foregoing documentation must: (i) describe the costs incurred with particularity; and (ii) be conspicuously identified as "Termination costs incurred as a result of termination for convenience pursuant to Section 22.6 of the General Provisions of the Contract."

**22.9 Compensation After Termination for Convenience.** In the event of a termination for convenience pursuant to Section 22.6 of these General Provisions, subject to receipt of reasonable substantiating documentation as described in Section 22.8 of these General Provisions, the District shall pay to the Contractor an amount equal to the total of: (i) all actual costs incurred by the Contractor in accordance with the provisions of the Contract Documents attributable to the terminated portion of the Work that was satisfactorily completed by the Contractor, but not previously paid by the District; (ii) a reasonable allowance for profit on the actual costs established pursuant to the foregoing clause (i), provided that the Contractor establishes to the satisfaction of the District that it is reasonably probable the Contractor would have made a profit on such portion of the Work, but in no event shall such allowance exceed ten percent of the actual costs established pursuant to the foregoing clause (i); and (iii) a reasonable allowance for administrative and demobilization costs incurred by the Contractor, but in no event shall such allowance exceed five percent of the actual costs established pursuant to the foregoing clause (i). Notwithstanding anything to the contrary, in

no event shall the total amount payable to the Contractor pursuant to this Section 22.9 exceed the proportionate amount of the Contract Price attributable to the terminated portion of the Work satisfactorily completed prior to termination, consistent with the then-most recent approved Schedule of Values.

**22.10 Termination by the Contractor for Cause.** The Contractor may terminate the Contract, by providing written notice to the District, in the event: (i) as a result of factors beyond the Contractor's control and not arising from any fault, omission, act or negligence of the Contractor or any Subcontractor, materialman or other person or entity that has furnished or is to furnish any labor, materials, services or other things in connection with the Work, there has been a cessation or suspension of all Work for a period of more than one-hundred and twenty consecutive days, and the District has not provided to the Contractor within such period a notice to resume the Work, a Notice of Intent to Terminate for Cause, or a Notice of Termination for Convenience; or (ii) after notice and reasonable opportunity to cure, the District fails to pay the Contractor any substantial undisputed sums due to the Contractor in accordance with the Contract Documents. In the event of a termination by the Contractor pursuant to this Section 22.10, subject to receipt of reasonable substantiating documentation as described in Section 22.11 of these General Provisions, the District shall pay to the Contractor an amount equal to the total of all actual costs incurred by the Contractor in accordance with the provisions of the Contract Documents attributable to the portion of the Work that the Contractor satisfactorily completed prior to termination, but not previously paid by the District. If a termination by the Contractor pursuant to this Section 22.10 is the result of a failure by the District to pay any substantial undisputed sum as described above, or otherwise is solely the fault of or caused by the District or any of its contract representatives, then, subject to receipt of reasonable substantiating documentation as described in Section 22.11 of these General Provisions, the District also shall pay to the Contractor: (i) a reasonable allowance for profit on the actual costs established pursuant to this Section, provided that the Contractor establishes to the satisfaction of the District that it is reasonably probable the Contractor would have made a profit on such portion of the Work, but in no event shall such allowance exceed ten percent of such actual costs; and (ii) a reasonable allowance for administrative and demobilization costs incurred by the Contractor, but in no event shall such allowance exceed five percent of the actual costs established pursuant to this Section. Notwithstanding anything to the contrary, in no event shall the total amount payable to the Contractor pursuant to this Section 22.10 exceed the proportionate amount of the Contract Price attributable to the portion of the Work satisfactorily completed prior to termination, consistent with the then-most recent approved Schedule of Values. In the event of termination by the Contractor pursuant to this Section 22.10, the Contractor shall have no Claim(s) against the District except with respect to Work that the Contractor performed prior to termination. Notwithstanding a termination pursuant to this Section, the Contractor and its surety shall continue to be responsible and liable, in accordance with the Contract Documents and applicable law for any and all defects in quality, damage to property, injury to any person, and other matters arising from the Work performed prior to the termination.

**22.11 Documenting Costs After Termination by Contractor for Cause.** Within fourteen days after the effective date of a termination by the Contractor for cause pursuant to Section 22.10 of these General Provisions, the Contractor must submit to the District all documentation required pursuant to Section 21.8 of these General Provisions to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the termination. All of the foregoing documentation must: (i) describe the costs incurred with particularity; and (ii) be conspicuously identified as "Termination costs incurred as a result of termination by Contractor for cause pursuant to Section 22.10 of the General Provisions of the Contract."

**22.12 Remedies for Default Other Than Termination.** In the event the Contractor is in default of its obligations pursuant to the Contract in any one or more of the ways specified in Section 22.1 of these General Provisions, the District, in its sole discretion and after notice as provided in this Section 22.12, shall have the right to cure or otherwise correct the default(s), by any reasonable means or method the District

deems advisable, without terminating the Contract or the Contractor's right to perform the other portions of the Work. If the District so intends to cure or otherwise correct any default(s) by the Contractor, the District shall provide written notice to the Contractor and its surety. If, within five days of receiving such notice (or, in the event of an Emergency or situation involving an existing or potential safety hazard, within such shorter period of time as set forth in the notice), the Contractor fails to adequately cure or otherwise correct the default(s), or fails to make arrangements satisfactory to the District for such adequate cure or other correction, the District shall have the right to cure or otherwise correct the default(s), by separate contract or by any other reasonable means or method the District deems advisable (including, without limitation, supplementing the workforce of the Contractor or any Subcontractor with additional workers and/or equipment), for the account of and at the expense of the Contractor. If the District is required to expend funds in connection with any such cure or other correction, such amounts shall accrue interest at the maximum legal rate from the date(s) expended to the date(s) the District is reimbursed, whether reimbursed directly by the Contractor or its surety. Such amounts shall be charged to the Contractor and/or deducted from amounts payable to the Contractor pursuant to the Contract. The rights of the District pursuant to this Section 22.12 are in addition to, not in lieu of, any other rights and remedies the District may have pursuant to law, equity or contract, and in no circumstances shall the rights of the District pursuant to this Section 22.12 be deemed or construed to limit or constitute a waiver by the District of any such other rights or remedies. Neither the Contractor nor its surety shall have any recourse against the District with respect to any cure(s) and/or other correction(s) undertaken and completed by the District in good faith.

**22.13 Declaring Contractor a Non-Responsible Bidder.** Without limiting any other rights the District may have, in the event the Contractor defaults on its obligations pursuant to the Contract in any one or more of the ways specified in Section 22.1 of these General Provisions, the District, in its sole discretion, may initiate proceedings to declare the Contractor a non-responsible bidder for a period of up to five years from the date of such declaration.

## **PART 23 INDEMNIFICATION OF DISTRICT AND OTHERS**

**23.1 Indemnification of District and its Representatives.** Subject to the provisions of Section 23.4 of these General Provisions, the Contractor shall indemnify, defend, and hold harmless the District, Architect, Project Manager, and Inspector of Record, and each of them individually (each a "District Indemnitee") from and against any and all claims, demands, actions, other proceedings, liens, judgments, damages, losses, costs, expenses (including, without limitation, attorneys' fees), and other liabilities of any nature: (i) arising from personal injury (including death) or property damage that occurs in connection with the performance of the Work by the Contractor or any Subcontractor or other person or entity; (ii) arising from any act or omission by the Contractor or any Subcontractor, materialman or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work; and (iii) as expressly required pursuant to these General Provisions and other Contract Documents. Without limiting the foregoing, the Contractor shall be required to indemnify, defend and hold the District Indemnitees harmless from and against all claims, demands, actions, other proceedings, liens, judgments, damages, losses, costs, expenses and/or other liabilities arising from, among other things: (i) loss of use of any property; (ii) any failure or alleged failure by the Contractor or any Subcontractor or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work to comply with the Contract Documents or any applicable law, ordinance, rule, regulation or other governmental requirement; (iii) any other loss, damage, expense, *et cetera*, sustained by any person or entity in connection with the performance of the Work; (iv) any dispute between Contractor and any Subcontractor, materialman, surety, or other person or entity, including, without limitation, any payment, stop notice, or lien disputes; (v) any breach or alleged breach of any express or implied warranty by the Contractor or any Subcontractor, materialman, or

other person or entity that furnishes any labor, materials, services, or other things in connection with the Work; and (vi) infringement or alleged infringement of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the District, unless specifically stated otherwise in the Contract Documents

**23.2 Contractor Defense of District and its Representatives.** The Contractor, at its sole cost and expense, shall defend each and every claim, demand, action, and other proceeding within the scope of Section 23.1 of these General Provisions initiated against any District Indemnitee, regardless of whether the District Indemnitee may be the sole party named in the claim, demand, action or other proceeding. Any such defense must be conducted by knowledgeable and experienced legal counsel selected and retained by the Contractor at its cost. If the District or any of its officers, employees, or agents is named in any claim, demand, action or other proceeding, the defense counsel must be reasonably acceptable to the District. Without limiting anything else in any indemnity provisions of the Contract, the Contractor shall also pay the full cost to the District of the monitoring of, and, if necessary, the participation in, the defense of any District Indemnitee by the District's legal counsel. Without jeopardizing or compromising any of its other rights pursuant to Section 23.1 of these General Provisions or other provisions of the Contract, the District may settle any claim, demand, action or other legal proceeding on terms determined by the District Board to be reasonable and in the best interests of the District and/or any District Indemnitee. As part of its obligations pursuant to Section 23.1 of these General Provisions and this Section 23.2, and with respect to any claim, demand, action or other proceeding within the scope of such Sections, within thirty days of receiving an invoice from the District, the Contractor shall reimburse the District for any and all: (i) judgments paid by the District; (ii) amounts paid by the District in settling such claim, demand, action or other proceeding; and (iii) any other legal or other costs and expenses reasonably incurred by the District in connection with such claim, demand, action or other proceeding. If the Contractor fails to pay any such amount(s) within the required time, the unpaid amount(s) shall accrue interest at the legal rate.

**23.3 Indemnification of Officers, Employees, and Agents of District Indemnitees.** For purposes of each and every obligation of the Contractor set forth in these General Provisions and other Contract Documents to indemnify, defend and/or hold-harmless any party, the reference to the indemnified party (including, without limitation, the District, Architect, Project Manager and Inspector of Record, as applicable) shall be deemed and construed to require that the Contractor also indemnify, defend and hold-harmless, to the same extent, the officers, employees, agents, consultants and other representatives of the party.

**23.4 Limitation on Contractor Indemnification Obligations.** Notwithstanding anything to the contrary, the Contractor shall not be responsible or liable pursuant to Sections 23.1, 23.2 or 23.3 of these General Provisions, or any other indemnification provisions set forth in the Contract Documents, to the extent that a claim, demand, action, other proceeding, lien, judgment, damage, loss, cost, expense, or other liability is attributable to the active negligence or willful misconduct of the District, in which event the District and the Contractor shall be responsible and liable on a comparative basis.

**23.5 Contractor Must Ensure Subcontractors Indemnify District.** The Contractor must include provisions in each Subcontract requiring that the Subcontractor also indemnify, defend and hold-harmless the District Indemnitees to the same extent required of the Contractor pursuant to this Part 23 of these General Provisions.

**PART 24**  
**CLAIMS AND LEGAL PROCEEDINGS**

**24.1 Requirements and Procedures for Filing Claims Are Mandatory.** This Part 24 establishes mandatory requirements and procedures applicable to the filing by the Contractor of any and each demand for: (i) extension of time; (ii) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or to which the claimant is not otherwise entitled; or (iii) an amount the payment of which is disputed by the District (each a "Claim"). **IF THE CONTRACTOR FAILS TO FILE ANY CLAIM IN STRICT ACCORDANCE WITH CERTAIN REQUIREMENTS AND PROCEDURES DESCRIBED IN THIS PART 24, THE CONTRACTOR SHALL BE DEEMED AND CONSTRUED TO HAVE FORFEITED AND WAIVED ANY AND ALL RIGHTS TO ASSERT THE CLAIM ON ANY BASIS OR TO INITIATE AND PURSUE ANY LEGAL ACTION OR OTHER PROCEEDING BASED ON ANY FACTS AND/OR CIRCUMSTANCES FORMING A BASIS FOR THE CLAIM.**

**24.2 Mandatory Time Limits for Filing of Claims.** The Contractor must file each Claim within fourteen days of the date the Contractor first becomes aware or reasonably should have first become aware of any basis for the Claim. In addition, the Contractor must file any Claim prior to when the District issues final payment to the Contractor pursuant to Section 21.17 of these General Provisions, and the District shall reject any Claim filed thereafter as null and void. **IF THE CONTRACTOR FAILS TO FILE A CLAIM WITHIN THE PERMITTED FOURTEEN-DAY PERIOD AND PRIOR TO FINAL PAYMENT, THE CONTRACTOR SHALL BE DEEMED AND CONSTRUED TO HAVE FORFEITED AND WAIVED ANY AND ALL RIGHTS TO ASSERT THE CLAIM ON ANY BASIS OR TO INITIATE AND PURSUE ANY LEGAL ACTION OR OTHER PROCEEDING BASED ON ANY FACTS AND/OR CIRCUMSTANCES FORMING A BASIS FOR THE CLAIM.**

**24.3 Content of Claims and Substantiating Materials.** Each Claim must consist of: (i) a cover letter that sets forth a summary of the basis or bases for the Claim (including, without limitation, dates of relevant occurrences, the particular persons involved or that have relevant knowledge, the specific remedy and/or compensation the Contractor is seeking, and, if applicable, the total amount of the Claim and a breakdown of the total amount into general categories of costs incurred by the Contractor); (ii) a reasonably detailed analysis of the contractual bases for the Claim (including, without limitation, identifying all provisions of the Contract Documents relevant to the Claim), the legal bases for the Claim, and any other bases or justifications for the Claim asserted by the Contractor, with cross-references to documents submitted in support of the Claim; and (iii) all documents that support the Contractor's position(s) as described in the Claim, including, by way of example and not as a limitation, any Specifications, Drawings, cost analyses, daily reports, *et cetera*. A Claim must include all information that the Contractor desires to be considered in connection with the review, analysis, and rejection or approval of the Claim.

**24.4 Mandatory Certification of Claims Subject to Penalty of Perjury.** The Contractor must submit each Claim with a written certification by the Contractor stating that: (i) the Contractor has reviewed the Claim and is filing it in a good-faith belief that the Contractor is entitled to the remedy and/or compensation described in the Claim; (ii) each document and item of other supporting information (whether an original or copy) submitted with the Claim is authentic (i.e., not altered or modified in any manner), accurate and complete; (iii) the Claim accurately sets forth, the total amount of the District's monetary and/or other liability for the Claim; and (iv) the Contractor acknowledges that the filing of false and/or fraudulent claims may result in fines and/or imprisonment pursuant to Government Code Sections 12650 *et seq.* and Penal Code Section 72. An Authorized Contractor Officer must sign each such certification under penalty of perjury and the signature must be notarized. **IF THE CONTRACTOR FAILS TO SUBMIT THE REQUIRED CERTIFICATION WITH ANY CLAIM, THE CONTRACTOR SHALL BE DEEMED AND CONSTRUED TO HAVE FORFEITED AND WAIVED ANY AND ALL RIGHTS TO ASSERT THE CLAIM ON ANY BASIS OR TO INITIATE**

**AND PURSUE ANY LEGAL ACTION OR OTHER PROCEEDING BASED ON ANY FACTS AND/OR CIRCUMSTANCES FORMING A BASIS FOR THE CLAIM.**

**24.5 Prerequisites for Filing Delay Claims.** NO CLAIM FILED BY THE CONTRACTOR THAT DEMANDS AN EXTENSION OF THE CONTRACT TIME AND/OR AN INCREASE IN THE CONTRACT PRICE BASED ON A DELAY IN THE WORK SHALL BE VALID, AND THE DISTRICT SHALL NOT BE REQUIRED TO CONSIDER ANY SUCH CLAIM, UNLESS THE CONTRACTOR DEMONSTRATES PRIOR COMPLIANCE WITH ALL APPLICABLE REQUIREMENTS OF SECTIONS 13.10 THROUGH 13.13, INCLUSIVE, OF THESE GENERAL PROVISIONS. If the District disapproves a Change Order Request submitted in accordance with Section 13.13 of these General Provisions, the period in which the Contractor may file a related Claim shall commence upon receipt by the Contractor of notice of such disapproval.

**24.6 Method of Filing Claims.** The Contractor must file each complete Claim (i.e., each Claim that satisfies the requirements of Sections 24.1 through 24.5, inclusive, of these General Provisions) by delivering it to the District, with copies to the Architect, Project Manager, and Inspector of Record, via personal delivery (signature of receiving person requested) or certified or registered U.S. Mail (postage pre-paid and signature of receiving person requested).

**24.7 Procedures Applicable to Claims Seeking \$375,000 or Less.** Each Claim within the scope of Public Contract Code Section 20104(b)(2) that seeks an amount less than or equal to \$375,000 shall be resolved in accordance with the procedures set forth in Public Contract Code Section 20104 *et seq.* ("PCC Claims Procedures"), as those may be amended from time to time, and the PCC Claims Procedures are incorporated herein by this reference. In summary, the PCC Claims Procedures specify requirements and procedures for filing a claim, for requesting additional information, and for responding to the claim, as well as for disputing the response to the claim. Different timelines and procedures apply for claims of less than \$50,000 and for claims of \$50,000 to \$375,000. In addition, the PCC Claims Procedures specify requirements for civil actions filed to resolve claims. The PCC Claims Procedures do not apply to tort claims or alter time periods for filing of tort claims in accordance with the Government Code. For additional information, the Contractor should refer to Public Contract Code Section 20104 *et seq.* **NOTHING IN THIS SECTION 24.7 OR IN THE PCC CLAIMS PROCEDURES SHALL BE DEEMED OR CONSTRUED TO SUPERSEDE THE REQUIREMENTS OF SECTIONS 24.1 THROUGH 24.6, INCLUSIVE, OF THESE GENERAL PROVISIONS, WHICH ARE APPLICABLE TO EACH AND EVERY CLAIM ARISING FROM THE WORK OR THE CONTRACT.**

**24.8 District Requests for Additional Information.** At all times that a Claim is pending, the District, Architect and/or Project Manager may request (including for purposes of the PCC Claims Procedures when those are applicable) that the Contractor provide additional information relevant to the Claim that is believed reasonably necessary or convenient for analysis or evaluation of the Claim. The Contractor shall provide such additional information as soon as reasonably possible, but in no event later than fourteen days after receiving the District's request, and any time period in which the District is to respond to the Claim shall be extended by the amount of time required for the Contractor to provide the requested information.

**24.9 Procedures for Initial Review of Claim by Architect.** Except if and as expressly provided by the PCC Claims Procedures when those are applicable, the Architect, in consultation with the Project Manager and the Inspector of Record, will review each Claim and, within twenty days after the Claim was filed, take one or more of the following preliminary actions: (i) request that the Contractor provide additional information pursuant to Section 24.8 of these General Provisions; (ii) if necessary due to the complexity and/or number of issues described in the Claim, provide information to the Contractor as to when the Architect anticipates being able to complete its review pursuant to this Section 24.9; (iii) recommend that the District disapprove the Claim in whole or in part, stating reasons for rejection; (iv) recommend that the District approve the Claim; or (v) suggest a compromise of the Claim. Regardless of whether a Claim is

processed pursuant to the PCC Claims Procedures, the District may, but is not obligated to, notify the Contractor's surety of the nature and amount of the Claim and request the surety's assistance in resolving the Claim.

**24.10 Approval of Claim After Initial Architect Review.** If the District approves a Claim, in whole or in part, upon recommendation of the Architect pursuant to Section 24.9 of these General Provisions, the Architect will provide notice of such approval to the Contractor and will, thereafter, prepare or obtain and process a Change Order that appropriately documents the resolution of the Claim.

**24.11 Disapproval of Claim After Initial Architect Review.** If the District disapproves a Claim, in whole or in part, upon recommendation of the Architect pursuant to Section 24.9 of these General Provisions, the Architect will provide notice of such disapproval to the Contractor. Subject to the provisions of Section 24.15 of these General Provisions, to the extent the District disapproves a Claim, in whole or in part, without initiating informal efforts to resolve the Claim in accordance with Section 24.12 of these General Provisions, the Contractor may pursue any remedy available to the Contractor in accordance with the Contract.

**24.12 Initiation of Mandatory Informal Claim-Resolution Efforts.** In the sole discretion of the District, if the Architect has recommended that the District reject a Claim, in whole or in part, or has suggested a compromise of the Claim, the District may, by giving written notice, initiate informal efforts to resolve the Claim. In such event, the Project Manager will schedule a mandatory meeting of the Contractor and the District, Architect, Project Manager and Inspector of Record, to occur within ten days of the District's notice or as soon thereafter as practicable. The District and the Contractor may bring to such meeting any documents or other materials related to the basis or bases for the Claim and any individual(s) they believe necessary or convenient for purposes of such informal efforts. The individuals present at the meeting shall make good-faith efforts to resolve the Claim. If the District and the Contractor are unable to resolve the Claim during the meeting, but agree that further informal efforts would be productive, they may schedule additional meetings or discussions for purposes of continuing the efforts to resolve the Claim. If, not less than thirty days after the initial meeting, either the District or the Contractor concludes that additional informal efforts to resolve the Claim would be unavailing, that party shall provide written notice to the other party. In the event of such notice, neither the District nor the Contractor shall be required to continue informal attempts to resolve the Claim. Except if and as expressly limited by the PCC Claims Procedures when those are applicable, if the District has initiated informal Claim-resolution efforts in connection with a Claim filed by the Contractor, completion by the Contractor of such informal efforts as provided in this Section 24.12 shall be a condition precedent to the Contractor initiating any action, arbitration, or other legal proceeding arising from the Claim.

**24.13 Documentation of Compromise.** If the District and Contractor agree, as a result of informal Claim-resolution efforts or otherwise, to a compromise or other resolution of a Claim, the Architect will prepare or obtain and process a Change Order, or the District and Contractor shall enter into another appropriate written agreement, that appropriately documents the resolution of the Claim.

**24.14 Architect Ruling if Claim Remains Unresolved.** Except if and as provided by the PCC Claims Procedures when those are applicable, if the District and the Contractor fail to agree, after informal Claim-resolution efforts or otherwise, to a compromise or other resolution of a Claim or portion thereof, the Architect, in consultation with the District, Project Manager and Inspector of Record, will issue a written ruling on the Claim to the District and the Contractor. The Architect will issue its ruling within thirty days of the notice given pursuant to Section 24.12 of these General Provisions that terminated the informal efforts to resolve the Claim. The Architect's ruling will set forth the Architect's determination in regard to each separate basis for the Claim described in the Claim, and any associated adjustments to the Contract Price

and/or Contract Time. Regardless of whether issued pursuant to this Section or the PCC Claims Procedures, the Architect's ruling on a Claim shall be final. Subject to the provisions of Section 24.15 of these General Provisions, if the Contractor disagrees with the Architect's ruling, the Contractor may pursue any remedy available to the Contractor in accordance with the Contract.

**24.15 Conditions Precedent to Initiating Subsequent Actions.** Except if and as expressly limited by the PCC Claims Procedures when those are applicable, the disapproval of a Claim, in whole or in part, pursuant to Section 24.11 of these General Provisions if the District has not initiated informal Claim-resolution efforts, or a ruling on the Claim by the Architect pursuant to Section 24.14 of these General Provisions after completion of informal Claim-resolution efforts, whichever applies, shall be a condition precedent to the initiation by the Contractor of any action, arbitration or other proceeding relating to or arising from the matters addressed in the Claim. Such condition precedent shall be deemed and construed to apply to all Claims arising from the performance of the Work, including, without limitation, Claims regarding the extent to which the Work has been completed and/or the necessity, adequacy, quality, or quantity of such Work. Notwithstanding the foregoing, the Contractor shall not be required to comply with such condition precedent if, within thirty days after written notice from the Contractor to the District, Architect and Project Manager, they have failed to cure or correct any of the following: (i) the Architect has failed to take any action within the extended time determined in accordance with Section 24.8 of these General Provisions, plus any other authorized extensions; (ii) the Architect has failed to take any action pursuant to Section 24.9 of these General Provisions within twenty days or such extended time as indicated pursuant to clause (ii) of the first sentence of Section 24.9 of these General Provisions, plus any other authorized extensions; (iii) the Architect has failed to take any action within an agreed time limit; or (iv) the District, because it is a public entity, has a statutory obligation or right pursuant to applicable law to impose or assess remedies and/or penalties (e.g. penalties for Labor Code violations).

**24.16 Contractor Must Continue Work While Claims Pending.** Neither the existence of any dispute, nor the filing or other initiation of any Claim or related action, arbitration or other legal proceeding, shall be deemed or construed to constitute a valid basis for the Contractor to stop, delay or change the Work. The Contractor must diligently continue with all Work as required by the Contract Documents (including, without limitation, as set forth in any Architect Field Directives) and in accordance with all milestones set forth in the Master Construction Schedule, regardless of whether: (i) any dispute exists or any Claim, action, arbitration or other legal proceeding has been filed or otherwise initiated; or (ii) the District disapproves any Claim. In the event a Claim is not resolved to the Contractor's satisfaction, the Contractor's sole remedy shall be to initiate an action or other legal proceedings as permitted pursuant to the Contract, but only, as described in Section 24.18 of these General Provisions, after the Project has been completed or the Contract has been terminated.

**24.17 Resolving Disputes Through Binding Arbitration.** In the event of a dispute, the District and the Contractor may agree in writing to resolve any Claim through binding arbitration. In such event, the District and Contractor shall attempt within thirty days thereafter to agree on the arbitrator who will conduct the arbitration. If the parties cannot so agree, they shall request that the presiding judge of the Superior Court for the County designate an arbitrator with experience in public works construction. The District and the Contractor each shall pay one-half of the cost of the arbitration. The arbitrator shall establish procedures and rules to be followed in conducting the arbitration, which, at a minimum, shall specify that the arbitrator must adhere to and apply all substantive statutory, regulatory, administrative and decisional law that is applicable to the dispute. If a party petitions to confirm, correct, or vacate the award as provided by Chapter 4 of Title 9 of the Code of Civil Procedure (commencing with Section 1285), the prevailing party shall be entitled, as part of its costs to be fixed by the court, reasonable attorneys' fees and expenses incurred in connection with such proceedings. The surety that issued the Performance Bond and/or Payment Bond shall be made a party to any such arbitration and shall be fully bound by any decision of the arbitrator.



**24.18 Resolving Disputes in Court of Competent Jurisdiction.** If any Claim is not resolved in accordance with the procedures set forth in this Part 24 after compliance by the Contractor with all such procedures as required, then, except if and as limited by the PCC Claims Procedures when those apply, the Contractor may file an action in a court of competent jurisdiction in the County seeking resolution of the Claim through bench trial. No such action may be initiated until after: (i) the entirety of the Project has been fully completed and accepted by the District in accordance with Section 18.9 of these General Provisions; (ii) completion of the Project has occurred as defined in Subsection (c) of Public Contract Code Section 7107; or (iii) the Contract in its entirety has been terminated prior to completion of the Project. AS A CONDITION PRECEDENT TO THE CONTRACTOR'S RIGHT TO FILE ANY SUCH ACTION, WITHIN FIFTEEN DAYS AFTER COMPLETION OF THE PROCEDURES REQUIRED PURSUANT TO THIS PART 24 WITHOUT RESOLUTION OF THE APPLICABLE CLAIM, THE CONTRACTOR MUST PROVIDE WRITTEN NOTICE TO THE DISTRICT THAT THE CONTRACTOR THEREBY RESERVES ITS RIGHTS TO FILE SUCH ACTION. Any statutory limitation on the period for filing of such an action shall be tolled, from the date the procedures required pursuant to this Part 24 are duly completed without resolution of the applicable Claim, until the date an action may be filed in accordance with the foregoing provisions of this Section 24.18.

**24.19 Neither Party's Remedies are Limited.** Except as expressly stated in these General Provisions or the other Contract Documents, the rights and remedies available in accordance with the Contract are in addition to any rights and remedies available pursuant to applicable law; provided that the exercise of any and all such rights and remedies are subject to procedural requirements made applicable by this Part 24.

**24.20 Applicable Law and Venue.** The Contract shall be construed in accordance with the laws of the State. Any provision of law purported to be described or specified herein that is incorrectly described or specified shall, nonetheless, be applicable as if correctly described or specified herein. If any action, arbitration, mediation or other proceeding is initiated to enforce or interpret any term of the Contract, such proceeding shall be initiated and conducted only in the County.

## **PART 25 MISCELLANEOUS PROVISIONS**

**25.1 Entire Understanding and Agreement.** The Contract, as defined in these General Provisions and as amended in accordance with the Contract Documents, constitutes the final, complete and exclusive statement of the terms of the agreement between the District and the Contractor pertaining to performance of the Work. The Contract supersedes all prior and contemporaneous understandings or agreements of the Parties, oral or written, except as those are included in the Contract. Each of the District and the Contractor acknowledges and agrees that neither the other party, nor its agents or attorneys, has induced the execution of the Contract by making any promise, representation, or warranty whatsoever, express or implied, not set forth in the Contract.

**25.2 Provisions Required by Law Deemed Included.** Each and every provision required by law to be included in the Contract is hereby deemed to be so included, and the Contract shall be construed and enforced as if all such provisions are so included. If, for any reason, any provision required by law is not included or incorporated into the Contract Documents, or is not correctly included or incorporated into the Contract Documents, then, upon request of either the District or the Contractor, they shall amend the Contract Documents to include or incorporate, or to correctly include or incorporate, such provision.

**25.3 Execution of Documents in Counterparts.** The District and Contractor may sign the Construction Services Agreement and other Contract Documents in one or more counterparts, which, taken together, shall be deemed and construed to constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of the Construction Services Agreement having original signatures of both parties.

**25.4 Captions and Headings.** Any and all captions or headings for the Parts, Sections, Subsections and other provisions of these General Provisions and the other Contract Documents are provided solely for convenience of the reader and shall not be deemed or construed to establish, define, or limit the content or meaning of such provisions.

**25.5 No Third-Party Beneficiaries of Contract.** Except to the extent provided by law (e.g., requirements for payment of prevailing wages to workers on the Project), no party other than the District or the Contractor may claim or assert any right or benefit arising from the Contract. Each provision of the Contract Documents shall be deemed and construed to benefit only the District and/or the Contractor unless and only to the extent the provision is included in the Contract specifically as a result of any law intended to benefit any third party. Provisions of the Contract Documents that relate to or permissibly expand on any provision of law intended to benefit any third party, but are not necessary for compliance with that law, shall be deemed and construed as being included in the Contract for the convenience of the Parties and shall not be deemed or construed to benefit any third party or as providing a basis for any claim, demand, action or other proceeding by a third party relating to the Contract.

**25.6 Circumscribed Right to Assign Contract.** The Contractor may not, without the prior written consent of the District: (i) assign, transfer, pledge, or hypothecate the Contract or any interest therein; or (ii) sublet or lend the use of the Project Site or any portion thereof. Any consent by the District to any of the foregoing prohibited acts shall be deemed and construed to apply only in the particular circumstances for which consent is given and shall not be deemed or construed as consent for any subsequent similar or other circumstances. Except as expressly permitted by the Contract Documents, the Contractor shall not assign the Contract or any obligations pursuant to the Contract without the prior written consent of the District, which consent the District may grant or deny in its sole discretion. Any attempted or purported assignment by the Contractor of the Contract or any obligations pursuant to the Contract, without such prior written consent, shall be null and void, and the Contractor shall remain responsible for all of its obligations pursuant to the Contract. Subject to the foregoing, the Contract shall inure to the benefit of, and be binding on, the authorized successors and assigns of the Contractor.

**25.7 Waiver of Contract Requirements.** The failure by either the District or the Contractor at any time(s) to require performance of any requirement of the Contract shall in no manner affect the right at a later time to enforce the same or any other provision of the Contract. Except as expressly provided in the Contract Documents, the forbearance or indulgence by either the District or the Contractor in any regard whatsoever shall not constitute a waiver of the requirement at issue. Until complete performance by a Party of the requirement at issue, the District or Contractor, as applicable, shall be entitled to invoke any remedy available to it in accordance with this Contract, regardless of any such forbearance or indulgence. No requirement of the Contract to be performed by or on behalf of either the District or the Contractor can be waived except by the written consent of the other. Unless expressly provided in any such written waiver, no waiver by either the District or the Contractor of a breach or the performance of any requirement of the Contract shall be deemed to be construed as a continuing waiver of future breaches or future performance of the same or any other requirement.

**25.8 Requirements of Contract are Severable.** If a court of competent jurisdiction determines, for any reason, that any provision or requirement of the Contract is invalid or unenforceable, such

determination shall not invalidate or render unenforceable any other provision or requirement of the Contract. In such event, the remaining provisions and requirements shall be interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose underlying the invalid or unenforceable provision or requirement.

**25.9 Assignment of Anti-Trust Claims.** As provided in Government Code Section 4552, in having submitted its bid for the Work, the Contractor thereby offered and agreed to assign to the District all rights, title and interest in and to all causes of action the Contractor may have under Section 4 of the Clayton Act (15 USC 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 purchase of goods, services, or materials pursuant to the Contract. This assignment shall become effective at the time the District tenders the final Construction Progress Payment to the Contractor, without further acknowledgment by either the District or the Contractor.

**25.10 Service of Demands and Other Notices.** Unless the Contract Documents expressly provide otherwise with respect to any particular circumstance, demands and other notices required or to be given pursuant to the Contract Documents must be in writing and must be given or served in accordance with this Section 25.10. Each such notice must be sent via: (i) personal delivery (with signature of recipient and recipient's name legibly written on delivery receipt); (ii) facsimile transmission (with transmission confirmation from the sender's machine retained in the sender's files and the original of the notice deposited into United States mail, first-class postage prepaid, within 12 hours after transmission); (iii) registered or certified United States mail (postage pre-paid and return receipt requested); or (iv) FedEx, U.P.S. or other reliable, private delivery service (with signature of recipient obtained on electronic or other delivery receipt). Notices sent to the District must be addressed and delivered to each of the Authorized District Officers identified in the Special Provisions, at the District's main administrative offices, and copies of each such notice must be sent to the Architect and the Project Manager. Notices sent to the Contractor must be addressed and delivered to either the Job Superintendent or any of the Authorized Contractor Officers. Any such notice shall be deemed given or served only upon receipt by the addressee. The requirements of this Section 25.10 shall not be deemed or construed to apply to communications of the District and/or the Contractor necessary for day-to-day administration of the Contract or performance of the Work or to service of process in accordance with applicable law or rules of court. A Party may change its address, facsimile transmission number, or person to whom attention should be directed, by giving notice as provided in this Section 25.10.

**25.11 Public Inquiries and Complaints.** If the Contractor or any Subcontractor or other person or entity on, at or in the vicinity of the Project Site on account of the Work receives any inquiry, complaint, or other communication regarding the nature, status, *et cetera*, of the Work or the Project, from any homeowner, business owner, member of the press, or other member of the public, the inquiry, complaint or other communication must be referred to the District for response. The Contractor shall as necessary provide to the District any information in the Contractor's possession or control that is reasonably required for the District to respond to any such inquiry, complaint or other communication.

**25.12 District Notice of Third-Party Claims.** In accordance with Public Contract Code Section 9201, the District shall timely notify the Contractor if the District receives any third-party claim relating to the Work or the Contract. The District shall be entitled to recover from the Contractor the District's reasonable costs incurred in providing such notification.

**(End of General Provisions.)**

## SPECIAL PROVISIONS

- 1. District Representatives.** The Authorized District Officers for the Project are:  
(i) *Art Fritz*, the District's *Director of Facilities*, who may be reached at (951) 941-7557; and  
(ii) *Mike Slipich*, the District's *M&O Supervisor*, who may be reached at (951) 537-7323.
- 2. Architect.** N/A
- 3. Project Manager.** N/A
- 4. Commencement and Duration of Work.** Not sooner than five calendar days after the date of the Notice of Award, the District will issue a Notice to Proceed with the Work to the Contractor. The Contractor must commence performance of the Work on the Commencement Date set forth in the Notice to Proceed. The Contractor shall complete all Work in accordance with any and all schedule milestones established for the Project pursuant to the Master Construction Schedule and other Contract Documents. Such milestone periods and time for completion of the Work shall be deemed to include any and all federal and state holidays observed by the Contractor and/or any of its Subcontractors. In submitting its bid, the Contractor is deemed to have accepted and agreed that performance of the Work within such total period and in accordance with all such milestones is reasonable and attainable. The District anticipates, but does not guarantee, that the foregoing will occur in accordance with the following:

District issues Notice of Award: *May 17, 2017*

*Project Schedule:*

Contractor commences Work: *June 9, 2017*  
Contractor completes Work: *August 6, 2017*

- 5. Project Site Not Immediately Available.** If the Project Site is not immediately available to the Contractor as of the Commencement Date (e.g., due to coordination with other contractors or priority of work on the Project) the Contractor must use the time prior to commencing the Work for administrative tasks and initial mobilization, and shall coordinate such activities with the Project Manager.
- 6. Strict Scheduling Requirements for Operating Schools.** The Contractor acknowledges that the District has scheduled the Work for a specific time period, in order to promote the best usage of school facilities, to provide an appropriate learning environment for students, and to avoid interference with the District's educational, recreational and other programs. Contractor further acknowledges that strict compliance with scheduling requirements for the Work is mandatory in order to accomplish the foregoing goals. Therefore, in submitting a bid for the Work, the Contractor is deemed to have agreed that it will have materially breached the contract if it fails to do all things necessary to timely complete the Work, including, without limitation, failing to provide submittals within the time required by the Contract Documents or to provide an adequate workforce or proper and sufficient materials and equipment.
- 7. Time For Submitting Required Contract Forms.** The Required Contract Forms include various form documents that the Contractor must complete and submit in connection with the execution of the Contract. If the time, situation, or condition for submitting any such form document is not specified in the form, General Provisions or other Contract Documents, or is not readily apparent from context, the Contractor must submit such form within seven days of the date of the Notice of Award or prior to the Commencement Date, whichever is earlier.

**8. Sole-Source Items.** N/A

**9. Additive and/or Deductive Alternates.** N/A

**10. Indemnity.** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the District, its design professionals and consultants, and the officials, agents and employees of any of them (“indemnified parties”) from and against claims, damages, losses and expenses, including but not limited to attorney fees, arising out of Contractor’s performance of work under this agreement, regardless of whether such claim, damage, loss or expense is caused in part by an indemnified party. However, Contractor shall not be obligated to indemnify an indemnified party for liability due to willful misconduct, active negligence, or sole negligence for which that indemnified party is legally responsible. Contractor shall, if requested by the District, defend using counsel approved by the District in its sole discretion. Contractor’s obligations under this indemnity agreement shall survive the completion or termination of the project.

**11. Minimum Insurance Requirements.** The Contractor must obtain and maintain, and must require that each Subcontractor obtain and maintain, Insurance Policies as required pursuant to Part 6 of the General Provisions and having the following minimum coverage amounts:

1. Commercial General Liability, using a standard ISO CG 00 01 occurrence form, including operations, products and completed operations and contractual liability with limits not less than \$1,000,000.00 per occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products –Completed Operations Aggregate for bodily injury, personal injury, and property damage. This coverage shall be maintained for a period of not less than ten (10) years following substantial completion of the work that is the subject of this Agreement.
  - a. The Commercial General Liability Coverage shall include the following endorsements:
    - i. Aggregate Limit Per Project endorsement;
    - ii. The District, its Board, officers, agents and employees shall be included as Additional Insureds using ISO Additional Insured endorsements CG 20 10 and CG 20 37 or a blanket additional insured endorsement applicable “when required by written contract or agreement”. If the blanket additional insured endorsement is used, premises and operations as well as products-completed operations coverage must be provided for the Additional Insureds.
    - iii. A Waiver of Subrogation endorsement in favor of the District, its Board, officers, agents and employees or a blanket waiver of subrogation endorsement applicable “when required by written contract or agreement”;
    - iv. A Primary, Non-contributory endorsement in favor of the District, its Board, officers, agents and employees or a blanket primary, non-contributory endorsement applicable “when required by written contract or agreement”.
  - b. The Commercial General Liability Coverage shall not include the following endorsements:
    - i. Amendment of Contractual Liability
    - ii. Total Pollution Exclusion
    - iii. Cross Suits Liability Exclusion
    - iv. X, C, U Exclusion

2. Automobile Liability, using a standard ISO Business Auto CA 00 01 form with limits not less than \$1,000,000.00 per accident for bodily injury and property damage for all owned, hired and non-owned automobiles. Coverage shall include Contractual Liability.
  - a. The Business Auto coverage shall include the following endorsements:
    - i. Broadened Pollution Coverage Endorsement;
    - ii. The District, its Board, officers, agents and employees shall be included as Designated Insureds or a blanket additional insured endorsement applicable “when required by written contract or agreement”;
    - iii. A Waiver of Subrogation endorsement in favor of the District, its Board, officers, agents and employees or a blanket waiver of subrogation endorsement applicable “when required by written contract or agreement”;
    - iv. A Primary, Non-contributory endorsement in favor of the District, its Board, officers, agents and employees or a blanket primary, non-contributory endorsement applicable “when required by written contract or agreement”.
3. Workers’ Compensation including statutory coverage as required by the State of California and including Employers’ Liability with limits not less than \$1,000,000.00 each accident; \$1,000,000.00 policy limit bodily injury by disease; \$1,000,000.00 each employee bodily injury by accident.
  - a. The Workers’ Compensation coverage shall include the following endorsements:
    - i. A Waiver of Subrogation endorsement in favor of the District, its Board, officers, agents and employees or a blanket waiver of subrogation endorsement applicable “when required by written contract or agreement”;
    - ii. If the Contractor or any Subcontractor is using a Professional Employer Organization or any other type of staffing company to lease employees, Contractor must notify and seek approval from the Risk Management Department of the District prior to the execution of this Agreement.
4. Umbrella or Excess Liability coverage with limits not less than \$1,000,000.00 excess over the Commercial General Liability, Automobile Liability and Employer’s Liability.
  - a. The Umbrella or Excess Liability coverage shall include the following endorsements:
    - i. All endorsements required under Paragraphs **I. 1.**, **I. 2.**, **I. 3.** above;
5. Professional Liability coverage with limits not less than \$2,000,000 per occurrence and \$2,000,000 aggregate limit. Such insurance coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Agreement. This insurance requirement applies when the Contractor is providing project management, design-build, engineer, architect and other types of professional services to the District. This coverage shall contain an Extended Period of Indemnity no less than 90 days from the date of expiration of the policy.
6. Should any of the insurance policies contain either a deductible or self-insured retention, the Contractor or Subcontractor shall be responsible to pay that deductible or self-insured retention and the District shall not be responsible to pay these costs.

7. Should any required insurance policies be cancelled, non-renewed or if the Contractor or Subcontractor fails to renew, Contractor or Subcontractor shall provide notice of such cancellation, non-renewal or failure to renew immediately to the District.
8. All insurance policies as required in this section shall be written through insurance companies that are either admitted in the State of California or on the California Department of Insurance approved list of non-admitted insurers. All insurance companies shall have and maintain a minimum A. M. Best rating of A VII.
9. Certificates of Insurance Coverage shall be filed by Contractor with the District evidencing all of the insurance coverages required in this section at the time this Agreement is executed. The certificates must have all required endorsements attached or the Certificate will be rejected as non-compliant. Each successive year during the insurance requirement period shall be filed in the same manner. The failure to furnish such evidence may be considered default by the Contractor. The District reserves the right to require complete, certified copies of all required insurance policies, at any time. It is the obligation of the Contractor to obtain and maintain records of the required insurance coverages from all Subcontractors until beyond the statute of repose in the jurisdiction of the Project. The information contained in these Subcontractor insurance records shall be made available to the District immediately upon request.

**11. Owner Controlled Insurance Program.** The District may implement a program of owner-controlled, wrap-around, or similar insurance coverage ("OCIP"), through a joint-powers insurance cooperative of which the District is a member or otherwise. The OCIP will provide certain insurance coverage in connection with the Project for the District, the Contractor and the Subcontractors. A minimum level of participation by qualified contractors is required for the OCIP. Among other requirements, the Contractor and each Subcontractor must submit an application and qualification information to the OCIP administrator. If applicable, the OCIP requirements are described in detail in Supplementary Special Provisions included in the Contract Documents. The OCIP requirements described in Section 6.2 of the General Provisions and the Supplementary Special Provisions described in this Section 11 shall:

- be in effect and apply to the Contract.
- NOT be in effect and apply to the Contract.

**12. District All-Risk Policy.** A District All-Risk Policy, as described in Section 6.3 of the General Provisions, shall:

- be in effect and apply to the Contract and, therefore, the Contractor WILL NOT be required to procure insurance pursuant to Section 6.5.5 of the General Provisions.
- NOT be in effect and apply to the Contract, and:
  - Contractor WILL be required to procure insurance pursuant to Section 6.5.5 of the General Provisions.
  - Contractor WILL NOT be required to procure insurance pursuant to Section 6.5.5 of the General Provisions.

**13. Pre-Construction Labor-Law Conference.** The District will conduct a pre-construction conference to discuss labor-law requirements applicable to the Work. **Attendance at the conference is mandatory. The Contractor and each of its listed Subcontractors must attend.** The conference will occur on *April 21, 2017, at 11:00 a.m., at Perris High School, 175 East Nuevo Rd., Perris, CA 92570.*

**14. Regular Working Hours.** For purposes of Section 13.9 of the General Provisions, "Regular Working Hours" shall mean any weekday, Monday through Friday, inclusive:

between the hours of: 6:30 a.m. and 4:30 p.m.  
 commencing at or after such time, and ending by or prior to such time, as may be specified in either an applicable local ordinance or the Mitigation Monitoring Plan adopted by the District pursuant to the California Environmental Quality Act, whichever is more restrictive.

Work hours will be 3:30pm-11:00pm on weekdays for this project. Weekend work will also be allowed if necessary between the hours of: 7:30 a.m. and 4:30 p.m.

**15. Liquidated Damages.** For purposes of Section 13.21 of the General Provisions, the agreed amount of the liquidated damages, for each day or portion thereof, shall be \$1,000.00.

**16. Background Checks.** The District has considered the totality of the circumstances concerning the Project and determined that Section 10.3 of the General Provisions shall:

be in effect and apply to the Contract.  
 NOT be in effect and apply to the Contract.

**17. Stormwater Control Requirements.** The NPDES and SWPPP requirements set forth in Section 8.13 of the General Provisions shall:

be in effect and apply to the Contract.  
 NOT be in effect and apply to the Contract.

**18. Applicability of DVBE Requirements.** The DVBE requirements described in Section 11 of the Instructions For Bidders shall:

apply to the Contract.  
 NOT apply to the Contract.

**19. DVBE Advertising.** If Section 18 of these Special Provisions makes the DVBE requirements described in Section 11 of the Instructions For Bidders applicable to the Contract, the Project Manager will:

advertise for DVBE in connection with the Project.  
 NOT advertise for DVBE in connection with the Project.

**20. Retention.** Public Contract Code Section 7201, among other things, permits the District to withhold Retention in excess of five percent if the District Board finds during a properly-noticed and normally-scheduled public hearing conducted prior to bidding of a project that the project is substantially complex and, therefore, requires a higher retention amount, and such finding and the required Retention amount is specified in the bid documents for the project. The District Board or its designee has, in the case of the Project:

made a finding, as specified in Section 21 of these Special Provisions, that Retention in excess of five percent is required for the Project.



X   NOT made a finding that Retention in excess of five percent is required for the Project.

**21. Finding Regarding Retention.** If Section 20 of these Special Provisions indicates that the District Board or its designee has made a finding that the Project is substantially complex and, therefore, requires Retention in excess of five percent, such finding is as follows: *N/A*

**22. Required Retention.** If Section 20 of these Special Provisions indicates that the District Board or its designee has made a finding that the Project is substantially complex and, therefore, requires Retention in excess of five percent, then, notwithstanding Section 21.14 of the General Provisions, the Retention required for the Project shall be: *N/A*

**23. Copies Furnished By District.** The District will provide copies of the Drawings and Specifications to the Contractor at no charge. The Contractor may obtain additional copies of the Drawings and Specifications at its sole cost and expense.

**24. Miscellaneous Requirements Applicable to Operating Schools.** The following shall apply to the Work if the Project involves work on or at an existing, operating school:

- (i) No materials, equipment, *et cetera*, may be delivered to the Project Site between the hours of 7:45 a.m. - 8:30 a.m. or 2:15 p.m. - 2:45 p.m. on any school day.
- (ii) No materials and/or personal vehicles may be placed or parked in any fire lane on or adjacent to the Project Site. A construction vehicle or machinery then being used in connection with the Work may be parked in any such fire lane only temporarily and, if unattended, the vehicle or machinery must remain unlocked and the key thereto left in the ignition switch so that it can be moved if necessary, but the Contractor shall at all times remain liable for any injury or damage resulting from unauthorized or improper use of the vehicle or machinery by others.
- (iii) Not more than one vehicle per trade will be permitted on the Project Site at any one time. All tools, materials, equipment, *et cetera*, are to be dropped off and vehicles removed from the Project Site immediately. Vehicles used in connection with the Work must be legally parked on public streets in the vicinity of the Project Site, and no such vehicles may be parked in the school parking lot.
- (iv) The Contractor must coordinate with the Project Manager all traffic and pedestrian control required for the operations of the Contractor and its Subcontractors and suppliers.
- (v) All areas of the Project Site on which the Work is to occur may not be available at the same time, and the Contractor may need to mobilize more than once to complete the Work.
- (vi) Existing landscaped areas and plants on and adjacent to the Project Site must be avoided and otherwise protected, and the Contractor shall be responsible for repairing any damage to landscaping, irrigation systems, and plants.

**25. Defined Terms.** Capitalized terms used, but not defined, in these Special Provisions shall have the meanings ascribed to such terms in other of the Contract Documents.

***(End of Special Provisions.)***

## ***REQUIRED CONTRACT FORMS***

The Required Contract Forms are set forth on the following pages and include:

1. Construction Services Agreement
2. Payment Bond
3. Performance Bond
4. Certification Regarding Asbestos
5. Notice and Certification Regarding Lead-Free Materials
6. Certification Regarding Drug-Free Workplace
7. Certification Regarding Tobacco-Free Workplace
8. Certification Regarding Workers Compensation

## **CONSTRUCTION SERVICES AGREEMENT**

This Construction Services Agreement is entered into as of *August 18, 2016* by and between the Perris Union High School District ("District"), a California public school district, and *[Insert contractor business name]* ("Contractor"), a *[Insert type of contractor business, e.g., corporation, general partnership, et cetera]*. In consideration of their respective rights and obligations pursuant to this Construction Services Agreement, the District and the Contractor agree as follows:

**Section 1. Project.** This Construction Services Agreement applies to the following Project:  
***Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School***

**Section 2. Scope of Work.** The Contractor shall furnish any and all labor, materials, equipment, tools, utilities, temporary facilities, transportation, goods and other services and things necessary for full completion of all construction and other services required in accordance with the Contract Documents for the Project ("Work").

**Section 3. Component Parts of the Contract.** This Construction Services Agreement is but one component of the Contract that sets forth the complete understanding and agreement of the District and the Contractor with respect to the performance of the Work. The Contract is composed of all of the Contract Documents, as may be amended in accordance with their provisions, and each such document is hereby incorporated as an operative and effective part of the Contract. The Contract Documents shall be deemed and construed to be complementary and an integrated whole. Any requirement or provision set forth in one Contract Document, but not in one or more of the other Contract Documents, shall be interpreted as if set forth in or applicable to all Contract Documents. The Contract Documents include, but are not limited to, all of the following:

- (i) Notice Inviting Bids;
- (ii) Instructions For Bidders;
- (iii) All completed and executed Required Bidding Forms, excluding the Bid Label and the Bid Bond;
- (iv) All completed and executed Required Contract Forms;
- (v) All completed and executed Required Project Forms;
- (vi) The Construction Services Agreement;
- (vii) The General Provisions;
- (viii) The Special Provisions;
- (ix) The Supplementary Special Provisions  
(only if an OCIP is made applicable pursuant to Section 11 of the Special Provisions);
- (x) All Specifications;
- (xi) All Drawings;
- (xii) Addenda Nos.
- (xiii) The Master Construction Schedule;
- (xiv) The Notice to Proceed;
- (xv) All issued Architect Field Directives;
- (xvi) All issued Construction Change Directives; and
- (xvii) All completed and executed Change Orders.

**Section 4. Contract Time.** The Contractor shall mobilize and commence the Work on the date specified by the District as the date for commencing the Work ("Commencement Date") in the notice from the District directing the Contractor to proceed with the Work ("Notice to Proceed"). The District may defer issuing a Notice to Proceed as provided in the General Provisions. The Contractor must fully complete the



**PAYMENT BOND**

**District:** *Perris Union High School District*

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

**Surety:** \_\_\_\_\_

**Bond #:** \_\_\_\_\_

**Penal Sum:** \_\_\_\_\_ (\$ \_\_\_\_\_)

**WHEREAS**, the Project identified above is a public project in accordance with applicable law, and the District identified above awarded to the Contractor identified above (herein, the "Principal") a contract providing for completion of the Project ("Contract"); and

**WHEREAS**, the Contract and/or California Civil Code Section 9550 *et seq.* require that the Principal furnish a labor and materials payment bond to the District that ensures the faithful performance of the Principal's obligations pursuant to the Contract to pay for materials, labor and other things as required by law, which bond must have a penal sum equal to one hundred percent of the total amount payable by the District to the Principal pursuant to the Contract; and

**WHEREAS**, the Surety identified above hereby represents to the District that the Surety is an "admitted surety insurer" in accordance with Section 995.120 of the California Code of Civil Procedure;

**NOW, THEREFORE**, we, the Principal and Surety, are hereby held and firmly bound to the District in an amount of lawful money of the United States of America equal to the Penal Sum specified above, the payment of which well and truly to be made, we hereby bind, jointly and severally, ourselves and our heirs, executors, administrators and successors.

**THE CONDITION OF THIS OBLIGATION** is that, if the Principal, or any of its heirs, executors, administrators, successors or assigns, or any of its subcontractors, fail in connection with the Project to pay as and when required (1) any of the persons authorized by California Civil Code Section 9100 to assert a claim against the Payment Bond, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed pursuant to the Contract, or (3) any amounts required to be deducted, withheld, and paid over to the Employment Development Department from wages of employees of the Principal or any of its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, then the Surety shall pay, in full, any and all claims for such amounts, in a total amount not in excess of the penal sum set forth herein, and also, in case suit is brought upon this Payment Bond, such reasonable attorney's fees as fixed by the court.

This Payment Bond shall inure to the benefit of any and all of the persons named in California Civil Code Section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Payment Bond.

The Surety hereby stipulates and agrees that this Payment Bond shall not be exonerated and the Surety shall not be released from its obligations pursuant to this Payment Bond on account of: (1) any extension of time, change, amendment or other modification of the Contract or other Project documents, or of the Principal's rights and/or obligations pursuant thereto, and Surety hereby waives notice of any and all such modifications; (2) any rescission or attempted rescission of the Contract or this Payment Bond; (3) any fraud of any person or entity other than fraud of a claimant in making a claim on

this Payment Bond; or (4) any breach of any contract by the District, the Principal or any person or entity for whose benefit Surety has issued this Payment Bond. The Surety further stipulates and agrees that this Payment Bond shall be construed most strongly against the Surety and in favor of the persons and entities for whose benefit Surety has issued this Payment Bond.

The Surety shall not be deemed to have fully and appropriately executed this Payment Bond unless Surety has provided all of the following information:

**SURETY'S SOUTHERN CALIFORNIA/LOCAL REPRESENTATIVE**

**SURETY'S REPRESENTATIVE FOR FILING CLAIMS**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Telephone Number

\_\_\_\_\_  
Representative Telephone Number

***(The remainder of this page intentionally left blank.)***

Each person that signs this Payment Bond on behalf of the Principal or the Surety thereby represents and warrants that the party he or she represents has duly-authorized him or her to sign, and thereby bind such party to, this Payment Bond.

**IN WITNESS WHEREOF**, the Principal and Surety have executed this Payment Bond as evidenced by the signatures, below, of their respective, duly-authorized representatives.

**PRINCIPAL**

**SURETY**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Title

\_\_\_\_\_  
Representative Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

**Principal: Attach Notary acknowledgment to this Payment Bond and, if applicable, imprint corporate seal in the space below this line.**

**Surety: Attach Notary acknowledgment and power of attorney to this Payment Bond and imprint corporate seal in the space below this line.**

**PERFORMANCE BOND**

**District:** *Perris Union High School District*

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

**Surety:** \_\_\_\_\_

**Bond #:** \_\_\_\_\_

**Penal Sum:** \_\_\_\_\_ (\$ \_\_\_\_\_)

**WHEREAS**, the Project identified above is a public project in accordance with applicable law, and the District identified above awarded to the Contractor identified above (herein, the "Principal") a contract providing for completion of the Project ("Contract"); and

**WHEREAS**, the Contract requires that the Principal furnish a bond to the District that ensures the faithful performance of the Principal's obligations pursuant to the Contract to fully and satisfactorily perform the work and services required by the Contract, which bond must have a penal sum equal to one hundred percent of the total amount payable by the District to the Principal pursuant to the Contract; and

**WHEREAS**, the Surety identified above hereby represents and warrants to the District that the Surety is an "admitted surety insurer" in accordance with Section 995.120 of the California Code of Civil Procedure;

**NOW, THEREFORE**, we, the Principal and Surety, are hereby held and firmly bound to the District in an amount of lawful money of the United States of America equal to the Penal Sum specified above, the payment of which well and truly to be made, we hereby bind, jointly and severally, ourselves and our heirs, executors, administrators and successors.

**THE CONDITION OF THE FOREGOING PAYMENT OBLIGATION** is that, if the Principal (or, to the extent permitted by the Contract, its heirs, executors, administrators, successors or assigns) shall fully perform all of the undertakings, terms, covenants, conditions, agreements and other obligations required of the Principal pursuant to the Contract and any amendments or changes thereto, in full and strict conformance with the requirements thereof, and all within the time and in the manner designated therein, in all respects according to their true intent and meaning, then such obligation shall become null and void; otherwise, it shall remain in full force and effect.

A condition precedent to the satisfactory completion of the Contract is that, after the acceptance of the Project by the District, the payment obligation of this Performance Bond shall remain in full force and effect, in the penal sum set forth herein, during all periods in which the Principal has any obligations pursuant to the Contract (including, without limitation, the obligations to make full, complete, and satisfactory repair and replacements of any defective materials and/or faulty workmanship, to pay liquidated damages and/or to indemnify the District or any other party), and the obligation of Surety hereunder shall continue so long as any such obligation of Principal continues to exist. The obligations of Surety pursuant to this Performance Bond are exclusive of and distinct from any obligations Surety may have pursuant to any labor and materials payment bond applicable to the Project.

Whenever the District declares the Principal to be in default of its obligations pursuant to the Contract, the District having performed its obligations thereunder, the Surety, promptly within the time required by the Contract, shall remedy the default or, at the District's discretion, shall:



- (i) Complete the Project in strict accordance with the terms and conditions of the Contract, including, without limitation, provisions for the time(s) within which the Surety must act; or
- (ii) Obtain, or permit the District to obtain, one or more bids or proposals for any and all work required to complete the Project in strict accordance with the terms and conditions of the Contract, and upon determination of each lowest responsive and responsible bidder or proposer, arrange for such bidder or proposer and the District to enter into a contract, which may be in accordance with Education Code Section 17406, and make available as the work progresses sufficient funds, up to and including a total amount equal to the penal sum set forth herein less the balance of the contract amount, to pay the cost of completing the Project.

The term “balance of the contract amount,” as used in the foregoing paragraph, shall mean the total amount payable by the District to Principal pursuant to the Contract and any amendments and changes thereto, less the amounts thereof previously paid by the District to the Principal.

In performing its obligations pursuant to this Performance Bond, the Surety expressly agrees that: (i) absent the express written consent of the District, the Surety shall neither use the Principal nor accept a bid or proposal from the Principal for purposes of completing the Project; and (ii) the District shall have the right, in its reasonable discretion, to reject any contractor or subcontractor that the Surety may propose to fulfill such obligations. In the event the District provides notice to the Surety that the Principal is in default of its obligations pursuant to the Contract and, therefore, the Surety is required, as provided herein, to complete the Project or to arrange for the District to contract for completion of the Project, and, through no fault of the District, the Surety has exceeded the time permitted pursuant to the Contract for doing so, the District may arrange to use replacement contractor(s) selected and contracted for by the District to complete the Project and, in such event, the Surety’s payment and other obligations pursuant to this Performance Bond shall not be thereby diminished or otherwise limited.

Notwithstanding anything to the contrary, in the event the District determines that the Principal has not met, or likely will be unable to meet, any deadline required pursuant to the Contract, or that Principal’s performance does not conform with the requirements of the Contract, the District may notify the Surety. In such event, the Surety must make reasonable attempts to assist the Principal to resolve or avoid the default by the Principal. The Surety and Principal expressly agree that neither the giving of such notice by the District nor the giving of such assistance by the Surety shall be deemed or construed to constitute interference by the District or the Surety with the Contract or the ability of the Principal to obtain any bond(s) in any amount(s) from any surety insurer(s).

For value received, the Surety hereby stipulates and agrees that this Performance Bond shall not be exonerated and the Surety shall not be released from its obligations pursuant to this Performance Bond by any change, amendment or other modification of the Contract or other Project documents, or of the Principal’s rights and/or obligations pursuant thereto, and Surety hereby waives notice of any and all such modifications.

***(The remainder of this page intentionally left blank.)***

The Surety shall not be deemed to have fully and appropriately executed this Performance Bond unless Surety has provided all of the following information:

**SURETY'S SOUTHERN CALIFORNIA/LOCAL REPRESENTATIVE**

**SURETY'S REPRESENTATIVE FOR FILING CLAIMS**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Telephone Number

\_\_\_\_\_  
Representative Telephone Number

***(The remainder of this page intentionally left blank.)***

Each person that signs this Performance Bond on behalf of the Principal or the Surety thereby represents and warrants that the party he or she represents has duly-authorized him or her to sign, and thereby bind such party to, this Performance Bond.

**IN WITNESS WHEREOF**, the Principal and Surety have executed this Performance Bond as evidenced by the signatures, below, of their respective, duly-authorized representatives.

**PRINCIPAL**

**SURETY**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Title

\_\_\_\_\_  
Representative Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

**Principal: Attach Notary acknowledgment to this Performance Bond and, if applicable, imprint corporate seal in the space below this line.**

**Surety: Attach Notary acknowledgment and power of attorney to this Performance Bond and imprint corporate seal in the space below this line.**

### CERTIFICATION REGARDING ASBESTOS

**District:** *Perris Union High School District*

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to California law, that:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor.
- (ii) The Contractor is aware and acknowledges that, for purposes of this certification: (a) asbestos is any of chrysotile, crocidolite, amosite, anthophyllite, tremolite, actinolite or other minerals generally known as asbestos; and (b) an asbestos-containing material is any material or thing, or any component thereof, that contains, consists of, or is made up of greater than one-tenth of one percent (0.1%) asbestos.
- (iii) The Contractor shall not use on, or incorporate into, the Project any asbestos or asbestos-containing materials, including, without limitation, in any tools, devices, clothing, or equipment used in the construction of any portion of the Project.
- (iv) The Contractor has instructed its employees and subcontractors in regard to such prohibition against asbestos and asbestos-containing materials, and in regard to the hazards, risks and liabilities involved in the use of asbestos and asbestos-containing materials.
- (v) The Contractor acknowledges and agrees that:
  - (a) Each dispute as to whether any material, equipment or other thing used on, or incorporated into, the Work contains asbestos or is an asbestos-containing material shall be settled by electron microscopy; and
  - (b) The costs of any such tests shall be paid by the Contractor if the material is found to contain asbestos at a level greater than as specified herein; and
  - (c) The District shall reject any and all materials or other things incorporated into the Work that are determined to contain asbestos or asbestos-containing materials, and the Contractor, at no cost to the District, must remove, replace and/or repair as necessary any and all affected portions of the Work.

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

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

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

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

## NOTICE AND CERTIFICATION REGARDING LEAD-FREE MATERIALS

**District:** *Perris Union High School District*

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

### NOTICE:

If the Work is other than entirely new construction, the Work may disturb lead-containing or lead-based paint and other building materials that may be incorporated into existing buildings or other improvements located on the project Site. Until sampling and testing confirms otherwise, it shall be presumed that all school buildings and improvements built in 1992 or earlier contain lead-based or lead-containing paint.

The Contractor shall be responsible for ensuring that its employees and subcontractors fully and adequately comply with, and that the Work is performed in conformance with, all applicable laws, ordinances, rules and regulations governing lead-based or lead-containing paint and other materials, including, but not limited to: (i) Education Code Section 32240 *et seq.*; (ii) Title 8, California Code of Regulations, Section 1532.1; and (iii) Title 17, California Code of Regulations, Section 35001, *et seq.*

If the Work involves renovation, modernization or other disturbance of any existing school buildings or improvements, the Contractor shall sample and test all materials as appropriate to determine whether lead-based paint or other materials are present and may present a hazard or threat during any such renovation or modernization. The Contractor shall provide the District with the results of any and all such testing, whether conducted prior to commencement of the Work, during the Work, or after completion of the Work.

Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. Consistent with applicable law, when a lead-based hazard is identified, the Contractor shall utilize personnel certified by the Department of Health Services (“DHS”) to perform lead-related services. The District may at any time request that Contractor provide the training and certification records of each employee of the Contractor or subcontractor who provides lead-related services. The Contractor shall be solely responsible for proper disposal, in conformance with all applicable laws, of any and all lead-containing, lead-based or hazardous waste products including, but not limited to, paint chips, residue, and any other material that may be exposed or disturbed during the course of the Work.

California law prohibits, in the construction of any new school facility or in the modernization or renovation of any existing school facility, the use of lead-containing or lead-based paint, plumbing, solders, and other materials that may constitute a potential source of lead contamination.

In the event the Contractor or its employees or subcontractors fail to comply with all applicable laws, rules and regulations related to lead-containing or lead-based paints and other materials, or fail to comply with any other requirements set forth in this Lead-Containing Materials Certification, the Contractor shall be held solely responsible for any and all costs associated with any investigative and/or corrective actions deemed necessary by the District, and shall indemnify, defend and hold harmless the

District, pursuant to the indemnification provisions of the Contract for the Work, with respect to any and all claims, demands, actions, damages, costs, expenses and other liabilities arising therefrom.

**CERTIFICATION:**

The undersigned, subject to penalty for perjury, hereby certifies that: (i) the undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor; (ii) the Contractor has received notice that lead-containing or lead-based paint or other materials may be located on the Project Site; (iii) the Contractor has received notice that it must comply with all applicable laws, rules and regulations governing work with, and disposal of, such materials; and (iv) the Contractor shall comply with all such applicable laws, rules and regulations, as well as the other requirements of this lead-containing materials certification.

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

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

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

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

## CERTIFICATION REGARDING DRUG-FREE WORKPLACE

**District:** *Perris Union High School District*

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor;
- (ii) The Contractor, in accordance with Government Code Section 8350 *et seq.*, the Drug-Free Workplace Act of 1990, shall provide a drug-free workplace by doing all of the following:
  - (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the Contractor’s workplace and specifying actions which will be taken against employees for violations of the prohibition.
  - (2) Establishing a drug-free awareness program to inform employees about all of the following:
    - (a) The dangers of drug abuse in the workplace;
    - (b) The Contractor’s policy of maintaining a drug-free workplace;
    - (c) Availability of drug counseling, rehabilitation and employee-assistance programs; and
    - (d) The penalties that may be imposed upon employees for drug abuse violations.
  - (3) Requiring that each employee engaged in the performance of Work on the Project be given a copy of the statement required by paragraph (1) of this clause (ii) and that, as a condition of employment on the Project, the employee agrees to abide by the terms of the statement.
- (iii) The Contractor hereby acknowledges and agrees that, if the District determines that either (a) the certification herein is false, or (b) the Contractor violated this certification by failing to carry out the requirements of Section 8355, then the Contract awarded to the Contractor shall be subject to termination, suspension of payments, or both, and the Contractor shall be subject to debarment in accordance with the requirements of Section 8350 *et seq.*

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

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

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

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

## CERTIFICATION REGARDING TOBACCO-FREE WORKPLACE

**District:** *Perris Union High School District*

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor; and
- (ii) The Contractor shall ensure a tobacco-free workplace by doing both of the following:
  - (1) Providing the following provision, in writing, to each person providing any labor or services on or at the Project Site, including, without limitation, any delivery personnel:
 

All properties and facilities operated by the Perris Union High School District, including, without limitation, the Project Site, are tobacco-free work places. It is strictly forbidden while in, on or at any District property or facility (whether owned or leased) to smoke, chew or otherwise use tobacco products. The Contractor shall require each person (including, without limitation, any employee of the Contractor or any subcontractor or supplier) found in violation of these requirements to permanently leave the Project Site, and the Contractor shall not thereafter permit such person to be present in, on or at the Project Site.
  - (2) Enforcing the requirements specified in the foregoing provision.

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

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

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

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



**CERTIFICATION REGARDING WORKERS COMPENSATION**

(Labor Code § 1861)

**District:** *Perris Union High School District*

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor; and
  
- (ii) The Contractor is aware of the provisions of Labor Code Section 3700 *et seq.*, which require every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and the Contractor shall comply with such provisions prior to commencing and throughout the entirety of performance of the Work on the Project.

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

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

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

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

## ***REQUIRED PROJECT FORMS***

The Required Project Forms are set forth on the following pages and include:

1. Architect Field Directive
2. Request To Substitute Specified Item
3. Certification Regarding Master Construction Schedule
4. Request for Information
5. Daily Time and Materials Report
6. Progress Payment Request
7. Conditional Waiver and Release (Progress Payment)
8. Unconditional Waiver and Release (Progress Payment)
9. Certification Regarding Readiness For Inspection (Upon Substantial Completion)
10. Conditional Waiver and Release (Final Payment)
11. Unconditional Waiver and Release (Final Payment)
12. Certification Regarding Contractor Guarantee

### ARCHITECT FIELD DIRECTIVE

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

**Field Directive No:** \_\_\_\_\_ **Date Issued:** \_\_\_\_\_

**Subject:** \_\_\_\_\_

**Reference RFI, Change Order, Drawing, Specification and/or other document:** \_\_\_\_\_

**Directive (attach additional sheets as needed):** \_\_\_\_\_

**Reason for Directive (attach additional sheets as needed):** \_\_\_\_\_

**ARCHITECT CERTIFICATION:** The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that: (i) the undersigned is a duly-authorized representative of the Architect and, in that capacity, has executed this Architect Field Directive on behalf of the Architect; (ii) the Architect has determined based on review of relevant facts that implementation of this Field Directive will not result in any need for adjustment to the Contract Time and/or Contract Price.

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

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

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

**Date Signed:** \_\_\_\_\_

**District Signature:**

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

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

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

**Date Signed:** \_\_\_\_\_

**Construction Manager Signature:**

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

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

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

**Date Signed:** \_\_\_\_\_

**NOTE:** The Contractor’s approval is not required for this Architect Field Directive to be valid and binding on the Contractor. If Contractor believes that implementation of this Architect Field Directive will require an adjustment to the Contract Time and/or Contract Price, the Contractor must give notice in accordance with Section 17.5 of the General Provisions of the Contract.

### REQUEST TO SUBSTITUTE SPECIFIED ITEM

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

**Substitution Request No:** \_\_\_\_\_ **Request Submittal Date:** \_\_\_\_\_

Specified Item: \_\_\_\_\_

Drawing No(s): \_\_\_\_\_ Spec. Section(s)/Page(s): \_\_\_\_\_

Proposed Substitute for Specified Item: \_\_\_\_\_

Reason for Proposed Substitution (attach additional sheets as needed): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Contractor Certification:** The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that: (i) the undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this Request to Substitute Specified Item on behalf of the Contractor; (ii) the specified Item is commercially unavailable or the Contractor has other good cause for requesting substitution, as described above in the Reason for Proposed Substitution; (iii) the Contractor made all reasonable efforts to obtain all information relevant to this Request to Substitute Specified Item; (iv) the Contractor has provided two copies of all of such information with this Request to Substitute Specified Item; (v) the Contractor reasonably and in good faith believes that the proposed substitute item is equal or better in all material respects to the Specified Item, will adequately and fully accomplish the intended aesthetics, purposes and/or functions of the Specified Item, and otherwise satisfies all requirements of Sections 14.4 through 14.10, inclusive, of the General Provisions of the Contract; and (vi) in connection with this Request to Substitute Specified Item, the Contractor shall pay or otherwise be responsible for any and all costs as provided in Sections 14.8 and 14.9 of the General Provisions of the Contract.

Representative Name: \_\_\_\_\_ Representative Title: \_\_\_\_\_

Representative Signature: \_\_\_\_\_ Date Signed: \_\_\_\_\_

Date Request Received by Architect: \_\_\_\_\_

**Proposed Substitution:**

- Approved  Conditionally Approved (see notes)
- Not Approved (see notes)  Received too late (see notes)

Notes (attach additional sheets as needed): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Architect Representative:**

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

Signature: \_\_\_\_\_ Date Signed: \_\_\_\_\_

## CERTIFICATION REGARDING MASTER CONSTRUCTION SCHEDULE

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this Acknowledgment of Master Construction Schedule on behalf of the Contractor;
- (ii) The Contractor is aware and understands that the Work required for the Project has been scheduled for particular time period(s) in order to facilitate making school facilities available at particular time(s), promote the best usage of school facilities, to provide an appropriate learning environment for students, and to avoid interference with the educational, recreational and other programs to be conducted at the Project Site;
- (iii) The Contractor is aware and understands that the Master Construction Schedule for the Project, as developed and as may be modified in accordance with the Contract Documents, shall govern with respect to the timing of the Work, including, without limitation, any and all phasing of the Work specified in the Master Construction Schedule;
- (iv) The Contractor has carefully and thoroughly reviewed and considered the approved Master Construction Schedule and understands the requirements for labor, materials, equipment, supplies, and other things that are necessary to complete the Work, and any phases thereof, in strict accordance with the approved Master Construction Schedule;
- (v) The Contractor is aware and understands that, among its other responsibilities pursuant to the Contract, the Contractor shall be solely responsible for appropriately and adequately coordinating and timing the various portions of the Work (including, without limitation, in relation to work by others on the Project) to ensure that all of its Work is properly completed within the time(s) specified in the Master Construction Schedule; and
- (vi) The Contractor is aware and understands that the Contractor may be liable for costs and/or damages arising from any failure by the Contractor to perform the Work and its other obligations relating to the Project in accordance with the Master Construction Schedule.

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

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

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

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

# REQUEST FOR INFORMATION

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

**RFI No:** \_\_\_\_\_ **Date RFI Submitted:** \_\_\_\_\_

**Subject:** \_\_\_\_\_

**Drawing No:** \_\_\_\_\_ **Spec. Section/Page:** \_\_\_\_\_

**Information Requested (attach additional sheets as needed):** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Suggested Interpretation or Resolution (attach additional sheets as needed):** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Anticipated Schedule Impact:**  Yes  No **Anticipated Cost Impact:**  Yes  No

**CONTRACTOR CERTIFICATION:** The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that: (i) the undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this RFI on behalf of the Contractor; (ii) prior to submitting this RFI, the Contractor made good faith, thorough and diligent efforts to review the Contract Documents and thereby resolve the inquiry set forth herein; and (iii) the Contractor is aware and understands that the response to this RFI shall not be deemed or construed to authorize any substitution or other change in the Work unless expressly described as an authorized change in the Response by Architect, below.

**Representative Name:** \_\_\_\_\_ **Representative Title:** \_\_\_\_\_

**Representative Signature:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_

**Date RFI Received by Architect:** \_\_\_\_\_

**Response by Architect (attach additional sheets as needed):** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Architect Representative

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_

## DAILY TIME AND MATERIALS REPORT

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

**Description of Work:** \_\_\_\_\_

**Report No.:** \_\_\_\_\_ **Date Work Performed:** \_\_\_\_\_ **Date of Report:** \_\_\_\_\_

**LABOR:**

No.	Hourly Rate	Time	Description	Cost
<b>TOTAL</b>				

**EQUIPMENT:**

No.	Hourly Rate	Time	Description	Cost
<b>TOTAL</b>				

**MATERIALS:**

Quantity	Unit Cost	Description	Cost
<b>TOTAL</b>			

**CONTRACTOR CERTIFICATION:** The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that: (i) the undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this Report on behalf of the Contractor; (ii) the descriptions of the labor, equipment and materials employed in completing the Work covered by this Report are true, accurate and complete.

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

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

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

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

**ACKNOWLEDGEMENT BY INSPECTOR OF RECORD:** Based on personal observation, the undersigned believes that the descriptions of the labor, equipment and materials employed in completing the Work covered by this Report are true, accurate and complete. This acknowledgement does not constitute approval on behalf of the District.

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

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

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

### PROGRESS PAYMENT REQUEST

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

**Payment Request No:** \_\_\_\_\_ **Request Date:** \_\_\_\_\_ **For period to:** \_\_\_\_\_

**Date Request Received** (to be completed by Architect): \_\_\_\_\_

**CONTRACTOR'S REQUEST FOR PROGRESS PAYMENT:** The Contractor hereby requests payment in connection with the Project, as shown below and on attached Continuations Sheet(s).

- 1. Original Contract Price .....\$ \_\_\_\_\_
- 2. Net approved and executed Change Orders (from Continuation Sheet(s)) .....\$ \_\_\_\_\_
- 3. Contract Price as adjusted to date (line 1 + line 2) .....\$ \_\_\_\_\_
- 4. Total Work completed to date (including this Progress Payment Request) .....\$ \_\_\_\_\_
- 5. Retention from total Work completed to date (per Contract) .....\$ \_\_\_\_\_
- 6. Total Work completed less total Retention (line 4 – line 5).....\$ \_\_\_\_\_
- 7. Total prior Progress Payment Requests paid .....\$ \_\_\_\_\_
- 8. Payment due for this Progress Payment Request (line 6 – line 7) .....\$ \_\_\_\_\_
- 9. Balance to finish, including Retention (line 3 – line 4) .....\$ \_\_\_\_\_

**CONTRACTOR CERTIFICATION:** The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that: (i) the undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this Progress Payment Request on behalf of the Contractor; (ii) the portion of the Work covered by this Progress Payment Request has been completed in strict accordance with the Contract Documents; (iii) the amount specified on Line 8, above, is now due and payable; and (iv) the Contractor has paid all Subcontractors and others due any payment attributable to Work covered by prior Progress Payment Requests.

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_

**ARCHITECT CERTIFICATION:** The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that: (i) the undersigned is a duly-authorized representative of the Architect and, in that capacity, has executed this Request for Progress Payment on behalf of the Architect; (ii) the Architect has determined based on site-observations and the data substantiating this Request for Progress Payment that the Work has progressed as indicated herein, the quality of the Work is in accordance with the Contract Documents, and the Contractor is hereby entitled to payment of the amount specified on Line 8, above.

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_

**Inspector of Record Acknowledgement of Review:**

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_

**District Acknowledgement of Review:**

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_





**CONDITIONAL WAIVER AND RELEASE (PROGRESS PAYMENT)**

(Civil Code Section 8132)

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

IDENTIFYING INFORMATION

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

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

CONDITIONAL WAIVER AND RELEASE

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_

Amount of Check: \$ \_\_\_\_\_

Check Payable to: \_\_\_\_\_

EXCEPTIONS

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
  - Date(s) of waiver and release: \_\_\_\_\_
  - Amount(s) of unpaid progress payment(s): \$ \_\_\_\_\_
- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

SIGNATURE

Claimant’s Signature: \_\_\_\_\_

Claimant’s Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**UNCONDITIONAL WAIVER AND RELEASE (PROGRESS PAYMENT)**

(Civil Code Section 8134)

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**NOTICE: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

IDENTIFYING INFORMATION

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

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

UNCONDITIONAL WAIVER AND RELEASE

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: \$ \_\_\_\_\_

EXCEPTIONS

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

SIGNATURE

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

## CERTIFICATION REGARDING READINESS FOR INSPECTION

(Upon Substantial Completion)

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

**Inspection requested for** (check only one of the following):

**All of the Work**       **Portion of the Work, described as:**

\_\_\_\_\_

**(Note:** District approval required, in advance, for inspection of only a portion of the Work.)

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor;
- (ii) All inspection and testing of the Work has been completed as required by the Contract Documents and applicable law, including, without limitation, in the presence of, as applicable, the District, the Architect, the Inspector of Record, and other consultants, inspectors and government agency representatives;
- (iii) The Contractor has determined, in accordance with Section 18.1 of the General Provisions, that the Work has been satisfactorily performed in accordance with the Contract Documents (including, without limitation, that all equipment and systems installed in connection with the Work are fully operational), and the Work is now ready for inspection for purposes of determining whether the Work has been substantially completed;
- (iv) If this certification is submitted in connection with a re-inspection of any Work, the previously incomplete and/or unsatisfactory portions of the Work have been completed and/or corrected in accordance with the Contract Documents; and
- (v) The Contractor acknowledges that, as provided in Section 18.8 of the General Provisions, the Contractor shall be solely responsible and liable for any and all costs incurred by the District if the Contractor requests an inspection of any portion of the Work in any of the following circumstances:
  - (1) It is reasonably apparent that such portion of the Work is not complete and ready for inspection;
  - (2) In the reasonable opinion of the District, Architect, Construction Manager or Inspector of Record, the Contractor is using the inspection as a means to define or determine the scope of such Work or the scope of the uncompleted portions of any Work;

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- (3) In the reasonable opinion of the District, Architect, Construction Manager and/or Inspector of Record, the Contractor is using the inspection as a means to accelerate the Work of any Subcontractor;
- (4) The Work fails to pass the inspection due to any negligence or misconduct of the Contractor or any Subcontractor or other person or entity on, at or in the vicinity of the Project Site on account of the Work;
- (5) Work noted as incomplete and/or unsatisfactory during a prior inspection is not reasonably complete and/or satisfactory upon re-inspection; or
- (6) The Work is not ready for inspection and it is reasonably apparent that, for any other reason, the Contractor did not request the inspection in good faith.

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

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

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

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

**CONDITIONAL WAIVER AND RELEASE (FINAL PAYMENT)**

(Civil Code Section 8136)

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

IDENTIFYING INFORMATION

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

CONDITIONAL WAIVER AND RELEASE

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_

Amount of Check: \$ \_\_\_\_\_

Check Payable to: \_\_\_\_\_

EXCEPTIONS

This document does not affect any of the following:

Disputed claims for extras in the amount of \$ \_\_\_\_\_

SIGNATURE

Claimant’s Signature: \_\_\_\_\_

Claimant’s Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**UNCONDITIONAL WAIVER AND RELEASE (FINAL PAYMENT)**

(Civil Code Section 8138)

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

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IDENTIFYING INFORMATION

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

UNCONDITIONAL WAIVER AND RELEASE

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This claimant has been paid in full.

EXCEPTIONS

This document does not affect any of the following:

Disputed claims for extras in the amount of \$ \_\_\_\_\_

SIGNATURE

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

### CERTIFICATION REGARDING CONTRACTOR GUARANTEE

**District:** Perris Union High School District

**Project:** *Bid #050117 Epoxy Flooring in Rooms 1204 and 1213 at Perris High School*

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this acknowledgement on behalf of the Contractor;
- (ii) Without limiting any of its other obligations pursuant to the Contract Documents, the Contractor has reviewed and understands its obligations pursuant to Section 19.4, Section 19.5, and Part 20 of the General Provisions to the Contract;
- (iii) The Contractor, not later than ten days after written notice from the District, and at no cost to the District, shall repair, replace or otherwise correct to the standards required by the Contract Documents: (1) any defective, improper or otherwise faulty Work that is discovered or revealed during any applicable Guarantee Period; and (2) any systems, equipment, materials and/or other things damaged, destroyed or otherwise disturbed as a consequence of the repair, replacement or other correction of the defective, improper or faulty Work (collectively, the "Guarantee Work");
- (iv) The Contractor shall coordinate any and all Guarantee Work with the District in order to avoid interfering with District operations and/or endangering any person(s) at the Project Site, shall perform any and all Guarantee Work within the time required by the Contract, and shall provide written notice to the District upon completing required Guarantee Work;
- (v) The Contractor is aware and understands that the District, at the Contractor's cost, may cause any required Guarantee Work to be performed by other than the Contractor if: (i) the Contractor fails to undertake and/or complete any Guarantee Work within the time permitted by the Contract; or (ii) an Emergency situation exists and the delay that would result from providing notice to the Contractor and permitting the Contractor to perform the Guarantee Work would endanger or further endanger any person(s) or property; and
- (vi) The Contractor is aware and understands that, with respect to each portion of the Project affected by Guarantee Work, the applicable Guarantee Period shall be extended by the amount of time necessary to result in the Guarantee Period remaining in effect for a period of two years after the date the Guarantee Work is completed and accepted by the District.

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

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

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

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