

## 10-INDEX TO GENERAL CONDITIONS-GC

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## 10-GENERAL CONDITIONS-GC

**PROJECT TITLE/ BID #: Eissler Elementary School - Site Improvements to Parent Resource Center (Project #22203.00-55-MD)**

**OWNER: Bakersfield City School District**

### ARTICLE 1 DEFINITIONS

A. Action of the Governing Board or Other Governing Body: An official act of the governing board or other governing body of OWNER.

B. Approve: The term “approve,” where used in conjunction with the Architect’s action on the CONTRACTOR’S submittals, applications, and request, is limited to the responsibilities and duties of the Architect stated in General and Supplementary Conditions. Approval shall not release CONTRACTOR from responsibility to fulfill Contract Document requirements, unless otherwise provided in the Contract Documents.

C. Architect: The person, persons, or entity selected by OWNER to provide architectural services to the Project. Architect is an independent contractor and is not an agent of OWNER.

D. Contract Documents: All contract documents, including all official documents on this Project, including the Notice Calling for Bids, Instructions to Bidders, Bid Form, Designation of Subcontractors, Workers’ Compensation Certificate, Performance Bond, Payment Bond, Change Orders, Shop Drawings and their Transmittals, Information Required of Bidder, all prequalification forms submitted pursuant to Public Contract Code sections 20111.5 or 20111.6, if any, Substitution Listing form on any approved substitutions, Non-Collusion Declaration, Insurance Certificates, Guarantees, Contractor’s Certificate Regarding Non-Asbestos and/or Lead Containing Materials, if any, Davis-Bacon Compliance Certification, Fingerprinting Certifications, Labor Compliance Program documents, General Conditions, Supplemental General Conditions, if any, Iran Contracting Act Certification, if any, Special Conditions and/or Requirements, if any, Plans, Drawings, Specifications, the Construction Agreement, and all Modifications, addenda, and amendments of those documents.

E. Modification:

1. A written amendment to the Contract Documents signed by both parties;
2. A fully executed Change Order;
3. A written interpretation issued by the Architect; or

4. A written order for a minor change in the Work issued by the Architect.
- F. CONTRACTOR: That entity awarded this Construction Agreement by official action of OWNER. Throughout the Contract Documents CONTRACTOR is treated as being of singular number and neuter gender.
- G. Date of Acceptance: The date when all of the following conditions are satisfied:
1. OWNER is able to occupy all portions of the project.
  2. The notice of completion is recorded with local authorities.
  3. The final verified report is filed with the Division of State Architect of the Department of General Services.
  4. Acceptance of project by OWNER's governing board or other governing body.
- H. Days: Calendar days unless noted otherwise.
- I. Equivalent to: Equal or superior in function and quality and approved by the Architect.
- J. Furnish: Means “supply and deliver to the project site, ready for unloading, unpacking, assembly, installation, and similar operations.”
- K. Indicated: Refers to graphic representations, notes or schedules on the Drawings, or other Paragraphs or Schedules in Specifications, and similar requirements in Contract Documents. Where terms such as “shown,” “noted,” or “scheduled” are used, it is to help locate the reference; no limitation on locations is intended except as specifically noted.
- L. Install: Used to describe operations at the project site, including the actual “unloading, unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protection, cleaning and similar operations.”
- M. Installer: An entity engaged by CONTRACTOR, either as an employee, subcontractor, or sub-subcontractor for performance of a particular construction activity, including installation, erection, application, and similar required operations. Installers are required to be experienced in the operations they are engaged to perform and licensed as required in the individual specification sections.

N. Liquidated Damages: Pursuant to Government Code Section 53069.85, this is the specified sum of money that CONTRACTOR shall forfeit and pay to OWNER for those specified portions of the Project that are uncompleted and delayed beyond the stated completion time.

O. Or Equal: Where named products in specification text are accompanied or are deemed by law to be followed by the term “or equal,” or other language of similar effect, CONTRACTOR shall comply with those Contract Document provisions for “substitutions” when obtaining Architect’s review and consideration.

P. OWNER: The school district, community college district, County Superintendent of Schools, or other public entity executing the Construction Agreement acting through its governing board or other governing body.

Q. Plans: The reproductions of the official drawings adopted and approved by OWNER showing locations, character, dimensions, and details of the work.

R. Project: The undertaking planned by OWNER and CONTRACTOR as provided in the Contract Documents.

S. Project Inspector/Inspector of Record: Any individual or firm retained by OWNER as the on-site inspector for a particular project hired by and paid by OWNER and under general direction of the Architect or registered engineer in charge. The Project Inspector shall be responsible for inspecting all work included in the Contract Documents. A special inspector shall be responsible only for inspecting the work for which he/she is approved. Inspectors are independent contractors and are not agents or employees of OWNER.

T. Project Manual: The volume(s) that include the bidding requirements, sample forms, and all of the initial Contract Documents, such as Conditions of the Contract, Schedules and Details Manual, the Specifications, and the addenda to be used on the Project.

U. Project Site: The space available to CONTRACTOR for performance of the Work, either exclusively or in conjunction with others performing other construction as part of the Project. The extent of the Project Site is shown on the Drawings, and may or may not be identical with the description of the land upon which the Project is to be built.

V. Provide: Includes “provide complete in place,” that is, furnish and install.

W. Refer: Indicates that the subject is defined or specified in further detail at another location in the Contract Documents or elsewhere as indicated. Except, as

otherwise noted, “refer” does not imply that CONTRACTOR must purchase or subcontract the subject work in any special manner.

X. Related Work in Other Sections: A nonrestrictive term used throughout the Specifications to coordinate the Work and facilitate checking and bidding.

Y. Required: As required by Contract Documents.

Z. Safety Orders: Issued by Division of Industrial Safety and OSHA Safety and Health Standards for Construction.

AA. Specification: The printed instruction and requirements which complement the plans as to the methods and manner of performing the Work or to the quantities and qualities of the materials to be furnished.

BB. Subcontractor: Includes those having a direct contract with the CONTRACTOR and those who furnish material worked to a special design according to plans, drawings, and Specifications of this work, but does not include those who merely furnish material not so worked.

CC. Surety: The firm or corporation executing CONTRACTOR’S Performance Bond and/or Payment Bond as surety, as the context indicates.

DD. Testing Laboratory: An independent entity engaged to perform specific inspections or test, either at the Project Site or elsewhere, and to report on, and if required, interpret results of those inspections or tests. It is not an agent of OWNER.

EE. Unfinished: Refers to the status of the Work prior to reaching completion, as described in Article 61.

FF. Work: Work of the CONTRACTOR and subcontractors, including all labor or materials (including without limitation, equipment, and appliances), both incorporated in, or to be incorporated in the Project in order to fully meet the requirements of the Contract Documents.

## **ARTICLE 2 STATUS OF CONTRACTOR**

A. CONTRACTOR is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of the Contract Documents.

B. Nothing contained in the Contract Documents shall be construed as creating the relationship of employer and employee, or principal and agent, between OWNER and CONTRACTOR or any of CONTRACTOR'S agents or employees.

C. CONTRACTOR exclusively assumes the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. CONTRACTOR, its agents, and employees shall not be entitled to any rights or privileges of OWNER employees and shall not be considered in any manner to be OWNER employees.

D. OWNER shall be permitted to monitor the activities of CONTRACTOR to determine compliance with the terms of the Contract Documents.

E. Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any contractor not so licensed is subject to penalties under the law and the Construction Agreement will be considered void pursuant to Business and Professions Code Section 7028.7. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, 3132 Bradshaw Road, Post Office Box 2600, Sacramento, California, 95826.

F. Contractors or subcontractors are not qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. This project is subject to monitoring by the Department of Industrial Relations.

### **ARTICLE 3 CONTRACTOR SELECTION PROCESS AND PROHIBITED INTERESTS**

A. As a means of maintaining the integrity of the formal selection process, contacts with individual members of OWNER's Board of Trustees or governing body on behalf of any bidding firm relative to this Project will be considered inappropriate.

B. No official of OWNER who is authorized in such capacity and on behalf of OWNER to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving, any architectural, engineering, inspection, construction, or material supply contract, or any subcontract in connection with construction of the Project, shall have any direct or indirect financial interest in any part of this Project.

C. No officer, employee, architect, attorney, engineer, or inspector of or for OWNER who is authorized in such capacity and on behalf of OWNER to exercise any executive, supervisory, or other similar functions in connection with construction of the Project shall have any direct or indirect financial interest in any part of this Project.

D. CONTRACTOR shall receive no compensation and shall repay OWNER for any compensation received should CONTRACTOR aid, abet, or knowingly participate in any violation of this Article.

#### **ARTICLE 4 CHANGE IN NAME OR NATURE OF CONTRACTOR'S LEGAL ENTITY**

Before CONTRACTOR makes any change in the name or legal nature of the CONTRACTOR'S entity, CONTRACTOR shall first notify OWNER in writing and cooperate with OWNER in making such changes as OWNER may request in the Contract Documents.

#### **ARTICLE 5 DEBARRED CONTRACTOR**

A. Pursuant to Labor Code Sections 1777.1 and 1777.7, a contractor may be prohibited from bidding or performing work as a subcontractor on a public works project.

B. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the Project shall be returned to the awarding body. The contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

C. Pursuant to Public Contract Code Section 4701, CONTRACTOR shall request the substitution of any subcontractor who has been debarred by the California Labor Commissioner from working as a subcontractor on public work.

#### **ARTICLE 6 SUBCONTRACTING**

A. CONTRACTOR agrees to bind each and every subcontractor to the terms of the Contract Documents as far as the terms are applicable to the subcontractor's work. Each subcontract shall contain a reference to Contract Documents, and the terms of the Contract Documents shall be incorporated into and made a part of each subcontract. If CONTRACTOR subcontracts any part of its work under the Construction Agreement, CONTRACTOR shall be responsible to OWNER for any acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors. Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and OWNER.

B. OWNER'S consent to or approval of any subcontractor shall not in any way relieve CONTRACTOR of its obligations under the Contract Documents , and no such consent or approval shall be deemed to waive any provision of the Contract Documents.

C. CONTRACTOR must submit with its bid a Designation of Subcontractors. If CONTRACTOR specifies more than one subcontractor for the same portion of work or



fails to specify a subcontractor, and such portion of the work exceeds one-half of one percent of the total bid, CONTRACTOR agrees that it is fully qualified to perform and shall perform such work itself. The substitution or addition of subcontractors shall be permitted only as authorized by Public Contract Code Sections 4100, et seq.

D. All subcontractors shall be appropriately licensed and registered with DIR to perform the work for which employed in conformity with the laws of the State of California.

E. In accordance with California Business and Professions Code Section 7059, if CONTRACTOR is designated as a "specialty contractor" (as defined in Public Contract Code Section 7058), all of the work to be performed outside of the Contractor's license specialty, except "incidental" work as that term is used in Section 7059(a), shall be performed by a licensed subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100, et seq.

F. A copy of each subcontract, if in writing, or if not in writing, then a written statement signed by the Contractor giving the name of the subcontractor and the terms and conditions of such subcontract, shall be filed with OWNER before the subcontractor begins work. Each subcontract will provide for termination in accordance with these General Conditions. Each subcontract shall provide for its annulment by CONTRACTOR at the order of the Architect if in the Architect's opinion the subcontractor fails to comply with the requirements of the Contract Documents insofar as the same may be applicable to this work.

G. Nothing contained in these General Conditions shall relieve CONTRACTOR of any liability or obligation under the Contract Documents, nor shall any permissible substitution or addition of a subcontractor result in any increase in the contract price or in an extension of time for completion of the Project.

H. CONTRACTOR shall require subcontractors to include the provisions of this article in their sub-subcontracts, if any.

I. Each subcontract applicable to this Project is hereby assigned to OWNER, such assignment to become effective only upon termination of the Construction Agreement for cause pursuant to the Contract Documents, and only as to such subcontracts as OWNER may, in its sole discretion, select and provide written notice of such assignment, and such assignments are subject to the rights and obligations of the surety on any applicable bonds, as detailed in the Contract Documents.

## **ARTICLE 7 ARCHITECT'S STATUS**

A. The Architect shall be OWNER's representative during construction and shall observe the progress and quality of the Work on behalf of OWNER. The Architect shall have the authority to act on behalf of OWNER only to the extent expressly provided in the Contract Documents. The Architect shall have authority to stop work whenever necessary, in the Architect's reasonable opinion, to ensure the proper execution of the Work of the Project.

B. The Architect shall be, in the first instance, the judge of the performance of the Work. The Architect shall exercise authority under the Contract Documents to enforce CONTRACTOR's faithful performance.

C. The Architect shall have all authority and responsibility established by law, including Title 24 of the California Code of Regulations. The Architect has the authority to enforce compliance with the Contract Documents and CONTRACTOR shall promptly comply with instructions from the Architect or an authorized representative of the Architect.

D. On all questions related to quantities, acceptability of material, equipment, or workmanship, execution, progress, or sequence of work, the interpretation of plans, specifications, or drawings, and the acceptable performance of CONTRACTOR, the decision of the Architect shall govern and shall be a condition precedent to any payment, unless otherwise ordered by OWNER. CONTRACTOR shall not impair or delay the progress and completion of the Work by virtue of any question or dispute arising out of or related to the foregoing matters, or the instructions of the Architect relating to them.

E. General supervision and direction of the Work by the Architect shall in no way imply that the Architect or its representatives are in any way responsible for the safety of CONTRACTOR or its employees or that the Architect or its representatives will maintain supervision over CONTRACTOR'S construction methods, means, or personnel other than to ensure that the quality of the finished work is in accordance with the Contract Documents.

## **ARTICLE 8 PROJECT INSPECTOR AND INSPECTOR FACILITIES**

A. One or more Project Inspectors ("IOR"), including specialty Inspectors as required, employed by OWNER and operating under direction of the Architect, in accordance with the requirements of the California Code of Regulations Titles 21 and 24, will be assigned to the Work. All work shall be performed under the observation of or with the knowledge of the Project Inspector. The Project Inspector shall have free access to all parts of the Work at any time. CONTRACTOR shall furnish the Project

Inspector with such information as may be necessary to keep the Project Inspector fully informed regarding the progress and manner of work and the character of materials.

B. Observations by the Project Inspector shall not in any way relieve CONTRACTOR from responsibility for full compliance with all terms and conditions of the Contract Documents, or be construed to lessen to any degree CONTRACTOR's responsibility for providing efficient and capable superintendence.

C. The Project Inspector is not authorized to make changes in the drawings or Specifications, nor shall the Project Inspector's approval of the Work and methods relieve CONTRACTOR of responsibility for the correction of subsequently discovered defects, or from its obligation to fully comply with the Contract Documents.

## **ARTICLE 9 COPIES FURNISHED**

CONTRACTOR will be furnished five copies of the drawings and specifications free of charge. Additional copies may be obtained for the cost of reproduction.

## **ARTICLE 10 OWNERSHIP OF DRAWINGS**

All documents prepared on behalf of OWNER including, without limitation the Plans, Specifications, drawings, and other documents, are instruments of service of the Architect and/or its consultants and are the property of OWNER. Neither CONTRACTOR nor any Subcontractor, Sub-subcontractor, material or equipment supplier or anyone else shall own or claim a copyright in such documents. Unless otherwise indicated, the Architect shall be deemed the author of such documents. Such documents are furnished to CONTRACTOR for use solely with respect to this Project, and are not to be used for any other purpose by CONTRACTOR or any Subcontractor, Sub-subcontractor, or material or equipment supplier, or anyone claiming through them without the express written consent of OWNER. CONTRACTOR, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the documents for use in the execution of their work under the Contract Documents.

## **ARTICLE 11 DOCUMENTS ON WORK**

A. CONTRACTOR shall keep one copy of all Contract Documents, including addenda, change orders, shop drawings, and other modifications, and Titles 19, 21, and 24 of the California Code of Regulations, on the job at all times. The documents shall be kept in good order and accurately marked to record all changes made during construction. The documents shall be available to the Architect and its representatives at all times.

B. CONTRACTOR shall be acquainted with and comply with all statutes and regulations as they relate to this Project. (See particularly the duties of Contractor, Title 24 California Code of Regulations, Sections 4-343.) CONTRACTOR shall also be acquainted with and comply with all provisions of the California Code of Regulations relating to conditions on this Project, particularly Titles 8 and 17.

## **ARTICLE 12 DRAWINGS AND SPECIFICATIONS**

A. Drawings and Specifications are intended to delineate and describe the Project and its component parts sufficiently to enable skilled and competent contractors to intelligently bid upon the work, and to carry the Work to a successful and timely conclusion.

B. Organization of the Specifications into divisions, sections, and articles, and arrangement of drawings, shall not control CONTRACTOR in dividing the Work among subcontractors or in establishing the extent of work to be performed by any trade.

C. The drawings and Specifications describe the work to be performed by CONTRACTOR. Generally, the Specifications describe work which cannot be readily indicated on the drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of work in the Specifications which can be adequately shown on the drawings, or to show on the drawings all items of work described or required by the Specifications even if they could have been shown.

D. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. The Contract Documents are intended to encompass all labor and materials, equipment, and transportation necessary for proper execution of the Work. Any item of work mentioned in the Specifications and not shown on the drawings, or shown on the drawings and not mentioned in the Specifications, shall be provided by CONTRACTOR as if shown in both.

E. All materials or labor for the Work which are shown either by the Drawings or the Specifications (or are reasonably inferable from the Drawings or the Specifications as being necessary to complete the work) shall be provided by CONTRACTOR, whether or not the work is expressly covered in either the Drawings and/or the Specifications. It is intended that the Work be of sound, quality construction. CONTRACTOR must furnish adequate labor and materials to cover installation of all items indicated, described, or implied in the portion of the Work to be performed.

F. Drawings and Specifications are intended to comply with all laws, ordinances, rules and regulations of authorities having jurisdiction, and where referred to in the Contract Documents, such laws, ordinances, rules and regulations shall be considered as a part of the Contract Documents within the limits specified. If CONTRACTOR

observes that the drawings or Specifications are contrary to applicable law, ordinance, rule or regulation, CONTRACTOR shall immediately notify the Architect in writing, and any changes deemed necessary by the Architect shall be made as provided in the Contract Documents for changes in work. If CONTRACTOR performs any work which CONTRACTOR knows or through the exercise of reasonable diligence should have known to be contrary to any law, rule, regulation, or ordinance without seeking and obtaining clarification, CONTRACTOR shall bear any and all costs arising from it, including without limitation the costs of correction without increase or adjustment to the contract price or the time for performance.

G. Materials or work described in words which have a well known technical or trade meaning shall be deemed to refer to those recognized standards.

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

I. Naming any material and/or equipment requires CONTRACTOR to furnish and install the named material/equipment, including all incidental and accessory items and/or labor necessary to achieve full and complete functioning of the material and/or equipment according to the best practices of the trade(s) involved, unless specifically noted otherwise.

J. Figured dimensions on drawings shall govern, but work not dimensioned shall be as directed. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large scale drawings shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials, workmanship, and installation procedures, provided however that the drawing or specification calling for the higher quality material or workmanship shall prevail, without additional cost to OWNER.

K. In case of inconsistencies in the descriptions of work to be done, equipment to be provided or material to be used, it is intended that the more stringent, higher quality, and greater quantity of work shall apply, without additional cost to OWNER.

L. All items indicated on the drawings or in the Specifications as future items require CONTRACTOR to provide all the mechanical, electrical, and other necessary service hookups or provisions required to make the equipment function as intended. Such items shall be provided to the location where the future item is indicated to be installed.

M. In the event of an inconsistency between the Construction Agreement or General Conditions and the other various Contract Documents, the Construction Agreement or General Conditions shall control.

N. Drawings and specifications are intended to be fully cooperative and to agree. If CONTRACTOR observes that drawings and Specifications are in conflict, CONTRACTOR shall promptly notify the Architect in writing, requesting clarification. Should CONTRACTOR commence work on any part of the Work without seeking clarification, CONTRACTOR waives any claim for extra work or damages as a result of any ambiguity, conflict, or lack of information. Questions regarding interpretation of drawings and Specifications shall be clarified by the Architect in writing.

O. If CONTRACTOR or its subcontractors, material, or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any work to be done under the Contract Documents which it knows, or should have known, to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, CONTRACTOR shall bear any and all resulting costs, including without limitation the costs of correction without increase or adjustment to the contract price or the time for performance.

P. Should clarification by the Architect be deemed new or additional work, the cost shall be adjusted as provided in these General Conditions for "Changes and Extra Work," provided however that requirements calling for the higher quality material or workmanship shall prevail without additional cost to OWNER or time adjustment.

Q. In the event the Architect determines that CONTRACTOR's requests for clarification or interpretation are not justified, or do not reflect adequate, competent supervision or knowledge by CONTRACTOR, or by the subcontractors, CONTRACTOR shall be required to pay the Architect's reasonable and customary fees in processing and responding to such requests.

R. Some drawings or other documents may be required of CONTRACTOR. If CONTRACTOR performs, permits, or causes the performance of any work under the documents prepared by or on the behalf of CONTRACTOR which document is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, CONTRACTOR shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the contract price or the time for performance. In no case shall any subcontractor proceed with the work if uncertain without CONTRACTOR'S written direction and/or approval.

S. If it is found at any time, whether before or after completion of the work, that CONTRACTOR has varied from the drawings and/or Specifications in materials, quality, form, or finish, or in the amount or value of the materials and labor used, the Architect shall make a recommendation either: (1) that all such improper work should be

removed, remade, and replaced, and all work disturbed by these changes be made good at CONTRACTOR'S sole expense; or (2) that OWNER deduct from any amount due CONTRACTOR the sum of money equivalent to the difference in value between the work performed and that called for by the drawings and Specifications. The Architect shall determine such difference in value. At its option, OWNER may pursue either recommendation made by the Architect.

## **ARTICLE 13 DETAIL DRAWINGS AND SPECIFICATIONS**

A. In case of ambiguity, conflict, or lack of information, the Architect shall furnish additional instructions, by means of drawings or otherwise, necessary for proper execution of the Work. All drawings and instructions shall be consistent with the Contract Documents, true developments of them, and reasonably inferable from them. Any additional instructions shall be furnished with reasonable promptness, provided that CONTRACTOR informs the Architect of the relationship of the request to the critical path of construction.

B. Work shall be executed in conformity with the Contract Documents and CONTRACTOR shall do no work without proper drawings and instructions.

C. The Architect will furnish necessary additional details to more fully explain the work, which shall be considered as part of the Contract Documents.

D. Should any details be more elaborate, in the opinion of CONTRACTOR, than scale drawings and specifications warrant, CONTRACTOR shall give written notice to the Architect within five days of receipt of the details. In case no notice is given to the Architect within five days, it will be assumed the details are reasonable development of the scale drawings. In case notice is given, the details will be considered and if found justified the Architect will either modify the drawings or shall recommend to OWNER a change order for any extra work involved.

E. All parts of the construction shall be of the best quality of their respective kinds and CONTRACTOR shall use all diligence to become fully involved in the required construction and finish, and in no case to proceed with the different parts of the Work without first obtaining from the Architect directions and/or drawings as may be necessary for proper performance of the Work.

## **ARTICLE 14 SHOP DRAWINGS AND SUBMITTALS**

A. The term "shop drawing" shall be understood to include, but not be limited to detail design calculations, fabrication and installation drawings, lists, graphs, and operating instructions.

B. CONTRACTOR shall check and verify all field measurements and shall promptly submit six copies of all shop or setting drawings, schedules, and material lists required for the work of various trades, checked and approved by CONTRACTOR.

C. All submittals of shop drawings, catalog cuts, data sheets, schedules, and material lists shall be complete and shall conform to contract drawings and specifications. Except where the preparation of a shop drawing is dependent upon the approval of a prior shop drawing, all shop drawings pertaining to the same class or portion of the work shall be submitted simultaneously.

D. Shop drawings shall be submitted at a time sufficiently early to allow review by the Architect and the Division of State Architect (DSA) if required, and to accommodate the rate of construction progress required under the Contract Documents. CONTRACTOR will be required to pay the Architect's reasonable and customary fees to expedite review of shop drawings which are not submitted in timely fashion.

E. Calculations of a structural nature must be approved by the DSA.

F. All shop drawing submittals shall be accompanied by an accurately completed transmittal form using the format provided by OWNER. Any shop drawing submittal not accompanied by the transmittal form, or where all applicable items on the form are not completed, will be returned for resubmittal. CONTRACTOR may authorize a material or equipment supplier to deal directly with the Architect with regard to shop drawings, however ultimate responsibility for the accuracy and completeness of the information contained in the submittal shall remain with CONTRACTOR.

G. Normally, a separate transmittal form shall be used for each specific item or class of material or equipment for which a submittal is required. Transmittal of shop drawings on various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency indicates review of the group or package as a whole. At its option, CONTRACTOR or suppliers may obtain quantities of the shop drawing transmittal form at reproduction cost from the Architect.

H. CONTRACTOR's review and approval of shop drawings shall include the following stamp:

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



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Signature of CONTRACTOR"

I. The Architect's review of shop drawings will be limited to checking for general agreement with the Contract Documents, and shall in no way relieve CONTRACTOR of responsibility for errors or omissions contained in them, nor shall the review operate to waive or modify any provision contained in the Contract Documents. The Architect's approval of the drawings or schedules shall not relieve CONTRACTOR of its responsibility for deviations from drawings or specifications unless CONTRACTOR has called the Architect's attention to the deviations, in writing, at the time of submission, and secured the Architect's written approval.

J. Fabricating dimensions, quantities of material, applicable code requirements, and other contract requirements shall be CONTRACTOR's responsibility.

K. Within 21 calendar days after receipt of shop drawings, the Architect will return one or more prints of each drawing to CONTRACTOR with the Architect's comments noted on them.

L. If prints of the shop drawings are returned to CONTRACTOR marked "NO EXCEPTIONS TAKEN," formal revision of the drawings will not be required. If prints of the shop drawings are returned to CONTRACTOR marked "MAKE CORRECTIONS NOTED," formal resubmittal of the drawings will not be required. If prints of the shop drawings are returned to CONTRACTOR marked "REVISE AND RESUBMIT," CONTRACTOR shall revise the drawings and resubmit six copies of the revised drawings to the Architect. If prints of the shop drawings are returned to CONTRACTOR marked "REJECTED; RESUBMIT," CONTRACTOR shall resubmit six new copies of the drawing to the Architect.

M. CONTRACTOR shall make a complete and acceptable submittal to the Architect by the second submission of drawings. OWNER shall withhold funds due to CONTRACTOR to cover additional costs of the Architect's review beyond the second submission and any other costs incurred by OWNER.

N. Fabrication of an item shall not be commenced before the Architect has reviewed the pertinent shop drawings and returned copies to CONTRACTOR marked "NO EXCEPTIONS TAKEN," or "MAKE CORRECTIONS NOTED." Revisions indicated on shop drawings shall be considered changes necessary to meet the requirements of the Contract Documents and shall not be taken as the basis of claims for extra work.

O. No work represented by required shop drawings shall be purchased or commenced until the applicable submittal has been approved. The work shall conform to the approved shop drawings and all other requirements of the Contract Documents. CONTRACTOR shall not proceed with any related work which may be affected by the

work covered under shop drawings until the applicable shop drawings have been approved, particularly where piping, machinery, equipment, and/or the required arrangements and clearances are involved.

**P. CONTRACTOR SHALL HAVE NO CLAIM FOR DAMAGES OR EXTENSION OF TIME DUE TO ANY DELAY RESULTING FROM CONTRACTOR HAVING TO MAKE REQUIRED REVISIONS TO SHOP DRAWINGS UNLESS THE ARCHITECT'S REVIEW OF THE DRAWINGS IS DELAYED BEYOND THE TIME PROVIDED IN THE CONTRACT DOCUMENTS AND CONTRACTOR CAN ESTABLISH THAT THE ARCHITECT'S DELAY IN REVIEW ACTUALLY RESULTED IN A DELAY IN CONTRACTOR'S CONSTRUCTION SCHEDULE. CONTRACTOR SHALL NOT BE ENTITLED TO ANY CLAIM FOR DAMAGES RESULTING FROM DSA REVIEW EXTENDING BEYOND 15 CALENDAR DAYS AFTER SUBMITTAL. HOWEVER, OWNER MAY CONSIDER AN EXTENSION OF TIME DUE TO ANY DELAY CAUSED BY DSA REVIEW.**

#### **ARTICLE 15 SAMPLES**

A. Within 35 calendar days following award of contract, or a shorter time as circumstances require, CONTRACTOR shall furnish for approval all samples required in the Specifications, together with catalogs and supporting data required by the Architect. This provision shall not authorize any extension of time for performance of the work. The Architect shall review the samples, as to conformance with design concept of work and compliance with information given in the Contract Documents, and approve or disapprove them within 10 working days from receipt.

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

C. Upon demand of the Architect or OWNER, designated samples shall be submitted or tests or examinations and considered before incorporation into the Work. CONTRACTOR shall be solely responsible for delays due to samples not being submitted in time to allow for tests. Acceptance or rejection will be expressed in writing. Work shall be equal to approved samples in every respect. Samples which are of value after testing will remain the property of CONTRACTOR.

D. Work commenced before approval of samples subject to tests or examinations shall be at the sole risk of CONTRACTOR. CONTRACTOR alone shall bear the entire cost of repair, removal, or replacement of work commenced prior to approval of samples subject to tests or examinations.

## **ARTICLE 16 WORK TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS**

A. CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, and regulations relating to the Work required by the Contract Documents.

B. If CONTRACTOR observes that the Drawings and/or Specifications are at variance with any applicable law, ordinance, rule, or regulation, CONTRACTOR shall promptly notify the Architect in writing, and any changes deemed necessary by the Architect shall be made as provided in the Contract Documents for changes in work. If CONTRACTOR performs any work which CONTRACTOR knows, or through the exercise of reasonable care should have known, to be contrary to any laws, ordinances, rules, or regulations, and fails to notify the Architect, CONTRACTOR shall bear all arising costs, including without limitation the costs of correction without increase or adjustment to the contract price or the time for performance. Where Plans, Drawings, or Specifications state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall, or other body or agency, CONTRACTOR shall be responsible for satisfying the requirements of those bodies or agencies.

## **ARTICLE 17 WORK AND MATERIALS**

A. Except as otherwise specifically stated in the Contract Documents, CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of every kind, and all other services and facilities necessary to perform and complete the Work within the time specified.

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

C. Materials shall be furnished in ample quantities and at times to ensure uninterrupted progress of the work and shall be properly stored and protected. CONTRACTOR shall be solely responsible for any damage or loss by weather, theft, or other causes to materials or work under the Contract Documents. After issuance of the Notice to Proceed by OWNER, CONTRACTOR shall place orders for materials and/or equipment as specified so that delivery may be made without delays to the Work. Upon demand from the Architect, CONTRACTOR shall furnish to the Architect documentary evidence showing that orders have been placed.

D. In the event of failure to comply with the above instructions, OWNER reserves the right to place orders for any materials and/or equipment as it may deem advisable in order that the Work may be completed at the date specified in the Contract Documents, and all expenses incidental to procuring the materials and/or equipment shall be paid for by CONTRACTOR.

E. No material, supplies, or equipment for work under the Contract Documents shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest in all or any part is retained by the seller or supplier. CONTRACTOR warrants good title to all material, supplies, and equipment installed or incorporated in the Work, and upon completion of all work agrees to surrender the premises to OWNER, together with all improvements and appurtenances constructed or placed by CONTRACTOR, free from any claims, liens, or charges. CONTRACTOR further agrees that neither CONTRACTOR nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract Documents shall have any right to a lien upon the premises or any improvement or appurtenance, except that CONTRACTOR may install metering devices or other equipment of utility companies or political subdivisions, title to which is commonly retained by the utility company or political subdivision. In the event of the installation of any metering device or equipment, CONTRACTOR shall advise OWNER as to its owner. Nothing contained in this article however shall defeat or impair the legal right of persons furnishing material or labor to look to funds due and owing CONTRACTOR for payment. This provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

F. Title to new materials and/or equipment, and attendant liability for their protection and safety, shall remain in CONTRACTOR until incorporated in the Work and accepted by OWNER. No part of these materials and/or equipment shall be removed from their place of storage except for immediate installation in the Work, and CONTRACTOR shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to OWNER or its authorized representative.

G. Price, fitness, and quality being equal with regard to supplies, OWNER may prefer supplies grown, manufactured, or produced in California. OWNER may next prefer supplies partially manufactured, grown, or produced in California provided the bids of suppliers or the prices quoted by them do not exceed by more than five percent the lowest bids/prices quoted by out-of-state suppliers, the major portion of the manufacture of the supplies is not done outside of California, and the public good will be served. (Government Code Sections 4330-4334)

## **ARTICLE 18 CONTRACTOR'S SUPERVISION, PROSECUTION, AND PROGRESS**

A. Unless personally present on premises where the work is being done, CONTRACTOR shall maintain competent project supervision at all times during working hours, which includes but is not limited to a Project Manager and all additional personnel necessary to maintain progress of the Project within the approved contract schedule satisfactory to the Architect. The Project Manager shall not be changed except with the written consent of the Architect. The Project Manager shall represent

CONTRACTOR in its absence and all directions given to the Project Manager shall be binding on CONTRACTOR.

B. Unless personally present on premises where the work is being done, CONTRACTOR shall maintain a competent Superintendent on the work site at all times, satisfactory to the Architect. The Superintendent shall not be changed except with the written consent of the Architect. The Superintendent shall represent CONTRACTOR in its absence and all directions given to the Superintendent shall be binding on CONTRACTOR.

C. Before commencing the Work, CONTRACTOR shall give written notice to OWNER and the Architect of the name, qualifications, and experience of CONTRACTOR's proposed Project Manager and Superintendent. If either the Project Manager or Superintendent is found unsatisfactory by OWNER, CONTRACTOR shall replace that person with one acceptable to the OWNER.

D. CONTRACTOR shall supervise and direct the work competently and efficiently, devoting such attention and applying such skills as may be necessary to perform the Work in accordance with the Contract Documents.

E. Before commencing the Work, CONTRACTOR shall verify all grade lines, levels, and dimensions indicated on the Drawings and shall report any apparent error or inconsistencies to the Architect before commencing work. CONTRACTOR shall not proceed until reported apparent errors and inconsistencies are corrected or otherwise resolved by the Architect and OWNER.

F. CONTRACTOR shall establish and maintain all construction grades, lines, and bench marks, and be responsible for their accuracy and protection.

G. CONTRACTOR represents itself to OWNER as a skilled, knowledgeable, and experienced CONTRACTOR who will or has carefully studied and compared the Contract Documents with each other, and CONTRACTOR further represents it has or shall at once report to the Architect any errors, inconsistencies, or omissions discovered in them. CONTRACTOR shall be liable to OWNER for damage resulting from errors, inconsistencies, or omissions in the Contract Documents that CONTRACTOR either:

1. Recognized and knowingly failed to report; or
2. Should have recognized, and which a similarly skilled, knowledgeable, and experienced contractor would have discovered, which CONTRACTOR negligently failed to recognize and report.

H. CONTRACTOR shall verify all indicated dimensions before ordering materials or equipment, or before performing work. CONTRACTOR shall take field measurements,

verify field conditions, and carefully compare the field measurements and conditions and other information known to CONTRACTOR with the Contract Documents before commencing work. Errors, inconsistencies, or omissions discovered shall be reported to OWNER at once. Upon commencement of any item of work, CONTRACTOR shall be responsible for dimensions related to the item of work and shall make any corrections necessary to make work properly fit at no additional cost to OWNER. This responsibility for verification of dimensions is a non-delegable duty and may not be shifted to subcontractors or agents.

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

J. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. CONTRACTOR shall be responsible to see that the finished work complies accurately and completely with the Contract Documents

## **ARTICLE 19 SUBSTITUTIONS**

A. CONTRACTOR shall follow all instructions and requirements for substitutions set forth in the Instructions to Bidders and in this article.

B. OWNER desires that whenever possible all substitution requests be resolved prior to contract award. For that reason, no substitution requests, whether of "equal" materials, process, service, equipment, or otherwise, may be made after the bid date except by the express written permission of OWNER and on such terms as OWNER may require, or in the case of an emergency as where a specified material, process, service, equipment or other item has become unavailable through no fault of CONTRACTOR.

C. As to any emergency substitution request, CONTRACTOR shall timely submit the request, together with substantiating data, including substitution warranties, in order to prevent delays arising from the substitution request.

D. With respect to all proposed substitutions:

1. Every substitution request shall be on the substitution request form designated by OWNER, if any, and shall be accompanied by all substantiating data.

2. CONTRACTOR shall furnish with its substitution request all drawings, Specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and OWNER in determining whether the proposed substitution is acceptable, including but not limited to the following:

- a. Identify product by Specifications section and article numbers; provide manufacturer's name and address, trade name of product, and model or catalog number; list fabricators and suppliers as appropriate.
- b. Attach product data as required by Specifications.
- c. List similar projects using product, dates of installation, and names of Architect/Engineer and owner.
- d. Give itemized comparison of proposed substitution with specified product, listing variations and reference to Specifications section and article numbers.
- e. Give quality and performance comparison between proposed substitution and specified product.
- f. Give cost data comparing proposed substitution with specified product and amount of net change to contract sum.
- g. Identify any required license fees or royalties.
- h. List availability of maintenance services and replacement materials.
- i. State the effect of the substitution on the construction schedule, and the effect of any changes required in other work or products; include a document waiving rights to additional payment or time that may become necessary because of the failure of the substitution to perform adequately.

3. OWNER is not responsible for locating or securing any information which is not included in any substantiating data.

4. The proposed substitution must be, in the opinion of OWNER, substantially equal or better in every respect to what is specified. The burden of proof as to the quality or suitability of proposed substitutions shall be borne by CONTRACTOR.

5. With the assistance of the Architect, OWNER shall be the sole judge as to the quality and suitability of proposed substituted items, and decisions of the OWNER shall be final and conclusive.
6. All substitutions shall be submitted with a substitution warranty. Any substitution requests submitted without the warranty will not be considered, but will be returned to CONTRACTOR without review or evaluation. If required by OWNER, CONTRACTOR shall provide an extended warranty for the requested substitution.
7. No extension of time shall be granted if the extension request arises from a request for substitution, whether by reason of delay in making the request, delay in OWNER's approval of the request, delay in obtaining other governmental approvals, delay in coordination of substitutions into or with other work or equipment, delay in obtaining the substituted items, increased time of installation or performance, or for any other reason.
8. Once any part or all of a substitution request has been denied, it is considered always denied.
9. A substitution request shall be submitted separately from any other submittal and shall be clearly marked as a "request for substitution."
10. If the substitution is accepted, CONTRACTOR shall bear all costs and be solely and directly responsible for fitting accepted substitute materials and equipment into the available space in a manner acceptable to the Architect and OWNER, and for the proper operation of the substituted equipment with other equipment with which it may be associated. In addition, CONTRACTOR shall acknowledge in writing on CONTRACTOR's letterhead, that CONTRACTOR accepts complete responsibility for additional costs required for modifications to building or other materials and equipment and additional coordination of work.
11. Any additional time, including Architect review time, and any additional coordination, inspection, materials, equipment, labor, tools, warranty extension, or other items necessary to either accomplish a substitution or arising as a result of a substitution request will be the sole responsibility of and at the sole expense of CONTRACTOR, who will reimburse OWNER for review or redesign services associated with approval by the Architect and obtaining all required approvals by other agencies.
12. CONTRACTOR shall also be responsible for meeting all code requirements whether local, city, county, state, federal, or other.



F. If the substitution requested by CONTRACTOR is not substantially equal or better in every respect to that specified, in the opinion of DISTRICT, CONTRACTOR shall provide and/or perform as specified.

G. In the event CONTRACTOR furnishes a material, process, service, or equipment more expensive than that specified, the difference in cost of such material, process, service, or equipment furnished shall be borne by CONTRACTOR. Any difference in cost between an approved substitution which is lower in cost than the originally specified item shall be refunded by CONTRACTOR to OWNER.

H. Any engineering, design, or approval agencies' fees required to make adjustments in material or work of all trades directly or indirectly affected by the approved substitution shall be borne entirely by CONTRACTOR. If a substitution is approved, any additional time required to obtain shop drawings, order materials, make modifications, perform testing, or whatever else is necessary to make the substitution function properly in place of the originally specified item shall be borne solely by CONTRACTOR. It will also be CONTRACTOR's responsibility to acquire and install the substituted item in the time frame allowed under the Contract Documents. No time extension need be granted to CONTRACTOR for any substitution, except as OWNER in its sole discretion may deem appropriate.

## **ARTICLE 20 PROTECTION OF WORK AND PROPERTY**

A. CONTRACTOR shall be responsible for all damages to persons or property which occur as a result of CONTRACTOR's fault or negligence in connection with performance under the Contract Documents, and for the proper care and protection of all materials delivered and work performed until completion and final acceptance by OWNER. With the exception of damage to the Work caused by "acts of God," as defined in Public Contract Code 7105, CONTRACTOR assumes the risk for damage or destruction of any or all work performed under the Contract Documents. CONTRACTOR shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and this article.

B. CONTRACTOR shall take, and require subcontractors to take, all necessary precautions for safety of workers and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to the work site and to provide a safe and healthful place of employment. CONTRACTOR shall furnish, erect, and properly maintain at all times, as directed by OWNER or the Architect, or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created by such features in the course of construction. CONTRACTOR shall designate a responsible employee whose

duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. The name and position of the person so designated shall be reported in writing to OWNER by CONTRACTOR. CONTRACTOR shall correct any violation of safety laws, standards, orders, rules, or regulations. Upon issuance of a citation or notice of violation by the California Division of Occupational Safety and Health, the violation shall be corrected immediately by CONTRACTOR at CONTRACTOR's expense.

C. In an emergency affecting safety of life, work, or adjoining property, CONTRACTOR is permitted to act at its discretion without special instruction or authorization from the Architect or OWNER to prevent any threatened loss or injury, and CONTRACTOR shall act if authorized or instructed by the Architect or OWNER. Any compensation claimed by CONTRACTOR for emergency work shall be determined according to the Contract Documents.

D. CONTRACTOR shall (unless waived by OWNER in writing):

1. Provide heat, covering, and enclosures necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions;
2. Take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property, and structures, and avoid damage to them, and repair any damage caused by construction operations;
3. When performing new construction on existing sites, become informed and take into specific account the maturity of the students on the site, and perform work which may interfere with school routine before or after school hours; enclose the work area with a substantial barricade and arrange work to cause a minimum of inconvenience and danger to students and staff in their regular school activities;
4. Provide substantial barricades around any shrubs or trees to be preserved;
5. Deliver materials to the building area over the route designated by the Architect;
6. Take preventative measures to eliminate excessive dust;

7. Confine apparatus, storage of materials, and the operations of its workers within limits indicated by law, ordinances, permits, or directions of the Architect and not unreasonably encumber the premises with materials;

8. Enforce all instructions of OWNER and the Architect regarding signs, advertising, fires, danger signals, barricades, and smoking, and require that all persons employed on the Work comply with all regulations while on the construction site;

9. Exercise reasonable care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners; if markers are disturbed, they shall be replaced by an approved civil engineer at no cost to OWNER.

## **ARTICLE 21 USE OF ASBESTOS OR LEAD MATERIALS/PRODUCTS**

A. CONTRACTOR shall not use any asbestos or lead containing products or materials in performing the work under the Contract Documents. Upon completion of the Project, CONTRACTOR shall certify in writing to OWNER that no asbestos or lead containing materials or products were used by CONTRACTOR or any subcontractor in performing the work required by the Contract Documents.

B. Should asbestos containing materials be installed by CONTRACTOR in violation of this certification, or if removal of asbestos containing materials is otherwise a part of the Project, decontaminations and removals will meet the following criteria:

1. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by Cal-OSHA.

2. Any asbestos removal contractor shall be a Cal-OSHA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.

3. The asbestos consultant shall be chosen and approved by OWNER who shall have sole discretion and final determination in this matter.

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

C. Cost of all asbestos removal, including but not limited to the cost of an asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees,

time delays, and additional costs as may be incurred by OWNER shall be borne entirely by CONTRACTOR.

D. Interface of work for the Project with work containing asbestos shall be executed by CONTRACTOR at CONTRACTOR's risk and at CONTRACTOR's discretion with full knowledge of the currently accepted standards, hazards, risks, and liabilities associated with asbestos work and asbestos containing materials. By execution of the Construction Agreement, CONTRACTOR acknowledges the above and agrees to hold harmless OWNER, its governing board, or other governing body, employees, agents, and the Architect and assigns for all asbestos liability which may be associated with this work. CONTRACTOR further agrees to instruct CONTRACTOR's employees with respect to the above standards, hazards, risks, and liabilities.

E. Should lead containing materials be installed by CONTRACTOR in violation of this certification, or if removal of lead containing materials is part of the Project, decontaminations and removals will meet the criteria approved by OWNER.

F. The cost of all removals or decontaminations resulting from the installation of materials in violation of this certification shall be at the sole expense of CONTRACTOR.

## **ARTICLE 22 LAYOUT AND FIELD ENGINEERING**

All field engineering required for laying out this Work and establishing grades for earthwork operations shall be furnished by CONTRACTOR at its expense. The work shall be done by a qualified civil engineer approved by the Architect. "As-Built" drawings of site development and utilities' locations and inverts shall be prepared by an approved civil engineer.

## **ARTICLE 23 UTILITIES**

A. All utilities, including but not limited to electricity, water, gas, and telephone used on the Work, shall be furnished and paid for by CONTRACTOR. CONTRACTOR shall furnish and install necessary temporary distribution systems, including meters if necessary, from distribution points to points on the site where the utility is necessary to perform the work. Upon completion of the Work, CONTRACTOR shall remove all temporary distribution systems.

B. If this Project is for an addition to an existing facility, CONTRACTOR may use existing OWNER utilities, with the written permission of OWNER, by making prearranged payments to OWNER for utilities used by CONTRACTOR for construction.

## **ARTICLE 24 UTILITIES: REMOVAL, RESTORATION**

A. Pursuant to Government Code section 4215, OWNER assumes the responsibility for removal, relocation, and protection of utilities located on the construction site at the time of commencement of construction with respect to any main or trunkline utility facilities which are not identified in the Plans and Specifications. CONTRACTOR shall not be assessed any delay in completion of the Project caused by OWNER's failure to provide for removal or relocation of utility facilities. OWNER shall compensate CONTRACTOR for the costs of locating, repairing damage not due to CONTRACTOR's failure to exercise reasonable care, and removing or relocating any utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during the work, using the provisions of the Contract Documents on changes in the Work.

B. This article shall not be construed to preclude assessment against CONTRACTOR for any other delays in completion of the Work. Nothing in this article shall be deemed to require OWNER to indicate the presence of existing service laterals or appurtenances whenever the presence of those utilities on the construction site can be inferred from the presence of other visible facilities, such as buildings or meter junction boxes on or adjacent to the construction site.

C. If while performing work under the Contract Documents, CONTRACTOR discovers utility facilities not identified by OWNER in the contract Plans or Specifications, CONTRACTOR shall immediately notify OWNER and the utility in writing.

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

## **ARTICLE 25 SANITARY FACILITIES**

CONTRACTOR shall provide temporary sanitary toilet facilities as required by law and additional facilities as directed by the Project Inspector for the use of all workers. The facilities shall be maintained in a sanitary condition and left at the site until removal is directed by the Project Inspector. Use of toilet facilities contained in the Work under construction shall not be permitted except with the approval of the Project Inspector.

## **ARTICLE 26 LABOR—FIRST AID**

CONTRACTOR shall maintain emergency first aid treatment on the Project for all workers of CONTRACTOR or any subcontractors on the Project, and shall ensure compliance with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Section 651 et seq.).

## ARTICLE 27 CHANGES AND EXTRA WORK

A. As used in this article, the following definitions shall apply:

1. "Labor" means any amount(s) paid directly to non-supervisory workers (up to and including general foreman) in the form of employee wages and benefits in order to perform the Work. These costs shall include documented payroll cost (wages, payroll taxes, fringe benefits, workers compensation) and general liability insurance as submitted and approved by OWNER.

2. "Material" means all products, equipment, and devices that are physically incorporated into the work to be performed. Any costs or equipment, facilities, or services not physically incorporated in the work to be performed but necessary for its completion shall be considered "overhead." Cash or trade discounts available to the purchaser shall be credited to OWNER. Material costs secured by other than direct purchase and billing will be the price paid to the actual supplier as determined by OWNER. Markup will not be allowed. If cost of materials is deemed excessive, the price will be determined to be the lowest current wholesale price delivered to the site, less cash or trade discount.

3. "Equipment" costs shall include transportation and setup costs, if CONTRACTOR can substantiate that the Work could not have been performed economically with equipment already at the site. Rental costs shall not exceed rates set forth in the then-current "Rental Rate Blue Book," published by Dataquest, Inc., Palo Alto, California, as adjusted to this region. Owned equipment costs shall not exceed rates set forth in the then-current "Cost Reference Guide for Construction Equipment," published by Dataquest. Hours of usage must be documented by CONTRACTOR in order to be the basis for equipment utilization charges for Change Orders. CONTRACTOR will not be allowed to charge for idle equipment.

4. "Overhead" means any necessary costs and expenses incurred in the performance of the Work excluding "labor," "materials," and "equipment" as defined above.

B. Without invalidating the Contract Documents, OWNER may order extra work or make changes by altering, adding to, or deducting from the Work, and the contract sum shall be adjusted accordingly. All the work shall be subject to the conditions of the Contract Documents, except that any claim for extension of time caused by changes shall be adjusted at the time of ordering the change, with adjustments to time being made after CONTRACTOR has justified, through documentation, the impact on the critical path of the Project.

C. In giving instructions, the Architect shall have authority to make minor changes in the Work not involving a change in cost and not inconsistent with purposes of the Project, subject to DSA approval. If so authorized by OWNER, OWNER's Representative, if one has been identified, may authorize changes in work involving a change in cost that does not exceed \$15,000. Otherwise, except in an emergency endangering life or property, no extra work or change shall be performed unless pursuant to a written order from OWNER, and no claim for any addition to the contract amount or time shall be valid unless by written order of OWNER. A Change Order will not be officially approved until ratified by OWNER's Board of Trustees or other governing body.

D. If the Architect determines that the work required to be done constitutes extra work outside the scope of the Contract Documents, the Architect shall send a request for a detailed proposal to CONTRACTOR. CONTRACTOR will respond with a detailed proposal within five calendar days of receipt of the request for proposal. If the work is to be performed by a subcontractor, CONTRACTOR's proposal must include a bid from the subcontractor.

E. If the Architect determines the work required does not constitute extra work, or work for which CONTRACTOR may recover additional compensation, the Architect shall so notify CONTRACTOR. If CONTRACTOR is not in agreement with the determination by the Architect, CONTRACTOR shall immediately give notice of any claim as provided in the Contract Documents. CONTRACTOR shall perform the required work in timely fashion.

F. At the discretion of OWNER, the value of any extra work, change, or deduction shall be determined in one or more of the following ways:

1. By acceptable lump sum proposal from CONTRACTOR, a total sum for the changed work may be mutually determined by OWNER and CONTRACTOR. CONTRACTOR shall furnish a breakdown of the proposed lump sum cost satisfactory to OWNER, which shall be full and final compensation for the change, including time adjustment.

2. By contract unit prices contained in CONTRACTOR's original bid and incorporated in the Contract Documents, or fixed by subsequent agreement between OWNER and CONTRACTOR. Where payment for Change Orders is based on unit prices stipulated in CONTRACTOR's bid, those unit prices shall constitute the total equitable adjustment due for the change. If a change is ordered in an item or work covered by a contract unit price, and the change does not involve a substantial change in the character of the work from that shown on the Plans or included in the Specifications, an adjustment in payment will be made based upon the increase or decrease in quantity and the contract unit price. In the case of such an increase or decrease in a major bid Item, the use

of this basis for the adjustment of payment will be limited to that portion of the change which, together with all previous changes to that item, is not in excess of 25 percent of the total cost of such item based on the original quantity and contract unit price. If a change is ordered in an item of work covered by a contract unit price, and the change does involve a substantial change in the character of the work from that shown on the Plans or included in Specifications, an adjustment in payment will be made in accordance with other sections of this article. Should any contract item be deleted in its entirety, payment will be made only for actual costs incurred prior to notification of such deletion.

3. Stipulated contract unit prices are those established by OWNER in the Contract Documents, as distinguished from contract unit prices submitted by CONTRACTOR, and may be used for the adjustment of contract changes. Whether set forth in the Contract Documents or subsequently agreed upon, all contract unit prices shall include overhead, profit, and increased premium on the Surety Bonds.

4. By cost of labor, material, equipment, and subcontract, plus a percentage for overhead and profit. If the value is determined by this method the following requirements shall apply:

a. Daily reports by CONTRACTOR, as follows:

(i) General. At the close of each working day, CONTRACTOR shall submit a daily report to the Architect and the Project Inspector on forms approved by OWNER, together with applicable delivery tickets listing all labor, materials, and equipment involved for that day, and for other services and expenditures, when authorized, concerning extra work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Architect and CONTRACTOR. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by subcontractors or others shall be submitted through CONTRACTOR.

(ii) Labor. The report shall show names of workers, classifications, and hours worked and hourly rate. Project supervision expenses, including for foremen and above, are not allowed.

(iii) Materials. The report shall describe and list quantities of materials used and unit cost.



(iv) Equipment. The report shall show the type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable, and hourly/daily costs.

(v) Other Services and Expenditures. Other services and expenditures shall be described in such detail as OWNER may require.

b. Basis for Establishing Costs

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

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

(iii) Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$100 or less or where an invoice is not provided. Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental sources or distributors at the time the work is performed. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Necessary loading and transportation costs for equipment used on the extra work shall be included. If equipment is used intermittently, and when not in use could be returned to its rental source at less expense to OWNER than holding it at the work site, it shall be

returned, unless CONTRACTOR elects to keep it at the work site at no expense to OWNER. All equipment shall be acceptable to the Architect in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and manufacturer's approved modifications shall be used to classify equipment and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

(iv) Other Items. OWNER may authorize other items which may be required on the extra work. These items include labor, services, material, and equipment which are different in their nature from those required by the work and which are of a type not ordinarily available from CONTRACTOR or any of the Subcontractors. Detailed invoices covering all such items shall be submitted with the request for payment.

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

c. The following form shall be used by OWNER and CONTRACTOR as applicable to communicate proposed additions and deductions to the Contract Documents.

EXTRA CREDIT

- (i) Material (attached itemized quantity and unit cost plus sales tax
- (ii) Labor (attached itemized hours and rates)
- (iii) Subtotal
- (iv) If Subcontractor performed work, add Subcontractor's overhead and profit to portions performed by it, not to exceed 10% of Item (iii) above
- (v) Subtotal
- (vi) CONTRACTOR's Overhead and Profit, including any increased bond costs, not to exceed 10% of Item (v)
- (viii) Total

**5. IT IS EXPRESSLY UNDERSTOOD THAT THE VALUE OF SUCH EXTRA WORK OR CHANGES AS DETERMINED BY ANY OF THESE METHODS EXPRESSLY INCLUDES ANY AND ALL OF CONTRACTOR'S COSTS AND EXPENSES, BOTH DIRECT AND INDIRECT, RESULTING FROM DELAYS OR ADDITIONAL TIME REQUIRED ON THE PROJECT, OR RESULTING FROM ACCELERATED WORK TO AVOID DELAYS TO THE PROJECT.**

G. For changes that increase the contract price, CONTRACTOR may include amounts for overhead and profit. CONTRACTOR's overhead (general and administrative) and profit shall include, but not be limited to additional bond costs, additional job site facilities costs, additional home and field office costs, additional administrative costs, additional cleaning, and additional project supervision costs (which includes but is not limited to a Project Manager and any and all additional personnel necessary to maintain the project progress within the approved contract schedule).

H. CONTRACTOR'S overhead, profit, and additional bond costs on the cost of work performed by CONTRACTOR shall be a total sum not exceeding 10 percent of the cost of work.

I. CONTRACTOR'S overhead, profit, and additional bond costs on the cost of work performed by Subcontractors of all tiers shall be a total sum not exceeding 10 percent of those costs.

J. Subcontractors' (all tiers) overhead and profit on the cost of work performed by Subcontractor shall be a total sum not exceeding 10 percent of the cost of labor, materials, rentals, etc.

K. Overhead and profit shall not be applied to taxes, delivery charges, and insurance by CONTRACTOR or its subcontractors or sub-subcontractors.

L. Before CONTRACTOR is authorized to proceed with extra work or changes on the basis set forth in this Article, OWNER and CONTRACTOR shall be in complete agreement on what the term "costs" shall include and the percentage amount of fixed fee CONTRACTOR is to charge.

M. If CONTRACTOR should claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation constitutes a change, extra work, or otherwise obligates OWNER to pay additional compensation to CONTRACTOR or to grant an extension of time, or constitutes a waiver of any provision in the Contract Documents, CONTRACTOR shall notify OWNER in writing of such claim within five calendar days from the date CONTRACTOR has actual or constructive notice of the factual basis supporting the claim. The notice shall state the

factual basis for the claim and cite in detail the Contract Documents (including plans and specifications) upon which the claim is based. CONTRACTOR's failure to notify OWNER within the five-day period shall be deemed a waiver and relinquishment of such a claim. If the notice is given within the specified time, the procedure for its consideration shall be as stated in these General Conditions. In the event of failure to agree, the matter shall be treated as a claim following the claims procedures in the Contract Documents.

N. Costs which shall not be paid in Change Orders under the Contract Documents include but are not limited to interest costs of any type, claim preparation or filing costs, costs in preparing or reviewing proposed change orders or proposals, CQR's, ASI's, etc., lost revenue, lost profit, lost income or earnings, rescheduling costs, costs of idled equipment, lost earnings or interest on unpaid retainage, claims consulting costs, costs of corporate officers or staff visiting the site, fluctuation of foreign currency conversion or exchange rate costs, or loss of other business.

O. Notwithstanding any other provision in the Contract Documents, the adjustment in the contract price, if any, and the adjustment in the contract time, if any, set out in a change order shall constitute the entire compensation and/or adjustment in the contract time due CONTRACTOR arising out of the change in the work covered by the change order, including any extensions of time, unless otherwise expressly stated in the change order. The amount of any compensation due CONTRACTOR shall be calculated pursuant to this Article. The compensation shall not include any additional charges not set forth in this Article and shall not include delay damages due to processing a change order or refusal to sign a change order, or any indirect, consequential, or incidental costs, including any project management costs, extended home office and field office overhead, administrative costs, or profit except as such matters may be authorized under this Article.

P. In furtherance of the intent to settle all change orders fully and finally at the issuance date of the change order, the following shall be expressly incorporated in writing and deemed incorporated in all change orders:

**THE COMPENSATION (TIME AND COST) SET FORTH IN THIS CHANGE ORDER COMPRISES THE TOTAL COMPENSATION DUE CONTRACTOR FOR THE CHANGE DEFINED IN THE CHANGE ORDER, INCLUDING IMPACT ON UNCHANGED WORK. ACCEPTANCE OF THIS CHANGE ORDER CONSTITUTES A FULL AND COMPLETE ACCORD AND SATISFACTION OF ANY AND ALL CLAIMS BY CONTRACTOR ARISING OUT OF OR RELATING TO THE CHANGE ORDER, INCLUDING BUT NOT LIMITED TO CLAIMS FOR CONTRACT BALANCE AND RETENTION, TIME, EXTENDED FIELD OR HOME OFFICE, OR OTHER OVERHEAD, ALL ACCELERATION, IMPACT, DISRUPTION AND DELAY DAMAGES, ANY AND ALL OTHER**

**DIRECT AND/OR INDIRECT COSTS, CLAIMS BY SUBCONTRACTORS AND SUPPLIERS, AND ANY AND ALL OTHER CLAIMS AGAINST OWNER FOR TIME OR MONEY, FROM ANY SOURCE AND UNDER ANY LEGAL THEORY WHATSOEVER, AS TO THE SUBJECT OF THIS CHANGE ORDER. NO SIGNATURE UNDER PROTEST OR ACCOMPANIED BY RESERVATION OF RIGHTS OR PROTEST LANGUAGE, OR ANY OTHER ATTEMPTS TO AVOID SUCH WAIVER SHALL BE OF ANY FORCE OR EFFECT WHATSOEVER. NO ADDITIONS OR DELETIONS TO THIS CHANGE ORDER SHALL BE ALLOWED, EXCEPT WITH WRITTEN PERMISSION OF OWNER.**

Q. Within 10 days of the notice to proceed, CONTRACTOR shall submit a detailed list of the field office overhead cost components which are time related and which represent costs incurred as a direct result of time extensions. No allowance for overhead costs and no profit allowance will be allowed on the extended daily field overhead cost component of the change Order. The deviation of an extended home office overhead rate and its application to contract time extensions shall not be allowed.

#### **ARTICLE 28 CORRECTION OF WORK BEFORE FINAL PAYMENT**

A. CONTRACTOR shall promptly remove from the premises all work identified by OWNER as failing to conform to the Contract Documents, whether incorporated or not. CONTRACTOR shall promptly replace and repair its own work to comply with the Contract Documents, without additional expense to OWNER, and shall bear the expense of making good all work of other contractors destroyed or damaged by that removal or replacement, including compensation for the Architect's additional services.

B. If CONTRACTOR does not remove work within a reasonable time following written notification, OWNER may remove and store the material at CONTRACTOR'S expense. If CONTRACTOR does not pay the expenses of removal within 10 days, OWNER may sell the materials at auction or private sale upon 10 days' written notice, and shall account for any net proceeds after deducting all costs and expenses that should have been borne by CONTRACTOR.

#### **ARTICLE 29 DEDUCTIONS FOR UNCORRECTED WORK**

A. If CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract Documents, after 10 days' written notice to CONTRACTOR, OWNER may make good such deficiencies without prejudice to any other remedy it may have.

B. OWNER shall reduce the total contract price by the cost of making good such deficiencies.

C. If OWNER deems it inexpedient to correct work not performed in compliance with the Contract Documents, an equitable deduction from the contract price shall be made.

### **ARTICLE 30 CLEANING UP**

A. CONTRACTOR shall at all times keep the work site free from debris such as waste, rubbish, and excess materials and equipment caused by this Work. CONTRACTOR shall not leave debris under, in, or about the work site, but shall promptly remove all items.

B. Upon completion of the Work, CONTRACTOR shall clean the interior and exterior of each building, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected. CONTRACTOR shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment, and remove temporary fencing, barricades, planking, sanitary facilities, and similar temporary facilities from the site.

C. If CONTRACTOR fails to clean up at the completion of the Work, OWNER may do so and the cost for such cleanup shall be charged back to CONTRACTOR and may be deducted from future progress or final payments.

D. CONTRACTOR shall not include cleaning as an additional line item for change order payments. Cleaning is included in the overhead expenses included in the CONTRACTOR's and/or Subcontractor's overhead and profit percentage.

### **ARTICLE 31 ACCESS TO WORK**

OWNER and its representatives shall at all times have access to the Work wherever it is in preparation or progress. CONTRACTOR shall provide safe and proper facilities for access so OWNER's representatives may perform their functions under the Contract Documents.

### **ARTICLE 32 GUARANTEE**

A. CONTRACTOR warrants that the Work, including any equipment furnished by CONTRACTOR, shall be:

1. Free from defects in workmanship and material;
2. Free from defects in any design performed by CONTRACTOR;

3. New, and conform and perform to the requirements stated in the Specifications, and where detail requirements are not so stated, shall conform to applicable industry standards; and

4. Suitable for the use stated in the Specifications.

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

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

D. In the event CONTRACTOR or Surety fails to commence and pursue with diligence any replacements or repairs within one week after being notified in writing, OWNER is authorized to proceed to have any defects repaired at the expense of CONTRACTOR and Surety, and CONTRACTOR and Surety agree to pay the costs and charges immediately on demand.

E. If defective work creates a dangerous condition, in the opinion of OWNER, or requires immediate correction or attention to prevent further loss to OWNER or to prevent interruption or operations of OWNER, OWNER shall attempt to give the notice required by this Article. If CONTRACTOR or Surety cannot be contacted or neither complies with OWNER's request for correction within a reasonable time, as determined by OWNER, without regard to the provisions of this Article, OWNER may proceed to make the correction or provide the attention, and the costs of correction or attention shall be charged against CONTRACTOR. Any action by OWNER shall not relieve CONTRACTOR of the guarantees provided in this Article or elsewhere in the Contract Documents.

F. This article does not in any way limit the guarantee on any items for which a longer guarantee is specified, or any items for which a manufacturer gives a guarantee for a longer period. CONTRACTOR shall furnish OWNER with all appropriate guarantee or warranty certificates upon completion of the Project.

G. All guarantees required under this Article shall be considered to be in writing on the guarantee provided by CONTRACTOR, and CONTRACTOR shall use the form included in the Contract Documents unless otherwise agreed by OWNER.

H. OWNER may collect its reasonable costs and attorneys' fees in any action to enforce this Article.

### **ARTICLE 33 SURVEYS**

OWNER shall furnish all surveys describing the physical characteristics, legal limitations, and utility locations for the site of the Project and a legal description of the site. Surveys to determine locations of construction, grading, and site work shall be provided by CONTRACTOR.

### **ARTICLE 34 SOILS INVESTIGATION REPORT**

A. When a soils investigation report has been obtained from test holes at the site, that report is available for CONTRACTOR's use in preparing its bid and work under the Contract Documents. Any information obtained from the report or any information given on drawings as to subsurface soil conditions or as to elevations of existing grades or elevations of underlying rock, is approximate only, is not guaranteed, and **is not part of the Contract Documents**. CONTRACTOR is required to make a visual examination of the site and must make whatever tests it deems appropriate to determine the actual underground condition of the soil.

B. CONTRACTOR agrees that it will make no claim against OWNER for damages in the event that during progress of the Work, CONTRACTOR encounters subsurface or latent conditions at the site materially different from those shown on drawings or indicated in Specifications or soils reports, or for unknown conditions of an unusual nature which differ materially from those ordinarily encountered in work of the type provided for in the Plans and Specifications.

C. If during the course of work under the Contract Documents CONTRACTOR encounters subsurface or latent conditions which differ materially from those indicated in the soils investigation report, or drawings, or Specifications, CONTRACTOR shall notify OWNER of same within five working days of discovery of the condition.

**WARNING: OWNER does not warrant the soils at the project site. A soils investigation report is provided for CONTRACTOR'S information only.**



**CONTRACTOR represents it has conducted an independent investigation of the project site and the soil conditions of the site. CONTRACTOR is solely responsible to ascertain site conditions for the purposes of determining construction means and methods before commencing construction.**

#### **ARTICLE 35 PERMITS AND LICENSES**

A. All necessary permits and licenses shall be secured and paid for by CONTRACTOR unless otherwise provided in the Contract Documents.

B. All permits, licenses, and certificates shall be delivered to the Architect before demand is made for the certificate of final payment.

C. CONTRACTOR shall, and shall require subcontractors to, maintain appropriate contractor's licenses in effect as required by law throughout the entire Project.

D. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by OWNER unless otherwise specified.

E. Permits and charges for installation and inspection of utility services by serving utilities shall be secured and paid for by OWNER.

#### **ARTICLE 36 CUTTING AND PATCHING**

A. CONTRACTOR shall do all cutting, fitting, or patching of the Work as required to make its several component parts come together properly, and fit it to receive or be received by any work of other contractors indicated on, or reasonable implied by, the drawings and Specifications, and shall follow all directions given by the Architect.

B. Any cost caused by defective or ill-timed work shall be borne by CONTRACTOR.

C. CONTRACTOR shall not endanger any work by cutting, excavating, or otherwise altering work, and shall not cut or alter work of any other contractor except with the written consent of the Architect.

D. CONTRACTOR shall be solely responsible for protecting existing work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.

E. When modifying existing work or installing new work adjacent to existing work, CONTRACTOR shall match the finishes, textures, and colors of the original work as closely as conditions of site and materials will allow, refinishing existing work as required, at no additional cost to OWNER.

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

## **ARTICLE 37 TESTS AND INSPECTIONS**

A. If the Contract Documents, OWNER's instructions, laws, ordinances, or any public authority requires any work to be specially tested or approved, CONTRACTOR shall give notice, in accordance with requirements of such authority, of CONTRACTOR's readiness for observation or inspection. Such notice shall be given at least two working days prior to being tested or covered up. If inspection is by authority other than OWNER, CONTRACTOR shall inform OWNER's Inspector of the date fixed for such inspection. Required certificates of inspection shall be secured by CONTRACTOR. Observations by OWNER shall be promptly made, and where practicable, at the source of supply. If any work is covered up without approval or consent of OWNER, if required by OWNER, it must be uncovered for examination and satisfactorily reconstructed at CONTRACTOR's expense, in compliance with the Contract Documents. The cost of inspection or testing of any materials which are not in compliance with the Contract Documents shall be borne by CONTRACTOR. If the inspection or testing was paid for by OWNER, it will be charged back to and paid by CONTRACTOR. Other costs for tests and inspection of materials shall be paid by OWNER, unless otherwise provided in the Contract Documents.

B. Where the inspection and testing will be conducted by an independent laboratory or agency, the materials or samples of materials to be tested shall be selected by the laboratory or agency, or OWNER's representative, and not by CONTRACTOR.

C. CONTRACTOR shall notify OWNER in writing a sufficient time in advance of the manufacture of any materials to be supplied to CONTRACTOR under the Contract Documents, which materials must be tested according to the terms of the Contract Documents, in order that OWNER may arrange for testing at the source of supply. Materials shipped by CONTRACTOR from the source of supply without having satisfactorily passed testing and inspection, or prior to receipt of notice from OWNER that testing and inspection will not be required, shall not be incorporated into the Work without the prior approval of OWNER and subsequent testing and inspection.

D. Reexamination or retesting of questioned work may be ordered by OWNER, and if so ordered any work must be uncovered by CONTRACTOR. If the work is determined to be in accordance with the Contract Documents, OWNER shall bear the

costs of reexamination or retesting and replacement. If the work is not in accordance with the Contract Documents, CONTRACTOR shall bear the costs.

### **ARTICLE 38 EXCAVATION DEEPER THAN FOUR FEET**

A. CONTRACTOR shall provide adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation. Any such method used shall conform to applicable safety standards.

B. If the Contract Documents involve the excavation of any trench or trenches more than four feet in depth, in advance of excavation CONTRACTOR shall submit to OWNER, or to whomever OWNER designates, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches. If the plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety of the Department of Industrial Relations, the plan shall be prepared by a registered civil or structural engineer employed by CONTRACTOR, and all costs of the plan shall be included in the contract price. In no case shall the plan be less effective than that required by the Construction Safety Orders. No excavation of any trench or trenches shall be commenced until the plan has been accepted by CAL-OSHA and a CAL-OSHA permit for the plan is delivered to OWNER.

C. If the Contract Documents involve digging trenches or excavations that extend deeper than four feet below the surface, the following shall apply:

1. Before the following conditions are disturbed, CONTRACTOR shall promptly notify OWNER in writing of any:

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

b. Subsurface or latent physical conditions at the site different from those indicated.

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

2. OWNER shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a

decrease or increase in CONTRACTOR's cost or the time required for performance of any part of the Work, shall issue a change order under the procedures described in the Contract Documents.

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

### **ARTICLE 39 WORKERS**

A. At all times, CONTRACTOR shall enforce strict discipline and good order among its employees, shall not employ any unfit person or anyone not skilled in the work assigned, and shall require the same of all subcontractors of all tiers. It shall be the responsibility of CONTRACTOR to ensure subcontractor compliance with this Article.

B. Any person in the employ of CONTRACTOR or subcontractors whom OWNER may deem to be incompetent, unfit, troublesome, or otherwise undesirable, shall be excluded from the work site and shall not again be employed on it except with written consent of OWNER.

### **ARTICLE 40 FINGERPRINTING WORKERS**

A. CONTRACTOR shall comply with the applicable requirements of Education Code sections 45125.1 and 45125.2 with respect to fingerprinting CONTRACTOR's employees and pupil safety. CONTRACTOR shall also ensure that each of its subcontractors on the Project complies with the applicable requirements of sections 45125.1 and 45125.2. To this end, CONTRACTOR must complete and submit to OWNER the certification form included in the Contract Documents for itself and its subcontractors prior to commencing work on the Project. At CONTRACTOR's expense, CONTRACTOR shall comply with any directive from OWNER specifying measures to ensure the safety of pupils, including but not limited to one or more measures described in Education Code section 45125.2(a).

B. Should CONTRACTOR or any subcontractor feel its employees will have limited or less contact with OWNER's pupils, application shall be made to OWNER for a determination on that question. The determination by OWNER shall be final. In the event OWNER makes a determination of limited or less contact with pupils, CONTRACTOR shall comply with any directive by OWNER to ensure the safety of pupils, at CONTRACTOR's expense.

C. Use of Education Code section 45125.2(a)(1), (2), or (3) for compliance with these fingerprinting requirements is subject to prior OWNER approval. The determination by OWNER on the application of any of these sections shall be final.

D. In no event shall any employee of CONTRACTOR or its subcontractors come into contact with OWNER's pupils before the certification is completed and approved by OWNER.

#### **ARTICLE 41 WAGE RATES AND PAYROLL RECORDS**

A. Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2, of the California Labor Code, OWNER has ascertained the general prevailing rate of per diem wages for each craft, classification, or type of worker needed to execute the work of the Project in the locality in which this public work is to be performed. The general prevailing rates of per diem wages are available at OWNER's office. CONTRACTOR is responsible to pay those rates determined to be applicable by the Director of the Department of Industrial Relations and OWNER shall not be responsible for any damages arising from the error.

B. When permitted by law, holiday and overtime work shall be paid at a rate of at least one and one-half times the specified rate of per diem wages, unless otherwise specified.

C. CONTRACTOR shall pay and shall cause to be paid to each worker engaged in work on the Project not less than the general prevailing rate of per diem wages, regardless of any contractual relationship which may exist between CONTRACTOR or any Subcontractor and such workers.

D. Pursuant to Labor Code Section 1775, CONTRACTOR shall forfeit and OWNER shall withhold from payments to CONTRACTOR not more than \$200 for each calendar day any worker is paid less than the established prevailing wage rates for the work or craft in which the worker is employed by CONTRACTOR on the Project. The difference between the established prevailing wage rates and the amount paid to each worker for each whole or partial calendar day for which each worker was paid less than the established prevailing wage rates shall be paid to each worker by CONTRACTOR.

E. Any worker employed to perform work on the Project which is not covered by any classification available in OWNER's office, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

F. Pursuant to Labor Code Section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel, subsistence, apprenticeship, and similar purposes.

G. At appropriate conspicuous points on the site of the Project, CONTRACTOR shall post job site notices prescribed by the Department of Industrial Relations, including but not limited to, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

H. CONTRACTOR shall submit a breakdown of all labor costs for this Project by trade. This breakdown shall be for all labor that CONTRACTOR or any subcontractor supplies to the Project. This information shall be provided to OWNER before the **first payment request** after the Notice to Proceed has been issued. Failure to provide the labor cost breakdown will result in delay in processing the payment request until the complete cost breakdown is provided by CONTRACTOR and received and approved by OWNER. No other labor expenses will be considered unless approved in writing by OWNER.

I. Pursuant to the provisions of Labor Code Section 1776, CONTRACTOR shall keep and shall cause each Subcontractor performing any portion of the work on the Project to keep an accurate payroll record, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONTRACTOR in connection with the Work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating that (1) the information contained in the payroll record is true and correct, and (2) the employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the Project.

J. The payroll records required under this article shall be certified and shall be available for inspection at all reasonable hours at CONTRACTOR's principal office on the following basis:

1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request;
2. A certified copy of all required payroll records shall be made available for inspection or furnished upon request to a representative of OWNER, the Division of Labor Standards Enforcement, and/or the Division of Apprenticeship Standards of the Department of Industrial Relations;
3. A certified copy of all payroll records required under this article shall be made available for inspection or copies made upon request by the public;

provided, however, that a request by the public shall be made through either OWNER, the Division of Apprenticeship Standards, or the Department of Industrial Relations. If the requested payroll records have not been provided pursuant to Paragraph 2 above, prior to being provided the records, the requesting party shall reimburse the costs of preparation by CONTRACTOR, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at CONTRACTOR's principal office.

4. The form of certification shall be as follows:

I, \_\_\_\_\_ (*printed name*), the undersigned, am the \_\_\_\_\_ (*position in business*) with the authority to act for and on behalf of \_\_\_\_\_ (*name of business and/or CONTRACTOR*), and certify under penalty of perjury that the records or copies submitted \_\_\_\_\_ and \_\_\_\_\_ consisting \_\_\_\_\_ of (*description, number of pages*) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named.

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

K. CONTRACTOR shall file a certified copy of the required payroll records with the entity requesting the records within 10 days after receipt of a written request. In the event CONTRACTOR fails to comply within the 10-day period, as a penalty to OWNER CONTRACTOR shall forfeit \$100 for each calendar day, or portion of each calendar day, for each worker until strict compliance is effectuated. Upon request by the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

L. Payroll records made available for inspection as copies and furnished upon request to the public by OWNER, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. Payroll records furnished to agencies that are included in the Joint Enforcement Strike Force on the Underground Economy and other law enforcement agencies investigating violations of law shall be unredacted. The name and address of CONTRACTOR shall not be marked or obliterated in either case.

M. CONTRACTOR shall inform OWNER of the location of the payroll records, including the street address, city, and county, and within five working days shall provide a written notice of a change of location and address.

N. It shall be CONTRACTOR's responsibility to ensure compliance with the provisions of this article and the provisions of Labor Code Section 1776.

O. This project is subject to prevailing wage monitoring and enforcement by the Department of Industrial Relations. CONTRACTOR and all subcontractors shall be subject to the requirements of Subchapter 4.5 of Chapter 8 of Title 8 of the California Code of Regulations. Contractor and all subcontractors must furnish electronic certified payroll records to the DIR on the frequency specified in the Notice Calling for Bids using the DIR's eCPR system. To enroll in the eCPR system or obtain additional information and assistance, CONTRACTOR is directed to the DIR website at [www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html](http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html). CONTRACTOR shall comply with all requirements of the Labor Code and attendant regulations pertaining to prevailing wage monitoring and compliance as indicated in the Contract Documents, and/or as required by the DIR. CONTRACTOR shall permit OWNER, the DIR or their designee to interview CONTRACTOR's employees concerning compliance with prevailing wage, apprenticeship, and related matters, whether or not during work hours, and shall require each subcontractor to provide OWNER, the DIR or their designee with such access to its employees.

## **ARTICLE 42 APPRENTICES**

A. CONTRACTOR acknowledges and agrees that the Contract Documents are governed by the provisions of Labor Code Section 1777.5 where applicable. It shall be CONTRACTOR's responsibility to ensure compliance with this article and with Labor Code Section 1777.5 for all apprenticing occupations.

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

C. Every apprentice shall be paid the prevailing rate of per diem wages for apprentices in the trade to which the apprentice is registered, and shall be employed only at the work of the craft or trade to which the apprentice is registered.

D. Only apprentices as defined in Labor Code Section 3077 who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards, and who are parties to written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3, of the Labor Code, are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with either (1) the apprenticeship standards and apprentice agreements under which the apprentice is in training, or (2) the rules and regulations of the California Apprenticeship Council.

E. Pursuant to Labor Code Section 1777.5, CONTRACTOR and any subcontractors employing workers in any apprenticeship craft or trade performing any work under the Contract Documents shall employ apprentices in at least the ratio set forth in Labor Code Section 1777.5, and may apply to any apprenticeship program in the craft or



trade that can provide apprentices to the project site for a certificate approving CONTRACTOR or Subcontractor under the applicable apprenticeship standards for the employment and training of apprentices in the area of industry affected.

F. Prior to commencing work on the Project, CONTRACTOR shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the project site. The information submitted shall include an estimate of journeyman hours to be performed on the Project, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to OWNER if requested. Within 60 days after concluding work on the Project, CONTRACTOR and all Subcontractors shall submit a verified statement of the journeyman and apprentice hours performed on the Project to the awarding body, if requested, and to the apprenticeship program. This information shall be public.

G. If in performing any of the Work, CONTRACTOR employs journeymen or apprentices in any apprenticeable craft or trade, CONTRACTOR shall contribute to the California Apprenticeship Council the same amount that the Director of Industrial Relations determines is the prevailing amount of apprenticeship training contributions in the area of the Project, subject to any credits permitted by law.

H. If CONTRACTOR or any Subcontractor is determined by the Chief of the Division of Apprenticeship Standards to have knowingly violated Labor Code Section 1777.5, it shall:

1. Forfeit as a civil penalty an amount not exceeding \$100 (\$300 for knowing subsequent violations) for each full calendar day of noncompliance. Notwithstanding Labor Code Section 1727, upon receipt of a determination that a civil penalty has been imposed by the Labor Commissioner, OWNER shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

2. In lieu of the monetary penalty, for a first-time violation and with the concurrence of a specified apprenticeship program, the Labor Commissioner may order CONTRACTOR or any Subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

3. In the event CONTRACTOR or any Subcontractor is determined by the Labor Commissioner to have knowingly committed a serious violation of any provision of Section 1777.5, the Labor Commissioner may also deny CONTRACTOR or any Subcontractor, and their responsible officers, the right to bid on or be awarded or perform work as a subcontractor on any public works

contract for a period of up to one year for the first violation and up to three years for a subsequent violation.

CONTRACTOR or any Subcontractor (or responsible officer) shall have the right to obtain a review of the determination imposing a debarment or civil penalty as provided by law.

I. CONTRACTOR and all Subcontractors shall comply with Labor Code Section 1777.6, which forbids certain discriminatory practices in the employment of apprentices.

J. CONTRACTOR shall become fully acquainted with the law regarding apprentices prior to commencement of the work. Special attention is directed to Labor Code Sections 1777.5, 1777.6, and 1777.7, and Title 8, California Code of Regulations, Section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California.

### **ARTICLE 43 HOURS OF WORK**

A. CONTRACTOR shall furnish, and shall require all Subcontractors to furnish, sufficient forces to ensure the Work is prosecuted in accordance with the detailed project schedule without payment of overtime wage rates whenever possible.

B. As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight hours of labor shall constitute a legal day of work. The time of service of any worker employed at any time by CONTRACTOR, or by any subcontractor, upon the Work or upon any part of the work contemplated by the Contract Documents is limited and restricted to eight hours per day and 40 hours during any one week. Upon completion of all hours worked in excess of eight hours per day, work shall be permitted upon this Project at not less than one and one-half times the basic rate of pay.

C. CONTRACTOR shall keep, and shall cause all subcontractors to keep, an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by the Contract Documents. The record shall be kept open at all reasonable hours to the inspection of OWNER and to the Division of Labor Standards Enforcement, Department of Industrial Relations.

D. Saturdays, Sundays, holidays (including all OWNER designated holidays), and any day with work hours before 7:30 a.m. and/or after 4 p.m. shall be considered overtime for OWNER's representatives, consultants, and inspectors, and shall be compensated as such by CONTRACTOR per OWNER's submitted invoice. Such cost shall be billed to CONTRACTOR and deducted from subsequent progress payments or the final payment.

E. As a penalty, CONTRACTOR shall pay \$25 to the Department of Industrial Relations or OWNER for each worker employed by CONTRACTOR or by any subcontractor in the performance of the Contract Documents for each calendar day during which the worker is required or permitted to work more than eight hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

F. Any work performed before or after regular working hours or on Saturdays, Sundays, or holidays (including all OWNER designated holidays) shall be performed without additional expense to OWNER. Should inspection or testing services be necessary on a Saturday, Sunday, or holiday (including all OWNER designated holidays), CONTRACTOR shall pay all additional expenses incurred. Such cost shall be billed to CONTRACTOR and deducted from the next payment.

G. CONTRACTOR shall anticipate work that would occur outside the normal work hours of 7:30 a.m. to 4 p.m. Such activities would include but are not limited to early morning concrete pours (because of hot weather), early or late material deliveries, required off-site inspections, or any other activity that would require the Project Inspector or OWNER personnel to work longer than an eight-hour day.

H. The Project Inspector cannot be asked to leave the Project after eight hours of work so CONTRACTOR would not have to pay overtime. If the extended work day is a result of CONTRACTOR'S work, the Project Inspector will perform its DSA assigned work as necessary to assure the Project is kept on schedule and CONTRACTOR is responsible to pay all costs associated with fulfilling these DSA assignments, including the Project Inspector's overtime. These costs shall be billed to CONTRACTOR and deducted from subsequent progress payments or the final payment.

#### **ARTICLE 44 NONDISCRIMINATION**

In the performance of the terms of the Contract Documents, CONTRACTOR agrees that it will not engage in or permit any Subcontractor it may employ to engage in unlawful discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

#### **ARTICLE 45 COST BREAKDOWN AND PERIODICAL ESTIMATES**

A. On forms approved by OWNER, CONTRACTOR shall furnish the following:

1. Within 10 calendar days of award of contract, a detailed estimate giving a complete breakdown of contract price for each Project or site, which shall include

all Subcontractor/supplier agreements showing dollar amounts of these agreements to justify the schedule of values; and

2. A periodical itemized estimate of work done for the purpose of making partial payments; and

3. A schedule of estimated monthly payments due CONTRACTOR within 10 days of request by OWNER.

B. Values employed in making up any of these schedules are subject to the Architect's written approval and will be used only for determining basis of partial payments and will not be considered as fixing a basis for additions to or deductions from contract price unless OWNER in its sole discretion so elects.

## **ARTICLE 46 PAYMENTS**

A. Unless otherwise specified in writing, each month within 30 days after receipt by OWNER of the monthly progress schedule and the certification of application for payment by the Architect, OWNER shall pay to CONTRACTOR a sum equal to 95 percent of the value of work performed and materials delivered subject to or under the control of OWNER and unused up to the last day of the previous month, less aggregate previous payments. In its sole discretion, OWNER may also deduct from these payments any amounts deemed due from CONTRACTOR.

B. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by CONTRACTOR on a form approved by OWNER and filed before the fifth day of the month during which payment is to be made.

C. Before consideration of a request for payment, a certificate in writing shall be obtained from the Architect stating that the work for which the payment is demanded has been performed in accordance with the terms of the Contract Documents and that the amount stated in the certificate is due under the terms of the Contract Documents. The certificate shall be attached to and made a part of the payment request filed with OWNER. The certificate of the Architect shall not be conclusive upon OWNER, but advisory only.

D. If within three days after written demand the Architect fails to deliver such certificate, CONTRACTOR may file its payment request with OWNER without the certificate, but the request shall be accompanied by a statement that demand was made for the certificate and was refused. OWNER will then either allow the payment request as presented or shall by an order entered on the minutes of OWNER state the reasons for refusing to make payment.

E. Work completed as estimated shall be an estimate only and no inaccuracy or error in an estimate shall operate to release CONTRACTOR or Surety from any damages arising from such work or from enforcing each and every provision of the Contract Documents, and OWNER shall have the right to subsequently correct any error made in any estimate for payment.

F. CONTRACTOR SHALL NOT BE ENTITLED TO HAVE ANY PAYMENT REQUESTS PROCESSED OR ANY PAYMENT FOR WORK PERFORMED SO LONG AS CONTRACTOR HAS FAILED TO COMPLY WITH ANY LAWFUL OR PROPER DIRECTION CONCERNING THE WHOLE OR ANY PORTION OF THE WORK GIVEN BY OWNER OR THE ARCHITECT.

G. OWNER has discretion to require from CONTRACTOR any of the following information with the application for payment: (1) certified payroll covering the period of the prior application for payment, (2) unconditional waivers and releases from all Subcontractors/suppliers for which payment was requested under the prior application for payment, (3) receipts or bills of sale for any items. In addition, upon submittal of the first payment request, a complete per diem wage rate breakdown for all trades must be submitted in order for the payment request to be processed.

H. PAYMENT BY OWNER OF ANY PAYMENT REQUEST IS NOT AN INDICATION THAT OWNER HAS INSPECTED, APPROVED, OR ACCEPTED ANY PART OF THE WORK, NOR SHALL PAYMENT CONSTITUTE A WAIVER IN ANY RESPECT OF ANY OWNER RIGHTS.

I. The final payment of 5 percent of the value of the work done under the Contract Documents, if unencumbered, may be made 35 days after the Notice of Completion is recorded by OWNER. ACCEPTANCE WILL BE MADE ONLY BY ACTION OF THE GOVERNING BOARD OR OTHER GOVERNING BODY OF OWNER IN ACCORDANCE WITH THE PROVISIONS ON "COMPLETION."

J. Unless otherwise agreed in writing, on or before making request for final payment of the undisputed amount due under the Contract Documents, CONTRACTOR shall submit to OWNER the following in writing:

1. Information on CONTRACTOR's results in attaining compliance with the OWNER's three percent participation goal for Disabled Veterans Business Enterprises;

2. A summary of all claims for compensation under or arising out of the Contract Documents, stating whether the claims are settled or unsettled and the amounts of the claims, and further specifying the date(s) upon which any required protest and/or notice was given to OWNER;

3. A written release of all claims against OWNER arising by virtue of the Project, the Work, and the Contract Documents. Payment of undisputed amounts is contingent upon receipt of this waiver.

#### **ARTICLE 47 PAYMENTS BY CONTRACTOR**

CONTRACTOR shall pay:

A. All transportation and utility services not later than the 20th day of the calendar month following the month in which the services are rendered;

B. Ninety-five percent of the cost of all materials, tools, and other expendable equipment, not later than the 20th day of the calendar month following the month in which the materials, tools, and equipment are delivered to the project site, and the balance of the cost not later than the 30th day following completion of that part of the work in which the materials, tools, and equipment are incorporated or used; and

C. To each of its subcontractors the respective amounts allowed CONTRACTOR on account of work performed by each subcontractor not later than the fifth day following each payment to CONTRACTOR.

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

A. In addition to any amount(s) which OWNER may retain under the article entitled "PAYMENTS," OWNER may withhold sufficient amount(s) of any payment(s) otherwise due to CONTRACTOR, as in its judgment may be necessary to cover the following:

1. Payments which may be past due and payable for claims against CONTRACTOR or any Subcontractors at any level for labor or materials furnished in the performance of work under the Contract Documents.
2. Defective work not remedied.
3. Failure of CONTRACTOR to make proper payments to its subcontractor(s) or material suppliers for materials or labor.
4. Completion of work if there exists a reasonable doubt that the work can be completed for the balance then unpaid.
5. Damage to another contractor.
6. All costs and expenses associated with OWNER having to acquire alternate educational facilities if CONTRACTOR fails to complete the Project within the period of time required by the Contract Documents.

7. Project schedule not up-to-date with the current payment request.
8. Overtime charges due consultants, Project Inspectors, the Architect, and OWNER or others as a result of extra services that were provided at CONTRACTOR's request or as a result of actions of CONTRACTOR or those employed by CONTRACTOR, including subcontractors, material suppliers, or others will be withheld from current payment requests.
9. CONTRACTOR agrees that OWNER may withhold 150 percent of the estimated cost of any additional testing or retesting required as a result of the fault or negligence of CONTRACTOR, or Subcontractors, vendors, or suppliers, until such time as OWNER receives confirmation that payment for such additional testing or retesting has been made.
10. Failure to maintain a current record set of drawings. The drawings shall be updated to the date when the payment request is submitted.
11. Failure to submit daily reports.
12. Failure to submit items required to accompany payment requests at initial and final completion.
13. Failure to submit and keep current any construction schedule required by the Contract Documents.
14. Failure to compensate the Architect for substitution review within the required time period.
15. Failure to compensate OWNER for overtime charges for OWNER representatives and employees incurred as a result of services provided during the current payment period.
16. Failure to compensate OWNER and/or the Architect for the cost of review time to evaluate CONTRACTOR'S proposed solutions to effect repair of work not in accordance with Contract Documents.
17. Failure to submit per diem wage rates for all trades pursuant to appropriate provisions of the General Conditions.
18. Penalties for violation of labor laws.
19. Cost of site clean-up.

20. Required payments to indemnify, hold harmless, or defend OWNER.

21. Compensation for unpaid extra services for the Architect caused by CONTRACTOR.

22. Compensation for unpaid extra services for the Project Inspector, including but not limited to reinspection required due to CONTRACTOR's failed tests, installation of unapproved or defective materials, or CONTRACTOR's requests for inspection and failure to attend the requested inspection.

23. Any liquidated damages, forfeiture of fees, or other damages assessed against CONTRACTOR by reason of failure to complete the Project on time.

B. OWNER may apply the withheld amount(s) to the payment of any claims or obligations at its discretion. In so doing, OWNER shall be deemed the agent of CONTRACTOR and any payment made by OWNER shall be considered to be a payment made under the Contract Documents by OWNER to CONTRACTOR, and OWNER shall not be liable to CONTRACTOR for the payments made in good faith. The payments may be made without prior judicial determination of the claim or obligations. OWNER shall submit to CONTRACTOR an accounting of the funds disbursed on behalf of CONTRACTOR.

#### **ARTICLE 49 SUBSTITUTION OF SECURITIES**

A. Pursuant to the provisions of Public Contract Code section 22300, CONTRACTOR may substitute certain securities for any funds withheld by OWNER to ensure its performance under the Contract Documents. At the request and expense of CONTRACTOR, securities equivalent to any amount withheld shall be deposited, at the discretion of OWNER, with either a state or federally chartered bank as the escrow agent, who shall then pay any funds otherwise subject to retention to CONTRACTOR. Upon satisfactory completion of the Project, the securities shall be returned to CONTRACTOR.

B. Securities eligible for investment under this article shall include those listed in Government Code section 16430, bank and savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by CONTRACTOR and OWNER.

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

D. All expenses relating to the substitution of securities under Public Contract Code section 22300 and this article, including but not limited to OWNER's overhead and administrative expenses and expenses of escrow agent, shall be CONTRACTOR's responsibility.



E. Should the value of the substituted security at any time fall below the amount for which it was substituted, or any other amount which OWNER determines to withhold, CONTRACTOR shall immediately and at CONTRACTOR'S expense deposit additional security qualifying under Public Contract Code section 22300 until the total security deposited is no less than equivalent to the amount subject to withholding under the Contract Documents.

F. In the alternative, under Public Contract Code section 22300, at its own expense, CONTRACTOR may request OWNER to make payment of earned retention funds directly to the escrow agent.

G. All escrow agreements shall be in conformance with the Escrow Agreement for Security Deposits in Lieu of Retention set forth in Public Contract Code section 22300, and shall be in the form of agreement provided by OWNER unless otherwise agreed in advance.

## **ARTICLE 50 PROGRESS SCHEDULE**

A. Immediately after being awarded the Construction Agreement, CONTRACTOR shall prepare an estimated progress schedule and submit it to OWNER for review. The schedule shall indicate the beginning and completion dates of all phases of construction.

B. The schedule shall be updated at reasonably required intervals throughout the Project, unless specifically required to be updated at more frequent intervals.

C. Additional scheduling requirements may be contained in the attached Supplemental General Conditions.

D. While OWNER does not discourage efforts by CONTRACTOR to accomplish an early completion of the Project, CONTRACTOR is directed to utilize and schedule the entire construction period set forth in the Construction Agreement. Any portion of the construction period not so scheduled shall be considered "float" and used the same as other float under the Contract Documents.

## **ARTICLE 51 EXTENSION OF TIME—LIQUIDATED DAMAGES**

A. The parties understand and agree that the goodwill, educational process, and other business of OWNER will be damaged if the Project is not completed within the time limits required. The parties have further agreed that the exact amount of damages for failure to complete the Work within the time specified is, in some cases, extremely difficult, impractical, or impossible to determine. As to those damages that are difficult, impractical, or impossible to determine, CONTRACTOR shall be assessed the sum set

forth in the Contract Documents per day as liquidated damages for each and every calendar day until the work required under the Contract Documents is complete. CONTRACTOR will pay to OWNER or OWNER may retain such damages from amounts otherwise payable to CONTRACTOR. For purposes of this article, the Work shall be considered "complete" in accordance with the provisions of the article on "COMPLETION," except that the work may be considered complete without formal acceptance by the OWNER's governing board or other governing body so long as the governing board, at its next regularly scheduled meeting, accepts the work.

B. Providing CONTRACTOR has protested and/or given notice of delays on the Project as required by these Contract Documents, CONTRACTOR shall not be charged for liquidated damages as set forth above because of any delays in completion of work which are not the fault or negligence of CONTRACTOR, including but not restricted to acts of God. CONTRACTOR shall provide documentation and justification to substantiate the delay and its relation to the Project's critical path. OWNER shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the facts justify an extension. OWNER's findings of fact shall be final and conclusive on the parties. Extension of time shall apply only to that portion of work affected by the delay, and shall not apply to other portions of work not so affected. Any dispute pertaining to a request for time or assessment of liquidated damages shall be resolved pursuant to the provisions on resolution of construction claims in the Contract Documents.

C. In addition to any liquidated damages which may be assessed, if CONTRACTOR fails to complete the Project within the time period provided in the Contract Documents, and if as a result OWNER finds it necessary to incur any costs and/or expenses, or if OWNER receives any claims by other contractors, subcontractors, or third parties claiming time or other compensation by reason of CONTRACTOR's failure to complete work on time, CONTRACTOR shall pay all those costs and expenses incurred by OWNER. These costs and expenses may include but are not limited to such items as rental payments, inspection fees, and additional architectural fees, whether related to the acquisition of facilities or caused by the delay in completion. These costs and expenses may be retained by OWNER from any payments otherwise due to CONTRACTOR.

D. Within 10 days of the beginning of any delay (unless OWNER grants in writing a further period of time to file notice prior to the date of final completion of the Project), CONTRACTOR shall notify OWNER in writing of the causes for the delay. Failure to give the required notice in writing within the time provided shall be interpreted as a failure by CONTRACTOR to properly administer the Contract Documents, Project, and Work, and shall constitute a waiver by CONTRACTOR of all claims of any kind and nature, without limitation, arising from the delay. In addition to this notice, in any instance where CONTRACTOR claims delay was caused by OWNER, the Architect or Architect's consultants, Inspector of Record, Division of State Architect, or anyone

claimed to be an agent of them, and as a precondition to any right to claim additional time, prior to making any request for time, CONTRACTOR shall have satisfied the obligation of the Contract Documents to protest the delay.

E. Extensions of time shall be based solely upon the effect of delays to the work as a whole and will not be granted unless CONTRACTOR can demonstrate through analysis of the current updated schedule that the delay was caused by one of the causes for which an extension is authorized. A time extension will not be granted unless CONTRACTOR submits a Time Impact Analysis which utilizes networking techniques (fragments) and a written analysis of the facts which are alleged to have caused the delay. Time extensions will not be allowed for delays to parts of the work not on the critical path of the currently approved monthly updated construction schedule. Time extensions will not be granted until all available float, slack, or contingency time on the Project is used and the end date of the Work is moved beyond the current adjusted contract completion date. CONTRACTOR's sole remedy for delay or extensions of time in all cases except those due to unanticipated or unreasonable delay caused by OWNER shall be an extension of the contract time at no cost to OWNER. Additional scheduling requirements in cases of delay or requests for time may be included in supplementary conditions.

## **ARTICLE 52 OCCUPANCY**

OWNER reserves the right to occupy buildings and/or portions of the site at any time before completion, and occupancy shall not constitute final acceptance of any part of the Work covered by the Contract Documents, nor shall such occupancy extend the date specified for completion of the Work. Beneficial occupancy of building(s) does not commence any warranty period or entitle CONTRACTOR to any additional compensation due to such occupancy, or affect in any way or amount CONTRACTOR's obligation to pay liquidated damages for failure to complete the Project on time.

## **ARTICLE 53 CONTRACT CLOSEOUT**

A. Utility Connections: The building and/or buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

B. Record Drawings:

1. CONTRACTOR shall keep the following:

a. One complete set of blue line prints of all drawings which form a part of the Project in good order and available on the job site. They shall be used only for the purpose intended. Drawings shall be kept up-to-date as the Work progresses and shall be available at all times for inspection.

b. One set of annotated Specifications reflecting any and all changes to the original documents from change orders, substitutions, or any other deviations from the original specifications.

2. The intent of this procedure is to obtain an exact "as built" record of the work upon completion of the Project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all record drawings:

a. Any work not installed as indicated on drawings.

b. The exact locations and elevations of all covered utilities, including valves, cleanouts, etc.

3. CONTRACTOR shall certify to OWNER the accuracy of the record drawings and annotated Specifications and is liable and responsible for inaccuracies in as-built and/or record drawings and the annotated Specifications, even if they do not become evident until a future date.

4. Upon completion of the Work and correction of all punch list items and as a condition precedent to approval of final payment, CONTRACTOR shall obtain the Architect's review of the marked up record set of prints and annotated Specifications and employ an appropriately trained individual to transfer the as-built information to a form of electronic media, acceptable to the Architect and OWNER, containing the original Drawings. CONTRACTOR shall provide the electronic as-built drawings to the Architect. When as-built information has been transferred to the acceptable electronic medium and the record drawings have been reviewed by the Architect, CONTRACTOR shall pay for a duplicate set of contract drawings to be used for CONTRACTOR's record drawings. Those final corrected record drawings shall also be saved on electronic media, in a format designated by OWNER, and shall be given to OWNER. Reproduction expenses for the drawings shall be paid for by CONTRACTOR out of the allowance and any difference returned to OWNER.

5. CONTRACTOR shall deliver to the Architect three complete sets of operating manuals, repair parts lists, and service instructions for all electrical and mechanical equipment, together with equipment warranties.

C. Maintenance Manuals: At least 30 days prior to final inspection, three copies of complete operational and maintenance manuals shall be submitted for review. All installation, operating, and maintenance information and drawings shall be bound in 8½ x 11" binders, indexed with tabs, and include tables of contents. Each manual shall also contain a list of subcontractors, with their addresses and the names of persons to

contact in case of emergencies. Identifying labels shall provide names of manufacturers, their addresses, ratings, and capacities of equipment and machinery.

D. Inspection Requirements:

1. Before calling for final inspection, CONTRACTOR shall determine that the following work has been performed:

- a. General construction has been completed;
- b. Mechanical and electrical work complete, fixtures in place, connected and ready for tryout and test;
- c. Electrical circuits scheduled in panels and disconnect switches labeled;
- d. Painting and special finishes complete;
- e. Doors complete with hardware, cleaned of protective film, in good working order without sticking or binding;
- f. Tops and bottoms of doors stained/painted and sealed;
- g. Floors waxed and polished as specified;
- h. Broken glass replaced and glass cleaned;
- i. Grounds cleared of CONTRACTOR'S equipment, raked clean of debris, and trash removed from site;
- j. Work cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material;
- k. Finished and decorative work shall have marks, dirt, and superfluous labels removed;
- l. All flatwork shall have all stains removed including but not limited to oil, gas, rust, paint, etc.

2. Final inspection will be made by the Architect and specified OWNER personnel upon written notification from CONTRACTOR that work has been completed. CONTRACTOR must prearrange a final inspection with OWNER and Project Inspector. There should be a minimum of seven days' notice to OWNER and Project Inspector before the final inspection is scheduled.

CONTRACTOR shall receive a list (punch list) of items found unacceptable and shall promptly correct them. Upon written notification from CONTRACTOR that all items have been corrected the Architect and Project Inspector or OWNER will reinspect for final acceptance of the Project. Failure of CONTRACTOR to complete punch list items will necessitate further reinspection by the Architect and Project Inspector or OWNER. Cost of reinspection will be deducted from the amounts owing to CONTRACTOR.

3. Deliver keys (labeled) to OWNER's representative. Master keys shall be accounted for in writing.

4. Furnish a letter to OWNER stating that a responsible representative of OWNER (give name and position) has been instructed in working characteristics of mechanical and electrical equipment.

E. Guarantee: Upon completion of final inspection, CONTRACTOR is to submit the guarantee to OWNER as specified in the Contract Documents.

F. Manufacturer Warranties: CONTRACTOR shall deliver 10 days prior to final inspection, original manufacturer warranties for all materials, equipment and/or supplies purchased and/or installed under the Contract Documents.

G. Equipment Training: Prior to final inspection, CONTRACTOR is responsible for providing the appropriate training for a minimum of two personnel of OWNER for each trade for the newly installed mechanical and electrical equipment required under the Contract Documents.

H. Contract Closeout Items Specified Within this Article are Mandatory: The parties agree that, should the required items not be furnished to OWNER, as stated or within 30 days of completion of all other work, OWNER will suffer damage which damage will be difficult, impossible or impractical to assess. For that reason, in accordance with Government Code Section 53069.85, the parties agree the following sums shall be assessed as fixed and liquidated damages and not as a penalty:

1. Record Drawings—\$25,000 or 10 percent of contract price, whichever is less;

2. Maintenance Manuals—\$5,000 or 10 percent of contract price, whichever is less;

3. Guarantee—\$25,000 or 10 percent of contract price whichever is greater;

4. Manufacturer Warranties—\$5,000 for each product or 10 percent of contract price whichever is greater;

5. Equipment Training—\$10,000 for each system or 10 percent of contract price whichever is greater.

I. In addition, the Notice of Completion will not be filed until either such amounts are paid or the items are provided. However, OWNER may also elect to file the Notice of Completion and pay retention after deducting such amounts. If CONTRACTOR disputes the amounts or OWNER's right to withhold these amounts, OWNER may withhold up to 150 percent of the disputed amount.

## **ARTICLE 54 COMPLETION**

A. OWNER shall accept the completion of the Project when all of the following conditions have been met:

1. The entire Work or Project (including all phases if a project is phased) including minor corrective items is completed to the satisfaction of OWNER;
2. The final DSA report has been filed with the State;
3. By action of its governing board or other governing body, OWNER has accepted the Project to be complete.
4. The Notice of Completion for the entire Project has been filed and recorded.

B. A final walk-through of the Project to determine completion of the Work and to record the Notice of Completion shall occur only upon a valid claim by CONTRACTOR that the Project is complete, including minor corrective items.

1. CONTRACTOR's Project Manager and Superintendent(s) shall attend the final walk-through. A representative(s) of OWNER shall also attend.
2. Should OWNER incur any costs by reason of an erroneous or premature claim of completion by CONTRACTOR that results in a premature walk-through, OWNER may withhold such costs from any money due or to become due to CONTRACTOR.
3. Any incomplete or corrective items shall be identified in the final walk-through of the Project.
4. Incomplete and corrective items identified in any walk-through shall be completed before CONTRACTOR calls for a subsequent walk-through, which

shall be treated as and bear the same consequences as the initial call for a walk-through.

C. Alternative Process: OWNER shall have the option in its sole discretion to accept completion of the Work and have the Notice of Completion recorded when the entire Work is completed to OWNER's satisfaction, except for minor corrective items as distinguished from incomplete items.

1. Should OWNER elect to accept the Work as complete prior to completion of the entire Work or Project, it shall be on the following conditions:

a. The entire Work or Project (including all phases if a project is phased), excluding minor corrective items, is complete to OWNER's satisfaction;

b. The final DSA report shall be filed with the State as soon as appropriate;

c. By action of its governing board or other governing body, OWNER has accepted the Project to be complete.

d. The Notice of Completion for the entire project has been filed and recorded.

2. Should OWNER elect to accept the Work as complete prior to completion of the entire Work or Project, there shall be a final walk-through of the Project, as follows:

a. Final walk-through shall be made upon a valid claim by CONTRACTOR that the Project is complete, excepting only minor corrective items;

b. CONTRACTOR's Project Manager and Superintendent(s) shall attend the final walk-through. OWNER may be represented by anyone designated by OWNER's Representative, including but not limited to the Project Inspector, management, and/or representatives from Maintenance and Operations;

c. Should OWNER incur any costs by reason of an erroneous or premature claim of completion by CONTRACTOR that results in a premature walk-through, OWNER may withhold such costs from any money due or to become due to CONTRACTOR.



d. All remaining work, including minor incomplete or corrective items, shall be identified in the final walk-through of the Project;

e. Incomplete and corrective items identified in any walk-through shall be completed before CONTRACTOR calls for a subsequent walk-through, which shall be treated as, and bear the same consequences as, the initial call for a walk-through.

3. Should OWNER elect to accept the Work as complete prior to completion of the entire Work or Project, and if CONTRACTOR fails to complete the minor corrective items prior to the expiration of a 35-day period immediately following recording of the Notice of Completion, OWNER shall withhold from the final payment an amount equal to 150 percent of the estimated cost, as determined by OWNER, of each incomplete or corrective item until such time as the item is completed.

4. If at the end of an additional 30-day period, there are items remaining to be corrected, OWNER may elect to:

a. Permit additional time for completion;

b. Complete the Work at the expense of CONTRACTOR, deducting the cost of work from any amounts being withheld.

5. CONTRACTOR shall have no claim or offset as against OWNER arising or in any way connected with an election by OWNER not to accept completion of the Work until the entire Work or Project, including minor corrective items, has been completed to OWNER's satisfaction. The time taken by CONTRACTOR to complete the Work or Project, including minor corrective items, shall be a basis for assessment of liquidated damages as provided in the Contract Documents, and is not affected by any decision by OWNER to occupy all or any portion of the Work prior to completion.

## **ARTICLE 55 CLAIMS FOR DAMAGES**

A. Pursuant to Public Contract Code section 9204, CONTRACTOR shall make all claims for payment for 1) work done by or on behalf of contractor for which payment is not otherwise expressly provided for in the Contract, 2) damages allegedly sustained by reason of any acts or omissions of OWNER or its agents, 3) time extensions, 4) relief from damages or penalties for delay or, 5) an amount disputed by OWNER by registered mail or certified mail, return receipt requested. Such written claim shall be submitted, within 10 days after the claim has arisen, is discovered or reasonably should have been discovered. CONTRACTOR shall furnish reasonable documentation to support the claim.

**IF CONTRACTOR FAILS TO COMPLY WITH ANY OF THE PROVISIONS OF THIS ARTICLE CONCERNING THE SUBMISSION OF CLAIMS, ITS CLAIM(S) SHALL BE FORFEITED AND INVALIDATED.**

B. In no event shall CONTRACTOR be permitted to reserve rights to make or pursue claims of any kind, whether for compensation in any form, or for time extensions, without the OWNER's express written consent. Any attempt to make such reservation or otherwise avoid the effect of this Article shall be void and of no force or effect whatsoever.

C. Any change order executed by CONTRACTOR with such reservation or other language of qualified acceptance shall be read and interpreted as though such language did not exist. No action by OWNER is required to invalidate such language, and no oral communication or other act or omission by OWNER or anyone acting on OWNER's behalf, except OWNER's express written consent, shall be construed as acquiescence in or consent to such reservation or other qualified acceptance language.

D. CONTRACTOR shall diligently proceed with performance of the Work, and OWNER shall continue to make payment of undisputed amounts, during any time period while claims are pending.

**ARTICLE 56 RESOLUTION OF CONSTRUCTION CLAIMS**

A. Upon receipt of a claim, OWNER shall conduct a reasonable review of the claim, and, unless extended by mutual agreement of the parties, provide CONTRACTOR a written statement identifying what portion of the claim is disputed and what portion is undisputed within 45 days.

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

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

D. If CONTRACTOR disputes OWNER'S written response, or if OWNER fails to respond to a claim issued pursuant to this section within the time prescribed,

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

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

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

G. Unless otherwise agreed to by OWNER and CONTRACTOR in writing, the mediation conducted pursuant to section E (above) shall excuse any further obligation under Public Contract Code section 20104.4 to mediate after litigation has been commenced.

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

I. CONTRACTOR may present to OWNER a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the CONTRACTOR present a

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

J. Except for tort claims, all claims or any portion of the claim(s) by CONTRACTOR remaining in dispute of \$375,000 or less shall be subject to the provisions of Public Contract Code Section 20104 et seq., except that the provisions of Public Contract Code section 20104.4 relating to mediation after litigation has commenced are excused, unless a written agreement to the contrary has been entered into between the parties.

Only claims, regardless of size, for which timely notice has been given, which have been subjected to the procedures specified in Public Contract Code section 9204, remaining "unresolved" may be pursued through litigation. All other CONTRACTOR claims are deemed waived.

K. The parties shall attempt to resolve all claims during the course of the Project using the procedures set forth in Articles 55 and 56. Pending resolution of a claim, CONTRACTOR shall diligently continue to work on the Project to completion. CONTRACTOR agrees it will neither rescind the Contract Documents nor stop the progress of the work, and CONTRACTOR'S sole remedy shall be the procedures set forth in Articles 55 and 56.

## **ARTICLE 57 PERFORMANCE/PAYMENT BOND**

A. Unless otherwise specified in the Contract Documents, CONTRACTOR shall furnish a Performance Bond, and for any contract of \$25,000 or more, a Payment Bond, each in an amount equal to 100 percent of the price stated in the Contract Documents. All bonds shall be provided by a corporate surety admitted in California. Personal sureties and unregistered sureties are unacceptable. The Performance Bond shall remain in full force and effect through the guarantee period as specified in the Contract Documents and through such extended period as permissible to cover latent conditions.

B. All surety companies with a minimum rating of "A minus, VIII," ("A minus V" when the price stated in the Contract Documents is less than \$500,000) as rated by the current edition of Best's Key Rating Guide, published by A.M. Best Company, Oldwick, New Jersey, 08858, and admitted in California shall be presumed to be satisfactory to OWNER for the issuance of bonds. In the alternative, any admitted surety company

which satisfies the requirements set forth in California Code of Civil Procedure Section 995.660 shall be accepted and approved for the issuance of bonds.

## **ARTICLE 58 INSURANCE REQUIREMENTS**

A. CONTRACTOR shall provide the following insurance coverages, which shall remain in full force and effect during the Project:

1. Workers' Compensation;
2. Comprehensive General Liability;
3. Comprehensive Auto Liability;
4. Asbestos Abatement (on all modernization projects and on any other projects where asbestos-containing products may be affected by construction);
5. Course of Construction/Builder's Risk.

B. All insurance companies must meet the following criteria:

1. California admitted, as confirmed by the California Department of Insurance, or listed in the California Department of Insurance's List of Eligible Surplus Line Insurers ("LESLI list")
2. A minimum rating of "A-,VIII," as rated by the current edition of Best's Key Rating Guide, published by A.M. Best Company, Oldwick, New Jersey, 08858.

C. All CONTRACTOR'S insurance policies shall name OWNER's governing board or other governing body, OWNER's consultants, the Architect, and the Architect's consultants, their officers, agents and employees as additional insureds with regard to damages and defense of claims arising from:

1. Activities performed by or on behalf of the Named Insured;
2. Products and completed operations of Named Insured;
3. Premises owned, leased or used by the Named Insured;
4. The ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the Named Insured.

D. Should CONTRACTOR fail to provide insurance as required by the Contract Documents, OWNER may, at OWNER's option, take out and maintain at the expense

of CONTRACTOR, insurance in the name of CONTRACTOR, or subcontractor, as OWNER may deem proper. OWNER may deduct the cost of taking out and maintaining such insurance from any sums which are due or to become due to CONTRACTOR under the Contract Documents.

E. Insurance coverage shall not be less than the following:

1. WORKERS' COMPENSATION

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

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

c. CONTRACTOR shall at all times maintain workers' compensation insurance for all of its employees engaged in work under the Contract Documents, on or at the site of the Project. In case any of its work is sublet, CONTRACTOR shall require the subcontractor to similarly provide workers' compensation insurance for all of the subcontractors' employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by CONTRACTOR's insurance. In case any class of employees engaged in work under the Contract Documents, on or at the site of the Project, is not protected under the workers' compensation statutes, CONTRACTOR shall provide or shall cause a subcontractor to provide adequate insurance coverage for the protection of such employees not otherwise protected before subcontractor commences work. CONTRACTOR shall file with OWNER certificates of its insurance protecting workers and a 30-day notice shall be provided to OWNER before the cancellation or reduction of any policy of CONTRACTOR or subcontractor. CONTRACTOR shall submit proof of insurance and provide endorsements on the forms provided by OWNER or on forms approved by OWNER.

d. The certificate shall reflect coverage in at least the following amounts:

(1) State workers' compensation statutory benefits policy—limits of not less than \$1,000,000.

(2) Employer's liability policy—limits of not less than \$1,000,000.

## 2. COMMERCIAL GENERAL LIABILITY

a. CONTRACTOR shall take out and maintain such commercial general liability insurance as shall protect CONTRACTOR and OWNER from all claims for personal injury, including accidental death, to any person (including, as to OWNER, injury or death to CONTRACTOR's or subcontractor's employees), as well as from all claims for property damage arising from operations under the Contract Documents, in amounts set forth in this article.

b. CONTRACTOR shall require its subcontractors, if any, to take out and maintain similar general commercial liability insurance in like amounts.

c. Coverage must be written on an occurrence versus a "claims made" form with policy limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate per project on bodily injury and property damage, and include coverage for the following:

- (1) Premises - operations;
- (2) Contractual liability;
- (3) Products;
- (4) Completed operations;
- (5) Broad form property damage including explosion, collapse, and underground coverages;
- (6) Personal injury;

d. In the event of any payment under the Commercial General Liability Policy, the insurer shall be subrogated to the extent of such payment to all the insured's rights of recovery, but the insurer shall have no rights of subrogation against OWNER, OWNER's consultants, the Architect, and the Architect's consultants, their elected or appointed officials, or employees, except as respects the negligence of OWNER, the Architect, and Architect's consultants.

3. COMPREHENSIVE AUTO LIABILITY INSURANCE

Such insurance shall have combined single limits of not less than \$1,000,000, bodily injury, property damage, including coverage for owned, non-owned and hired autos.

4. ASBESTOS ABATEMENT

- a. Must be occurrence coverage versus "claims made" coverage.
- b. \$1,000,000 per occurrence with not less than \$2,000,000 annual aggregates limits required.
- c. Certificates of insurance must specify "asbestos abatement."

5. COURSE OF CONSTRUCTION (COC)/BUILDER'S RISK INSURANCE

a. When required by OWNER, on new school construction project, CONTRACTOR may be required to provide builders risk coverage with limits equal to 100 percent of the insurable value of the Project, including all items of labor and materials in or adjacent to the structure insured, all materials in place or to be used as part of the permanent construction, including surplus materials, shanties, protective fences, bridges, or temporary structures, miscellaneous materials and supplies incident to the work, and such scaffolding, staging, towers, forms, and equipment as are not owned or rented by CONTRACTOR, the cost of which are included in the cost of the Work. Such insurance shall be maintained for the life of the Contract.

b. If required by OWNER, CONTRACTOR shall maintain a Builder's Risk Completed Value Form providing all risk coverage, naming CONTRACTOR and OWNER as insureds and subcontractors to all levels as additional insureds, as their respective interests appear.

c. A maximum deductible of \$5,000 per occurrence will be allowed on projects. CONTRACTOR shall be responsible for any deductibles under the property insurance policy.

d. The builder's risk insurance limits shall initially be for the full amount of the Project price shown in the Agreement document and shall be maintained in full force and effect at all times between the signing of the contract and final acceptance of the completed work by OWNER at an amount equaling the estimated cost to OWNER of rebuilding.



F. CONTRACTOR shall be responsible for payment of any deductibles under any of the above named coverages.

## **ARTICLE 59 PROOF OF INSURANCE COVERAGE**

A. CONTRACTOR shall deliver in triplicate proof of carriage of required insurance. This proof shall be presented with the required Payment and Performance Bonds and return of other Contract Documents.

B. CONTRACTOR shall not commence work or allow any subcontractor to commence work under this contract until CONTRACTOR has obtained all required insurance and certificates, which shall be delivered to and approved by OWNER.

C. Certificates and insurance policies shall include the following:

1. A clause stating:

"This policy shall not be canceled or reduced in required limits of liability or amount of insurance until notice has been mailed to certificate holder stating the date of cancellation or reduction. The date of cancellation or reduction may not be less than 30 days after the date of mailing the notice."

2. Transcripts from the policies authenticated by the proper office of the insurer evidencing, in particular, those insured, the extent of the insurance, the location of and the operations to which the insurance applies, expiration date, and cancellation and reduction notice.

3. A statement that OWNER is a named additional insured under the policy described and that the insurance policy shall be primary to any insurance or self-insurance maintained by OWNER.

E. OWNER shall be named as certificate holder and additional insured and all certificates with endorsements shall be forwarded in triplicate to OWNER.

F. In the event of modification or cancellation of the policy or policies during the periods of coverage stated in this article, 30 days' prior written notice of such cancellation shall be delivered or mailed by certified mail, return receipt requested, to OWNER.

G. Acceptance of the certificates of insurance shall not relieve or decrease CONTRACTOR's liability. Insurance coverage in the minimum amounts set forth in the Contract Documents shall not be construed to relieve CONTRACTOR of liability in excess of such coverage, nor shall it preclude OWNER from taking such other actions

as are available to it under any other provisions of the Contract Documents or otherwise in law.

## **ARTICLE 60 INDEMNIFICATION**

A. CONTRACTOR shall hold harmless, defend, and indemnify OWNER, the Architect, and Inspector of Record and the officials, officers, employees, volunteers, and agents, and each of them, from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts, omissions, or willful misconduct of CONTRACTOR, its officials, officers, employees, agents, consultants, and subcontractors arising out of or in connection with the performance of the Work or the Contract Documents, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. At CONTRACTOR's own cost, expense, and risk and with counsel reasonably satisfactory to OWNER, CONTRACTOR shall defend any and all such suits, actions, or other legal proceedings of every kind that may be brought or instituted against OWNER, the Architect, Inspector of Record, and their directors, officials, officers, employees, agents, or volunteers. CONTRACTOR shall pay and satisfy any judgment, award, or decree that may be rendered against OWNER, the Architect, Inspector of Record or their directors, officials, officers, employees, agents, or volunteers, in any such suit, action, or other legal proceeding. CONTRACTOR shall reimburse OWNER, the Architect, Inspector of Record and their directors, officials, officers, employees, agents, and volunteers, for any and all legal expenses and costs incurred by each of them in connection with any suit, action, or legal proceeding, or in enforcing the indemnity provided under this Article.

B. CONTRACTOR shall require each subcontractor to hold harmless, defend, and indemnify OWNER, the Architect, Inspector of Record and their officials, officers, employees, volunteers and agents, from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage, or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts, omissions, or willful misconduct of subcontractor its officials, officers, employees, agents, consultants and subcontractors arising out of or in connection with the performance of the Work or the Contract Documents, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. At subcontractor's own cost, expense and risk, subcontractor shall defend any and all such suits, actions, or other legal proceedings of every kind that may be brought or instituted against OWNER, the Architect, Inspector of Record, and their directors, officials officers, employees, agents or volunteers. Subcontractor shall pay and satisfy any judgment, award, or decree that may be rendered against OWNER, the Architect, Inspector of Record, or their directors, officials, officers, employees, agents or volunteers, in any such suit, action, or other legal proceeding. Subcontractor shall reimburse OWNER, the Architect, Inspector of Record, and their directors, officials,

officers, employees, agents, and volunteers, for any and all legal expenses and costs incurred by each of them in connection with any suit, action, or legal proceeding, or in enforcing the indemnity provided under this article.

C. The obligations of this Article expressly include but are not limited to the obligations of indemnification and defense of OWNER, the Architect, Inspector of Record, and their directors, officials, officers, agents and employees arising in any manner out of any claims against them brought by other contractors, subcontractors, material suppliers, or other third parties alleging any of them owe the claimant either time, compensation, or damages due to any act, omission, or occurrence caused or contributed to in any degree by CONTRACTOR or any of its subcontractors.

## **ARTICLE 61 ASSIGNMENT**

CONTRACTOR shall not assign any rights, delegate any duties, transfer, convey, sublet, or otherwise dispose of the Construction Agreement or of its rights, title, or interest in or to the Construction Agreement or any part of it. If CONTRACTOR assigns, transfers, conveys, sublets, or otherwise disposes of the Construction Agreement or its right, title, or interest in it, or any part of it, any attempted or purported assignment, transfer, conveyance, sublease, or other disposition, shall be null, void, and of no legal effect whatsoever, and at OWNER's option the Construction Agreement may be terminated, revoked, and annulled, and OWNER shall then be discharged from any and all liability and obligations to CONTRACTOR, and to its purported assignee or transferee, arising out of the Construction Agreement. This expressly includes but is not limited to any attempts to create "pass through" or similar rights for subcontractors to pursue claims directly against OWNER.

## **ARTICLE 62 SEPARATE CONTRACTS**

A. OWNER reserves the right to let other contracts in connection with this Work. CONTRACTOR shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work, and shall coordinate its work with those other contractors.

B. If any part of CONTRACTOR's work depends upon work of any other contractor for proper execution of results, CONTRACTOR shall inspect and promptly report in writing to the Architect any defects in the other contractor's work that render it unsuitable for proper execution or results. CONTRACTOR's failure to inspect and report shall constitute its acceptance of any other contractor's work as fit and proper for reception of its work except as to defects which may develop in another contractor's work after execution of CONTRACTOR's work.

C. To ensure proper execution of CONTRACTOR's subsequent work, CONTRACTOR shall measure and inspect work already in place and shall report in

writing to the Architect any discrepancy between executed work and the Contract Documents.

D. CONTRACTOR shall ascertain to CONTRACTOR's satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by OWNER in connection with the Project, in order that CONTRACTOR may perform the work in light of any other contracts. Nothing contained in the Contract Documents shall be interpreted as granting to CONTRACTOR exclusive occupancy of the Project site. CONTRACTOR shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, OWNER shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that the contractors may proceed simultaneously. OWNER shall not be responsible for any damage suffered or extra costs incurred by CONTRACTOR resulting directly or indirectly from the award or performance or attempted performance of any other contract or contracts on the Project, or caused by any decision or omission of OWNER regarding the order in performing or coordinating the contracts.

## **ARTICLE 63 OWNER'S RIGHT TO TERMINATE CONTRACT**

### **Termination for Cause:**

A. OWNER may serve upon CONTRACTOR and its surety written notice of OWNER's intention to terminate the Construction Agreement, without prejudice to any other right or remedy, upon the occurrence of any of the following circumstances:

1. If CONTRACTOR refuses or fails to pursue the Work or any part with sufficient diligence to ensure its completion within the time specified, or any extension of time;
2. If CONTRACTOR refuses or fails to complete the Work within the time required;
3. If CONTRACTOR is adjudged a bankrupt, or makes a general assignment for the benefit of its creditors;
4. If a receiver is appointed on account of CONTRACTOR's insolvency;
5. If CONTRACTOR persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials to complete the Work in the time specified, except in cases for which extension of time is provided;

6. If CONTRACTOR fails to make prompt payment to subcontractors or for material or labor;

7. If CONTRACTOR persistently disregards laws, ordinances, or instructions of OWNER;

8. If CONTRACTOR or its SUBCONTRACTORS violates any of the provisions of the Contract Documents.

B. The notice of intent to terminate shall contain the reasons for termination.

C. Unless the identified condition(s) or violation(s) ceases and arrangements satisfactory to OWNER for correction are made within 10 days after service of the notice, the Construction Agreement may be terminated, in the total discretion of OWNER. In that event, CONTRACTOR shall not be entitled to receive any further payment until the Work is completed.

D. In the event of OWNER's election to terminate, OWNER shall immediately serve written notice of termination upon CONTRACTOR and upon surety on CONTRACTOR's Performance Bond, and the surety shall then have the right to take over and perform this contract; provided however that if within seven days after service upon the surety of the notice of election to terminate, the surety does not give OWNER written notice of its intention to take over and perform the Construction Agreement, or does not commence performance within 15 days after the date of service of the notice of termination by OWNER on surety, OWNER may take over and complete the Work by contract or by any other method it deems advisable.

E. CONTRACTOR and its surety shall be liable to OWNER for any excess cost or other damages incurred by OWNER. If OWNER takes over the Work as provided above, OWNER may exclude CONTRACTOR and the surety from the premises, or any portion of the premises, and take control of the premises without liability and without affecting the liability of CONTRACTOR and the surety for completion of the Work. In addition, OWNER may take possession of and utilize in completing the Work any materials, appliances, equipment, and other property belonging to CONTRACTOR on the work site necessary for completion of the Project, without liability.

F. If the unpaid balance of the contract price exceeds the expense of finishing the Work, including without limitation compensation for additional architectural, managerial, inspection, and administrative services, the excess shall be paid to CONTRACTOR. If the expense exceeds the unpaid balance, CONTRACTOR shall pay the difference to OWNER. Any expenses incurred by OWNER, and any damage incurred through CONTRACTOR's default, shall be certified by the Architect.

G. These provisions are in addition to and not a limitation on any other rights or remedies available to OWNER.

**Termination for Convenience:**

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

1. Cease operations as directed by OWNER in the notice;
2. Take any actions necessary, or that OWNER may direct, for the protection and preservation of the Work; and
3. Maintain any insurance provisions required by the Contract Documents.

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

**ARTICLE 64 NO WAIVER**

The failure of OWNER in any one or more instances to insist upon strict performance of any of the terms of the Contract Documents, or to exercise any option conferred in them, shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

**ARTICLE 65 EXCISE TAXES**

If any transaction under the Contract Documents constitutes a sale on which a federal excise tax is imposed under federal excise tax law, and the sale is exempt from the excise tax because it is a sale to a state or local government for its exclusive use, upon request OWNER will execute a certificate of exemption which will certify that (1) OWNER is a political subdivision of the State for the purpose of such exemption, and (2) the sale is for the exclusive use of OWNER. No excise tax for such materials shall be included in any bid price.

## **ARTICLE 66 NOTICE OF TAXABLE POSSESSORY INTEREST**

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

## **ARTICLE 67 ASSIGNMENT OF ANTITRUST ACTIONS**

A. Public Contract Code Section 7103.5(b) provides:

“In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body (OWNER) all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sect. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.”

B. For itself and all subcontractors, CONTRACTOR agrees to assign to OWNER all rights, title, and interest in and to all such causes of action CONTRACTOR and all subcontractors may have under the Contract Documents. This assignment shall become effective at the time OWNER tenders final payment to CONTRACTOR, and CONTRACTOR shall require assignments from all SUBCONTRACTORS to comply with this requirement.

## **ARTICLE 68 PATENTS, ROYALTIES, AND INDEMNITIES**

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

## **ARTICLE 69 STATE AUDIT**

Pursuant to and in accordance with the provisions of Government Code Section 8546.7, CONTRACTOR and any subcontractor connected with the performance of the

Contract Documents involving the expenditure of public funds in excess of \$10,000, including, but not limited to the cost of administration of the Contract Documents, shall be subject to examination and audit by the State of California, either at the request of OWNER or as part of any audit of OWNER, for a period of three years after final payment is made under the Contract Documents.

## **ARTICLE 70 PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Every provision of law and clause required by law to be inserted in the Contract Documents shall be deemed to be inserted, and the Contract Documents shall be read and enforced as though it were included. If through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either party the Contract Documents shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject which are in effect as of the date of the Contract Documents and any later changes which do not materially and substantially alter the positions of the parties.

## **ARTICLE 71 NOTICE AND SERVICE**

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

B. If notice is given to OWNER, by personal delivery to OWNER or by depositing the notice in the United States mail, enclosed in a sealed envelope addressed to OWNER and sent by registered or certified mail with postage prepaid.

C. If notice is given to CONTRACTOR, by personal delivery to CONTRACTOR or to CONTRACTOR's superintendent at the Project Site, or by depositing the notice in the United States mail, enclosed in a sealed envelope addressed to CONTRACTOR at its regular place of business or at such address as may have been established for the conduct of work under the Contract Documents, and sent by registered or certified mail with postage prepaid.

D. If notice is given to surety or other persons, by personal delivery or by depositing the notice in the United States mail, enclosed in a sealed envelope addressed to the surety or person at the address last communicated by the surety or other person to the party giving notice, and sent by registered or certified mail with postage prepaid.

## **ARTICLE 72 DISABLED VETERAN BUSINESS ENTERPRISE COMPLIANCE**

A. In accordance with Education Code Section 17076.11, OWNER has a participation goal for disabled veteran business enterprises of at least three percent per



year of the overall dollar amount of funds allocated to OWNER by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the school district.

B. Prior to, and as a condition precedent for final payment under any contract for such project, CONTRACTOR shall provide appropriate documentation to OWNER identifying the amount paid to disabled veteran business enterprises in conjunction with the Contract Documents, so that OWNER can assess its success at meeting this goal.