

SAN DIEGO UNIFIED SCHOOL DISTRICT

STRATEGIC SOURCING AND CONTRACTS DEPARTMENT



2351 Cardinal Lane, Building M, San Diego, CA 92123

BID NO. CC23-0081-24

**CLAIREMONT HIGH SCHOOL CTE REMODEL
AND THROWING FACILITIES
IMPROVEMENTS**

ADVERTISEMENT DATES:

**JULY 5, 2022
JULY 12, 2022**

NOTICE TO CONTRACTORS CALLING FOR BIDS

DISTRICT: SAN DIEGO UNIFIED SCHOOL DISTRICT

PROJECT DESCRIPTION: CLAIREMONT HIGH SCHOOL CTE REMODEL AND THROWING FACILITIES IMPROVEMENTS

DATE/TIME FOR SUBMITTAL OF BID PROPOSAL: 1:00 PM ON AUGUST 10, 2022

PLACE FOR SUBMITTAL OF BID PROPOSALS: ELECTRONIC-ONLY BID MUST BE SUBMITTED VIA PLANETBIDS. GO TO:
[HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL_CFM?COMPANYID=43764](https://www.planetbids.com/portal/portal_cfm?companyid=43764)
THEN SEARCH UNDER “BID OPPORTUNITIES” FOR “INVITATION NUMBER” CC23-0081-24 CLAIREMONT HIGH SCHOOL CTE REMODEL AND THROWING FACILITIES IMPROVEMENTS. FOR NEW VENDORS, PLEASE REGISTER UNDER “NEW VENDOR REGISTRATION”.

BID AND CONTRACT DOCUMENTS AVAILABLE AT: CRISP IMAGING
8375 CAMINO SANTA FE, UNIT B
SAN DIEGO, CA 92121
(858) 535-0607
- OR- www.crispimg.com/planwell

MANDATORY SITE VISIT: **PREREGISTER WITH THE DISTRICT PRIOR TO ATTENDING THE SITE WALK AT:**
<https://sandiegounified.org/sitewalks>
9:00 AM ON JULY 20, 2022
OUTSIDE THE MAIN OFFICE OF
CLAIREMONT HIGH SCHOOL
4150 UTE DRIVE, SAN DIEGO, CA 92117

ADDRESS: STRATEGIC SOURCING AND CONTRACTS
DEPARTMENT
2351 CARDINAL LANE, BLDG. M
SAN DIEGO, CALIFORNIA 92123

NOTICE IS HEREBY GIVEN that the above-named California Public School District, acting by and through its Board of Education, hereinafter “the District” will receive up to, but not later than the above-stated date and time, sealed Bid Proposals for the Contract for the Work of the Project generally described as

**NO. CC23-0081-24 CLAIREMONT HIGH SCHOOL CTE REMODEL AND
THROWING FACILITIES IMPROVEMENTS**

REQUIRED EXECUTABLE DOCUMENTS AND TIMELINE**(NOTE: This listing does not contain all the documents required during the construction phase)****THE FOLLOWING DOCUMENTS MUST BE COMPLETED AND SIGNED AT TIME OF BID OPENING**

<u>DESCRIPTION</u>	<u>PAGE NUMBER</u>
Bid Proposal	E-1
Subcontractors List	E-5
Non-Collusion Declaration	E-8
Bid Security Bond or cashier's check	E-9
DVBE/SDVOB Bidder Declaration	E-29

THE FOLLOWING DOCUMENTS MUST BE COMPLETED AND SUBMITTED WITHIN TWENTY-FOUR (24) HOURS AFTER BID OPENING

Completed Subcontractors List	E-5
Prime Contractor's Project Stabilization Agreement Letter of Assent	E-11
Completed SDVOB/DVBE Bidder Declaration	E-29
Bidder's DVBE Statement & Required Certifications	E-27

THE FOLLOWING DOCUMENTS MUST BE COMPLETED, SIGNED, AND SUBMITTED WITHIN 3 BUSINESS DAYS AFTER WRITTEN NOTIFICATION

Electronic Signature Acknowledgement & Agreement	E-10
Agreement	E-13
Certificate of Workers' Compensation Insurance	E-19
Drug-Free Work Place Certification	E-20
Guarantee	E-21
Contractor Certification Regarding Background Checks	E-22
List of Employees "Attachment A"	E-23
Electricians Certification (if required)	See Instruction to Bidders I-2
Certificates of DIR Registration (pursuant to SB854)	See Instruction to Bidders I-2

THE FOLLOWING DOCUMENTS MUST BE COMPLETED, SIGNED AND SUBMITTED WITHIN 5 BUSINESS DAYS AFTER WRITTEN NOTIFICATION

Labor and Material Payment Bond	E-15
Performance Bond	E-17
Project Stabilization Agreement Subcontractor Contact Information List	E-12a
Original Insurance Certificate(s) for General and Auto Liability and Workers' Compensation	

THE FOLLOWING DOCUMENTS MUST BE COMPLETED AND SUBMITTED WITHIN FIFTEEN (15) DAYS OF NOTICE TO PROCEED

Schedule of Values, including Cost Breakdown to CM	See GC's Article 7.1
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THE FOLLOWING DOCUMENTS MUST BE COMPLETED, SIGNED AND SUBMITTED ON A MONTHLY BASIS (BY THE 5TH DAY OF EACH MONTH)

Application for Progress Payment to Construction Office	See GC's Article 7.2
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*** NOTICE ***

YOUR DEPOSIT FOR HARD COPY BID PACKAGES WILL BE FORFEITED IF PLANS AND SPECIFICATIONS, INCLUDING ALL ADDENDA, ARE NOT RETURNED IN GOOD CONDITION* WITHIN

TEN (10) CALENDAR DAYS

AFTER FINAL BID TABULATION IS ISSUED.

***Good condition is complete and bound, as it was distributed. Moderate highlighting and markings are allowed.**

If you are the apparent low bidder, or a listed subcontractor to the apparent low bidder, please keep your plans and call the office to have your check released.

DOCUMENT LIST
FOR
CLAIREMONT HIGH SCHOOL CTE REMODEL AND THROWING FACILITIES IMPROVEMENTS

Bid Documents

- Notice Calling For Bids
- Bid Advertisement
- Required Executable Documents and Timeline
- Instructions to Bidders
- Bid Proposal
- Subcontractors List
- Non-Collusion Declaration
- Prime Contractor's Project Stabilization Agreement Letter of Assent
- Project Stabilization Agreement Subcontractor Contact Information List
- Bid Security Bond
- DVBE Participation Program Overview and Resources & DVBE/SDVOB Bidder Declaration

Contract Documents

- Electronic Signature Acknowledgement & Agreement
- Agreement
- Labor and Materials Payment Bond
- Performance Bond
- Workers Compensation Certificate
- Drug-Free Workplace Certification
- Guarantee
- Contractor Certification Regarding Background Checks
- List of Employees "Attachment A"
- General Conditions
- Supplementary Conditions
- Specifications
- Drawings

1. SUBMITTAL OF BID PROPOSALS

All Bid Proposals shall be submitted “**electronic-only**” based on the information supplied by Strategic Sourcing and Contracts Department, located at 2351 Cardinal Lane, Building M., San Diego, CA 92123. Bid Proposals must conform with, and be responsive to, the Bid and Contract terms and conditions, specifications and plans, incorporated herein. Only Bid Proposals submitted through PlanetBids <https://www.planetbids.com/portal/portal.cfm?CompanyID=43764> prior to the date and time set forth above for the electronic bid opening shall be considered.

2. BID PROPOSAL, SUBCONTRACTOR LIST, AND OTHER BID DOCUMENTS

All documents required at time of bid are included in the bid set, and shall be attached to the electronic-only bid submission or your bid will not be accepted.

3. BID AND CONTRACT DOCUMENTS

The Bid and Contract Documents are available at the location stated in the Notice to Contractors Calling for Bids in three formats, hard copy, CD, or online from Plan Well. Hard copy bid documents are available for a refundable payment of Three Hundred Dollars (\$300) per set; CD's are available for a non-refundable charge of \$50, and; online documents are available for download on PlanWell through Crisp Imaging www.crispimg.com, click on Public Planroom (Questions? 858-535-0607). Payments shall be made by check payable to **SAN DIEGO UNIFIED SCHOOL DISTRICT**. If the payment for Bid and Contract Documents is refundable, refunds will be processed by the District only if the Bid and Contract Documents, including all addenda, are returned intact and in good order to Crisp Imaging within ten (10) days of issuance of Final Bid Tabulation.

4. OFFICIAL ADVERTISING AND DISTRIBUTION SITES

The official media sources for advertising San Diego Unified School District bids are www.planetbids.com and The Daily Transcript. The official distribution point for bid documents is Crisp Imaging in Sorrento Valley. If bidders receive bid information or documents from any other source than those listed above, or from District departments other than Strategic Sourcing and Contracts, the District will not be responsible for any erroneous information published or distributed.

5. DOCUMENTS ACCOMPANYING BID PROPOSAL

Each Bid Proposal shall be accompanied by: (a) the required Bid Security; (b) Subcontractors List; (c) Non-Collusion Declaration; and (d) DVBE Bidder Declaration. All information or responses of a Bidder in its Bid Proposal and other documents accompanying the Bid Proposal shall be typewritten or in ink, complete, accurate and true; incomplete, inaccurate or untrue responses or information provided therein by a Bidder shall be grounds for the District to reject such Bidder's Bid Proposal for non-responsiveness.

6. DESIGNATION OF SUBCONTRACTORS

In compliance with the Subletting and Subcontracting Fair Practices Act (California Public Contract Code §§4100, et seq.) and amendments thereof, each Bidder shall at time of bid set forth in the Subcontractors List: (a) the name and location of the place of business of each Subcontractor (as defined in Public Contract Code §4113, California Business & Professions Code §7026, and properly licensed with the California Contractors State License Board) who will perform work or labor or render services to the Bidder in or about the construction of the Work to be performed under the Contract Documents in an amount in excess of one-half of one percent (0.5%) of the Bidder's Bid Proposal; and (b) the portion of the Work which will be performed by each listed Subcontractor, and (c) the California contractor's license number and, (d) DIR Registration Number. The Bidder shall list only one Subcontractor for each portion of the Work as is defined by the Bidder in its Bid Proposal. If a Bidder fails to list a Subcontractor or if the Bidder specifies more than one

Subcontractor for the same portion of Work to be performed under the Contract Documents valued in excess of one-half of one percent (0.5%) of the Bidder's Bid Proposal amount, the Bidder shall be deemed to have agreed that it is fully qualified to perform that portion of the Work itself and that it shall perform that portion of the Work.

Bidders may submit a complete subcontractor's full address and the percentage of work the subcontractor will perform within 24 hours of the bid opening date and time as permitted under Public Contract Code §4104(a)(3)(A).

Subcontractors must be actively and properly licensed by the CSLB for all scopes of work performed by the contractor at all times they are performing work on the District's project.

7. DIR REGISTRATION REQUIREMENTS

No contractor or subcontractor may submit a bid, be listed on a bid proposal, or awarded a contract for a public works project unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code §1771.1(a)].

This project is subject to compliance monitoring and enforcement by the DIR. Prime contractors must include the DIR Registration Number for each of their listed subcontractors to the Subcontractors List AND submit a certificate of registration for their own firm and those of their listed subcontractors upon request by the District.

Failure of the bidding prime contractor to list their subcontractors DIR Registration Number on the Subcontractors List **at time of bid** may result in rejection of their bid as non-responsive.

8. PREVAILING WAGE RATES

Pursuant to Labor Code §1773 *et seq*, the Director of the Department of Industrial Relations (DIR) of the State of California has determined the generally prevailing rates of wages in the locality in which the Work is to be performed. The Contractor awarded the Contract for the Work shall post a copy of all applicable prevailing wage rates for the Work at conspicuous locations at the Site of the Work. The Contractor and all Subcontractors performing any portion of the Work shall pay not less than the applicable prevailing wage rate for the classification of labor provided by their respective workers in prosecution and execution of the Work.

Prevailing wage requirements apply to this project and must be followed as stated in Article 17 of the General Conditions of this contract. The applicable wage determination for this contract is 2022-1, and will be 2022-1 for the duration of the contract. This includes amendments, change orders, and warranty work relating to this contract number. The following is a link to the Department of Industrial Relations website to obtain rate information, and any applicable predetermine increases www.dir.ca.gov/oprl/dprevagedetermination.htm.

Furthermore, the Contractor and all subcontractors regardless of tier shall have an active DIR number prior to award and construction, and for the duration of site work. Any subsequent subcontractors/vendors who perform work at the construction site must also have an active DIR registration number. Pursuant to Labor Code § 1773.3(d) an awarding body shall withhold final payment due to the contractor until at least 30 days after all of the required information in paragraph (2) of subdivision (a) has been submitted to DIR, including, but not limited to, providing a complete list of all subcontractors regardless of tier. See Exhibit "D" of General Conditions.

9. CONTRACTORS LICENSE CLASSIFICATION

In accordance with the provisions of California Public Contract Code §3300, the District requires that Bidders possess the following classification(s) of California State Contractors License at the

time that the Contract for the Work is awarded: **B**, or other appropriate license, subject to District approval. Any Bidder not so duly and properly licensed shall be subject to all penalties imposed by law. No payment shall be made for work, labor, materials or services provided under the Contract for the Work unless and until the Registrar of Contractors verifies to the District that the Bidder awarded the Contract is properly and actively licensed to perform the Work.

Under Business and Professions Code §7028.15(g), a bid submitted to the District by a contractor who is not licensed in accordance with this chapter [Business & Professions Code, Division 3. Professions and Vocations Generally, Chapter 9 Contractors] shall be considered nonresponsive and shall be rejected by the District, unless one of the exceptions under § 7028.15 apply. Under Business & Professions Code §7028.15(g), the District shall, before awarding a contract or issuing a purchase order, verify that the contractor was properly licensed when the contractor submitted the bid, unless one of the exceptions under § 7028.15 apply.

Under Business & Professions Code §7028.15(a), it is a misdemeanor for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor within this state without having a license.

10. **MANDATORY PRE-QUALIFICATION FOR PROJECTS ESTIMATED AT \$1,000,000 OR OVER**

Pursuant to Public Contract Code (PCC) §20111.6, each contractor submitting a bid as a prime to the District for projects estimated at \$1,000,000 or over, or any subcontractor performing the license classifications of A, B [if performing the work of] C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43 and C-46 wishing to submit a bid to a bidding prime contractor must be prequalified in order to bid.

A contractor who submits a bid who is not prequalified at time of bid, or who lists a non-prequalified subcontractor performing any of the classifications listed in the paragraph above to perform a portion of work will be rejected as non-responsive. PCC §20111.6(f) states the District may not accept a bid proposal from any person or entity that is required to submit a completed questionnaire and financial statement, or any other person or other entity that uses a subcontractor that is required to submit a completed questionnaire and financial statement for prequalification.

Any prime contractor or subcontractor who is not already prequalified must submit a **complete** District provided Pre-qualification Questionnaire **at least** ten (10) business days prior to the bid opening due date. Any Questionnaire received less than ten (10) business days before the bid opening due date will not be considered. Any Questionnaires submitted incomplete will be put aside to process completed Questionnaires first and may result in an incomplete Questionnaire not being processed within the required timeline of five (5) business days prior to the bid opening due date. Such action will render the prime contractor or subcontractor who submitted the incomplete Questionnaire to be ineligible to bid on the project for which they submitted the Questionnaire.

The District strongly encourages all prime contractors and subcontractors performing any of the classifications listed above to submit a Pre-qualification Questionnaire well in advance of a bid in order to avoid the consequence of not being eligible to bid on a project they are interested in bidding on. Pre-qualification Questionnaires may be found online at <https://prequal.sandi.net>.

11. **CONTRACT TIME**

Performance and completion of the Work shall be in accordance with the Supplementary Conditions and Specifications Section 011000. Failure to achieve completion of the Work within the Milestone Dates established therein will subject the Contractor to assessment of Liquidated Damages for delayed Substantial Completion, as set forth in the Contract Documents.

12. BID SECURITY

Each Bid Proposal shall be accompanied by Bid Security in an amount not less than **Ten Percent (10%)** of the maximum amount of the Bid Proposal, inclusive of any Additive or Deductive Alternate bid item(s). District will accept a copy of the Bid Security at time of electronic-only bid, and will require the original Bid Security to be delivered the Strategic Sourcing and Contracts within 24 hours of the bid opening. Failure of any Bid Proposal to be accompanied by Bid Security in the form and in the amount required shall render such Bid Proposal to be non-responsive and rejected by the District.

13. WITHDRAWAL OF BID PROPOSALS

Bid Proposals may not be withdrawn by any Bidder for a period of **Ninety (90)** days after the opening of Bid Proposals. During this time, all Bidders shall guarantee prices quoted in their respected Bid Proposals. A successful bidder shall not be relieved of the bid submitted without the District's consent or bidder's recourse to Public Contract Code §5100 et seq.

14. SUBSTITUTE SECURITY

In accordance with the provisions of California Public Contract Code §22300, substitution of eligible and equivalent securities for any monies withheld by the District to ensure the Contractor's performance under the Contract will be permitted at the request and expense of the Contractor and in conformity with California Public Contract Code §22300.

15. REJECTION OF BIDS AND WAIVER OF IRREGULARITIES

The District reserves the right to reject any or all Bid Proposals, to contract work with whomever and in whatever manner the District decides, to abandon the Work entirely, and to waive any informality or non-substantive irregularity in any Bid Proposal or in the bidding as the interests of the District may require.

16. AWARD OF CONTRACT

Acceptance of a Bid Proposal occurs upon Award of Contract. The Contract for the Work, if awarded, will be by action of the District's Board of Education to the responsible Bidder submitting the lowest responsive Bid Proposal. If Additive or Deductive Bid Items are included in the bidding process, the lowest Bid Proposal will be determined on the basis of the Base Bid Proposal or on the Base Bid Proposal, additional Items and any combination of Additive or Deductive Bid Items selected in accordance with the applicable provisions of the Instructions to Bidders and the Bid Proposal Form.

17. DEFINITION OF AGREEMENT, CONTRACT

Agreement: The Agreement is the executable document (E-xx) that binds District and Contractor to the terms and conditions of the Contract documents.

Contract: The Contract is the entire set of binding documents comprised of the Executable documents, General Conditions, Supplementary Conditions, Specifications, Drawings and all issued Addenda.

18. MANDATORY SITE VISIT

Pursuant to San Diego Unified School District requirements, it is mandatory that all Bidders attend the scheduled Site Visit listed in the Notice to Contractors Calling for Bids. This is a material requirement of the Construction Contract, and should a prospective bidder not attend the Site Visit,

such Bidder's bid will be rejected as non-responsive. For multiple site projects, Bidders must attend all sites scheduled for a visit.

To be eligible to attend a mandatory site walk, a Contractor attendee must preregister with the District at <https://sandiegounified.org/sitewalks>. Registration for the mandatory site walk will be the official sign-in sheet at the site walk.

19. RECEIPT AND OPENING OF BID PROPOSALS

- 19.1 **Bid Proposal Forms.** Bid Proposals shall be submitted on the forms obtained at Crisp Imaging, as mentioned in the Notice to Contractors Calling for Bids. Bid Proposals submitted on forms other than those obtained pursuant to the preceding will be rejected as non-responsive. All information required by the bid forms must be completely and accurately provided, typewritten or in ink. Responses to required information which are incomplete, inaccurate, untrue or which contain omissions of material fact rendering the response false or misleading may result in rejection of a Bid Proposal for non-responsiveness. The Bid Proposal and other documents required to be executed on behalf of the Bidder and submitted with the Bid Proposal must be executed in the name of the Bidder and must bear the original signature(s) in longhand of the person(s) duly authorized to execute the Bid Proposal and other documents on behalf of the Bidder.
- 19.2 **Submission of Bid Proposal.** A Bid Proposal and other documents accompanying the Bid Proposal shall be submitted through PlanetBids <https://www.planetbids.com/portal/portal.cfm?CompanyID=43764> prior to the date and time set forth above for the electronic bid opening. Only Bid Proposals submitted and received prior to the latest date and time for submission of Bid Proposals will be considered. Bidders are solely responsible for the timely submission of Bid Proposals.
- 19.3 **Electronic-only bidding. After the latest date/time for submission of Bid Proposals,** the preliminary bid results will be made available through PlanetBids.
- 19.4 **Pricing:** The District's computation of offered prices will always be based on the Bidder's unit price multiplied by the quantity for a particular item. In the event that there are unit prices as well as extended prices, the unit price will prevail in the event of a mathematical discrepancy.
- 19.5 **Equal Bids:** In accordance with Public Contract Code §20117, in the event that equal Bids are received, the successful Bidder shall be randomly selected through a drawing.
- 19.6 **Erasures.** Erasures, interlineations or other corrections to the Bid Proposal or other documents submitted with a Bid Proposal may render the Bid Proposal non-responsive unless the same are suitably authenticated by affixing in the margin immediately next to any erasure, interlineation or other correction the initials of a person(s) authorized to act on behalf of the Bidder.
- 19.7 **Modifications.** Upon submission of a Bid Proposal through PlanetBids, Bidder's may modify any portion of the Bid Proposal or other documents submitted with the Bid Proposal until the scheduled date and time of the bid opening has been met. If the latest revised submission of a Bid Proposal is not received in PlanetBids by the closing date and time, the last submission of the Bid Proposal will be received and considered.
- 19.8 **Multiple Sites.** Please note that, if this project is for more than one school site you may be required to break your bid down by site. Please see Bid Proposal form to determine these requirements prior to doing your takeoffs.

20. EXAMINATION OF CONTRACT DOCUMENTS

Each Bidder shall become fully acquainted with conditions relating to the Work to fully understand the facilities, difficulties, and restrictions attending the execution of the Work. Bidders shall thoroughly examine and be familiar with the Drawings and Specifications and all other Contract Documents. The failure of any Bidder to receive or examine any of the Contract Documents, form, instrument, addendum, or other document or to visit the Sites and be acquainted with the conditions there existing shall in no way relieve any Bidder from obligations with respect to its Bid Proposal or

to the contract. The submission of a Bid Proposal shall be taken as prima facie evidence of compliance with this section.

21. EXECUTION OF AGREEMENT

The apparent low bidder must sign the Agreement included in this Invitation for Bids, and must submit it within three (3) business days of written notification by District.

22. DELIVERY OF BONDS AND CERTIFICATES

Unless otherwise specified, the successful bidder shall, within five (5) business days after written notification by the District, sign and deliver to the District the Labor and Material Payment Bond and Performance Bond, certificates of insurance, and other required documents. In the event the successful bidder fails or refuses to so deliver such documents by the deadline date, the District may declare the bidder's bid deposit or bond forfeited as damages, and may award the work to the next lowest responsible bidder, or may reject all bids and call for new bids.

The penal sums of the Labor and Materials Payment Bond and the Performance Bond shall each be in an amount equal to 100% of the Contract Price, unless otherwise stated in the Supplementary Conditions. Bonds required by the Contract Documents shall be accepted by the District only if issued and duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

23. INTERPRETATION OF CONTRACT DOCUMENTS.

If any person contemplating submission of a Bid Proposal for the proposed Contract is in doubt as to the true meaning of any part of the Drawings, Specifications, or other portions of the Contract Documents, or finds discrepancies in, or omissions from the Drawings, Specifications or other portions of the Contract Documents, a written request for an interpretation or correction thereof shall be submitted to the address as mentioned in the Notice To Contractors Calling For Bids. Any Bidder submitting such a request is solely responsible for its prompt delivery. Any interpretation or correction, or other modification of any portion of the Contract documents will be made only by Addendum duly issued by or on behalf of the District and a copy of such Addendum will be posted on PlanetBids, and made available to each Bidder who has theretofore obtained a set of the Contract Documents from Crisp Imaging or via hard copy from PlanWell online plan room. The District will not be responsible for any other explanations or interpretations of the Contract Documents. No oral interpretation, correction or modification of any portion of the Contract Documents will be made to any bidder and no Bidder may rely upon any such oral interpretation, correction or modification. Addenda issued pursuant to the above shall be made a part of the Contract Documents. All interpretations, corrections or modifications made by the Strategic Sourcing and Contracts Department, San Diego Unified School District, shall be final and binding. Failure of a Bidder to request interpretation, correction or modification of known discrepancies in, or omissions in the Drawings, Specifications or other portions of the Contract Documents shall be deemed an acknowledgment by the Bidder that if awarded the Contract for the Work, the Bidder will remedy said discrepancies and omissions at no additional cost to the Owner.

24. ADDENDA AND AMENDMENTS

The terms and conditions contained in the Notice to Contractors Calling for Bids, Bid Proposal Form, Instructions to Bidders, General Conditions, Supplementary Conditions, Specifications, Agreement, and any other document that comprises this Invitation for Bids herein may be amended or modified only with the proper written approval of the District.

Addenda will be issued either directly from the District via PlanetBids, and through Crisp Imaging via hard copy or through PlanWell online plan room. Bidder is completely responsible for obtaining and verifying all addenda issued for bids advertised by the District. Failure of a bidder to obtain

and acknowledge in the Bid Proposal all addenda may result in their bid being rejected as non-responsive.

Any addenda issued during the time of bidding shall form a part of this Invitation for Bids and shall constitute a part of the contract documents.

25. AWARD OF CONTRACT

- 25.1 Action by Board of Education. The acceptance of a Bid Proposal occurs upon Award of Contract. The contract, if awarded, will be by action of its Board of Education to the responsible, responsive Bidder submitting the lowest priced Bid Proposal on the basis of the Base Bid Proposal or the Base Bid Proposal and Additive or Deductive Bid Items, if any, selected in accordance with this Instructions to Bidders.
- 25.2 Selection of Additive or Deductive Bid Items. If Additive or Deductive Bid Items are part of determining the responsive low bidder, as stated in the Bid Proposal Form, the selection of Additive or Deductive Bid Items for inclusion in the scope of the Work of the Contract to be awarded and for determination of the lowest Bid Proposal based upon the Base Bid Proposal and the combination of Additive or Deductive Bid Items selected for inclusion in the Contract to be awarded will be by a "blind-bidder" process. See Public Contract Code §20103.8(d). After the public reading of Bid Proposals, District clerical staff ("Clerical Staff") who will not be engaged in the selection of Additive or Deductive Bid Items for inclusion in the Contract to be awarded will assign each Bidder an alphabetical letter for identification purposes. The Clerical Staff will mask all portions of the Bid Proposal and other documents submitted with Bid Proposals so that the identity of each Bidder is not revealed. The Clerical Staff will maintain a list ("the Bidders List"), which identifies by name and the alphabetical letter assigned by the Clerical Staff to each Bidder. After the public reading of Bid Proposals, the Clerical Staff will provide the District's staff responsible for selection of Additive or Deductive Bid Items for inclusion in the Contract to be awarded ("District Project Staff") copies of Bid Proposals with the identities of Bidders masked; Bid Proposals reviewed by the District Project Staff will identify Bidders only by alphabetical letters. At such time as the District Project Staff has completed review of Bid Proposals and made a determination of which Bidder (by the alphabetical letter assigned by Clerical Staff) has submitted the lowest Bid Proposal on the basis of the Base Bid Proposal and any combination of Additive or Deductive Bid Items as determined by the District Project Staff, the Clerical Staff will make available to the Project Staff the Bidders List so that the identity of the Bidder to be awarded the Contract can be identified. Until such time as the District Project Staff has completed review of Bid Proposals and determined which Bidder has submitted the lowest Bid Proposal, there will be no communication between the Clerical Staff and the District Project Staff regarding the identities of Bidders or disclosure of any portion of the Bidders List.
- 25.3 Additive or Deductive Bid Items Not Included in Award of Contract. Bidders are referred to the provisions of the Contract Documents permitting the District, during performance of the Work, to add or delete from the scope of the Work Additive or Deductive Bid Items with the cost or credit of the same being the amount(s) set forth by in the Additive or Deductive Bid Items Proposal. See Public Contract Code §20103.8.
- 25.4 Responsive Bid Proposal. A responsive Bid Proposal shall mean a Bid Proposal, which conforms, in all material respects, to the requirements of Bid and Contract Documents.
- 25.5 Responsible Bidder. Under Public Contract Code §1103, a responsible Bidder is a Bidder who has the capability in all respects, to perform fully the requirements of the Contract Documents and the quality, fitness, capacity and experience which will assure good faith performance. In determining responsibility, the following criteria will be considered: (i) the ability, capacity and skill of the Bidder to perform the Work of the Contract Documents; (ii) whether the Bidder can perform the Work promptly and within the time specified, without delay or interference; (iii) the character, integrity, reputation, judgment, experience and efficiency of the Bidder; (iv) the quality of performance of the Bidder on previous contracts, by way of example only, the following information will be considered: (a) the administrative,

consultant or other cost overruns incurred by the District on previous contracts with the Bidder; (b) the Bidder's compliance record with contract general conditions on other projects; (c) the submittal by the Bidder of excessive and/or unsubstantiated extra cost proposals and claims on other projects; (d) the Bidder's record for completion of work within the contract time and the Bidder's compliance with the scheduling and coordination requirements on other projects; (e) the Bidder's demonstrated cooperation with the District and other contractors on previous contracts; (f) whether the work performed and materials furnished on previous contracts was in accordance with the Contract Documents; (v) the previous and existing compliance by the Bidder with laws and ordinances relating to contracts; (vi) the sufficiency of the financial resources and ability of the Bidder to perform the work of the Contract Documents; (vii) the quality, availability and adaptability of the goods or services to the particular use required; (viii) the ability of the Bidder to provide future maintenance and service for the warranty period of the Contract; (ix) whether the Bidder is in arrears on debt or contract or is a defaulter on any surety bond; (x) such other information as may be secured by the District having a bearing on the decision to award the Contract, to include without limitation the ability, experience and commitment of the Bidder to properly and reasonably plan, schedule, coordinate and execute the Work of the Contract Documents and whether the Bidder has ever been debarred from bidding or found ineligible for bidding on any other projects. The ability of a Bidder to provide the required bonds will not of itself demonstrate responsibility of the Bidder.

26. BIDDERS INTERESTED IN MORE THAN ONE BID; NON-COLLUSION DECLARATION

No person, firm or corporation shall be allowed to make, or file, or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm, or corporation that has submitted a sub-proposal to a bidder, or who has quoted prices of materials to a bidder is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders, or from submitting a Bid Proposal itself to the District. The form of Non-Collusion Declaration included in the Contract Documents must be completed and duly executed on behalf of the Bidder; failure of a Bidder to submit a completed and executed Non-Collusion Declaration with its Bid Proposal will render the Bid Proposal non-responsive.

27. SUBSTITUTION OF SPECIFIED ITEMS

Pursuant to Public Contract Code §3400, whenever the Contract Documents refer to any specific article, device, equipment, product, material, fixture, specified patent or proprietary name, patented process, form, method or type of construction, by name, make, trade name, or catalog number ("specified item"), such reference shall be deemed to be followed by the words, "or equal", unless it is indicated that no substitutions will be considered. Any Bidder who has timely submitted a Bid Proposal may submit data to the District to substantiate a request to substitute a specified item ("Substitution Substantiation Data") using the form provided in the contract documents. However, a request to substitute a specified item will not be considered for approval until after the District's Board of Trustees has taken action to award the Contract without any conditions or reservations. Therefore, bidders should not consider, use or include proposed substitutes for specified items when submitting their bid. Substitution Substantiation Data submitted by any Bidder with its Bid Proposal will not be considered by the District nor be deemed a submission of Substitution Substantiation Data. The Bidder awarded the Contract may request the substitution of specified items in the Contract Documents upon strict compliance with the applicable terms of the Contract Documents.

28. DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION PROGRAM

Pursuant to Resolution In Support of Service Disabled Veterans Owned Businesses (SDVOB) and Disabled Veteran Business Enterprises (DVBE) approved on May 10, 2011 by the Board of Education, the San Diego Unified School District has replaced the good faith effort with a **mandatory requirement** of 3% for DVBE participation in **all** District construction bids, regardless

of size. In order to be responsive, the successful bidder **must meet or exceed** 3% DVBE participation as evidenced by DVBE/SDVOB Bidder Declaration form submitted at time of bid. The failure of any Bidder to strictly comply with the District's DVBE Participation Program Policy **will** result in rejection of a Bidder's Bid Proposal for non-responsiveness.

The apparent low bidder will be required to submit a **complete** DVBE/SDVOB Bidder Declaration, including the subcontractor/supplier's full address and contact information and work to be performed or supplies to be provided, within 24 hours of the bid opening date and time.

DVBE's need to have a current and valid certification from the State of California Department of General Services. SDVOB's need to have a current and valid verification letter from the Department of Veteran's Affairs Center for Veterans Enterprise; self-representation will not be accepted. DVBE eligibility is a one year period and must be renewed annually. SDVOB eligibility is a two year period. Eligibility must be current at time of bid and contract award. Bidders will need to submit either certification(s) or credential(s) within twenty-four (24) hours after the opening bid proposals.

29. PROJECT STABILIZATION AGREEMENT (PSA)

This project is subject to the Project Stabilization Agreement (PSA) adopted by the Board of Education on July 28, 2009 and as subsequently amended. The complete agreement is available for viewing and downloading at www.sandi.net.

Contractor shall submit the signed PSA Prime Contractor Letter of Assent (LOA) within 24 hours of the bid opening due date. Failure to submit LOA within the specified timeline will result in rejection of their bid as non-responsive.

Unless otherwise specified, the successful bidder shall, within five (5) business days after written notification by the District, provide the completed PSA Subcontractor Contact Information List.

30. PUBLIC RECORDS

Bid Proposals and other documents responding to the Call for Bids become the exclusive property of the District upon submittal to the District. At such time as the District issues the Bid Tabulation pursuant to these Instructions to Bidders, all Bid Proposals and other documents submitted in response to the Call for Bids become a matter of public record and shall thereupon be considered public records. A Bidder that indiscriminately marks all or most of its Bid Proposal as exempt from disclosure as a public record, whether by the notations of "Trade Secret," "Confidential," "Proprietary," or otherwise, may render the Bid Proposal non-responsive and rejected. The District is not liable or responsible for the disclosure of such records, including those exempt from disclosure if disclosure is deemed required by law, by an order of Court, or which occurs through inadvertence, mistake or negligence on the part of the District or its officers, employees or agents. At such time as Bid Proposals are deemed a matter of public record, pursuant to the above, any Bidder or other party shall be afforded access for inspection and/or copying of such Bid Proposals, by request made to the District in conformity with the California Access to Public Records Act, California Government Code §§6250, et. seq. If the District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of a Bid Proposal deemed exempt from disclosure hereunder, the Bidder submitting the materials sought by such action or proceeding agrees to defend, indemnify and hold harmless the District in any action or proceeding from and against any liability, including without limitation attorneys' fees arising therefrom. The party submitting materials sought by any other party shall be solely responsible for the cost and defense in any action or proceeding seeking to compel disclosure of such materials; the District's sole involvement in any such action shall be that of a stakeholder, retaining the requested materials until otherwise ordered by a court of competent jurisdiction.

31. DRUG FREE WORKPLACE CERTIFICATE

In accordance with California Government Code §§8350 et seq., the Drug Free Workplace Act of 1990, the successful Bidder will be required to execute a Drug Free Workplace Certificate concurrently with execution of the Bid Proposal. The successful Bidder will be required to implement and take the affirmative measures outlined in the Drug Free Workplace Certificate and in California Government Code §§8350 et seq. Failure of the successful Bidder to comply with the measures outlined in the Drug Free Workplace Certificate and in California Government Code §§8350 et seq. may result in penalties, including without limitation, the termination of the Agreement, the suspension of any payment of the Contract Price otherwise due under the Contract Documents and/or debarment of the successful Bidder.

32. COMPLIANCE WITH IMMIGRATION REFORM AND CONTROL ACT OF 1986

The Bidder is solely and exclusively responsible for employment of individuals for the Work of the Contract in conformity with the Immigration Reform and Control Act of 1986, 8 USC §§1101 et seq. (the "IRCA"); the successful Bidder shall also require that any person or entity employing labor in connection with any of the Work of the Contract shall so similarly comply with the IRCA.

33. DEBARMENT

Federal Executive Order (E.O.) 12549 "Debarment" requires that all contractors receiving individual awards, using federal funds, and all subcontractors certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government. As part of bid responsiveness, District will verify the successful bidders' and his listed subcontractors' status prior to award of contract. Any successful bidder found on the Federal debarment list will be rejected as non-responsive. Information on debarment is available at the following website: <https://sam.gov>.

34. ALTERNATE BID PROPOSALS; ALTERNATE BID ITEM(S)

If the Bid Proposal forms do not specifically call for the submittal of alternate bid(s) or bid(s) for alternate item(s) and a Bidder submits alternate bid(s) or bid(s) for alternate bid item(s), the District may deem the Bid Proposal to be non-responsive and reject the same. In the event that alternate item(s) are specifically called for in the Bid Proposal forms, any Bid Proposal which does not include bid(s) for the alternate item(s) may result in the Bid Proposal being deemed by the District to be non-responsive and rejected. In the event that bids for alternate item(s) are specifically called for in the Bid Proposal forms, the Bidder is referenced to the provisions of the Contract Documents permitting the District, during performance of the Work of the Contract Documents, to add or delete such alternate item(s) with the cost or credit (inclusive of all direct and indirect costs, supervision, overhead and profit) for such alternate item(s) shall being in the amount(s) set forth in the Bidder's Bid Proposal for such alternate items(s).

35. RECOMMENDATION TO AWARD CONTRACT

The District will issue a Final Bid Tabulation, identifying the Bidder to whom the District recommends award of the Contract and the date/time/place of the District's Board of Education meeting at which time award of the Contract will be considered.

36. BID PROTEST

A bidder must have standing (i.e., sufficient protectable and tangible interest at stake) to submit a bid protest. For example, whereas a second low bidder may file a bid protest as to the first low bidder, a third low bidder may only file a bid protest if it has basis to challenge the second and first low bidders. A bidder whose bid has been rejected as non-responsive by the District has no

standing to protest another's bid, but may protest the rejection of their own bid only. Any Bidder, with the exception of a declared non-responsive bidder, submitting a Bid Proposal to the Districts address as mentioned in the Notice to Contractors Calling for Bids may file a protest of the District's recommendation to award the Contract provided that each and all of the following are complied with:

- 36.1 The bid protest is in writing on company letterhead and sent via email, fax, US Mail or hand delivered. The bid protest is filed and received by the Contracts Administration Supervisor, at the address as mentioned in the Notice To Contractors Calling For Bids, not more than five (5) calendar days following the date of issuance of the District's Final Bid Tabulation; and the written bid protest sets forth, in detail, all grounds for the bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence.
- 36.2 Any bid protest not conforming to the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the Contracts Administration Supervisor, or such individual(s) as may be designated by him/her, shall review and evaluate the basis of the bid protest. Either the Contracts Administration Supervisor or other individual designated by him/her shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest.
- 36.3. Upon receipt of the written statement from the Contracts Administration Supervisor, if the bidder submitting the bid protest would like a further opportunity to be heard, the bidder shall submit in writing (e-mail is not acceptable) a request for a panel review. This request must be received by the Contracts Administration Supervisor, at the address as mentioned in the Notice To Contractors Calling For Bids, not more than five (5) calendar days following the date of the written statement in the preceding paragraph. Either the Contracts Administration Supervisor or other individual designated by him/her will convene a panel to consider oral and written evidence from the bidder submitting the bid protest as well as the apparent low bidder(s). The panel will consider evidence presented at the proceeding as well as previously submitted evidence. Failure to attend or present evidence shall constitute a waiver of that opportunity to be heard. Either the Contracts Administration Supervisor or other individual designated by him/her shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest, which will be the recommendation to the District's Board of Education.
- 36.4 The District's Board of Education will render a final determination and disposition of a bid protest by taking action to adopt, modify or reject the disposition of the contract award as reflected in the written statement of the Strategic Sourcing and Contracts Officer, or his/her designee. Action by the District's Board of Education relative to a bid award shall be final and not subject to appeal or reconsideration by the District, any employee or officer of the District or the District's Board of Education. The rendition of a written statement by the Strategic Sourcing and Contracts Officer (or his/her designee) and action by the District's Board of Education to adopt, modify or reject the disposition of the bid award reflected in such written statement shall be express conditions precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District's intent to award the Contract, the District's disposition of any bid protest or the District's decision to reject all Bid Proposals.

37. QUESTIONS PERTAINING TO THIS BID

Questions pertaining to this bid should be addressed to:

Sharon Cheng, Senior Contracts Specialist, Construction
San Diego Unified School District
Strategic Sourcing and Contracts Department
2351 Cardinal Lane, Bldg. M
San Diego, CA 92123
(858) 522-5854
scheng@sandi.net

PRE-BID SUBMITTAL DOCUMENT CHECKLIST

This checklist is to assist the bidder in submitting a complete and responsive bid offer. The inclusion of all the required documents at time of bid does not in itself render the bidders offer as responsive.

- I am prequalified to bid as prime contractor by San Diego USD.**
- All of my listed subcontractors performing MEP trades are prequalified by San Diego USD.**
- Completed and signed Bid Proposal Form
- Listed all subcontractors performing more than ½ of 1% of the total bid value on the Subcontractor List and provided the minimum required information at time of bid per Article 6 in the Instructions to Bidders.
- Listed DIR Registration Number for each listed subcontractor.**
- Completed and signed Noncollusion Declaration.
- Completed and signed Bid Security Bond with Attorney-in-Fact certificate attached, or provided a cashier's check for 10% of your bid's value.
- Signed DVBE/SDVOB Bidder Declaration. **NOTE: In addition to meeting the minimum requirement of 3% DVBE/SDVOB participation, this document must contain as a minimum the DVBE firm name, certification number and percentage of work to be performed for your bid to be considered responsive to the District's DVBE/SDVOB requirements (see Article 28 in the Instructions to Bidders). Any deviation from what is instructed in the bid terms and conditions may render your bid non-responsive. If you are uncertain about this requirement please call Linda Hippe, Contracts Administration Supervisor, Construction at 858-522-5831 for assistance.**

BID PROPOSAL

TO: **SAN DIEGO UNIFIED SCHOOL DISTRICT** (“District”), a California Public School District, acting by and through its Board of Education.

FROM:

(Name of Bidder)

(Address)

(City, State, Zip Code)

(Telephone)

(Email Address)

(Name(s) of Bidder’s Authorized Representative(s))

Bid Proposal

Bid Proposal Amount. Pursuant to and in compliance with the Notice to Contractors Calling for Bids, the Instructions to Bidders and the other documents relating thereto, the undersigned Bidder having reviewed the Instructions to Bidders, General Conditions, Supplementary Conditions, Specifications, Agreement and all other Contract Documents and upon compliance with all requirements therein with reference to the submittal of this Bid Proposal, hereby proposes and agrees to perform the Contract including, without limitation, all of its component parts; to perform everything required to be performed; to provide and furnish any and all of the labor, materials, tools, equipment and services necessary, including all taxes, to perform the Contract and complete in a workmanlike manner all of the Work required for the Project described as:

NO. CC23-0081-24 – CLAIREMONT HIGH SCHOOL CTE REMODEL AND THROWING FACILITIES IMPROVEMENTS

in accordance with the Contract Documents as set forth above as follows:

ALLOWANCES: The following allowances are to be included in the Clairemont High School CTE Remodel Base Bid 1 by the Bidder:

Allowances for Clairemont High School CTE Remodel

No. 1:	Unforeseen conditions related to underground and site work	\$5,000.00
No. 2	Unforeseen conditions related to utility work	\$45,000.00
No. 3	Unforeseen conditions related to moving conditions/temporary storage work	\$10,000.00
No. 4	Unforeseen conditions related to tenant improvement work	\$60,000.00
No. 5	Unforeseen conditions related to hazardous material abatement	\$20,000.00
No. 6	Unforeseen conditions related to soils	\$5,000.00

No. 7	Unforeseen conditions related to FF&E procurement and installation work	\$15,000.00
Subtotal of Allowances for Clairemont High School CTE Remodel:		\$160,000.00

Acknowledgement by Bidder that Allowances 1-7 listed above are included in their Item 1 Base Bid _____
Initials

ALLOWANCES: The following allowance is to be included in the Clairemont High School Throwing Facilities Improvements Base Bid 2 by the Bidder:

No. 1:	Unforeseen conditions related to site work as directed by the District	\$50,000.00
Subtotal of Allowance for Clairemont High School Throwing Facilities Improvements:		\$50,000.00

Acknowledgement by Bidder that Allowance 1 listed above is included in their Item 2 Base Bid _____
Initials

Refer to Specification Section 01 21 00 Allowances

Method of Determining Low Bidder: The low bidder will be determined by the sum total of Base Bid Items 1 and 2.

Additive or Deductive Bid Items: If Bid Proposal prices are required for Additive or Deductive Bid Items, the Bidder's price proposal(s) for Additive or Deductive Bid Items and Unit Price Items shall be entered in PlanetBids or on the Unit Price Sheet. The Bidder acknowledges that the District may, at its sole discretion, elect to include as part of the scope of Work of the Contract any Additive or Deductive Bid Item selected in accordance with the Instructions to Bidders and in such event, the cost or credit to the District shall be as set forth in the Additive or Deductive Bid Item Proposal submitted through PlanetBids. Failure to include Bid Proposal prices, even if "zero", for any Additive or Deductive Bid Item included in the bidding process, will render the Bid Proposal non-responsive and rejected.

Unit Price Items: If unit pricing is required, it shall be entered on the Unit Price Sheet and submitted at time of bid on PlanetBids. Failure to include pricing, even if "zero", for Unit Price Item(s) included in the bidding process, may render the Bid Proposal non-responsive and rejected.

Rejection of Bid; Holding Open of Bid: It is understood that the District reserves the right to reject this Bid Proposal and that this Bid Proposal shall remain open and not be withdrawn for the period of time specified in the Instructions to Bidders.

Documents Accompanying Bid: The undersigned Bidder shall submit with this Bid Proposal the following:

- Bid Security
- Non-Collusion Declaration
- Subcontractors List
- DVBE/SDVOB Bidder Declaration

The Bidder acknowledges that if this Bid Proposal and the foregoing documents are not fully in compliance with applicable requirements set forth in the Notice to Contractors Calling for Bids, the Instructions to Bidders and in each of the foregoing documents, the Bid Proposal may be rejected as non-responsive.

Requirements of Low Bidder Recommended for Award of Contract: It is understood and agreed that if written notice of the acceptance of this Bid Proposal demonstrated by Bid Tabulation thereon is e-mailed or delivered by the District to the undersigned after the opening of Bid Proposals, the undersigned will

execute and deliver to the District all required documents in accordance with the Bid Proposal as detailed in the Required Executable Documents and Timeline (“Timeline”) and the Instructions to Bidders. Pursuant to the Timeline, the apparent low bidder of the Contract shall deliver to the District: (a) Certificates of Insurance evidencing all insurance coverages required under the Contract Documents; (b) the Performance Bond; (c) the Labor and Material Payment Bond; (d) the Certificate of Workers Compensation Insurance; (e) the Prime Contractors Letter of Assent; (f) the Drug-Free Workplace Certificate; (g) Guarantee; (h) Contractor Certification Regarding Background Checks; (i) Attachment A List of Employees; and (j) Certification Public Contract Code Section 3006 (if applicable). All of the foregoing shall be in conformity with applicable requirements set forth in Notice to Contractors Calling for Bids, the Instructions to Bidders and in each of the foregoing Documents. Failure of the Bidder recommended the Contract to strictly comply with the preceding may result in the District’s rescission of its recommendation of the award of the Contract and/or forfeiture of the Bidder’s Bid Security. In such event, the District may, in its sole and exclusive discretion elect to award the Contract to the responsible Bidder submitting the next lowest Bid Proposal, or to reject all Bid Proposals. The Work under the Contract Documents shall be commenced by the undersigned Bidder, if awarded the Contract, on the date stated in the District’s Notice to Proceed issued pursuant to the Contract Documents and Substantial Completion of the Work shall be achieved within the Contract Time specified in the Contract Documents.

Notices: All notices or other correspondence shall be addressed to the District and the Bidder at their respective addresses set forth herein. Notices shall be effective only if in writing and in conformity with the requirements for service of notices set forth in the Contract Documents.

Contractor's License: The undersigned Bidder is currently and duly licensed in accordance with the California Contractors License Law, California Business & Professions Code §§7000 et seq., under the following classification(s) _____ bearing License Number(s) _____, with expiration date(s) of _____. By executing this Bid Proposal and submitting the same to the District, the Bidder acknowledges the provisions of California Business & Professions Code §7028.15, which provides that it shall be a misdemeanor for any person to submit a bid proposal to a public agency without having a license to perform the work of the bid proposal. By executing this Bid Proposal, the Bidder hereby certifies that: (a) it is duly licensed, in the necessary class(es), for performing the Work of the Contract Documents; (b) that such license shall be in full force and effect throughout the duration of the performance of the Work under the Contract Documents; and (c) that all Subcontractors (as defined in Public Contract Code §4113 and Business & Professions Code §7026) providing or performing any portion of the Work of the Contract Documents shall be so similarly and appropriately licensed to perform or provide such portion of the Work.

Legal Status: The undersigned Bidder’s legal status is _____ (i.e., corporation, sole proprietorship, partnership, LLP).

DIR Registration Number: _____

Designation of Subcontractors: In compliance with the Subletting and Subcontracting Fair Practices Act (California Public Contract Code §§4100, et seq.) and amendments thereof, each Bidder shall set forth **at time of bid** in the Subcontractors List: (a) the name and location of the place of business of each Subcontractor who will perform work or labor or render services to the Bidder in or about the construction of the Work to be performed under the Contract Documents in an amount in excess of one-half of one percent (0.5%) of the Bidder's Bid Proposal; (b) the Subcontractor’s license number; (c) the portion of the Work which will be performed by each listed Subcontractor; and, (d) DIR Registration Number. The Bidder shall list only one Subcontractor for each portion of the Work as is defined by the Bidder in its Bid Proposal. If a Bidder fails to list a Subcontractor or if the Bidder specifies more than one Subcontractor for the same portion of Work to be performed under the Contract Documents valued in excess of one-half of one percent (0.5%) of the Bidder's Bid Proposal amount, the Bidder shall be deemed to have agreed that it is fully qualified to perform that portion of the Work itself and that it shall perform that portion of the Work. Subcontractor is defined in Public Contract Code §4113 and Business & Professions Code §7026.

Confirmation of Figures: By submitting this Bid Proposal, the Bidder confirms that it has checked all of the above figures in the Allowances section, as well as the Bid Item numbers and Additive or Deductive Bid Item numbers entered into PlanetBids, and understands that neither the District nor any of its agents,

SUBCONTRACTOR LIST

NOTE!

The Subcontractor List contains the Architect's listing of expected licensed trades performing work over .5% of the project estimate. You are free to add any trades performing work over .5% over and above that of the Architect's projection. **The listing provided does not relieve you of the Public Contract Code requirement to list ALL subcontractors performing over 1/2 of 1% of the projects scope of work.**

NEW: Effective July 1, 2014, no contractor or subcontractor may be listed on a bid proposal, or awarded a contract for a public works project (**awarded on or after April 1, 2015**) unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code §1771.1(a)].

This project is subject to compliance monitoring and enforcement by the DIR. Prime contractors must add the DIR Registration Number for each of their listed subcontractors to the Subcontractors List AND submit a certificate of registration for their own firm and those of their listed subcontractors upon request by the District.

Failure of the bidding prime contractor to list their subcontractors DIR Registration Number on the Subcontractors List **at time of bid** may result in rejection of their bid as non-responsive.

NOTE! **ALL OF YOUR SUBCONTRACTORS PERFORMING MEP TRADES (as defined by PCC Section 20111.6) MUST BE PREQUALIFIED BY THE DISTRICT.**

SUBCONTRACTORS LIST

Bidder: _____

Address: _____

Telephone: _____ **Email:** _____

Bidder(s) Authorized Representative(s): _____

PROJECT: CLAIREMONT HIGH SCHOOL CTE REMODEL AND THROWING FACILITIES IMPROVEMENTS

TRADE/PORION OF THE WORK	SUBCONTRACTOR NAME AND LICENSE NUMBER	LICENSE CLASSIFICATION	SUBCONTRACTOR BUSINESS LOCATION	% OF CONTRACT VALUE	DVBE/SBE?	DIR REG. NO.
Site Demo						
Building Demo						
Abatement						
Building Concrete						
Site Concrete						
Rough Carpentry						
Casework						
Doors/Frames/Hardware						
Gypsum Board Assembly						
Acoustic Ceiling						

TRADE/PORION OF THE WORK	SUBCONTRACTOR NAME AND LICENSE NUMBER	LICENSE CLASSIFICATION	SUBCONTRACTOR BUSINESS LOCATION	% OF CONTRACT VALUE	DVBE/SBE?	DIR REG. NO.
Acoustic Ceiling						
Flooring						
Specialties						
Plumbing						
HVAC						
Electrical						
Communications						
Earthwork						
Site Utilities/ Electrical						
Landscape/ Irrigation						

TRADE/PORION OF THE WORK	SUBCONTRACTOR NAME AND LICENSE NUMBER	LICENSE CLASSIFI-CATION	SUBCONTRACTOR BUSINESS LOCATION	% OF CONTRACT VALUE	DVBE/ SBE?	DIR REG. NO.

NOTE: Under Public Contract Code section 4100 et. seq. known as the Subletting and Subcontracting Fair Practices Act, all subcontractors (defined under Public Contract Code section 4113 and Business & Professions Code section 7026) to the prime contractor performing work in excess of 0.5% of the bid must be listed. Contractor **at time of bid** must list the name and location of business, contractor’s license number and trade/portion of work, **and pursuant to SB854, the DIR Registration Number of every listed subcontractor.**

NOTE: LIST ALL DVBE SUBCONTRACTORS IN THE DVBE/SDVOB BIDDER DECLARATION DUE AT TIME OF BID AS WELL AS IN THIS SUBCONTRACTORS LIST.

The Bidder shall designate/identify the listed subcontractors as DVBE’s on the DVBE/SDVOB Bidder Declaration form and Subcontractor’s List at **time of bid**, and within twenty-four (24) hours after the opening of Bid Proposals, provide all required information on the Subcontractor List per Public Contract Code section 4104(a)(3)(A). Failure of a Bidder to meet the 3% DVBE participation percentage requirement pursuant to Resolution In Support of Service Disabled Veterans Owned Businesses (SDVOB) and Disabled Veteran Business Enterprises (DVBE) approved on May 10, 2011 by Board of Education shall result in rejection of the Bidder’s Bid Proposal for non-responsiveness. DVBE’s need to have a current and valid certification from the State of California Department of General Services. SDVOB’s need to have a current and valid verification letter from the Department of Veteran’s Affairs Center for Veterans Enterprise; self-representation will not be accepted. DVBE and SDVOB eligibility is a one year period and must be renewed annually; eligibility must be current at time of bid and contract award. Failure of a Bidder to submit the designation/identification of subcontractors pursuant to the preceding may result in rejection of the Bidder’s Bid Proposal for non-responsiveness. For purposes of the preceding, the following definitions shall apply:

Small Business: A business concern, independently owned and operated, not dominant in the field of operation and whose size determinations and annual receipts are in accordance with the U.S. Department of Commerce "Standard Industrial Classification Manual". Size determination is set by either (1) annual receipts or (2) number of employees. In size determinations where the standard is "annual receipts", size eligibility requires that the concern may not exceed the "annual receipts" in that standard. In size determinations where the standard is "number of employees", size eligibility requires that the concern may not exceed the number of employees in that standard. "Number of employees" means the average employment of the concern for the preceding completed 12 calendar month period. A concern is "not dominate in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. The designation of small business shall include:

“DVBE” Disabled Veteran Business Enterprise: A business concern that is certified by the State of California Department of General Services Office of Small and Minority Business, 51% owned and operated by a disabled veteran.

“SBE” Small Business Enterprise: A small business concern independently owned and operated by a non-minority, qualifying in one of the above categories.

Percentage of Contract Value: The Bidder shall stipulate what percentage of work a small business; a DVBE or a SBE will perform in relation to the total bid value.

NON-COLLUSION DECLARATION

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this ____ day of _____, 20__ at

(City, County and State)

By: _____
(Signature of Company Officer) (Date)

(Typed or Printed Name) (Title)

(Address) (Phone/Fax with area code)

(City/State/Zip) (Email Address)

SAN DIEGO UNIFIED SCHOOL DISTRICT
BID SECURITY BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____

_____ as Principal, and

_____ as a Surety, are held and firmly bound unto SAN DIEGO UNIFIED SCHOOL DISTRICT hereinafter called the Owner, in the penal sum equal to: TEN PERCENT (10%) of the total amount of the Principal's Bid Proposal submitted to the Owner for the Work described below for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying Bid Proposal dated _____, 20____, for the Work described as: _____

PROJECT NAME

NOW, THEREFORE, if the Principal shall not withdraw said Bid Proposal within the period specified therein after the opening of the same, or, if no period be specified, within one hundred twenty (120) days after said opening, and shall within the period specified therefore, or, if no period be specified, within five (5) days after the prescribed forms are presented to him for signature, enter into a written contract with the Owner, in accordance with the bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, or in the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bond within the time specified, if the Principal shall pay the Owner the difference between the amount specified in said Bid Proposal and the amount for which the Owner may procure the required work and/or supplies if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or the Call for Bids, or to the Work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract or the Call for Bids, or to the work, or to the specifications.

In the event suit is brought upon this bond by the Owner and judgment is recovered, the Surety shall pay all litigation expenses incurred by the Owner in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF the above-named parties have executed this instrument under their several seals this ____ day of _____, 20____.

(Principal Name)

By: _____

(Typed or Printed Name)

Title: _____

(Surety Name)

By: _____
(Signature of Attorney-in-Fact for Surety)

(Typed or Printed Name)

(Attach Attorney-in-Fact Certificate)

(____) _____ Phn (____) _____ Fax
(Area Code Telephone and Fax Number of Surety)

ELECTRONIC SIGNATURE ACKNOWLEDGEMENT & AGREEMENT

This Agreement governs the rights, duties, and responsibilities relating to the use of an electronic signature for Contract management with San Diego Unified School District (“District”) through an electronic system established and maintained by the District.

1. Under the Uniform Electronic Transactions Act (California Civil Code sections 1633.1-1633.17), I agree to conduct transactions relating to the Contract by use of an electronic signature, which is an electronic mark that is held to the same standard as a legally binding equivalent of my handwritten signature. **I further agree that, for the purposes of authorizing, approving, and authenticating records, information, and transactions relating to the Contract, my electronic signature has the full force and effect of a signature affixed by hand to a paper document. I agree that the transactions I conduct electronically relating to the Contract shall be binding upon me.**
2. I agree that my electronic signature will be valid from date of issuance until it is revoked or terminated under this Agreement. I understand that the District may suspend, terminate, or revoke my electronic signature in its reasonable discretion.
3. I will use my electronic signature to establish my identity and sign electronic documents and forms relating to the Contract. I am solely responsible for protecting my electronic signature. If I suspect or discover that my electronic signature has been stolen, lost, used by an unauthorized party, or otherwise compromised, then I will immediately notify the Construction Manager Director or his/her designee and request that my electronic signature be revoked. I will then immediately cease all use of my electronic signature. I agree to keep my electronic signature secret and secure by taking reasonable security measures to prevent it from being lost, modified, or otherwise compromised, and to prevent unauthorized disclosure of, access to, or use of it or of any media on which information about it is stored.
4. I will immediately request that my electronic signature be revoked if I discover or suspect that it has been or is in danger of being lost, disclosed, compromised or subjected to unauthorized use in any way.
5. If I have requested that my electronic signature be revoked, if I am notified that someone has requested that my electronic signature be suspended, terminated, or revoked, or if I suspect or discover that it has been or may be compromised or subjected to unauthorized use in any way, I will immediately cease using my electronic signature. I will also immediately cease using my electronic signature upon termination of employment or termination of this Agreement.
6. I will not enter into an electronic signature for any person other than myself, unless I am designated in writing, as a proxy for such person relating to the Contract.

Please print or type your first and last name

Date

Please provide your email address

- I understand that by checking this box constitutes a legal signature confirming that I acknowledge and warrant the truthfulness of the information provided in this document. Please sign within the box below.

**PROJECT STABILIZATION AGREEMENT
PRIME CONTRACTOR LETTER OF ASSENT**

TO: **SAN DIEGO UNIFIED SCHOOL DISTRICT**, a California Public School District, acting by and through its Board of Education ("the District").

FROM:

(Name of Contractor)

(Address)

(City, State, Zip Code)

(Telephone/Fax)

(Email Address)

(Name(s) of Contractor's Authorized Executive(s))

This is to confirm that my Company agrees to be party to and bound by the San Diego Unified School District Project Stabilization Agreement – School Construction Major Rehabilitation Funded by Propositions S and Z, effective July 28, 2009 and as subsequently amended, as such Agreement may from time to time be amended by the negotiating parties or interpreted pursuant to its terms. Such obligation to be a party and bound by this Agreement shall extend to all work covered by the Agreement undertaken by this Company on the Project pursuant to CC23-0081-24 – Clairemont High School CTE Remodel and Throwing Facilities Improvements, and this Company shall require all of its subcontractors and others covered by the PSA of whatever tier to be similarly bound for all work within the scope of the Agreement by signing and furnishing to the District's Contract Compliance Office an identical Letter of Assent prior to their commencement of work.

Executed By:

(Signature of Company Officer)

(Date)

(Typed or Printed Name)

(Title)

**PROJECT STABILIZATION AGREEMENT
SUBCONTRACTOR CONTACT INFORMATION FORM**

(Company Name of Prime Contractor)

(Address)

(City, State, Zip Code)

(Telephone)

(Email Address)

(Name(s) of Contractor's Authorized Executive(s))

This is to inform the San Diego Unified School District's Project Stabilization Agreement Department the contact information for all subcontractors listed for project CC23-0081-24 – Clairemont High School CTE Remodel and Throwing Facilities Improvements, and will be providing to the District's Contract Compliance Office a Letter of Assent prior to their commencement of work.

This document is a tool for obtaining the necessary information from the subcontractor. General Contractors are not required to submit these individual forms to the District. Only the PSA Subcontractor Contact Information List is required, upon request by the District.

It is requested of each subcontractor bidding on the listed project above, to complete the following form and return to the prime contractor within 24 hours of request.

SUBCONTRACTOR COMPANY NAME	PSA COMPLIANCE CONTACT PERSON	CONTACT PERSON'S EMAIL ADDRESS	SUBCONTRACTOR BUSINESS ADDRESS	PHONE NUMBER

AGREEMENT

THIS AGREEMENT is entered into by and between the **SAN DIEGO UNIFIED SCHOOL DISTRICT**, a California Public School District hereinafter "District" and _____, "Contractor".

WITNESSETH, that the District and the Contractor in consideration of the mutual covenants contained herein agree as follows:

- 1. **The Work.** Within the Contract Time and for the Contract Price, subject to adjustments thereto pursuant to the Contract Documents, the Contractor shall perform and provide all necessary labor, materials, tools, equipment, utilities, services and transportation to complete in a workmanlike manner all of the Work required in connection with the work of improvement commonly referred to as **CLAIREMONT HIGH SCHOOL CTE REMODEL AND THROWING FACILITIES IMPROVEMENTS**

Contractor shall complete all Work covered by the Contract Documents, including without limitation, the Drawings and Specifications prepared by the Architects AVR P Studios and other Contract Documents enumerated in Article 6 below, along with all modifications and addenda thereto issued in accordance with the Contract Documents.

- 2. **Contract Term.** The Work shall be commenced on the date stated in the District's Notice to Proceed; the Contractor shall achieve Substantial Completion of the Work within the Contract Time set forth in the Contract Documents.
- 3. **Compensation.** Contractor shall be compensated for the performance of its obligations under this Agreement as specified in the executed Bid Proposal, for the following items:

Item 1 CTE Remodel Base Bid: _____

Item 2 Throwing Facilities Base Bid: _____

Total Contract Price: _____

The District's payment of the Contract Price shall be in accordance with the Contract Documents.

- 4. **Liquidated Damages.** In the event of the failure or refusal of the Contractor to achieve Substantial Completion of the Work of the Contract Documents within the Contract Time, as adjusted, the Contractor shall be subject to assessment of Liquidated Damages in accordance with the Contract Documents.
- 5. **Termination.** This Agreement may be terminated by the District upon seven (7) days written notice to Contractor. The District's right to terminate under this paragraph shall be in addition to any other rights reserved to the District under this Contract.
- 6. **The Contract Documents.** The documents forming a part of the Contract Documents consist of the following, all of which are component parts of the Contract Documents, and any other documents signed by both parties relating to the subject matter of the Agreement, all of which are incorporated by reference as though set forth in full herein.

Agreement
 Instructions to Bidders
 Bid Proposal
 Subcontractors List
 Project Stabilization Agreement Letter of Assent
 PSA Subcontractor Contact Info List
 Certification of Workers Compensation

Performance Bond
 Labor and Material Payment Bond
 DVBE/SDVOB Bidder Declaration
 General Conditions
 Electronic Signature Acknowledgement
 Supplementary Conditions
 Specifications

Project Name:
Bond No.:

NO. CC23-0081-24

**SAN DIEGO UNIFIED SCHOOL DISTRICT
STRATEGIC SOURCING AND CONTRACTS DEPARTMENT
2351 CARDINAL LANE, BLDG. M
SAN DIEGO, CA 92123**

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____ as Principal, and as Surety _____ are held and firmly bound unto **SAN DIEGO UNIFIED SCHOOL DISTRICT** hereinafter "the Obligee", in the penal sum of _____ Dollars (\$ _____) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Trustees passed on _____, 20____, has awarded to the Principal a Contract for the Work described as: _____

WHEREAS, the Principal, on or about _____, 20____, entered into a Contract with the Obligee for performance of the Work, the Agreement and all other Contract Documents set forth therein are incorporated herein and made a part hereof by this reference which contract is by this reference made a part hereof.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor materials or services used, or reasonably required for use, in the performance of the Work.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully make payment to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The term "Claimant" shall refer to any person, corporation, partnership, proprietorship or other entity including without limitation, all persons and entities described in California Civil Code §§8004, 9100, (and generally Civil Code §8000 et seq., 9000 et seq.) providing or furnishing labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard for whether such labor, materials or services were sold, leased or rented. This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

In the event suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorneys fees pursuant to California Civil Code §§8150, 9550 (and generally Civil Code §8000 et seq., 9000 et seq.).

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration, deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

Project Name:
Bond No.:

NO. CC23-0081-24

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this _____ day of _____, 20__ by their duly authorized agent or representative.

(Principal Name)

By: _____

(Typed or Printed Name)

Title: _____

(Surety Name)

By: _____
(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

(Typed or Printed Name)

() _____ Phn () _____ Fax
(Area Code Telephone and Fax Number of Surety)

_____ E-Mail

Address for Notices

Project Name:
Bond No.:

NO. CC23-0081-24

**SAN DIEGO UNIFIED SCHOOL DISTRICT
STRATEGIC SOURCING AND CONTRACTS DEPARTMENT
2351 CARDINAL LANE, BLDG. M
SAN DIEGO, CA 92123**

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the San Diego Unified School District ("the District") has awarded to

_____ as Principal, a contract dated the _____ day of _____, 20____, (the "Contract"), which Contract is by this reference made a part hereof, for the work described as follows:

WHEREAS, Principal is required to furnish a bond in connection with the Contract, guaranteeing the faithful performance thereof;

NOW, THEREFORE, we, the undersigned Principal and as Surety are held and firmly bound unto the District in the sum of _____ dollars (\$ _____), to be paid to the District or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by the District, shall promptly and faithfully perform the covenants, conditions, and agreements of the Contract during the original term and any extensions thereof as may be granted by the District, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless the District as stipulated in the Contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

No extension of time, change, alteration, modification, or addition to the Contract, or of the work required there under, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

Whenever Principal shall be and declared by the District to be in default under the Contract, Surety shall promptly remedy the default, or shall promptly:

1. Undertake through its agents or independent contractors, reasonably acceptable to the District, to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages, or, at Surety's election, or, if required by the District, to pay the penal sum.
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by the District of the lowest responsible bidder, arrange for a contract between such bidder and the District and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall

Project Name:
Bond No.:

NO. CC23-0081-24

not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by the District to the Principal under the Contract and any amendments thereto, less the amount paid by the District to Principal.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the District' rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the District or its successors or assigns.

Surety may join in any arbitration proceedings brought under the Contract and shall be bound by any arbitration award.

In the event suit is brought upon this bond by the District, Surety shall pay reasonable attorney's fees and costs incurred by the District in such suit.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

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

Principal: _____
(Name of Firm)

Surety: _____
(Name of Firm)

By: _____
(Signature)

By: _____
(Signature)

(Printed Name)

(Printed Name)

Title: _____

Title: _____

Address for Notices:

DRUG-FREE WORKPLACE CERTIFICATION

I, _____, am the _____ of _____ (Print Name) (Title) (Contractor Name). I declare, state and certify to all of the following:

- 1. I am aware of the provisions and requirements of California Government Code §§8350 et seq., the Drug Free Workplace Act of 1990.
2. I am authorized to certify, and do certify, on behalf of Contractor that a drug free workplace will be provided by Contractor by doing all of the following:
A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying actions, which will be taken against employees for violation of the prohibition;
B. Establishing a drug-free awareness program to inform employees about all of the following:
(i) The dangers of drug abuse in the workplace;
(ii) Contractor's policy of maintaining a drug-free workplace;
(iii) The availability of drug counseling, rehabilitation and employee-assistance programs; and
(iv) The penalties that may be imposed upon employees for drug abuse violations;
C. Requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.
3. Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code §8355 by, inter alia, publishing a statement notifying employees concerning: (a) the prohibition of any controlled substance in the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code §8355(a) and requiring that the employee agree to abide by the terms of that statement.
4. Contractor and I understand that if the District determines that Contractor has either: (a) made a false certification herein, or (b) violated this certification by failing to carry out and to implement the requirements of California Government Code §8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code §§8350, et seq.
5. Contractor and I acknowledge that Contractor and I are aware of the provisions of California Government Code §§8350, et seq. and hereby certify that Contractor and I will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed at San Diego, California

By: _____ (Signature) _____ (Date)

_____ (Typed or Printed Name) _____ (Title)

GUARANTEE

DISTRICT: SAN DIEGO UNIFIED SCHOOL DISTRICT

**PROJECT: CLAIREMONT HIGH SCHOOL CTE REMODEL AND THROWING FACILITIES
IMPROVEMENTS**

CONTRACTOR NAME: _____

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above-referenced Project (the "Work") have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Drawings and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Drawings and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of two (2) years from the date of the District's Final Acceptance of the Work, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor's failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District's issuance of the Notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses, or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District's presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor's Guarantee(s) and warranty(ies) relating to the Work shall be binding upon the Contractor's Performance Bond Surety and all successors or assigns of Contractor and/or Contractor's Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor's guarantee(s) and warranty(ies) or any guarantee(s) or warranty(ies) provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

By: _____
(Signature) (Date)

(Typed or Printed Name) (Title)

CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS

_____ certifies that it has performed one of the following:
Name of Contractor/Consultant

- Pursuant to Education Code Section 45125.1, Contractor has conducted criminal background checks, through the California Department of Justice, of all employees providing services to the San Diego Unified School District, pursuant to the contract dated _____, and that none have been convicted of serious or violent felonies, as specified in Penal Code 1192.7(c) and 667.5(c), respectively.

OR

- Pursuant to Education Code Section 45125.2, Contractor will ensure the safety of pupils by one or more of the following methods:

- 1) The installation of a physical barrier at the worksite to prevent contact with pupils (i.e. 8 foot chain link fencing).

AND

- 2) Continual supervision and monitoring of all employees of the entity by an employee of the entity, such as foremen, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

OR

- 3) Will execute the required Department of Justice application and send either all employees or supervising and monitoring employees for fingerprinting at an authorized processing center. ***Prior to performing work on site Contractor must provide certification that the required employees have been fingerprinted.***

Contact www.oag.ca.gov to obtain an ORI number or more information from the Department of Justice regarding this requirement.

AND

Included as "Attachment A" is a list of the names of the employees of the undersigned who will be working on the project and who, to the best knowledge of the undersigned, are not convicted felons or awaiting trial for a felony charge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____, 20_____

Signature

Title



**DISABLED VETERAN BUSINESS ENTERPRISE ("DVBE")
PARTICIPATION PROGRAM OVERVIEW AND RESOURCES**

1. **DVBE Participation Program Policy.** The District is committed to achieving the administratively established Participation Requirement for Disabled Veteran Business Enterprises ("DVBEs") in accordance with Resolution In Support of Service Disabled Veteran-Owned Businesses (SDVOB) and Disabled Veteran Business Enterprises (DVBE) approved on May 10, 2011 by the Board of Education Resolution. Through the DVBE participation program, the District encourages contractors to ensure maximum opportunities for the participation of DVBE's in the Work of the Contract. The District's commitment to the achievement of DVBE Participation Requirement for the Work of the Contract shall not, however, result in the District's discrimination in the award of the Contract on the basis of ethnic group identification, ancestry, religion, age, sex, race, color, or physical or mental disability.

Your participation is mandatory for all construction jobs with San Diego Unified School District.

Information regarding the DVBE Participation program, including a listing of DVBE certified businesses, is available on the internet at the State of California website at: <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>.

2. **Definitions.**

- 2.1 **Broker:** A certified DVBE/SDVOB contractor that does not have title, possession, control, and risk of loss of materials, supplies, services or equipment provided, unless one or more of the disabled veteran owners has at least 51-percent (51%) ownership of the quantity and value of the materials, supplies and equipment provided [Military and Veterans Code (MVC) Section 999.2(b)].
- 2.2 **Commercially Useful Function (CUF):** A "commercially useful function" (CUF) provides services or goods that contribute to the fulfillment of the contract requirements. It is not a CUF if the DVBE/SDVOB's role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DVBE/SDVOB participation. A CUF is a person or entity doing all of the following:
 - a. is responsible for the execution of a distinct element of the work of the contract;
 - b. carries out the obligation by actually performing, managing or supervising the work involved;
 - c. performs work that is normal for its business services and functions; and
 - d. is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry standards.
- 2.3 **Disabled Veteran.** A "Disabled Veteran" means a veteran of the military, naval, or air service of the United States with at least ten percent (10%) service-connected disability who is a resident of the State of California.
- 2.4 **Disabled Veteran Business Enterprise.** A "Disabled Veteran Business Enterprise" ("DVBE") means a business enterprise certified by the Office of Small Business Certification & Resources, State of California, Department of General Services, pursuant to Military and Veterans Code §999, or an enterprise certifying that it is a DVBE by meeting all of the following requirements: (a) it is a sole proprietorship at least fifty-one percent (51%) owned by one or more Disabled Veterans, or in the case of a publicly owned business, at least fifty-one percent (51%) of its stock is owned by one or more Disabled Veterans; or a subsidiary wholly owned by a parent corporation, but only if at



least fifty-one percent (51%) of the voting stock of the parent corporation is owned by one or more Disabled Veterans; or a joint venture in which at least fifty-one percent (51%) of the joint venture's management and control and earnings are held by one or more Disabled Veteran; (b) the management and control of the daily business operations are by one or more Disabled Veterans; provided that the Disabled Veteran(s) exercising management and control of the business enterprise are not required to be the same Disabled Veteran(s) who is/are the equity Owner(s) of the business enterprise; and (c) it is a sole proprietorship, corporation, or partnership with its home office located in the United States and which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business. The terms "foreign corporation" "foreign firm" and "foreign-based business" shall be deemed to mean a business entity that is incorporated or which has its principal headquarters located outside the United States of America.

- 2.5 **Front.** A subcontractor providing artificial or incidental participation to meet the objective of a contract (e.g., DVBE/SDVOB participation requirement), or a provider who does not own the equipment they are providing, but going to an outside source.
- 2.6 **Pass-through.** A supplier providing access to materials and supplies for which they are not specifically certified/verified. Also see "Front" above.

3. Participation Requirement.

- 3.1 **Participation Requirement Defined.** The term "Participation Requirement" is a numerically expressed condition of DVBE participation in performing the Work of the Contract
- 3.2 **DVBE Participation.** The Bid Proposal of a bidder shall be deemed responsive only if the bidder achieves or exceeds the DVBE Participation Requirement of Three Percent (3%) of total amount of bidder's Bid Proposal. The bidder's achievement of the Participation Requirement will not by itself render the Bid Proposal of such bidder to be responsive; in accordance with the Information for Bidders, the entirety of the Bid Proposal must be responsive.

DVBE's need to have a current and valid certification from the State of California Department of General Services for the business type and classification as listed on the bid documents. SDVOB's need to have a current and valid verification letter from the Department of Veteran's Affairs Center for Veterans Enterprise relevant to the bid (e.g., NAICS Code); self-representation will not be accepted. DVBE eligibility is a one year period and must be renewed annually; SDVOB eligibility is a two year period. Eligibility must be current at time of bid and contract award.
- 3.3 **Exclusions.** The District expressly prohibits pass-throughs and fronts.



DVBE RESOURCE INFORMATION

The Elite Service Disabled Veteran-Owned Business (SDVOSB) Network, San Diego Chapter at www.elitesdvob.org

Disabled Veteran Business Alliance: www.gousvba.org

Veterans In Business Network: www.vibnetwork.org

Federal SDVOSB database: www.vip.VetBiz.gov

State of California DVBE database: <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

The District's Outreach Team can also be reached for assistance:

1. Karen Linehan, Outreach Program Manager at 858-627-7232 or klinehan@sandi.net; or
2. Alma D. Bañuelos, Business Outreach Coordinator at 858-573-5852 or abanuelos@sandi.net.

Please review the District's Disabled Veteran Business Participation Tip Sheet at: https://www.sandiegounified.org/sites/default/files_link/district/files/dept/facilities_planning_&_construction/BizOutreach/DVBE%20TipSheet_single%20page%20for%20website%200416.pdf



**DVBE PARTICIPATION DOCUMENTATION
BIDDER'S DVBE STATEMENT**

1. General Information.

Bidder's Name: _____

Bidder's Address: _____

Bidder's Telephone Number: _____

Bidder's Fax Number: _____

Project Name: _____

Total Amount of Bidder's Bid Proposal: _____

Bidder's Representative: _____

2. DVBE Participation Achieved.

<u>Minimum Participation Requirement</u>		<u>Participation Achieved</u>	
DVBE's:	3%	DVBE's:	____%

3. Submittal of Documentation.

Concurrently with the submittal of this Bidder's DVBE Statement, the bidder has also submitted duly completed, and executed if required, the Documentation of Disabled Veteran Business Enterprise Program Requirements (DVBEPR). All of the information provided by the bidder in its responses to (DVBEPR) is true, correct and accurate; there are no omissions in the responses of the bidder to the foregoing Attachments, which render any of the bidder's statements or information provided therein to be false or misleading.

4. Certification of DVBE Status.

The bidder certifies, warrants and represents to the District that the bidder has exercised due diligence in ascertaining the status of each proposed DVBE identified in (DVBEPR) as a DVBE in compliance with the applicable provisions of the District's DVBE Participation Program Policy and applicable law. By executing and submitting this Bidder's DVBE Statement, the bidder represents to the District that each DVBE identified in (DVBEPR) is duly and properly certified as a DVBE in conformity with the District's DVBE Program Policy and applicable law. The bidder acknowledges that in the event that the District shall reasonably determine that any DVBE identified in the bidder's responses to (DVBEPR) is not duly and properly certified in the appropriate category of DVBE, the Bid Proposal of such bidder may be rejected by the District as being non-responsive. For each DVBE identified in (DVBEPR), the bidder has submitted with its Bid Proposal forms of DVBE Certification (DVBEPR) duly completed and executed by each such DVBE.



5. **Authority to Execute.**

The individual executing this Bidder's DVBE Statement on behalf of the bidder warrants and represents to the District that she/he is duly authorized to execute this Bidder's DVBE Statement on behalf of the Bidder.

Executed this _____ day of _____ 20____, at _____.
(City and State)

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

(Sign)

(Name of Individual Executing Statement)

[Printed or Typed]

Company Name: _____

DVBE/SDVOB BIDDER DECLARATION

1. Prime Bidder Information:

- a. Identify current California certification(s) (MB, SB, SB/NVSA, DVBE) _____ Or None _____
- b. Will DVBE/SDVOB subcontractors or suppliers be used for this contract? Yes _____ No _____
- c. If you answered NO, skip to 4. CERTIFICATION below.

2. Subcontractor/Supplier Information:

- a. If you answered YES to 1.b. above, have you verified whether your DVBE/SDVOB subcontractors/suppliers have current and valid CA DVBE certification or SDVOB Center for Veterans Enterprise (CVE) Verification Letters? Yes _____ No _____
- b. If you answered YES, list your DVBE/SDVOB firms in 3. DVBE/SDVOB SUBCONTRACTOR/SUPPLIERS below.
- c. You must list only qualified DVBE's possessing a current and valid certification or SDVOB possessing a current and valid verification letter from the CVE. Any listed subcontractors/suppliers found to not have either a certification or verification letter will render your bid non-responsive. No exceptions.

3. DVBE/SDVOB Subcontractor/Supplier Listing: (COMPLETE ALL SHADED COLUMNS AT TIME OF BID. Attach additional page if necessary)
Bidder shall submit within 24 hours of bid opening due date a COMPLETE DVBE/SDVOB BIDDER DECLARATION with ALL columns complete, along with the completed Bidders DVBE Statement.

Subcontractor/Supplier Name, Contact Person, Phone and Fax number	Subcontractor/Supplier Address and E-mail Address	CA DVBE Certification # or SDVOB Verification Letter Date	Work to be performed or supplies provided for this contract	Corresponding % of bid price

4. CERTIFICATION: By signing this Declaration, I certify under penalty of perjury that the information provided is true and correct.

Printed name: _____ **Signature:** _____ **Date:** _____

TABLE OF CONTENTS

ARTICLE 1	DEFINITIONS
ARTICLE 2	DISTRICT
ARTICLE 3	ARCHITECT – DUTIES OF
ARTICLE 4	CONTRACTOR – DUTIES OF
ARTICLE 5	SUBCONTRACTORS
ARTICLE 6	CONTRACT TIME
ARTICLE 7	CONTRACT PRICE
ARTICLE 8	SUBMITTALS
ARTICLE 9	MATERIALS AND EQUIPMENT
ARTICLE 10	CHANGES
ARTICLE 11	SEPARATE CONTRACTS
ARTICLE 12	PROTECTION OF PERSONS AND PROPERTY
ARTICLE 13	TESTS AND INSPECTIONS
ARTICLE 14	UNCOVERING AND CORRECTION OF WORK
ARTICLE 15	WARRANTIES
ARTICLE 16	SUSPENSION OR TERMINATION OF WORK AND FORCE MAJEURE
ARTICLE 17	STATUTORY REQUIREMENTS
ARTICLE 18	MISCELLANEOUS
ARTICLE 19	CONFLICTS IN CONTRACT DOCUMENTS
EXHIBIT A	PAYMENT – EXTRA, ADDITIONAL, ALLOWANCES, CONTINGENCIES OR DELETED WORK
ATTACHMENT 1A	HOURLY LABOR RATE WORKSHEET
EXHIBIT B	CONTRACTOR AND SUBCONTRACTOR MONTHLY UPDATE OF EMPLOYEE D.O.J. FINGERPRINTING STATUS
EXHIBIT C	FINAL SUBCONTRACTORS LIST AS REQUIRED BY LABOR CODE SECTION 1773.3(D)

ARTICLE 1

1. DEFINITIONS – GENERAL

1.1. ARCHITECT

1.1.1. The Architect is the person or entity identified as such in the Agreement; references to the "Architect" in the Contract Documents shall mean the Architect or the Architect's authorized representative. Unless otherwise stated, references in the Contract Documents to "the Architect" are references to the Architect or Architectural Firm retained by the District specifically for the Work and not the District Architect.

1.2 CONSTRUCTION EQUIPMENT

1.2.1. The term "Construction Equipment" shall be deemed to refer to equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.

1.3. CONSTRUCTION MANAGER

1.3.1. The Construction Manager is authorized and empowered to represent the District in construction supervisory and coordination activities and as provided for in the Contract Documents, including the authority to issue Field Work Orders on behalf of the District.

1.4. SUPERINTENDENT

1.4.1. The Superintendent is the individual employed by the Contractor whose principal responsibility shall be the supervision and coordination of the Work. The Superintendent shall not perform routine construction labor.

1.5. CONTRACT DOCUMENTS

1.5.1. The Contract Documents consist of the Agreement between the District and Contractor, Conditions of the Contract (whether General, Supplementary or otherwise), Drawings, Specifications, including addenda thereto issued prior to execution of the Agreement, and any other documents listed in the Agreement. The Contract Documents shall also include modifications issued after execution of the Agreement. The Contract Documents form the Contract for Construction.

1.5.2. Organization of the Specifications into divisions, sections or Articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade or craft involved.

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

1.5.4. Conflicts in the Contract Documents shall be resolved by the Architect in accordance with Article 19 herein.

1.6. CONTRACT DOCUMENT TERMS

1.6.1. As used in the Contract Documents, the term "provide" shall mean "provide complete in place" or to "furnish and install" such item. The terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the Architect in consultation with the District's Representative. The term "typical" as used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as "typical" in all other areas similarly marked as "typical"; Work in such other areas shall conform to that shown as "typical" or as reasonably inferable therefrom.

1.7. CONTRACTOR

1.7.1. The Contractor is the person or entity identified as such in the Agreement; references to "Contractor" in the Contract Documents shall mean the Contractor or the Contractor's authorized representative.

1.8. CRITICAL PATH

1.8.1. The term "critical path" as used in the Contract Documents shall mean the construction activity schedule that establishes the minimum overall Project duration.

1.9. DAY

1.9.1. The term "day" as used in the Contract Documents shall mean consecutive calendar day unless otherwise specifically defined.

1.10. DEFECTIVE OR NON-CONFORMING WORK

1.10.1. Defective or non-conforming Work is any Work which is unsatisfactory, faulty or deficient by: (a) not conforming to the requirements of the Contract Documents; (b) not conforming to the standards of Workmanship of the applicable trade or industry; (c) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (d) damage occurring prior to Final Completion of all of the Work.

1.11. DELIVERY

1.11.1. The term "delivery" used in conjunction with any equipment, materials or other items to be incorporated into the Work shall mean the unloading and storage in a protected condition pending incorporation into the Work.

1.12. DISTRICT

1.12.1. The term "District" shall refer to the San Diego Unified School District, the District's Board of Education and the District's officers, employees, agents and representatives.

1.13. DIVISION OF STATE ARCHITECT ("DSA")

1.13.1. DSA is the California Division of the State Architect including without limitation the DSA's Office of Construction Services, Office of Design Services and the Office of Regulation Services; references to the DSA in the Contract Documents shall mean the DSA, its offices and its authorized employees and agents. The authority of DSA over the Work and the performance thereof shall be as set forth in the Contract Documents and Title 24 of the California Code of Regulations.

1.14. DRAWINGS AND SPECIFICATIONS

1.14.1. The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing generally, the scope, design, extent, location, character and dimensions of the Work and may include without limitation, plans, elevations, sections, details, schedules or diagrams. Shop Drawings are not drawings as so defined herein. The Specifications are the portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, criteria and Workmanship for the Work and related services. The Drawings and Specifications are intended to delineate and describe the Work and its component parts so as to permit skilled and competent Contractors to bid upon the Work and prosecute the same to completion.

1.15. FIELD CLARIFICATIONS

1.15.1. Field Clarifications in the form of Field Work Orders are written or graphic documents, consisting of supplementary details, instructions or information issued on behalf of the

District, which clarifies or supplements the Contract Documents and which becomes a part of the Contract Documents upon issuance. Field Clarifications do not constitute an adjustment of the Contract Time or the Contract Price, unless a Change Order relating to a Field Clarification is authorized and issued.

1.16. MATERIAL SUPPLIER

1.16.1. A Material Supplier is any person or entity that only furnishes materials, equipment or supplies for the Work without fabricating, installing or consuming them in the performance of the Work of the Contract.

1.17. NOTICE TO PROCEED (“NTP”)

1.17.1. The Notice to Proceed (NTP) is the written notice issued by or on behalf of the District to the Contractor authorizing the Contractor to proceed with commencement of the Work or portions of the Work and which establishes the date for commencement of the Contract Time.

1.18. PARTIAL USE OR OCCUPANCY

1.18.1. Use or occupancy by the District of a partially completed portion, part, space or area of the Work prior to 100% Substantial completion of all the Work.

1.19. PROGRESS REPORTS; VERIFIED REPORTS

1.19.1. Progress Reports, if required, are written reports prepared by the Contractor and periodically submitted to the District in the form and content as required by the Contract Documents. Verified Reports are periodic written reports prepared by the Contractor and submitted to DSA; Verified Reports shall be in such form and content as required by the applicable provisions of Title 24 of the California Code of Regulations. Preparation of complete and accurate Progress Reports, as required in Division 1, and Verified Reports, as well as the timely submission of the same are material obligations of the Contractor.

1.20. THE PROJECT

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

1.21. PROJECT MANAGER

1.21.1. The Project Manager is authorized and empowered to act on behalf of the District in administering the Architect’s Contract and as set forth in the Contract Documents.

1.22. PROJECT INSPECTOR

1.22.1. The Project Inspector is the individual designated and employed by the District in accordance with the requirements of Title 24 of the California Code of Regulations. The Project Inspector shall be authorized to act on behalf of the District as provided for in the Contract Documents and in Title 24 of the California Code of Regulations, as the same may be amended from time to time.

1.23. RECORD DRAWINGS

1.23.1. The Record Drawings are a full size set of the Drawings marked by the Contractor during the performance of the Work to indicate completely and accurately the actual as-built condition of the Work. The Record Drawings shall be sufficient for a capable and qualified draftsman to modify the Drawings to reflect and indicate the Work actually in place at Final Completion of the Work.

1.24. SHOP DRAWINGS; SAMPLES; PRODUCT DATA ("SUBMITTALS")

1.24.1. Shop Drawings are original diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-Subcontractor, Manufacturer, Material Supplier, or Distributor to illustrate some portion(s) of the Work. Samples are physical examples of materials, equipment or Workmanship forming a part of, or to be incorporated into the Work. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. Shop Drawings, Samples, and Product Data prepared or furnished by the Contractor or any of its Subcontractors or Material Suppliers are collectively referred to as "Submittals".

1.25. SITE

1.25.1. The Site is the physical area designated in the Contract Documents for Contractor's performance, construction, and installation of the Work.

1.26. SUPPLEMENTARY CONDITIONS

1.26.1. Supplementary Conditions are supplemental provisions which apply to the Work that are not otherwise provided for in the Agreement or the General Conditions.

1.27. SUBCONTRACTORS; SUB-SUBCONTRACTORS

1.27.1. A Subcontractor is a person or entity that has a direct Contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means any Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate Contractor to the District or Subcontractors of any separate Contractor. A Sub-Subcontractor is a person or entity of any tier, who has a direct or indirect Contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-Subcontractor" is referred to throughout the Contract Documents as if singular in number and means any Sub-Subcontractor, of any tier, or an authorized representative of any Sub-Subcontractor.

1.28. SUBSTANTIAL COMPLETION

1.28.1. Substantial Completion is that stage in the progress of the Work when all the Work is 100% complete in accordance with the Contract Documents including receipt of final warranties, commissioning reports, guarantees and record document submittals such that the District can occupy or use all the Work for its intended purpose.

1.29. SURETY

1.29.1. The Surety is the person or entity that executes, as surety, the Contractor's Labor and Material Payment Bond and/or Performance Bond.

1.30. THE WORK

1.30.1. The term "Work" shall be deemed to mean the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment or services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract Documents. The Work may constitute the whole or a part of the Project.

ARTICLE 2**2. DISTRICT****2.1. INFORMATION AND SERVICES REQUIRED OF DISTRICT**

- 2.1.1. The District shall furnish information or services to be provided by the District under the Contract Documents with reasonable promptness to avoid delay in the orderly progress of the Work. Information about existing conditions or present improvements on or about the Site, furnished by the District to the Contractor, is obtained from sources believed to be reliable. The District neither guarantees nor warrants that such information is complete and accurate. The Contractor shall verify all information provided by the District and shall notify the District of any discrepancies pursuant to Article 4.1 herein.
- 2.1.2. Information, if any, concerning physical characteristics of the Site, including without limitation, surveys and utility locations, to be provided by the District are set forth in the Contract Documents. Information not provided by the District, which is required for Contractor's completion of the Work, shall be obtained by Contractor without adjustment to the Contract Price or the Contract Time. The soils reports (geotechnical reports) are not part of the Contract Documents but are available for the Contractor's examination.
- 2.1.3. The District shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities, which are expressly identified as the District's responsibility in connection with the Work. The Contractor's responsibilities for obtaining the same are set forth in the Contract Documents.
- 2.1.4. If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon written request, will execute a certificate of exemption which will certify (i) that the District is a political subdivision of the state for the purposes of such exemption; and (ii) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in any Contract price.
- 2.1.5. Except as otherwise provided for in the Contract Documents, the District shall furnish the Contractor, free of charge, the number of copies of the Drawings and the Specifications as set forth in the Supplementary Conditions. All of the Drawings and the Specifications provided by the District to the Contractor remain the property of the District; the Contractor shall not use the same in connection with any other Work of improvement other than the Work of the Project.

2.2. DISTRICT'S RIGHT TO STOP THE WORK

- 2.2.1. In addition to the District's right to suspend the Work or terminate the Contract pursuant to the Contract Documents, the District, may, by written order, direct the Contractor to stop the Work, or any portion thereof, until the cause for such stop Work order has been eliminated if the Contractor: (i) fails to correct Work which is not in conformity and in accordance with the requirements of the Contract Documents, or (ii) otherwise fails to carry out the Work in conformity and accordance with the Contract Documents. Contractor shall not be entitled to any adjustment of Contract Time or Contract Price as a result of such stoppage of Work.
- 2.2.2. The right of the District to stop the Work hereunder shall not be deemed a duty on the part of the District to exercise such right for the benefit of the Contractor or any other person or entity, nor shall the District's exercise of such right waive or limit the exercise of any other right or remedy of the District under the Contract Documents or at law.

2.3. PARTIAL OCCUPANCY OR USE

- 2.3.1. The District may occupy or use any completed or partially completed portion of the Work upon ten (10) days' notice to Contractor, provided that: (i) the District has obtained the consent of, or is otherwise authorized by, public authorities with jurisdiction thereof to so occupy or use such portion of the Work and (ii) the District and the Contractor have accepted, in writing, the responsibilities assigned to each of them for payments, retention (if any), security, maintenance, utilities, damage to the Work, insurance and the period for correction of the Work and commencement of warranties required by the Contract Documents for such portion of the Work partially used or occupied by the District.
- 2.3.2. In the event the Contractor and the District are unable to agree upon the matters set forth in (2.3.1.) above, the District may nevertheless use or occupy any completed or partially completed portion of the Work, with the responsibility for such matters subject to resolution in accordance with the Contract Documents. Immediately prior to such partial occupancy or use of the Work, or portions thereof, the Project Inspector, Contractor, and the Architect shall jointly inspect the portions of the Work to be occupied or to be used to determine and record the condition of the Work. The District's use or occupancy of portions of the Work pursuant to the preceding shall not be deemed an event of "completion" under Public Contract Code §7107.
- 2.3.3. Unless otherwise expressly agreed upon by the District and the Contractor, the District's partial occupancy or use of the Work or any portion thereof, shall not constitute the District's acceptance of the Work that fails to comply with the requirements of the Contract Documents or which is otherwise defective

2.4. PROHIBITED INTERESTS

- 2.4.1. No official of the District who is authorized in such capacity and on behalf of the District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any Architectural, engineering, inspection, construction or material supply Contract or any Subcontract in connection with construction of the Project, shall become directly or indirectly interested financially in this Contract or in any part thereof. No officer, employee, Architect, attorney, engineer or Project Inspector of or for the District who is authorized in such capacity and on behalf of the District to exercise any executive, supervisory or other similar functions in connection with construction of the Project shall become directly or indirectly interested financially in this Contract or in any part thereof.

ARTICLE 3

3. ARCHITECT – DUTIES OF

3.1. ARCHITECT'S RESPONSIBILITIES

- 3.1.1. The purpose of this Article is to provide the Contractor with information on the role and responsibilities of the Architect. This Article does not direct the Work of the Architect. The Architect's Work is directed by the Architects' Contract which is not a part of this Agreement.
- 3.1.2. The Architect shall assist the District in administration of the Contract as described in the Contract Documents, and shall be one of the District's representatives during construction until the time that Final Payment is due the Contractor under the Contract Documents. The Architect shall advise and consult with the Construction Manager, Project Manager, and the Project Inspector with respect to the administration of the Contract and the Work.
- 3.1.3. The Architect is authorized to act on behalf of the District to the extent provided for in the Contract Documents; and shall have the responsibilities and powers established by law, including Title 24 of the California Code of Regulations. Nothing contained in the Contract Documents shall create any Contractual relationship between the Architect and the Contractor.
- 3.1.4. The Architect shall visit the Site weekly or at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine, in general, if the Work is being performed in a manner indicating that the Work, when completed, shall be in accordance with the Contract Documents. The Architect shall not be required to make exhaustive or continuous Site inspections to check quality or quantity of the Work. On the basis of Site observations as an Architect, the Architect shall keep the District informed of the progress of the Work, and shall endeavor to guard the District against defects and deficiencies in the Work. At the District's sole discretion, the District may require more frequent site visits by the Architect to prevent Project delays.
- 3.1.5. The Architect and the Project Inspector are authorized to reject Work that is defective, unsafe, or does not conform to the requirements of the Contract Documents. Whenever the Architect or Project Inspector consider it necessary or advisable, for implementation of the intent of the Contract Documents, the Architect and the Project Inspector shall each have authority to require additional inspections or testing of the Work, whether such Work is fabricated, installed, or completed.
- 3.1.6. The Architect shall conduct observations to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive and forward to the District, for the District's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall verify that the Contractor has complied with all requirements of the Contract Documents and is entitled to receipt of Final Payment.
- 3.1.7. The Architect shall interpret and decide matters concerning the requirements of the Contract Documents on written request of either the District or the Contractor. The Architect's response to such requests shall be made with reasonable promptness and within the time limits agreed upon, if any, and in no event to exceed a five (5) working day period from receipt of the request. Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both the District and the Contractor, shall not show partiality to either and shall not be liable for results of interpretations or decisions so rendered in good faith.

3.2. TERMINATION OF ARCHITECT; SUBSTITUTE ARCHITECT

- 3.2.1. In case of termination of employment of the Architect, the District shall appoint a substitute Architect whose status under the Contract Documents shall be that of the Architect.

ARTICLE 4

4. CONTRACTOR – DUTIES OF

4.1. CONTRACTOR REVIEW OF CONTRACT DOCUMENTS

- 4.1.1. The Contractor shall carefully study and compare the Contract Documents with information furnished by the District pursuant to the Contract Documents and shall at once report to the Architect any errors, inconsistencies or omissions discovered by issuing a Request for Information (RFI) to the Architect. If the Contractor performs any Work that the Contractor knows, or with reasonable diligence should know, involves an error, inconsistency or omission in the Contract Documents without prior notice to the Architect, the Contractor shall assume full responsibility for such performance and bear all attributable costs for correction of the same.
- 4.1.2. If at any time the Contractor encounters any condition which the Contractor believes, in good faith and with reasonable basis, is the result of an ambiguity, conflict, error or omission in the Contract Documents (collectively “the Conditions”), it shall be the affirmative obligation of the Contractor to timely notify the Architect, in writing via an RFI, of the Conditions encountered and to request information from the Architect necessary to address and resolve any such Conditions. The Contractor shall act with promptness in submitting any such written RFI so as to allow the Architect a reasonable period of time to review, evaluate and respond to any such request. If the Contractor submits an RFI on a schedule activity within five (5) days or less of float on the most current Project CPM schedule, the Contractor shall not be entitled to any time extension provided that the Architect responds to the RFI within the five (5) working days set forth in Article 3.1.7.
- 4.1.3. If the Contractor fails to timely notify the Architect in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions, the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Price.
- 4.1.4. The Architect's responses to any such Contractor RFI shall conform to the standards and time frame set forth in Article 3.1.7 of these General Conditions. A response to an RFI is not an authorization to proceed with any Work that the Contractor considers to be an impact to the time or cost of the Work. Changes to the Contract Time or the Contract Price shall be governed by the provisions of Article 10.1 hereof.
- 4.1.5. The foregoing provisions notwithstanding, in the event that the Architect reasonably determines that any of Contractor's RFI's (i) do(es) not reflect adequate or competent supervision or coordination by the Contractor or any Subcontractor; or (ii) do(es) not reflect the Contractor's adequate or competent knowledge of the requirements of the Work or the Contract Documents; or (iii) is/are not justified for any other reason, Contractor shall be liable to the District for all costs incurred by the District associated with responding to any such request for information, including without limitation, fees of the Architect and any other design consultant to the Architect or the District which shall be deducted from the Contract Price.
- 4.1.6. Prior to commencement of the Work, or portions thereof, the Contractor shall take field measurements and verify field conditions at the Site and shall carefully compare such field measurements and conditions and other information known to the Contractor with information provided in the Contract Documents. Errors, inconsistencies or omissions discovered shall be reported in writing to the Architect at once.
- 4.1.7. The Contractor shall be solely responsible for measuring dimensions and coordinating the Work of the Contract Documents. Scaling of the Contract Documents is not permitted. All field engineering required for laying out the Work and establishing grades for earthwork operations shall be by the Contractor at its expense. Any field engineering or other

engineering to be provided or performed by the Contractor under the Contract Documents and required or necessary for the proper execution or installation of the Work shall be provided and performed by an engineer duly registered under the laws of the State of California in the engineering discipline for such portion of the Work.

4.2. SITE INVESTIGATION; SUBSURFACE CONDITIONS

- 4.2.1. The Contractor shall be responsible for, and by executing the Agreement acknowledges, that it has carefully examined the Site and has taken all steps it deems reasonably necessary to ascertain all conditions which may affect the Work, or the cost thereof, including, without limitation, conditions bearing upon transportation, disposal, handling or storage of materials; availability of labor or utilities; access to the Site; and the physical conditions and the character of equipment, materials, labor and services necessary to perform the Work. If the Contractor reasonably determines there is an existing condition which is materially different than depicted in the Contract Documents or at the time of bid, Contractor shall immediately notify the District and the Architect in writing of the same in accordance with Article 4.1.2 herein.
- 4.2.2. By executing the Agreement, the Contractor acknowledges that it has examined the boring data and other subsurface data available and satisfied itself as to the character, quality and quantity of surface and subsurface materials, including without limitation, obstacles which may be encountered in performance of the Work, insofar as this information is reasonably ascertainable from an inspection of the Site, review of available subsurface data and analysis of information furnished by the District under the Contract Documents. The Contractor shall examine all boring and other subsurface data to make its own independent interpretation of the subsurface conditions and acknowledges that its bid is based upon its own opinion of the conditions that may be encountered. The District assumes no responsibility for any conclusions or interpretations made by Contractor on the basis of available subsurface data or other information furnished by District under the Contract Documents.
- 4.2.3 When digging trenches or other excavations that extend deeper than four feet below the surface (per Public Contract Code §7104):
 - 4.2.3.1 Contractor shall promptly, and before the following conditions are disturbed, notify District, in writing, of any material that the Contractor believes may be material that is hazardous waste, as defined in §25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law. Contractor shall notify District in writing of subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids. Contractor shall notify District in writing of 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.
 - 4.2.3.2 District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.
 - 4.2.3.3 In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by

contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.2.3.4 Time or cost adjustments will not be allowed unless the Contractor has given notice as indicated above.

4.3. SUPERVISION AND CONSTRUCTION PROCEDURES

- 4.3.1. The Contractor shall supervise and direct performance of the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for safety precautions and programs, and for coordinating all portions of the Work under the Contract Documents. The Contractor shall be responsible for inspection of portions of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent Work.
- 4.3.2. The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and all other persons performing any portion of the Work under a Contract with the Contractor. The Contractor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager, Project Manager, Project Inspector, or the Architect in the administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor. The Contractor must maintain on the job site contemporaneous daily construction reports that record, at a minimum, weather conditions, weather effects, visitors to the Site, meetings/conversations, inspections made and results, problems encountered, materials delivered, equipment delivered, material procurement problems, safety meetings/issues, accidents, description of actions initiated to correct reported deficiencies, and detailed descriptions of all Work activities, including Work location, Subcontractor name, crew size, equipment utilized, identification of change order Work and identification of the beginning and ending of significant activities.
- 4.3.3. The Contractor shall prepare, or cause to be prepared, all detailed surveys necessary for performance of the Work, including without limitation, slope stakes, points, lines and elevations. The Contractor shall be responsible for the establishment, location, maintenance and preservation of benchmarks, reference points and stakes for the Work. The cost of any surveys and the establishment, location, maintenance and preservation of benchmarks, reference points and stakes shall be included within the Contract Price. The Contractor shall be solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes.
- 4.3.4. Unless otherwise provided elsewhere in the Contract Documents, the Contractor shall arrange for the furnishing of and shall pay the costs of all utility services, including, without limitation, electricity, water, gas, voice, data, fire and intrusion alarm necessary for performance of the Work and the Contractor's obligations under the Contract Documents. The Contractor shall furnish and install necessary or appropriate temporary distributions of utilities, including meters, to the Site. The Contractor, upon completion of the Work, shall remove any such temporary distributions. The costs of all such utility services, including the installation and removal of temporary distributions thereof, shall be borne by the Contractor and included in the Contract Price.
- 4.3.5. In accordance with California Government Code §4215, the District shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site which are not identified in the Drawings, Specifications or other Contract Documents. Contractor shall be compensated for the costs of locating or repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Contract Documents with reasonable accuracy, and for equipment on the Site necessarily idled during such Work.

Contractor shall not be assessed Liquidated Damages for delay in completion of the Work when such delay is caused by the failure of the District or the owner of the utility to provide for removal or relocation of such utility facilities.

- 4.3.6. The District is not required to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Site. In the event that Contractor, in performing the Work, shall encounter utility facilities not identified by the District in the Contract Documents, the Contractor shall immediately notify, in writing, the District, the Architect, and the utility owner. In the event that such utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation Work or permit the Contractor to do such repairs or relocation Work at a reasonable price
- 4.3.7. Within ten (10) days of the date of the District's Board of Education action awarding the Contract, the Contractor shall submit to the District a list of the individuals authorized to execute documents and instruments relating to the Work and the Contract Documents on behalf of the Contractor and to bind the Contractor to its obligations under such documents or instruments. If the Contractor is a corporation, in addition to the list of authorized representatives, the Contractor shall concurrently submit a duly certified resolution of the Contractor's Board of Directors reflecting authorization or ratification of the authority conferred upon each of the individuals on the list submitted in accordance with the provisions hereof.
- 4.3.8. The Contractor shall enforce strict discipline and good order among the Contractor's employees, the employees of any Subcontractor or Sub-Subcontractor and all other persons performing any part of the Work at the Site. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall dismiss from its employ, and direct any Subcontractor or Sub-Subcontractor to dismiss from their employment; any person deemed by the District to be unfit or incompetent to perform Work and shall not reemploy such person without the prior written consent of the District. The District reserves the right to interview and accept or reject proposed personnel, including but not limited to the Project Manager, Project Engineer, Superintendent, Assistant Superintendents, Scheduler and Safety Representative. Personnel assigned and accepted by the District shall be maintained throughout the Project, unless otherwise accepted by the District.
- 4.3.9. The Contractor shall employ a competent full time English speaking Superintendent and all necessary assistants who shall be in attendance at the Site at all times during performance of the Work. The Contractor's communications relating to the Work or the Contract Documents shall be through the Contractor's Superintendent. The Superintendent shall represent the Contractor and communications given to the Superintendent shall be binding as if given to the Contractor. The Contractor shall dismiss the Superintendent or any of his/her assistants if they are deemed, in the sole reasonable judgment of the District, to be unfit, incompetent or incapable of performing the functions assigned to them. In such event, the District shall have the right to approval of the replacement of Superintendent or assistant. The Contractor shall designate a separate Superintendent for each construction site included within the Work.

4.4. LABOR AND MATERIALS

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

4.5. TAXES

4.5.1. The Contractor shall pay, without adjustment of the Contract Price, all sales, consumer, use and other taxes for the Work or portions thereof provided by the Contractor under the Contract Documents.

4.6. PERMITS, FEES AND NOTICES; COMPLIANCE WITH LAWS

4.6.1. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permits, other permits, governmental fees, licenses and inspections necessary or required for the proper execution and completion of the Work.

4.6.2. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and other orders of public authorities bearing on performance of the Work.

4.6.3. If the Contractor knows, or has reason to believe, that any portion of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, regulations or rules, the Contractor shall promptly notify the Architect and the Project Inspector, in writing, of the same. If the Contractor performs Work knowing, or with reasonable diligence should have known, it to be contrary to such laws, applicable to the Work without prior notice, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs arising or associated therefrom, including without limitation, the removal, replacement or correction of the same.

4.6.4. The Contractor shall comply with all conditions of the State Water Resources Control Board ("State Water Board") National Pollutant Discharge Elimination System General Permit (NPDES) for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities Order No. 2009-009-DWQ ("Storm Water Construction General Permit") for all construction activity which results in the disturbance in excess of one (1) acre of total land area or which is part of a larger common area of development for sale. For projects with land disturbance less than a total acre of land or for projects with an Erosivity Waiver, the Contractor is not required to comply with the Stormwater Construction General Permit, but shall comply with similar standards for sediment erosion control and material and waste best management practices as detailed in the District's Water Pollution Control Program (WPCP).

4.6.5. The District is responsible for preparing a Stormwater Pollution Prevention Plan (SWPPP) and filing the Notice of Intent and fee to obtain coverage under the State Water Board Storm Water Construction General Permit for any project that disturbs one (1) acre or more which is not eligible for an Erosivity Waiver. A copy of the project SWPPP is provided by the District. A copy of the Storm Water Construction General Permit is provided by the District. Both the SWPPP and Storm Water Construction General Permit shall be kept on file at the construction site by the Contractor. The Contractor shall comply with both the project SWPPP and the Storm Water Construction General Permit without adjustment to the Contract Price or the Contract Time. The Contractor shall provide a designated individual meeting the specified qualifications and shall implement the SWPPP with regards to contract work items and shall timely and completely submit required reports and monitoring information required by the conditions of the Storm Water Construction General Permit and SWPPP for the Work. In addition to the compliance with the Storm Water Construction General Permit and SWPPP, the Contractor shall comply with all other applicable state, municipal or regional laws, ordinances, rules or regulations governing discharge of storm water, including applicable municipal storm water management programs. Contractor's Qualified SWPPP Practitioners (QSP) operating under the Construction General Permit shall meet the training requirements of the Construction General Permit and shall provide evidence of training to the District prior to start of construction.

- 4.6.6. The District is responsible for developing a Water Pollution Control Program (WPCP) for projects designated as disturbing less than 1 acre and for projects with Erosivity Waivers. The Contractor shall provide a designated individual with evidence of adequate training to implement the WPCP.

4.7. USE OF SITE AND CLEAN-UP

- 4.7.1. The Contractor shall confine operations at the Site to areas permitted by law, ordinances or permits, subject to any restrictions or limitations set forth in the Contract Documents. The Contractor shall not unreasonably encumber the Site or adjoining areas with materials or equipment. The Contractor shall be solely responsible for providing security at the Site with all such costs included in the Contract Price.

- 4.7.2. The District shall be providing CM and PI site supervision Monday through Friday from 7:00 AM to 3:30 PM. Working hours shall conform to local laws, which includes no street parking, deliveries, hoisting, welding, etc. or equipment startup. Scheduled and limited exceptions such as utility shutdowns and tie-ins to existing work shall be performed during "off-hours". All Work performed during off-hours must be coordinated and approved by the District, with a minimum of 48 hour notice. The Contractor is responsible for the costs of all overtime, shift time differentials, and other premium time costs required to achieve the schedule commitments. This includes, but is not limited to, work in excess of eight (8) hours per day, forty (40) hours per week, and/or work on Saturdays, Sundays and Holidays. If Contractor is behind schedule or not working full shifts in accordance with the hours indicated above, they shall be considered behind schedule and responsible for delay impacts.

- 4.7.3. The Contractor shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material or rubbish caused or generated by performance of the Work. Contractor shall be aware of and take appropriate measure to avoid nuisances. Should the Project Inspector determine that any waste materials, rubbish, or other stored materials have become a nuisance; the Contractor will remedy the condition immediately upon oral and/or written notice. Contractor shall separately contain hazardous and unsanitary waste materials from other waste and mark each container appropriately and dispose of legally. Contractor shall maintain the Site in a "broom-clean" standard on a daily basis. Prior to completion of the Work, Contractor shall remove from the Site all rubbish, waste material, excess excavated material, tools, Construction Equipment, machinery, surplus material and any other items which are not the property of the District under the Contract Documents. If the Contractor fails to clean up as provided for in the Contract Documents, the District may do so, and all costs incurred in connection therewith shall be charged to the Contractor; the District may deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.

4.8. ACCESS TO THE WORK

- 4.8.1. The Contractor shall provide DSA, the Project Inspector, Construction Manager, Project Manager, and the Architect with access to the Work at all times, whether in place, in preparation or in progress and wherever located. The Contractor shall also furnish the Project Inspector and the Architect access to the Work for obtaining such information as may be necessary to keep the Project Inspector and Architect fully informed respecting the progress, quality and character of the Work and materials, equipment or other items incorporated therein.

4.9. PATENTS AND ROYALTIES

- 4.9.1. The Contractor and the Surety shall defend, indemnify and hold harmless the District and its agents, employees and officers from any Claim, demand or legal proceeding arising out of or pertaining, in any manner, to any actual or Claimed infringement of patent rights or royalties therefrom in connection with performance of the Work under the Contract Documents.

4.10. CUTTING AND PATCHING

4.10.1. The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make the component parts thereof fit together properly in accordance with the Contract Documents.

4.11. EMPLOYEE FINGERPRINTING; STUDENT BARRIER/EMPLOYEE MONITORING

4.11.1. Pursuant to Education Code §§45125.1 and 45125.2, the Contractor shall implement the measures set forth in the Supplementary Conditions. The Contractor's implementation and maintenance of such measures is a material obligation of the Contract.

4.12. COMMUNICATIONS

4.12.1. All communications regarding the Work or the Contract Documents shall be in writing; verbal communications shall be reduced to writing and signed by both parties. Communications between the Contractor and the District shall be through the Architect. Communications between separate Contractors, if any, shall be through the Architect. All communications from the Contractor to the Architect will be copied to the Construction Manager. All written communications between the Contractor and any Subcontractor, Material Supplier or others directly or indirectly engaged by the Contractor to perform or provide any portion of the Work shall be available on the job site or online to the Architect and the Construction Manager for review, inspection and reproduction as may be requested from time to time. Failure or refusal of the Contractor to permit such review may be deemed a default of a material obligation of the Contractor.

4.13. ASSIGNMENT OF ANTITRUST CLAIMS

4.13.1. Pursuant to California Government Code §§4550, *et seq.*, the Contractor and its Subcontractor(s), of any tier, hereby offers and agrees to assign to the District all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C. §15) or under the Cartwright Act (California Business and Professions Code §§16700 *et seq.*), arising from purchases of goods, services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time the District tenders Final Payment to the Contractor, without further acknowledgment by the parties.

4.13.2. If the District receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under California Government Code §§4550, *et seq.*, the assignor thereof shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the Contract Price, less the expenses incurred by the District in obtaining that portion of the recovery. Upon demand in writing by the assignor, the District shall, within one year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose: and (i) the District has not been injured thereby; or (ii) the District declines to file a court action for the cause of action.

ARTICLE 5

5. SUBCONTRACTORS

5.1. SUBCONTRACTS

- 5.1.1. Any portion of the Work performed for the Contractor by a Subcontractor shall be pursuant to a written Agreement between the Contractor and such Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required in the Supplementary Conditions and obligates the Subcontractor to assume toward the Contractor all the obligations and responsibilities of the Contractor which by the Contract Documents the Contractor assumes toward the District and the Architect. Specialty Subcontractors shall be utilized for the performance of such parts of the Work, which, under normal Contract practices, are performed by such Subcontractors unless the Contractor has customarily performed such Work, is equipped to do so, and the District in its reasonable discretion has agreed to same. The foregoing notwithstanding, no Contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and the District, in writing, elects to assume the Subcontractor.
- 5.1.2. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to Article 16.3 or 16.4 hereof, subject to the prior rights of the Surety obligated under a bond relating to the Contract.
- 5.1.3. The Contractor shall, upon the District's request, and within ten (10) days of the request, provide to the District copies of all executed Subcontracts and Purchase Orders to which Contractor is a party. The Contractor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders shall be deemed Contractor's default in the performance of a material term of the Contract Documents.

5.2. SUBSTITUTION OF LISTED SUBCONTRACTOR

- 5.2.1. Any request of the Contractor to substitute a listed Subcontractor shall be considered only if such request is in strict conformity with this Article 5.2 and California Public Contract Code §4100 *et seq.* All costs incurred by the District, including without limitation, costs of the Construction Manager or Architect, in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs may be deducted by the District from the Contract Price then or thereafter due the Contractor.
- 5.2.2. Any request of the Contractor to substitute a listed DVBE or SDVOB Subcontractor or supplier shall be considered only if such request is in strict conformity with this Article 5.2 and the substituted subcontractor is replaced with another DVBE /SDVOB subcontractor or supplier. The District's Outreach Program, the Elite SDVOB Network and the DVBE Alliance are available to assist Contractor in locating a qualified DVBE/SDVOB of the same license classification if needed. In the event there is not another qualified DVBE/SDVOB subcontractor or supplier to replace the DVBE/SDVOB being substituted, or Contractor is unable to obtain bids from existing DVBE/SDVOB subcontractors or suppliers, Contractor shall submit proof of contact and refusal to bid from the solicited DVBE/SDVOB subcontractors or suppliers, as well as proof of contact and assistance request/receipt from the three referenced resources above. If District accepts the proof of contact and refusal then Contractor may substitute a non-DVBE/SDVOB subcontractor or supplier to perform the work, subject District's approval. All costs incurred by the District, including without limitation, costs of the Construction Manager or Architect, in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs may be deducted by the District from the Contract Price then or thereafter due the Contractor.

- 5.2.3. The District's consent to Contractor's substitution of a listed Subcontractor shall not relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Price. The substitution of a listed Subcontractor shall not, under any circumstance, result in, or give rise to any increase of the Contract Price or the Contract Time on account of such substitution.
- 5.2.4. In the event of the District's consent to the substitution of a listed Subcontractor, the Architect shall determine the extent to which, if any, revised or additional Submittals shall be required of the newly substituted Subcontractor. In the event that the Architect determines that revised or additional Submittals are required of the newly substituted Subcontractor, the Architect shall promptly notify the Contractor, in writing, of such requirement. In such event, revised or additional Submittals shall be submitted to Architect not later than thirty (30) days following the date of the Architect's written notice to the Contractor; provided that if in the reasonable and good faith judgment of the Architect, the progress of the Work or completion of the Work requires submission of additional or revised Submittals by the newly substituted Subcontractor in less than thirty (30) days, the Architect shall so state in its written notice to the Contractor.
- 5.2.5. In the event that the revised or additional Submittals are not submitted by Contractor within thirty (30) days, or such earlier time as determined by the Architect pursuant to the preceding sentence, following the Architect's written notice of the requirement for revised or additional Submittals, Contractor shall be subject to the per diem assessments reflected in Article 8.1.2 herein. Contractor shall reimburse the District for all fees and costs, including without limitation fees of the Architect or any design consultant to the Architect or the District and DSA fees, incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to Article 5.2.4. *et seq.*; the District may deduct such fees and costs from any portion of the Contract Price then or thereafter due the Contractor.

ARTICLE 6

6. CONTRACT TIME

6.1. SUBSTANTIAL COMPLETION

6.1.1. The Contract Time is the period of time, including authorized adjustments thereto, allotted in the Contract Documents for Substantial Completion of the Work. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing and achieving Substantial Completion of the Work for each phase, if any. The date for commencement of the Work is the date established by the Notice to Proceed issued by the District pursuant to the Agreement, which shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible. The date of Substantial Completion is the date certified by the Architect and the Project Inspector as such in accordance with the Contract Documents. Substantial Completion shall be determined by the Architect and the Project Inspector upon request by the Contractor in accordance with the Contract Documents. The good faith and reasonable determination of Substantial Completion by the Project Inspector and the Architect shall be controlling and final.

6.2. NO EARLY COMPLETION

6.2.1 By executing this Agreement, Contractor agrees that the Contract price includes all direct and indirect overhead costs (both home office and field office) throughout the Contract performance period, which ends on the Contract completion date specified in this Contract. By executing the Agreement, the Contractor acknowledges that it does not intend to complete the Contract earlier than said Contract completion date. Any intent by Contractor to complete the Contract earlier than said Contract completion date shall be void and of no force or effect, and Contractor shall not be entitled to claim additional compensation on the basis that it intended to, but was prevented from completing the project prior to the Contract completion date.

6.2.2 District shall not additionally compensate Contractor for early completion of the Work, unless agreed to in writing by the District and approved as an amendment to this Contract by the District's Board of Education. If the District accepts the Contractor's early completion schedule, the District reserves the right to execute a unilateral change order that amends the Contractual date of Substantial Completion and associated savings of overhead costs and General Conditions to coincide with the Contractor's anticipated Substantial completion date as depicted in such early completion schedule. The Contractor shall be subject to assessment of Liquidated Damages, as set forth in the Supplementary Conditions of the Contract and Article 6.7 of these General Conditions, if the Contractor fails to complete the Work and portions thereof within the Contract Time as adjusted by said unilateral change order.

6.3. CORRECTION OF DEFICIENCIES

6.3.1. Prior to the Contractor's request for determination of Substantial Completion by the Architect and the Project Inspector, the Contractor is required to issue its own comprehensive list of items of the Work to be corrected or completed by the Contractor ("Punchlist"). The Contractor must perform the corrective work and submit a signed-off copy of its own Punchlist to the Architect and the Project Inspector acknowledging Contractor's completion prior to requesting a determination of Substantial Completion. In the event the Contractor shall request determination of Substantial Completion or Final Completion by the Project Inspector and the Architect and it is determined by the Project Inspector and the Architect that the Work does not then justify certification of Substantial Completion or Final Completion and re-inspection is required at a subsequent time to make such determination, the Contractor shall be responsible for all costs of such reinspection,

including without limitation, the fees of the Architect and the salary of the Project Inspector. The District may deduct all such costs from the balance of the Contract Price then due or thereafter due to the Contractor.

- 6.3.2. Upon achieving Substantial Completion of all the Work or for each phase if any, the Project Inspector, the Architect, and the Contractor shall jointly inspect the Work and prepare a comprehensive Punchlist of the Work to be corrected or completed by the Contractor. The exclusion of, or failure to include, any item on such list shall not alter or limit the obligation of the Contractor to complete or correct any portion of the Work in accordance with the Contract Documents. Notwithstanding any other provisions of the Contract Documents to the contrary, inspection of the mechanical and electrical portions of the Work shall be conducted jointly by the Contractor's authorized representative(s), the Architect and the Project Inspector for the mechanical and electrical portions of the Work.
- 6.3.3. The Contractor shall promptly and diligently proceed to complete or correct all items noted on the Punchlist within thirty (30) days from the date the Contractor is in receipt of the Punchlist. In the event that the Contractor shall fail or refuse, for any reason, to complete items requiring completion or correction within the time so established, Contractor shall be subject to assessment of Liquidated Damages in accordance with Article 6.7 thereof. The foregoing notwithstanding, in the event of Contractor's failure or refusal to complete all items of the Work requiring correction or completion within the time so established, the District may, in its sole and exclusive discretion, elect to cause the completion of such items of the Work; provided, however, that such election by the District shall be in addition to, and not in lieu of, any other right or remedy of the District under the Contract Documents or the law. In the event that the District shall elect to complete items of the Work requiring correction or completion pursuant to the foregoing, Contractor shall be responsible for all costs incurred by the District in connection therewith.

6.4. FINAL COMPLETION

- 6.4.1 Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all correction or completion items noted upon Substantial Completion, and the Contract has been otherwise fully performed by the Contractor. Final Completion shall be determined by the Architect and the Project Inspector. The good faith and reasonable determination of Final Completion by the Project Inspector and the Architect shall be controlling and final. Final Completion of the Work shall not be deemed to have been achieved until: (a) all inspections have been completed; (b) Submittals, Guarantees, Record Drawings, Maintenance and Operations Manuals have been submitted and accepted; (c) all equipment shall be fully commissioned and operational as specified; and (d) the Work and adjoining areas of the Site are clean and ready for occupancy as an educational facility.
- 6.4.2 Final Acceptance of the Work shall occur upon approval of the Work by the District's Board of Education; such approval shall be submitted for adoption at the next regularly scheduled meeting of the District's Board of Education after the determination of Final Completion.

6.5. CONTRACT SCHEDULES

6.5.1. Execution

- 6.5.1.1. This section describes the scheduling of Work requirements to be performed by the Contractor. The term "Contract Schedules" refers to all schedules that are required herein and in the Specifications. The Contractor's planning, scheduling and execution of the Contract Work shall be presented to the Construction Manager by submission of the Contract Schedule information and data as described herein and in the Specifications. The Contractor shall plan, schedule, execute and report the Work under the Contract using a Critical Path Method

(CPM) schedule. The Contractor shall prepare the Contract Schedules to reflect the Contractor's proposed means and methods for accomplishing the entire scope of Work as awarded and included in the Contract Documents. The Contractor shall employ and supply a sufficient force of Workers, material and equipment, and shall prosecute the Work with such diligence so as to maintain progress, to prevent Work stoppage and to achieve Substantial Completion of all of the Work within the Contract Time. The Contractor shall not be entitled to, nor shall the District be required to make payment for any Contract Work until all Schedules comply with all Contract Requirements.

6.5.2. Baseline Schedule

6.5.2.1. The Baseline Schedule is defined as the Contractor's initial plan to conduct the Work, reviewed for acceptance by the Construction Manager in accordance with the Specifications. The Baseline Schedule shall show the breakdown of work into activities to the extent required to effectively plan the project, report work progress and analyze time impacts, and shall show all logical interrelationships (ties) between activities. The Baseline Schedule shall be the basis for monitoring the Contractor's progress, and the evaluation and reconciliation of Contract Time extensions. The Contractor shall prepare the Baseline Schedule based on the Contract as awarded, providing materials and equipment described in the Contract Documents, and without considering possible substitute or "or equal" items, even if the Contractor pursues a substitution in accordance with provisions of the Contract. The Construction Manager's final determination on proposed substitutions may not be made until after the Baseline Schedule or a Revised Schedule is submitted and accepted by the Construction Manager, or conditionally accepted with note exceptions.

6.5.3. Monthly Schedule Update

6.5.3.1. At monthly intervals, the Contractor shall update the schedule to reflect actual progress and submit the schedule update to the Construction Manager for review and acceptance in accordance with the Specification. The Monthly Schedule Update shall record progress for the period from the last Monthly Schedule Update through the current cutoff date set forth by the Construction Manager. The Monthly Schedule Update shall also forecast the remainder of the Work. The Monthly Schedule Update must not deviate significantly from the Baseline Schedule and shall not be used to delete or add activities, make title changes, and to make duration or logic changes. The Construction Manager may refuse to recommend the whole or part of any payment if, in the Construction Manager's opinion, the Contractor's failure, refusal or neglect to provide the required schedule information precludes a proper evaluation of whether or not the Contractor is prosecuting the work with the diligence that will ensure completion of the work within the Contract Time.

6.5.4. Schedule Corrections

6.5.4.1. Each month, in accordance with the Specification, the Contractor shall address corrections to the schedule that were identified by the Construction Manager during the review of the last Monthly Schedule Update. If the submittal is rejected, the Contractor must individually respond to every correction and review comment received from both the Construction Manager and/or Architect via the schedule narrative of the resubmittal. If the submittal is conditionally accepted with noted exceptions, the Contractor must individually respond to every correction and review comment via the schedule narrative of the next monthly update. Failure of the Contractor to specifically respond to each of the Construction Manager's previous review comments may result in rejection of the following submittal and a monthly payment portion withheld.

6.5.5. Look-Ahead Schedules

6.5.5.1. In accordance with the Specification, the Contractor shall submit a look ahead schedule that shows, at a level of detail satisfactory to the Construction Manager, the work planned and accomplished during the previous week and the upcoming work planned. The Contractor shall list the activity number from the Contract Schedule to which the activity on the look ahead schedule corresponds.

6.5.6. Schedule Revisions

6.5.6.1. Schedule Revisions are defined as any changes to schedule activities or logic other than the updating of actual start and completion dates, percent complete or remaining duration. The Contractor shall revise the Baseline Schedule when the Construction Manager determines that it is no longer useful as a status and control mechanism, when a change or delay impacts the Contractor's timing and sequence of the work, or when the Contractor has submitted logic changes that affect critical or near critical activities as determined by the Construction Manager. Schedule Revisions must be submitted in accordance with the Specification for the Construction Manager's review and acceptance. After the Construction Managers accepts the schedule revision, the Contractor shall incorporate the accepted revision into the next Monthly Schedule Update. Schedule Revisions are not to be used to change milestones dates of Contract Time.

6.5.7. Recovery Schedules

6.5.7.1. The Contractor's refusal, failure or neglect to take appropriate recovery action or to submit a Recovery Schedule shall constitute reasonable evidence that the Contractor is not prosecuting the Work with the diligence that will ensure its completion within the applicable Contract Time. Such lack of action shall constitute sufficient basis for the Construction Manager to withhold payments to the Contractor.

6.5.8. Contractor Responsibility Not Affected By Acceptance of Schedules

6.5.8.1. The Construction Manager's review or acceptance of the Contract Schedules shall not relieve the Contractor of its responsibility for scheduling, sequencing, and pursuing the Work to comply with the requirements of the Contract Documents, including adverse effects such as delays resulting from ill-timed Work or Work omitted from the schedule. Neither the submission nor the updating of any Contract Schedule Submittal shall have the effect of modifying the Contract Time, Contract Completion Date, Contract milestone dates, or the Contractor's obligations under this Contract. The Contractor shall be responsible for the coordination of Work activities performed by each Subcontractor and supplier, and to obtain information pertinent to the planning and updating of Subcontractor and supplier activities in preparing all Contract Schedules. The District reserves the right to review and comment on the Contract Schedules for conformance with the Contract Time and those sequences of Work indicated in or required by the Contract Documents, to record dates for milestones, for conformance with the scheduling requirements and other information provided in the Contract Documents that may have a bearing on the schedule, for reasonableness of durations and logic, and for consistency in the cost loading of the schedule activities. The Construction Manager's review shall not extend to the Contractor's means, methods, or techniques, the correctness of which shall remain the sole responsibility of the Contractor.

6.5.9. Cost of Schedule Preparation and Maintenance

6.5.9.1. The Contractor's responsibility for the preparation, Submittal and maintenance of the Contract Schedules is a material obligation under the Contract Documents. Any and all costs or expenses required or incurred to prepare, submit, maintain, and update the Contract Schedules shall be solely that of the Contractor and no such cost or expense shall be charged to the District. The Contract Price shall not be subject to adjustment on account of costs, fees or expenses incurred or associated with the Contractor's preparation, Submittal, and maintenance or updating of the Contract Schedules including adjustments required by change orders.

6.6. ADJUSTMENT OF CONTRACT TIME

6.6.1. Excusable, Noncompensable Delays

6.6.1.1. If Substantial Completion of the Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined by the Construction Manager and the District; Excusable Delays shall not result in any increase in the Contract Price. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of the Contractor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by the Contractor in performance of any portion of the Work. Excusable Delays include, but are not limited to, unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment, materials or Construction Equipment reasonably necessary for completion and proper execution of the Work, and unanticipated unusually severe weather conditions. Neither the financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor.

6.6.1.2. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted Work activities on the Critical Path Time Impact Analysis requirements.

6.6.2. Compensable Delays

6.6.2.1. If Substantial Completion of the Work is delayed and such delay is caused by the acts or omissions of the District, the Architect, or separate Contractor employed by the District (collectively "Compensable Delays"), upon Contractor's request and notice, in strict conformity with Articles 6 and 10 of these General Conditions, the Contract Time shall be adjusted by Change Order for such reasonable period of time as determined by the Construction Manager and the District. In accordance with California Public Contract Code §7102, if the Contractor's progress is delayed by any of the events described in the preceding sentence, Contractor shall be entitled to the recovery of damages directly and proximately resulting therefrom, provided that the District is liable for the delay, the delay is unreasonable under the circumstances and was not within the reasonable contemplation of the District or the Contractor at the time of

execution of the Agreement. In such event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or Construction Equipment directly resulting from such delay, and shall exclude indirect Field office, indirect additional Home office, unabsorbed overhead, or other consequential damages. No adjustment of the Contract Time shall be made on account of any Compensable Delays unless such delay(s) actually and directly impact Work activities on the Critical Path Time Impact Analysis requirements.

6.6.3. Inexcusable Delays

6.6.3.1. Inexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Articles 6.6.1 and 6.6.2 above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Inexcusable Delays.

6.6.4. Notice of Delay

6.6.4.1. Failure of Contractor to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of the same. Any delay, which will result in a request for an adjustment to the Contract Time, shall be documented by the Contractor in a letter to the Construction Manager within five (5) days of the occurrence. The Contractor shall identify the Contract Schedule activity number(s) and activity description(s) affected, as well as the event and documentation causing delay.

6.6.5. Concurrent Delays

6.6.5.1. If an Inexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the Contractor may not recover damages for the period of the concurrency under the provisions of Article 6.6.2, and the maximum extension of the Contract Time shall be equal to the Excusable Delay or the Compensable Delay.

6.6.5.2. Notwithstanding the foregoing, the District's failure to require compliance of any past delays shall not constitute a waiver or preclude it from enforcing such provisions in connection with any present or future delays.

6.6.6. Time Impact Analyses

6.6.6.1. If the Contractor experiences what they consider to be an excusable delay, the Contractor shall submit a written Time Impact Analysis (TIA) to the Construction Manager in accordance with the Specifications with each request for adjustment of Contract Time. Any accompanying cost proposal pursuant to Article 10 shall include all anticipated direct costs due to the delay, including direct actual extended General Conditions field overhead where applicable. If the Contractor does not submit a TIA for a specific change order or delay within the specified time as determined by the Construction Manager, the Contractor shall be deemed to have voluntarily irrevocably waived any rights to additional time and cost. In accordance with the Specifications the Contractor shall allow time for the Construction Manager to approve or reject the submitted TIA. The Contractor shall not incorporate any part of the Time Impact Analysis into the Monthly Schedule Update until authorized in writing by the Construction Manager.

6.7. LIQUIDATED DAMAGES

6.7.1. Should the Contractor neglect, fail or refuse to achieve Substantial Completion of the Work or phase thereof, within the Contract Time, as adjusted, the Contractor agrees to pay to

the District the amount of per diem Liquidated Damages set forth in the Supplementary Conditions, not as a penalty but as Liquidated Damages, for every day beyond the Contract Time, as adjusted, until Substantial Completion of the Work or phase thereof is achieved, subject to force majeure, as defined at Article 16.5 of the General Conditions. Contractor and District acknowledge and agree that if the Contractor fails to achieve Substantial Completion in accordance with the Contract Schedule, the District will incur costs and expenses not contemplated by the Contract Documents, the actual amount of which will be impracticable to ascertain. Contractor and District further acknowledge and agree that the per diem assessment set forth in the Supplementary Conditions represents a reasonable joint effort by the parties to establish an amount of Liquidated Damages that corresponds to actual loss and which is reasonable under the circumstances existing at the time the parties entered into the Contract. Liquidated Damages may be deducted from the Contract Price then or thereafter due the Contractor. The Contractor and the Surety shall be liable to the District for any Liquidated Damages exceeding any amount of the Contract Price then held or retained by the District. If the Contractor fails or refuses, for any reason, to promptly correct or complete all Punchlist items upon Substantial Completion for each phase within thirty (30) days as determined pursuant to Article 6.3 hereof, the Contractor shall be liable to the District for the per diem Liquidated Damages set forth in the Supplementary Conditions from the date that such items should have been corrected or completed until the date that all such items are actually corrected or completed. In the event the Contractor fails or refuses to correct or complete items of the Work noted upon Substantial Completion and the District elects to exercise its right to cause completion or correction of such items, the Contractor will be charged with the cost of completing or correcting the same.

ARTICLE 7**7. CONTRACT PRICE****7.1. SCHEDULE OF VALUES AND COST BREAKDOWN**

- 7.1.1. The Contractor shall prepare, on electronic spreadsheet forms provided by the District, a detailed Schedule of Values comprising an estimate and complete Cost Breakdown of the Contract Price.
- 7.1.1.1. If the Contract requires a cost-loaded schedule per Specifications, the Schedule of Values shall be directly resulting from the cost-loaded schedule and the Contractor shall adhere to the requirements contained within Specifications. The Schedule of Values shall be submitted with the Baseline Critical Path Method (CPM) Schedule Submittal, and shall follow the same review and approval timeline as the Baseline CPM Schedule.
- 7.1.1.2. If the Contract does not require a cost-loaded schedule per Specifications, the Schedule of Values shall be sufficiently detailed and organized in a manner acceptable to the Construction Manager. The Schedule of Values shall be submitted to the Construction Manager, in both printed and electronic form, for review and approval within fifteen (15) days of the (NTP) date. Payment for uninstalled materials is limited to major pieces of equipment with a cost value in excess of \$10,000. The Construction Manager has ten (10) days to review the Schedule of Values Submittal. If the Construction Manager rejects the Schedule of Values, the Contractor has five (5) days after the date of the rejection to submit a revised Schedule of Values to the Construction Manager for review and approval. The foregoing procedure for the approval of the Schedule of Values shall continue until the District has accepted the entirety of the Schedule of Values.
- 7.1.1.3. If the Contract has multiple sites, Contractor is required to submit separate Schedule of Values per site.
- 7.1.1.4. The Schedule of Values shall be divided into costs in order to comply with the District's cost coding system.
- 7.1.2. Once the District accepts the Schedule of Values, the Schedule of Values shall not be thereafter modified or amended by the Contractor without the prior consent and approval of the District, except that the Contractor shall amend the Schedule of Values to separately list each change order upon District approval of said Change Order in accordance with the provisions of Article 10.5.
- 7.1.3. If the Contract requires a cost-loaded schedule per Specifications, upon District approval of a Change Order in accordance with the provisions of Article 10.5, the Contractor shall add separate cost-loaded activities to the Contract Schedule for each Change Order individually.
- 7.1.4. If the Contract does not require a cost-loaded schedule per Specifications, upon District approval of a Change Order in accordance with the provisions of Article 10.5, the Contractor shall amend the Cost Breakdown to separately list each approved change order.
- 7.1.5. If the Construction Manager so determines, the Contractor must further divide each Change Order as necessary to comply with the District's cost coding system.

7.2. PROGRESS PAYMENTS

- 7.2.1. During the Contractor's performance of the Work, the Contractor shall submit to the Construction Manager a CPM schedule update each month in accordance with the provisions of General Requirements. The CPM schedule update Submittal that is to be submitted to the Construction Manager after the Monthly Schedule Review Meeting shall include Applications for Progress Payments, on forms provided by the Construction Manager, setting forth an itemized estimate of Work completed in the preceding month for the purpose of the District's making of Progress Payments thereon. Values utilized in the Applications for Progress Payments shall be based upon the District accepted Cost Breakdown pursuant to Article 7.1 above and shall not be considered as fixing a basis for adjustments to the Contract Price.
- 7.2.1.1. Where the Contract requires a cost-loaded schedule per Specifications, the estimate of Work completed in the preceding month shall be directly determined by the cost-loaded Monthly Schedule Update. Refer to Specifications regarding Monthly Schedule Updates.
- 7.2.1.2. Where the Contract does not require a cost-loaded CPM schedule per Specification, the Contractor shall estimate the amount of the Application for Progress Payment by updating the status of each Schedule of Value item that is complete or in progress with a physical percent complete as of the last day of the preceding month or other cutoff date as approved or directed by the Construction Manager.
- 7.2.1.3. The Contractor shall submit the updated Schedule of Values, in both printed and electronic form, to the Construction Manager for review and approval. Monthly Schedule Review meetings shall be conducted in accordance with Specifications for the purpose of finalizing the percent to be paid for Work completed or in progress. After the meeting, the Contractor shall make revisions to the status of Schedule of Value line items, as directed by the Construction Manager, and submit the Application for Progress Payment and electronic Schedule of Values on the due date set forth herein. The Contractor must submit the Monthly Schedule Update package to the Construction Manager before the District will process an Application for Progress Payment for a given month.
- 7.2.2. In accordance with Public Contract Code §20104.50, upon receipt of an Application for Progress Payment, the District shall review the same for approval. Such Application shall be deemed "proper" for payment only if it is submitted on the appropriate District form fully completed and accompanied by: (i) Certified Payrolls of the Contractor and all Subcontractors, of any tier, for laborers performing any portion of the Work for which a Progress Payment is requested; (ii) if applicable, duly completed and executed forms of Conditional and Unconditional Waiver(s) and Release(s) of Rights Upon Progress Payment in accordance with California Civil Code §8132 covering the Progress Payment requested; (iii) if applicable, a current union statement reflecting that the Contractor and any Subcontractor of any tier, are current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining Agreement to which the Contractor or any such Subcontractor is a party to or is otherwise bound by; (iv) a certification by the Contractor that it has continuously maintained, or caused to be maintained, the Record Drawings reflecting the actual as-built conditions of the Work performed for which the Progress Payment is requested, it being understood that such certification is subject to verification by the District; (v) the Construction Progress Schedule, (vi) daily construction reports, (vii) when appropriate, (a) completed and signed-off punch lists; (b) health and safety reports; and (c) test/adjust/balance records; (viii) signatures of the Project Inspector, Construction Manager, and the Architect; (ix) Updated List of Employees for both Contractor and all of his Subcontractors (Exhibit "C") with their DOJ fingerprinting status. In accordance with Public Contract Code §20104.50, an Application for Progress Payment

determined by the District not to be proper shall be returned by the District to the Contractor not more than seven (7) days after the District's receipt thereof setting forth, in writing, the reason(s) for the return.

- 7.2.3. Upon receipt of an Application for Progress Payment, the Architect and the Project Inspector shall inspect and verify the Work to determine whether it has been performed in accordance with the terms of the Contract Documents and to determine the portion of the Application for Progress Payment which is properly due to the Contractor under the terms of the Contract Documents.
- 7.2.4. In accordance with Public Contract Code §20104.50, within thirty (30) days after the District's receipt of a proper Application for Progress Payment, the District shall pay Contractor undisputed amounts. The District shall pay to Contractor a sum equal to ninety-five percent (95%) of the value of the Work indicated in the Application for Progress Payment, which is actually in place as of the date of the Application for Progress Payment. The remaining five percent (5%) shall be retained by the District until Final Completion. If an Application for Progress Payment is determined not to be proper due to the failure or refusal of the Contractor to submit documents or the submitted documents are incomplete or inaccurate, or if it is reasonably determined that the Record Drawings have not been continuously maintained to reflect the actual as-built conditions of the Work completed in the period for which the Progress Payment is requested, the 30-day period hereunder shall be deemed to commence on the date that the District is actually in receipt of all corrected documents or the date upon which the Contractor accurately and fully completes preparation of the Record Drawings relating to the Work for which the Progress Payment is requested.
- 7.2.5. Subject to the limitations of California Public Contract Code §9203, the District may, in its sole and exclusive discretion, disburse any remaining Progress Payments in full for Work actually in place at any time after fifty percent (50%) of the Work is concluded on Projects exceeding the amount of \$5,000, if the District determines that acceptable progress is being made.
- 7.2.6. In accordance with Public Contract Code §20104.50, in the event that the District fails to make any Progress Payment within thirty (30) days after receipt of a properly submitted Application for Progress Payment, the District shall pay the Contractor interest on the undisputed amount equal to the legal rate of interest set forth in California Code of Civil Procedure §685.010(a). The foregoing notwithstanding, if the District does not return an improper Application for Progress Payment within the allowed seven (7) day period provided in Article 7.2.2, the period of time for the District's disbursement of the Progress Payment without incurring the interest liability shall be reduced by the number of days exceeding the seven (7) day return period.
- 7.2.7. The approval of any Application for Progress Payment or the disbursement of any Progress Payment to the Contractor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents.
- 7.2.8. The Contractor's Applications for Progress Payment may include requests for payment on account of Changes in the Work which have been properly authorized and approved by the District's Project Inspector, the Architect and all other governmental agencies with jurisdiction over such Change in accordance with the terms of the Contract Documents and for which a Change Order has been issued. Change Orders must be clearly identified and referenced on the itemization sheet submitted with the Contractor's Application for Progress Payment. Change Orders must be itemized in conformance with the Contractor's accepted Cost Breakdown. Except as provided for herein, the District shall make no other payment for Changes in the Work.
- 7.2.9. Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment which,

at the time of the Contractor's Submittal of an Application for Progress Payment, have not been incorporated into and made a part of the Work.

- 7.2.10. The District may, in its sole and exclusive discretion, approve a request for payment not to exceed eighty percent (80%) submitted with an Application for Progress Payment for materials or equipment not yet incorporated into the Work if all of the following are complied with: (a) the materials or equipment have been delivered to the Site; (b) arrangements satisfactory to the District have been made by the Contractor to store and protect such materials or equipment at the Site including without limitation, insurance satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage; and (c) the establishment of procedures satisfactory to the District by which title to such materials or equipment shall be vested in the District upon the District's payment therefore. In the event that the District shall elect to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (b) and (c) of this Article 7.2.11 shall be borne solely and exclusively by the Contractor.
- 7.2.11. The foregoing notwithstanding, the District may, in its sole and exclusive discretion, elect to make payment not to exceed eighty percent (80%) for materials or equipment not incorporated into the Work and which are not delivered or stored at the Site at or prior to the time of the Contractor's Submittal of an Application for Progress Payment. Contractor shall incorporate with the Application a request for payment of such materials or equipment and comply with all of the following requirements: (a) arrangements satisfactory to the District have been made by the Contractor to store and protect such materials or equipment at a secure warehouse/storage that is insured for up to 100% of the value of the materials or equipment not yet incorporated into the Work, which is agreed to in writing by the District, and which arrangements shall include without limitation, insurance satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage; and (b) the establishment of procedures satisfactory to the District by which title to such materials or equipment shall be vested in the District upon the District's payment therefore. The Contractor acknowledges that the discretion to make, or not to make, payment for such materials or equipment delivered or stored at a secure warehouse/storage that is insured for up to 100% of the value of the materials or equipment not yet incorporated into the Work pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment for such materials or equipment shall not be deemed the District's default hereunder. In the event that the District shall elect to make payment for materials or equipment delivered and stored at a secure warehouse/storage that is insured for up to 100% of the value of the materials or equipment not yet incorporated into the Work the costs and expenses incurred to comply with the requirements of (a) and (b) of this Article 7.2.12 shall be borne solely and exclusively by the Contractor and no payment shall be made by the District on account of such costs and expenses. All stored items shall be stored, inventoried and if applicable, specified by identification numbers; otherwise, all risk of loss remains with the Contractor.
- 7.2.12. The provisions of this Article 7.2 notwithstanding, the District shall not make any payment on account of any materials or equipment which is in the process of being fabricated or which are in transit to the Site or other storage location.
- 7.2.13. Neither the Contractor's Application for Progress Payment shall include, nor shall the District be obligated to disburse, any portion of the Contract Price for amounts which the Contractor does not intend to pay any Subcontractor, of any tier, or Material Supplier because of a dispute or any other reason.

7.3. TITLE TO WORK

- 7.3.1. The Contractor warrants that title to all Work covered by an Application for Progress Payment shall pass to the District no later than the time of payment. The Contractor further

warrants that upon Submittal of an Application for Progress Payment, all Work for which a Progress Payment has been previously issued and the Contractor has received payment from the District therefore shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, Claims, stop payment notices, security interests or encumbrances in favor of the Contractor, Subcontractors, Material Suppliers or other persons or entities making a Claim by reason of having provided labor, materials and equipment relating to the Work.

7.4. FINAL PAYMENT

- 7.4.1. When the Contractor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, the Contractor shall submit an application for final payment. Thereupon, the Architect and the Project Inspector shall promptly make a final inspection of the Work and when the Architect and the Project Inspector find the Work acceptable under the Contract Documents and that the Contract has been fully performed by the Contractor, the Architect and the Project Inspector shall thereupon promptly approve the Application for Payment, stating that to the best of their knowledge, information and belief, the Work has been completed in accordance with the terms of the Contract Documents. The final payment shall include the remaining balance of the Contract Price and any retention from Progress Payments previously withheld by the District for occupied, utilized, partially completed and accepted portions of the Work.
- 7.4.2. Neither the Final Payment nor any remaining Contract Price shall become due until the Contractor submits to the District each and all of the following (i) a certificate evidencing that insurance required by the Contract Documents to remain in force after the Contractor's receipt of Final Payment is currently in effect and shall be held for two (2) years from the final approval date set by the District; (ii) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover any period following Final Payment as required by the Contract Documents; (iii) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of the Contractor in accordance with California Civil Code §8132, with each of the same stating that there are, or shall be, no Claims for additional compensation after disbursement of the Final Payment; (iv) Operations and Maintenance manuals and separate warranties provided by any Manufacturer or Distributor of any materials or equipment incorporated into the Work; (v) the Record Drawings; (vi) the form of Guarantee included in the Contract Documents duly executed by an authorized representative of the Contractor; (vii) Training and Orientation videos required by the Contract Documents; (viii) all equipment, fully commissioned and operating as specified; (ix) any and all other items or documents required by the Contract Document including **Exhibit C** of the General Conditions Final Project Completion Subcontractor's List as required by Labor Code §1773.3 (d) to be delivered to the District upon completion of the Work; and (x) if required by the District, such other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, stop payment notices, Claims, security interest or encumbrances arising out of the Contract to the extent and in such form as may be required by the District.
- 7.4.3. Not later than sixty (60) days following Final Acceptance, the District shall disburse the Final Payment to the Contractor. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and the Contractor at the time that disbursement of the Final Payment is due, the District may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute. Any dispute regarding the District's alleged failure to comply with this section or with Public Contract Code §7107 shall be subject to the claims resolution procedures set forth in Article 18 of this Agreement.

- 7.4.4. The Contractor's acceptance of the Final Payment shall be deemed a waiver and release by the Contractor of any and all Claims against the District for compensation or otherwise in connection with the Contractor's performance of the Contract.
- 7.4.5. Any lien, stop payment notice or other Claim filed or asserted after the Contractor's acceptance of the Final Payment by any Subcontractor, of any tier, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor who further agrees to indemnify, defend and hold harmless the District and its officers, agents, representatives and employees from and against any Claims, demands or judgments arising or associated therewith. In the event any lien, stop payment notice or other Claim of any Subcontractor, Laborer, Material Supplier or others performing Work under the Contract Documents remain unsatisfied after Final Payment is made, Contractor shall refund to District all monies that the District may pay or be compelled to pay in discharging any lien, stop payment notice or other Claim, including, without limitation, all costs incurred by District in connection therewith.

7.5. WITHHOLDING OF PAYMENTS

- 7.5.1. The District may withhold any Progress Payment or the Final Payment, in whole or in part, or backcharge the Contractor to the extent it may deem advisable to protect the District on account of: (i) defective Work or Work not in conformity with the requirements of the Contract Documents which is not remedied; (ii) failure of the Contractor to make payments when due to Subcontractors or Material Suppliers for materials or labor; (iii) Claims filed or reasonable evidence of the probable filing of Claims by Subcontractors, laborers, Material Suppliers, or others performing any portion of the Work under the Contract Documents for which the District may be liable or responsible including, without limitation, Stop payment notice Claims filed with the District pursuant to California Civil Code §9000, *et seq.*; (iv) a reasonable doubt that the Contract can be completed for the then unpaid balance of the Contract Price; (v) tax demands filed in accordance with California Government Code §12419.4; (vi) other Claims, penalties and/or forfeitures for which the District is required or authorized to retain funds otherwise due the Contractor; (vii) any amounts due from the Contractor to the District under the terms of the Contract Documents; or (viii) the Contractor's failure to perform any of its obligations under the Contract Documents, including performance of any lawful or proper direction given by the District or public authority having jurisdiction over the Work or its default under the Contract Documents or its failure to maintain adequate progress of the Work. When the District is reasonably satisfied that the Contractor has remedied any such deficiency, payment shall be made of the amount withheld.

7.6. SUBSTITUTE SECURITY FOR RETENTION

- 7.6.1. Eligible and equivalent securities may be substituted for any monies withheld by the District to ensure the Contractor's performance under the Contract Documents at the request and expense of the Contractor and in conformity with the provisions of California Public Contract Code §10263. The foregoing and the provisions of California Public Contract Code §10263 notwithstanding, failure of the Contractor to request the substitution of eligible and equivalent securities for monies to be withheld by the District within ten (10) days following award of the Contract to Contractor shall be deemed a waiver of such right.

7.7. PAYMENTS TO SUBCONTRACTORS

- 7.7.1. The Contractor shall pay all Subcontractors for and on account of Work of the Contract performed by such Subcontractors in accordance with the terms of their respective Subcontracts and as provided for pursuant to California Public Contract Code §§10262 and 10253, the provisions of which are deemed incorporated herein by this reference.

ARTICLE 8

8. SUBMITTALS

8.1. SUBMITTALS

- 8.1.1. Shop Drawings, Product Data, Samples and similar Submittals (collectively "Submittals") are not Contract Documents. The purpose for submission of Submittals is to demonstrate, for those portions of the Work for which Submittals are required, the manner in which the Contractor proposes to provide or incorporate such item of the Work in conformity with the information given and the design concept expressed in the Contract Documents.
- 8.1.2. The Contractor shall review, approve and submit to the Architect or such other person or entity designated by the District, the number of copies of Submittals required by the Contract Documents. Contractor's submission of Submittals in conformity with the Submittal Schedule is a material obligation of the Contractor under the Contract Documents. In the event of Contractor's failure or refusal to deliver Submittals to the Architect in accordance with the Submittal Schedule, the Contractor shall be subject to per diem assessments in the amount set forth in the Supplementary Conditions for each day of delayed submission for any Submittal beyond the date set forth in the Submittal Schedule, not as a penalty but as Liquidated Damages.
- 8.1.3. Contractor and District acknowledge and agree that if the Contractor fails to deliver Submittals in accordance with the Submittal Schedule, the District will incur costs and expenses not contemplated by the Contract Documents, the actual amount of which will be impracticable to ascertain. Contractor and District further acknowledge and agree that the per diem assessment set forth in the Supplementary Conditions represents a reasonable joint effort by the parties to establish an amount of Liquidated Damages that corresponds to actual loss and which is reasonable under the circumstances existing at the time the parties entered into the Contract.
- 8.1.4. In the event that the District or the Architect reasonably determines that all or any portion of such Submittals require re-submission, Contractor shall bear all costs associated with the review and approval of resubmitted Submittals, including without limitation Architect's fees incurred in connection therewith; such costs are in addition to, and not in lieu of, any per diem assessments. Submittals not required by the Contract Documents or which do not otherwise conform to the requirements of the Contract Documents may be returned without action. No adjustment to the Contract Time or the Contract Price shall be granted to the Contractor on account of its failure to timely submit any Submittal.
- 8.1.5. All Submittals prepared by Subcontractors, of any tier, Material Suppliers, Manufacturers or Distributors shall bear the written approval of the Contractor thereto prior to submission to the Architect for review. Any Submittal not bearing the Contractor's written approval shall be subject to return to the Contractor for Re-Submittal in conformity herewith, with the same being deemed to not have been submitted. Any delay, impact or cost associated therewith shall be the sole and exclusive responsibility of the Contractor without adjustment to the Contract Time or the Contract Price.
- 8.1.6. By approving and submission of Submittals, the Contractor represents to the District and Architect that the Contractor has determined and verified materials, field measurements, field construction criteria, catalog numbers and similar data related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.
- 8.1.7. All Submittals shall be accompanied by a written transmittal or other writing by the Contractor providing an identification of the portion of the Drawings or the Specifications pertaining to the Submittal, with each Submittal numbered consecutively for ease of reference along with the following information: (i) date of submission; (ii) Project name; (iii) name of submitting Subcontractor; and (iv) if applicable, the revision number. The

foregoing information is in addition to, and not in lieu of, any other information required for the Architect's review, evaluation and approval of the Contractor's Submittals.

- 8.1.8. The Contractor shall not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by the Architect's review and acceptance of Submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission of the Submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the Architect's acceptance thereof.
- 8.1.9. The Contractor shall perform no portion of the Work requiring the Architect's review and acceptance of Submittals until the Architect has completed its review and indicated acceptance of such Submittal. The Contractor shall not perform any portion of the Work forming a part of a Submittal or which is affected by a related Submittal until the entirety of the Submittal or other related Submittal has been fully accepted. Such Work shall be in accordance with accepted Submittals and other applicable portions of the Contract Documents.
- 8.1.10. The Architect shall review the Contractor's Submittals in compliance with the Contract Documents for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's approval of a specific item in a Submittal shall not indicate approval of an assembly of which the item is a component. The Architect's review of Submittals shall be conducted promptly so as not to delay or hinder the progress of the Work or the activities of the Contractor, the District or the District's separate Contractors while allowing sufficient time, in the Architect's reasonable professional judgment to permit adequate review of Submittals. If the Architect returns a Submittal as rejected or requiring correction(s) and re-submission, the Contractor, so as not to delay the progress of the Work, shall promptly thereafter resubmit a Submittal conforming with the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in order to obtain the Architect's acceptance. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals.
- 8.1.11. If any portion of the Work is designated in the Contract Documents as a "Deferred Approval" item, Contractor shall be solely and exclusively responsible for the preparation of Submittals for such item(s) in a timely manner so as not to delay or hinder the completion of the Work within the Contract Time.

ARTICLE 9**9. MATERIALS AND EQUIPMENT****9.1. SPECIFIED MATERIALS, EQUIPMENT**

9.1.1. References in the Contract Documents to any specific Article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number, with or without the words "or equal" shall be deemed to establish a minimum standard of quality or performance and in conformance with the public interest.

9.1.2. References in the Contract Documents to any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name or catalog number, with the wording "No Substitutions", shall be limited to the referenced item only.

9.2. APPROVAL OF SUBSTITUTIONS OR ALTERNATIVES

9.2.1. After issuance of Notice to proceed (NTP), the Contractor may propose to furnish equals, alternatives or substitutes for a particular item specified in the Contract Documents. Contractor's bid must be based on the specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction identified in the specifications. "Or equals", alternatives or substitutions will be considered, after issuance of NTP, provided that the Contractor provides advance written notice to the Architect of such proposed substitution or alternative and certifies to the Architect and the District that the quality, performance capability and functionality (including visual and/or aesthetic effect) of the proposed alternative or substitute shall meet or exceed the quality, performance capability and functionality of the item or process specified and that the use of the substitution or alternative is appropriate and shall not delay completion of the Work or result in an increase to the Contract Price. The Contractor shall submit engineering, construction, dimension, visual, and aesthetic and performance data to the Architect to permit its proper evaluation of the proposed substitution or alternative on the District furnished Substitution Request Form.

9.2.2. If requested by the Architect, Contractor shall promptly furnish any additional information or data regarding a proposed substitution or alternative, which the Architect deems reasonably necessary for the evaluation of the proposed substitution or alternative. The Contractor shall not provide, furnish or install any substitution or alternative without the Architect's prior written approval of the same; any alternative or substitution installed or incorporated into the Work without first obtaining the District's approval of the same shall be subject to removal pursuant to Article 14 hereof. The District's decision shall be final regarding the approval or disapproval of the Contractor's proposed substitutions or alternatives. Neither the Contract Time nor the Contract Price shall be increased on account of any substitution or alternative proposed by the Contractor and which is approved by the District; provided, however, that in the event a substitution or alternative is approved by the Architect and purchase, fabrication and/or installation or such approved substitution or alternative shall be less expensive than the originally specified item, the Contract Price shall be reduced by the actual cost savings realized by the Contractor's furnishing and/or installation of such approved substitution or alternative.

9.2.3. The Contractor shall be solely responsible for all costs and fees of the Architect, of the Architect's consultant(s) and/or governmental agencies to review and/or approve any proposed substitution or alternative. The Contractor shall be solely responsible for any increase in the cost of any approved substitution or alternative or any Work affected by such alternative or substitution. All requests for the Architect's review and approval of any proposed substitution or alternative and all engineering, construction, dimension and performance data substantiating the equivalency of the proposed substitution or alternative

shall be submitted by Contractor on the District Substitution Request Form. Submission of substitution requests is allowed during the period indicated in the Specifications.

- 9.2.4. The Architect may reject, without review, any request for approval of proposed alternatives or substitutions not submitted within the time limitations indicated in the Specifications. The foregoing process and time limits shall apply to any proposed substitution or alternative regardless of whether the substitute or alternate item is to be provided, furnished or installed by Contractor, any Subcontractor, any Sub-Subcontractor, Material Supplier or Manufacturer. Any request for substitution of specified materials or equipment will be considered only if submitted on the District Substitution Request Form.

9.3. PLACEMENT OF MATERIALS AND EQUIPMENT ORDERS

- 9.3.1. Contractor shall, after award of the Contract, promptly and timely place all orders for materials and/or equipment necessary for completion of the Work so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Contractor shall require that any Subcontractor or Sub-Subcontractor performing any portion of the Work similarly place orders for all materials and/or equipment to be furnished by any such Subcontractor or Sub-Subcontractor in a prompt and timely manner so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Upon request of the Architect or the District, the Contractor shall furnish written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, including without limitation, orders for materials and/or equipment to be provided, furnished or installed by any Subcontractor or Sub-Subcontractor.

- 9.3.2. In the event the Contractor fails or refuses to comply with the requirements set forth in Article 9.3.1, above, the District shall have the right, but not the obligation, to place such orders on behalf of the Contractor. The election of the District to exercise, or not to exercise, such right shall not relieve the Contractor from any of Contractor's obligations under the Contract Documents, including without limitation, completion of the Work within the Contract Time and for the Contract Price. If the District exercises the right hereunder to place orders for materials and/or equipment on behalf of Contractor pursuant to the foregoing, Contractor shall reimburse the District for all costs and fees incurred by the District in placing such orders; such costs and fees may be deducted by the District from any portion of the Contract Price then or thereafter due the Contractor.

9.4. DELIVERIES OF MATERIALS AND EQUIPMENT TO THE SITE

- 9.4.1. All materials or equipment to be incorporated into the Work shall be designated on the Drawings and delivered to the designated staging or storage area at the Site utilizing delivery route(s) designated in the Drawings and/or as directed from time-to-time by the Project Inspector or Construction Manager. Promptly upon delivery of materials/equipment for incorporation into the Work, the Contractor shall provide the District's Project Inspector with copies of delivery slips, invoices, bills of lading and similar instruments that indicate the type, nature and quantity of the materials/equipment delivered. The Contractor is solely responsible for adequately protecting the designated delivery route(s) and improvements in, on or about the designated delivery route(s) without adjustment of the Contract Time or the Contract Price; the Contractor shall repair or replace all damage on or about the delivery route resulting from deliveries.

9.5. SALVAGE AND DISPOSAL OF EXISTING MATERIALS AND EQUIPMENT

- 9.5.1. All existing materials/equipment to be removed or disconnected and which have not been specifically designated in the Contract Documents for re-use in the Work, or for salvage by the District, shall become the property of the Contractor. All items designated for removal and deemed the property of the Contractor upon removal shall be disposed by the Contractor in conformity with applicable law, rule or regulation. The District shall have no liability for any materials or equipment once they are removed from the Site. The

Contractor shall not dispose of any such items at the Site by gift, sale or otherwise. If any existing materials/equipment or other existing improvements at the Site are to be removed, disconnected or relocated for re-use in connection with the Work, the removal, disconnection or relocation shall be completed in a manner to avoid damage or destruction of the Work or other existing improvements or facilities. Damage or destruction of the Work, any existing improvements, facilities or other items designated for re-use in connection with the Work shall be repaired or replaced by the Contractor without adjustment of the Contract Price or the Contract Time. Any damage or destruction of existing improvements, facilities, or other items caused by construction activities, or any activity by the Contractor shall be repaired, replaced, or corrected to return said item in kind with preconstruction status.

9.6. DISTRICT PROVIDED, CONTRACTOR INSTALLED PRODUCTS

- 9.6.1. The Provisions of this Article 9.6 apply only to materials, supplies, equipment, furnishings, or other things or property of any kind of type that will be paid for and provided by the District but incorporated into the Project or installed by the Contractor. The foregoing notwithstanding, the Contractor's responsibility related to materials, supplies, equipment, furnishings, or other things or property of any kind or type paid for and provided by the District and incorporated into the Project or installed by the District's own forces or by separate Contractors shall be as set forth in Article 11 hereof.
- 9.6.2. If the District provides any materials, supplies, equipment, furnishings, or other things or property of any kind or type for incorporation into the Project or installation by the Contractor, the Construction Manager will coordinate delivery dates of such items with the Contractor. The Contractor shall thereupon coordinate the delivery, incorporation, and installation of such items with the remainder of the Work and the Contract Schedule. District will arrange and pay for delivery of such items to the Project site. After delivery of such items to the Project site, the Construction Manager, Project Manager, Project Inspector, and Contractor will jointly inspect delivered items for damage. If such District provided items are damaged, defective, or missing, the District will arrange for their replacement.
- 9.6.3. For District provided and Contractor incorporated or installed products, the Contractor shall notify the Construction Manager of the required schedule for any Manufacturer's field services, and the Construction Manager will thereupon arrange for such Manufacturer's field services; the Contractor shall request the Construction Manager arrange for delivery of Manufacturer's warranties to the Contractor; and the Contractor shall request the Construction Manager arrange for and deliver to the Contractor appropriate shop Drawings, product data and samples. When and as received from the Construction Manager, the Contractor shall review such shop Drawings, product data, and samples and notify the Construction Manager, in writing, of any discrepancies or anticipated problems in incorporating or installing said products.
- 9.6.4. The Contractor is responsible for receiving, unloading, and handling at the Project site District provided and Contractor incorporated or installed items. The Contractor is responsible for protecting such District provided items from damage during storage and handling, including damage from exposure to the elements. If such District provided items are damaged as a result of the Contractor's operations, the Contractor shall promptly repair or replace them.
- 9.6.5. If the Contractor Claims that delay or additional cost is involved because the materials, supplies, equipment, furnishings, or other things or property of any kind or type provided by the District and to be incorporated or installed by the Contractor are not delivered to the Project site in accordance with the Contract Schedule and in an undamaged condition, the Contractor may seek an adjustment to the Contract Price or the Contract Time as provided for in the Contract Documents. Failure of the Contractor to request such an adjustment of

the Contract Time or the Contract Price in strict conformity with the provisions of the Contract Documents applicable thereto shall be deemed a waiver of the same.

ARTICLE 10

10. CHANGES

10.1. CHANGES IN THE WORK

10.1.1. The District, at any time, by written order, may make Changes within the general scope of the Work under the Contract Documents or issue additional instructions; require additional Work or direct deletion of Work. The Contractor shall not proceed with any Change involving an increase or decrease in the Contract Price or the Contract Time without prior written authorization from the District via a Field Work Order or an approved Change Order.

10.1.2. The District's right to make Changes shall not invalidate the Contract nor relieve the Contractor of any liability or other obligations under the Contract Documents. Any requirement of notice of Changes in the scope of Work to the Surety shall be the responsibility of the Contractor, including any additional surety costs that may result from the adjustment of the Contract value. The Contractor can allow for these added costs through the Change Order provisions only. Changes to the Work depicted or described in the Drawings or the Specifications shall be subject to approval by DSA. The District may make Changes to bring the Work or the Project into compliance with environmental requirements or standards established by state or federal statutes and regulations enacted after award of the Contract.

10.2. ORAL ORDER OF CHANGE IN THE WORK

10.2.1. If the Contractor should Claim that any oral order, instruction, interpretation, determination, request, the Drawings, the Specifications, action, condition, omission, default, or other situation (collectively "Instructions") causes any change to the scope of the Work, or otherwise obligates the District to increase the Contract Price or to extend the Contract Time, the Contractor shall notify the Construction Manager and the Architect, in writing, of such Claim within five (5) days from the date of its actual or constructive notice of the factual basis supporting the same. The District shall consider any such Claim of the Contractor only if sufficient supporting documentation is submitted with the Contractor's notice to the Construction Manager and the Architect. The District, upon receipt from the Contractor, shall countersign such document.

10.2.2. Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District's review and evaluation) within five (5) days of its actual or constructive knowledge of any proposed adjustment of the Contract Time or the Contract Price shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or Claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of any such Instructions. In the event that the District determines that the Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with the Contractor's written notice, any such adjustment shall be determined in accordance with this Article 10.

10.3. WRITTEN ORDER OF CHANGE IN THE WORK

10.3.1. Within fifteen (15) days after receipt of a written request for cost estimate or written Field Work Order from the District directing a Change in the Work, or furnishing the written notice regarding any oral order directing a Change in the Work pursuant to paragraph 10.2 above, the Contractor shall submit to the Architect and the Construction Manager a detailed written statement setting forth the general nature of the Change, the amount claimed for any adjustment to the Contract Price on account thereof and the extent of adjustment of the Contract Time, if any, required by such Change. Said statement shall be properly itemized and supported by sufficient substantiating data to permit evaluation of the same, such documentation shall be submitted in conformance with the District form entitled "Payment – Extra, Additional, Allowances, Contingencies or Deleted Work" which is attached hereto

as Exhibit "A" and incorporated herein by reference. The Contractor may not reserve a right to assess impact costs, extended job site costs, extended general conditions overhead and any/or constructive acceleration costs at some later date as related to any and all changes of the Work. These Costs must be supported with full Schedule and Cost documentation with each proposed change within the Contract prescribed submission times. No Claim or adjustment to the Contract Price or the Contract Time shall be allowed if not asserted by the Contractor in strict conformity with this paragraph.

10.4. ADJUSTMENT TO CONTRACT PRICE AND CONTRACT TIME ON ACCOUNT OF CHANGES TO THE WORK

10.4.1. Adjustments to the Contract Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority:

10.4.1.1. By negotiation and mutual Agreement, on a lump sum basis, between the District and the Contractor on the basis of the estimate of the actual costs and direct increase or decrease in costs on account of the Change. Upon request of the Construction Manager or the Architect, the Contractor shall provide a detailed estimate of increase or decrease in costs directly associated with performance of the Change along with Cost Breakdowns of the components of the Change and supporting data and documentation. The Contractor's estimate, if requested, shall be in sufficient detail and in such form as to allow the Construction Manager and the Architect to review and assess the completeness and accuracy thereof. The Contractor shall be solely responsible for any additional costs or additional time arising out of, or related in any manner to, its failure to provide the estimate of costs within the time specified in the request.

10.4.1.2. By the District based upon actual and necessary costs incurred by the Contractor as determined by the District on the basis of the Contractor's records. If the procedure set forth herein is utilized to determine the extent of adjustment to the Contract Price on account of Changes to the Work, promptly upon determining the extent of adjustment to the Contract Price the District shall notify the Contractor in writing of the same. The Contractor shall be deemed to have accepted the District's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor shall notify the District's Representative and the Architect, in writing, not more than fifteen (15) days from the date of the District's written notice, of any objection to the District's determination. Failure of the Contractor to timely notify the District's Representative and the Architect of Contractor's objections to the District's determination of the extent of adjustment to the Contract Price shall be deemed Contractor's acceptance of the District's determination and a waiver of any right or basis of the Contractor to thereafter protest or otherwise object to the District's determination. The District reserves the right to unilaterally execute changes to the contract if impasse is reached after a Good Faith Attempt to Resolve has failed to reach consensus. If the District makes a change unilaterally, the Contractor is referred to the Dispute Resolution clause herein.

10.4.1.3. If the Contractor was required to submit Bid Proposal prices for Unit Price Items identified in the Bid Proposal and a Change to the Work involves a Unit Price Item, the adjustment of the Contract Price for the portion of a Change involving a Unit Price Item shall be based upon the Unit Price proposed by the Contractor in its Bid Proposal for the applicable Unit Price Item. The foregoing notwithstanding, if at the time of a Change involving a Unit Price Item, the District reasonably determines that the price proposed for a Unit Price Item materially varies from the then existing marketplace costs for such item, the District shall not be bound by the price proposed for such Unit Price Item. In such event, the

adjustment of the Contract Price for a Change involving a Unit Price Item shall be the then existing marketplace costs for such item.

10.4.2. In the event of Changes in the Work resulting in an adjustment of the Contract Price and the adjustment of the Contract Price is based upon the methods set forth in Articles 10.4.1.2 and 10.4.1.3 above, the basis for adjustment of the Contract Price shall be as follows:

10.4.2.1. Contractor shall be compensated for the costs of labor actually and directly utilized in the performance of the Change. Such labor costs shall be limited to field labor for which there is a prevailing wage rate classification. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Change. Use of a labor classification, which would increase labor costs associated with any Change, shall not be permitted. Labor costs shall exclude costs incurred by the Contractor in preparing estimate(s) of the costs of the Change, in the maintenance of records relating to the costs of the Change or the supervision and other overhead and general conditions costs associated with the Change or performance thereof.

10.4.2.2. Contractor shall be compensated for the costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment shall include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the performance of Changes, they shall be credited to the District. If materials and/or equipment necessarily used in the performance of Changes are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefore shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of the District, the costs asserted by the Contractor for materials and/or equipment in connection with any Change is excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and the District's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. The District reserves the right to furnish materials and/or equipment required for the performance of Changes to the Work, in which event the Contractor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

10.4.2.3. Contractor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by the Contractor from the Architect or the Construction Manager no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. The Contractor shall not be entitled to an allowance or any other compensation for Construction Equipment or tools under this paragraph where such Construction Equipment or tools have

a replacement value of Five Hundred Dollars (\$500) or less. Construction Equipment costs Claimed by the Contractor in connection with the performance of any Change to the Work shall not exceed rental rates established by Distributors or construction equipment rental agencies in the locality of the Site. Unless otherwise specifically approved in writing by the Architect or the Construction Manager, the allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any or all other costs incurred by the Contractor incidental to the use of such Construction Equipment.

- 10.4.3. In determining the cost to the District and the extent of increase to the Contract Price resulting from a Change adding to the Work, the allowance for mark-ups on the costs of the Change for all overhead (including home office and field overhead for any period of delay caused by the Change in the Work) direct, indirect and consequential costs, general conditions costs and profit associated with the Change shall not exceed the percentage set forth in Exhibit "A," regardless of the number of Subcontractors, of any tier, performing any portion of any Change to the Work. The allowance for mark-ups includes all insurance costs, bonds, all field and home office staff and assistants, all on-site project administration, labor compliance, PSA, administration costs, site clean-up costs, security costs, warranty costs, as-built costs, scheduling costs, the cost of small tools and consumables, incidental job burdens and all general home office expenses. The risk of unanticipated price or cost fluctuations by a supplier of material or labor needed by a contractor is assumed by the Contractor. Any request for material cost adjustment relief caused by force majeure, as defined at Article 16.5 of the General Conditions, are at District's sole discretion.
- 10.4.4. The foregoing notwithstanding, in the event that the Means Construction Cost Data, or a mutually agreed to estimating manual in the event that Means Construction Cost Data shall cease publication, is utilized to determine the costs of only materials contained in a Change and the cost computation therein includes an allowance for overhead, general conditions costs and/or profit, the Contractor and any Subcontractor, of any tier, performing any portion of such Change, shall not be entitled to an allowance for overhead general conditions costs and/or profit beyond that reflected for such item of Change in the Means Construction Cost Data or other mutually agreed upon estimating manual.
- 10.4.5. In the event of a Change to the Work resulting in a reduction of the Contract Price, the District shall pay no profit or general conditions costs to the Contractor for the reduced or deleted Work. Costs for overhead related expenses related to the reduction of the Contract Price shall be addressed on a per-change basis. In such event, the adjustment to the Contract Price shall be the actual cost reduction realized by the reduced or deleted Work, plus profit and/or General Condition's costs. The profit and/or General Conditions costs that are added to the cost reduction shall not exceed the percentage set forth in Exhibit "A" for mark-ups on the cost of a Change adding to the scope of the Work.
- 10.4.6. In the event that Contractor shall be directed to perform any Changes to the Work pursuant to Article 10.1 or 10.2, or should the Contractor encounter conditions, which the Contractor, pursuant to Article 10.6, believes would obligate the District to adjust the Contract Price and/or the Contract Time; Contractor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that the Contractor performs more than one Change to the Work in a calendar day, Contractor shall maintain separate records for each such Change.

- 10.4.7. Contractor shall maintain detailed records on a time and material basis of Work required by Field Work Orders. Project Inspector review and signature is required for each daily time and material document.
- 10.4.8. In the event that any Subcontractor, of any tier, provides or performs any portion of any Change to the Work, Contractor shall require that each such Subcontractor maintain records in accordance with the requirements set forth herein. Each daily record maintained hereunder shall be signed by Contractor or Contractor's authorized representative; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, and complete and relate only to the Change referenced therein. All records maintained by a Subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such Subcontractor's authorized representative.
- 10.4.9. All records maintained hereunder shall be subject to on-site inspection, review and/or reproduction by the Architect, Construction Manager, or the Project Inspector upon request. If the Contractor fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Contract Price on account of any Change to the Work is determined by the District, the District's reasonable good faith determination of the extent of adjustment to the Contract Price on account of such Change shall be final, conclusive, dispositive, and binding upon Contractor.
- 10.4.10. In the event of any Change(s) to the Work pursuant to this Article 10, the Contract Time shall be extended or reduced by Change Order pursuant to Article 6.4. In the event that any Change shall require an extension of the Contract Time, the Contractor shall not be subject to Liquidated Damages for such period of time. In the event that completion of the Work is delayed by causes for which the District is responsible, the Contractor shall be entitled to an adjustment pursuant to this Article 10.4 in the District's sole discretion.
- 10.4.11. Addition or deletion of an Alternate Bid Item(s) shall be in compliance with the procedures indicated in the Information to Bidders.

10.5. CHANGE ORDERS

- 10.5.1. If the District approves of a Change, a written Change Order by the District and prepared by the Construction Manager shall be forwarded to the Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of such Change. All Change Orders shall be in full payment and final settlement of all Claims for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, including any and all overhead costs (both field and office) during any period of delay caused by the Change, as well as any adjustments to the Contract Time.
- 10.5.2. Any Claim or item relating to any Change incorporated into a Change Order not presented by the Contractor for inclusion in the Change Order shall be deemed waived. The Contractor waives and releases any and all claims, rights or interest, including but not limited to, those of cost, profit, acceleration, delay costs, interference, impact, disruption, loss of efficiency, ripple, or other extraordinary or consequential causes arising directly or indirectly out of the Work described in the Change Order except as specifically included within. The Contractor shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to the Contractor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, the Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof.
- 10.5.3. The Contractor's attempted or purported modification or amendment of any such Change Order, without the prior approval of the District, shall not be binding upon the District; any such unapproved modification or amendment to such Change Order shall be null, void and

unenforceable. Unless otherwise expressly provided for in the Contract Documents or in the Change Order, any Change Order issued hereunder shall be binding upon the District only upon action of the District's Board of Education approving and ratifying such Change Order.

10.5.4. In the event of any amendment or modification made by the Contractor to a Change Order for which there is no prior approval by the District, in accordance with the provisions of this Article 10.5, unless otherwise expressly stated in its approval and ratification of such Change Order, any action of the Board of Education to approve and ratify such Change Order shall be deemed to be limited to the Change Order as written by the Architect and prepared by the Construction Manager; approval and ratification of such Change Order shall not be deemed the District's approval and ratification of any unapproved amendment or modification by the Contractor to such Change Order.

10.6. DISPUTED CHANGES

10.6.1. Regardless of any dispute or disagreement between the Contractor and the District or the Architect regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, the Contractor shall promptly commence and proceed diligently with the Change upon receipt of written authorization from District, in which case the dispute shall be subject to resolution in accordance with the claims procedures set forth in the Contract Documents.

10.6.2. In no event shall Contractor be entitled to stop the Work, or refuse to perform any Work required due to Changes in the Work, based upon a dispute between Contractor and the District regarding the amount to be paid to Contractor for any Change in the Work or the Adjustment of Time to be provided to account for such change.

10.7. EMERGENCIES

10.7.1. In an emergency affecting the safety of life, Work, or property, the Contractor, without special instruction or prior authorization from the District or the Architect, is permitted to act at its discretion to prevent such threatened loss or injury. Any compensation Claimed by the Contractor on account of such emergency Work shall be submitted and determined in accordance with this Article 10.

10.8. MINOR CHANGES IN THE WORK

10.8.1. The Architect may order minor Changes in the Work not involving an adjustment in the Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order via an Architect's Supplemental Instructions (ASI) and shall be binding on the District and the Contractor. The Contractor shall carry out such orders promptly.

10.9. UNAUTHORIZED CHANGES

10.9.1. Any Work beyond the lines and grades shown on the Contract Documents, or any extra Work performed or provided by the Contractor without notice to the Architect and the Construction Manager in the manner and within the time set forth in Article 10.2 shall be considered unauthorized and at the sole expense of the Contractor. Work so done shall not be measured or paid for, no extension to the Contract Time shall be granted on account thereof and any such Work may be ordered removed at the Contractor's sole cost and expense.

10.10. PRESERVATION OF RECORDS

10.10.1. The District shall have the right to examine and audit all daily job reports of Contractor's Project Manager(s), Project Superintendent(s) and/or Project foreperson(s), all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports, and other data of the Contractor, any Subcontractor, and/or supplier,

including computations and Projections related to bidding, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness and currency of the cost, manpower, coordination, supervision or pricing data at no additional cost to the District. These documents are in addition to any Bid Documents held in escrow by the District. The Contractor shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit or reproduction until three (3) years after final payment under this Contract. Notwithstanding the provisions above, Contractor shall provide any records requested by any governmental agency, available, after the time set forth above.

ARTICLE 11**11. SEPARATE CONTRACTS****11.1. DISTRICT'S RIGHT TO AWARD SEPARATE CONTRACTS**

11.1.1. The District reserves the right to perform construction or operations related to the Project with the District's own forces or to award separate contracts in connection with other portions of the Project or other construction or operations at or about the Site. If the Contractor Claims that delay or additional cost is involved because of such action by the District, the Contractor shall request an adjustment to the Contract Price or the Contract Time in accordance with the Contract Documents. Failure of the Contractor to request such an adjustment of the Contract Time or the Contract Price in strict conformity with the provisions of the Contract Documents applicable thereto shall be deemed a waiver of the same.

11.2. DISTRICT'S COORDINATION OF SEPARATE CONTRACTORS

11.2.1. The District shall provide for coordination of the activities of the District's own forces and of each separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate Contractors and the District in reviewing their respective Construction Schedules when directed to do so. The Contractor shall make any revisions to the Accepted Construction Schedule for the Work hereunder deemed necessary after a joint review and mutual Agreement. The Construction Schedules shall then constitute the Construction Schedules to be used by the Contractor, separate Contractors and the District until subsequently revised.

11.3. MUTUAL RESPONSIBILITY

11.3.1. The Contractor shall afford the District and separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities at the Site of the Work and shall connect and coordinate the Contractor's Work, construction and operations with theirs as required by the Contract Documents.

11.4. DISCREPANCIES OR DEFECTS

11.4.1. If part of the Contractor's Work depends for proper execution or results upon construction or operations by the District or a separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and the District's Project Inspector any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the District's or separate Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then discoverable by the Contractor's reasonable diligence.

ARTICLE 12

12. PROTECTION OF PERSONS AND PROPERTY

12.1. GENERAL SAFETY

- 12.1.1. The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety programs required by applicable law, ordinance, regulation or governmental orders in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. The Contractor's safety program shall include all actions and programs necessary for compliance with California or federal statutorily mandated Workplace safety programs, including without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code §§8350, *et seq.*) and the Cal/OSHA Construction Safety Standards. Without limiting or relieving the Contractor of its obligations hereunder, the Contractor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs.
- 12.1.2. The Contractor shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-Subcontractors; and (iii) other property or items at the site of the Work, or adjacent thereto, such as classroom equipment, supplies, furnishings, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall, at all times, maintain emergency first aid treatment materials at the Site that conform to applicable law, rule or regulation.
- 12.1.3. The Contractor shall have a written Safety Program acceptable to the District, which is formally communicated to, and fully understood by, all levels of the Contractor organization. The program must promote all of the following:
- Complete Management support of the program.
 - The immediate identification and elimination of unsafe Work practices and conditions in the Work place.
 - A heightened awareness of individual responsibility and increased supervisory attention to detail.
 - Building a team safety mentality where each Worker contributes to the effort and each supervisor is fully aware of the capabilities and limitations of their team.
 - A culture in which everyone accepts responsibility and accountability for their own, and each co-Worker's safety and health.
- 12.1.4. The Contractor shall erect and maintain, as required by existing conditions and conditions resulting from performance of the Contract, reasonable safeguards for safety and protection of property and persons, including, without limitation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying District and users of adjacent sites and utilities. Each separate physical area where Work activities occur shall be enclosed or barricaded with a 9 ga. chain link fence of at least 8'-0" height with gates and knurled fabric at the top and bottom of the fencing with flat feet, or imbedded posts in asphalt or concrete. Barricades may need to be moved from time to time to accommodate Site needs; such moves shall be completed without adjustment of the Contract Time or the Contract Price. Solid board fencing shall be used in lieu of chain-link if shown on the plans. The Project Inspector shall determine final locations and types of fencing. If the Project Inspector requires fencing types and/or quantities not indicated in the Contract Documents, an appropriate change document will be negotiated. All Work shall be arranged as to minimize inconvenience or disruption of school activities and to minimize danger to students, faculty, staff and others at or about

the Site. Work, which may interfere with school activities, shall be done before or after school hours. All such enclosures or barricades shall provide adequate exiting from occupied structures at all times.

- 12.1.5. The Contractor shall give or post all notices required by applicable law and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. No more than twenty-four (24) hours following: (i) any accident occurring at the Site involving any person performing Work and/or construction equipment; or (ii) any injury to any person at or about the Site, the Contractor shall submit a written Accident/Injury Report to the Construction Manager. The form of the Accident/Injury Report shall be as required by the District. An Accident/Injury Report shall be submitted for all accidents and injuries regardless of severity or whether an accident or injury constitutes a loss time accident. The timely submission of an Accident/ Injury Report with all required information accurately and completely provided is a material obligation of the Contractor.
- 12.1.6. The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents and the implementation and maintenance of safety precautions and programs. The Contractor shall advise the Project Inspector and Construction Manager of the name of the designated safety coordinator in writing. The safety coordinator shall conduct safety meetings at least once a week with Contractor's employees, Subcontractors, and any tiers thereof. In addition, the Contractor shall provide the Construction Manager with a copy of a safety plan and copies of safety plans from each of Contractor's Subcontractors at the commencement of the Project.
- 12.1.7. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.
- 12.1.8. In the event that the District identifies a loss of property, the Contractor shall assist the District in the investigation of said loss and shall fill out the District's Property Damage and Loss Report as requested.

12.2. RESPONSIBILITIES

- 12.2.1. Unless otherwise notified, the Contractor shall submit to the District a written Environmental Safety and Health (ES&H) Execution Plan, specific to the Work under this contract, for review and acceptance within thirty (30) calendar days after contract award and in any event prior to commencing Work at the Jobsite. This plan shall be amended when operations or conditions require and such amendments shall be submitted to the District for review and acceptance.
- 12.2.2. The Contractor shall flow all Project safety and health requirements to lower tier suppliers, Subcontractors, and visitors and acknowledges it is responsible for the performance of its visitors and suppliers and Subcontractors of every tier.
- 12.2.3. The Contractor's ES&H Execution Plan shall delineate the roles and responsibilities of Managers and supervisors and require that their actions clearly demonstrate an understanding of their roles and responsibilities in regard to the safety and environmental protection processes. The plan shall describe the system by which Managers and supervisors will be held accountable for ES&H implementation.
- 12.2.4. The Contractor's ES&H Representative(s) and their staff shall have sufficient authority and control to ensure effectiveness of the ES&H process and the Contractor shall hold them accountable for facilitating its implementation.
- 12.2.5. The Contractor's Managers and supervisors shall be familiar with, and shall enforce ES&H rules, regulations, and laws, and shall document all actions taken to ensure compliance with Contractor's ES&H Execution Plan.

- 12.2.6. The Contractor's Managers and supervisors shall take part in scheduled Work area audits, and shall implement and document required corrective actions.
 - 12.2.7. The Contractor's Site Management shall attend and clearly communicate ES&H expectations at all employee ES&H Orientations.
 - 12.2.8. Unless otherwise directed by the District, the Contractor's Site Management, Managers, and supervisors shall participate in any scheduled, documented ES&H assessments to be conducted by Contractor or the District.
 - 12.2.9. The Contractor's Managers and supervisors shall attend, actively participate in, and consistently demonstrate strong leadership at weekly "Tailgate" Safety Meetings.
 - 12.2.10. The Contractor's Managers and supervisors shall actively participate in documented pre-job planning activities.
 - 12.2.11. The Contractor's ES&H Representative shall actively participate in, and/or provide any needed, Specialized ES&H training, such as confined space, fire watch, Work from elevated platforms, etc. and keep the appropriate documentation.
 - 12.2.12. The Contractor shall inform all its Project personnel of potential hazardous conditions and/or near miss incidents and shall document such communications.
 - 12.2.13. Unless otherwise directed by the District, and before beginning any Work, the Contractor shall require all lower tier suppliers and Subcontractors to submit a written ES&H Plan specific to their scope of Work. The Contractor shall review and accept all such plans for compliance with District, and regulatory requirements.
 - 12.2.14. The Contractor shall participate in any Work area audits performed by the District, and root cause investigations.
 - 12.2.15. The Contractor's foremen shall complete, file on-site and make available to the District, weekly Tailgate Safety Meeting minutes.
 - 12.2.16. The Contractor shall stop Work if unknown or unanticipated hazards or Work conditions evolve which place employees at risk or necessitate greater precautions than currently exist or are required in the Project ES&H Execution Plan. The Contractor shall immediately report all such incidents to the District.
- 12.3. ORIENTATION AND TRAINING
- 12.3.1. Contractor Management shall provide the support and resources necessary to ensure adequate and effective training is provided and documented. Supervisors shall ensure adequate time is provided for such training.
 - 12.3.2. Before Contractor employees are placed on any Worksite, training shall be provided which satisfies regulatory requirements. A verification process (i.e., comprehension testing) may be required at the District's discretion.
 - 12.3.3. The Contractor shall update training materials to reflect changes in applicable local state and federal laws, regulations or Project requirements.
 - 12.3.4. The Contractor shall provide and require employees to attend sufficient specialized training applicable to their Work (e.g., confined space, Work at height, fire watch, etc).
 - 12.3.5. All Contractor employees shall attend their company specific New Employee Orientation. Documentation of all training and comprehension testing shall be kept on file on-site and made available to the District.
 - 12.3.6. The Contractor shall ensure that all Project visitors/vendors/delivery personnel are escorted at all times by an authorized and responsible Contractor employee who is

knowledgeable of all ES&H practices and procedures and instructs and supervises the visitor/vendor/delivery person accordingly.

12.4. MEDICAL SERVICES & MEDICAL TREATMENT

- 12.4.1. Contractor site personnel who provide first aid or other medical care shall be properly trained and qualified with a copy of their current certifications/licenses maintained on site.
- 12.4.2. The Contractor shall ensure its employees understand and comply with its medical management procedures.
- 12.4.3. The Contractor's ES&H Representative shall review all return-to-Work orders.
- 12.4.4. The Contractor emergency equipment shall be inspected daily to ensure effective operation. All such inspections shall be documented, kept on file on-site, and made available to the District.
- 12.4.5. Where applicable, the Contractor shall maintain clean and orderly first-aid facilities and locations where first aid treatment is provided.
- 12.4.6. The Contractor shall ensure injured employees are promptly referred to qualified industrial/occupational medical providers if offsite treatment is needed. The injured employee's employer shall provide transportation for such offsite medical treatment.
- 12.4.7. The Contractor employees injured on the Project and returned for modified duty shall have this status documented by the treating medical practitioner and reported to the District's Site Safety Supervisor or Site Manager.

12.5. MEDICAL REPORTING AND RECORDS

- 12.5.1. Contractor medical records shall be maintained up-to-date. Any recordable injuries are to be promptly reported to the District's Site Safety Supervisor or Site Manager. All other matters pertaining to medical records and reports shall be kept strictly confidential. The Contractor shall maintain and file its own Workers' compensation or insurance Claims forms as necessary.
- 12.5.2. The Contractor shall develop a method for tracking the status of injuries and shall be able to produce and provide to the District a Safety Performance Report with that information.

12.6. JOB HAZARD ANALYSIS

- 12.6.1. Unless otherwise directed by the District, the Contractor shall perform a Job Hazard Analysis (JHA) common to the construction industry for any Work of a hazardous nature. The JHA is generally in table form and simply describes tasks to be performed, potential hazards and mitigating measures. The JHA is used to identify, analyze, understand and mitigate potential hazards associated with repetitive or potentially hazardous Work operations.
- 12.6.2. Supervisors shall ensure that their employees understand the purpose of, and participate in the JHA and Tailgate meetings and shall use them as primary planning and lessons learned tools.

12.7. PERSONAL PROTECTIVE EQUIPMENT

- 12.7.1. Contractor shall require employees to wear eye protection at all times while working in the field. Safety glasses shall be equipped with hard side shields and should be manufactured to ANSI standard Z87.1. This applies to prescription eyewear as well. Contractor shall monitor the eye protection worn by its employees and take immediate corrective actions when non-compliance is noted. Employees performing grinding and buffing operations shall wear face shields and safety glasses or mono goggles.

- 12.7.2. Hardhats shall be worn with the brim forward at all times when in the field and shall be worn at all times when in direct proximity to construction operations.
- 12.7.3. Welders shall wear hardhat/welding hood combinations and safety glasses while welding. Welding screens shall be used to protect other employees from the hazards associated with direct welding arc rays.
- 12.7.4. Contractor employees with field responsibilities shall wear sturdy Work shoes or boots acceptable to the District.
- 12.7.5. Contractor employees shall receive information regarding personal protective equipment requirements during Contractor's New Employee Orientation.
- 12.7.6. Contractor employees who handle chemicals or harmful substances shall be trained in accordance with local, state and federal regulations, and shall wear appropriate personal protective equipment per the chemical Manufacturer's recommendations.
- 12.7.7. Contractor shall require all employees to wear long pants and a suitable shirt, with no less than 4" or 10 cm length sleeves, as the minimum Work clothing to be worn on the Project.
- 12.7.8. Contractor shall provide and require the use of appropriate hearing protection whenever a hearing hazard exists in accordance with local, state and federal regulations and or at the direction of the District.

12.8. RESPIRATORY PROTECTION

- 12.8.1. Contractor shall provide and require the use of appropriate respiratory protective equipment in accordance with 29 CFR 1910.134 and acceptable to the District, whenever a respiratory hazard exists.
- 12.8.2. A competent person knowledgeable of inhalation hazards and respiratory protective equipment shall be designated by the Contractor to conduct a step-by-step evaluation to insure that only respiratory protection appropriate for the conditions of exposure is selected and utilized.
- 12.8.3. Where respiratory protection is required or expected to be required, the Contractor shall have a written Respiratory Protection Program, which describes the selection, use, care and sanitation of respiratory equipment. This procedure shall include the name of the procedure administrator for the site, cartridge change out data, method to be used for sanitizing respirators, medical qualifications of those required to wear respirators, methods for fit testing and employee training.
- 12.8.4. Contractor supervisors shall notify the District's Site Safety Representative or Construction Manager before starting any Work that requires employees wear respiratory protection.

12.9. HEARING CONSERVATION PROGRAM

- 12.9.1. Contractor shall have a written Hearing Conservation Procedure. The procedure shall include information on noise surveys, engineering controls, the procurement and use of low noise equipment when possible, posting of signs and warnings for areas found to require hearing protection, and training on hearing protection devices used on the Project.

12.10. HAZARDOUS MATERIALS AND HAZARD COMMUNICATION

- 12.10.1. In the event that the Contractor, any Subcontractor or anyone employed directly or indirectly by them shall use, at the Site, or incorporate into the Work, any material or substance deemed to be hazardous or toxic under any law, rule, ordinance, regulation

or interpretation thereof (collectively "Hazardous Materials"), the Contractor shall comply with all laws, rules, ordinances or regulations applicable thereto and shall exercise all necessary safety precautions relating to the use, storage or disposal thereof.

- 12.10.2. Contractor shall develop a written Hazard Communication Plan and, as required, implementing procedures describing the method it will use to communicate the hazards associated with chemical handling, use, storage and disposal. The plan shall be consistent with the project SWPPP and submitted and acceptable to the District prior to start of Work.
- 12.10.3. Contractor shall make available to the District, Material Safety Data Sheets (MSDS) for each chemical substance purchased and/or carried onto a Worksite. Materials that arrive without an MSDS shall be quarantined and not released until the MSDS is received on site and the material is approved for use by the District. The Contractor shall maintain a list of hazardous materials on site and the quantities of each.
- 12.10.4. Contractor shall ensure that employees are trained (in accordance with local, state and federal regulations) in the recognition, proper handling and use of hazardous substances. Contractor's New Employee Orientation shall include introductory training on the topic of hazardous substances however; specific hazardous material training shall be provided by the Contractor for its Project employees whose Work involves the use of any hazardous material under its control. Such training shall be properly documented, filed and made available to the District. Contractor personnel shall be prohibited from participating in, or in the on-site supervision of, hazardous, toxic or radiological materials activities unless they have been certified as having successfully completed the training to a level required by their position, function and responsibilities.
- 12.10.5. Contractor shall properly label all hazardous substances and/or chemicals that have been transferred from the Manufacturer's container into another container. Inspections shall be made and documented by the Contractor to ensure that adequate labeling occurs.
- 12.10.6. Transportation, use, storage, and disposal of hazardous substances shall be under the supervision of a qualified person. Transportation, use and storage of hazardous substances shall be planned and controlled to prevent contamination of people, animals, food, water, equipment, materials and environment in accordance with local, state and federal regulations.
- 12.10.7. Disposal of surplus or excess materials and containers shall occur in a manner that will not contaminate or pollute any water supply, ground water, or streams, and will comply with the project SWPPP, federal, state and local regulations and guidelines.
- 12.10.8. In the event the Contractor encounters Hazardous Materials at the Site which have not been rendered harmless or for which there is no provision in the Contract Documents for containment, removal, abatement or handling of such Hazardous Materials, the Contractor shall immediately stop the Work in the affected area, but shall diligently proceed with the Work in all other unaffected areas. Upon encountering such Hazardous Materials, the Contractor shall immediately notify the Project Inspector and the Architect, in writing, of such condition. The Contractor shall proceed with the Work in such affected area only after such Hazardous Materials have been rendered harmless, contained, removed or abated. In the event such Hazardous Materials are encountered, the Contractor shall be entitled to an adjustment of the Contract Time to the extent that the Work is stopped and Substantial Completion of the Work is affected thereby. The District reserves the right to request the Contractor to de-mobilize and re-mobilize in the event unexpected Hazardous materials are encountered and alternate Work areas are not available. Upon the District's remediation of the Hazardous materials, the District will contact the Contractor and a re-mobilization date agreed to. If the District selects this scenario the Contractor shall be reimbursed only for the costs associated directly with

de-mobilization and re-mobilization and the Contract time extended accordingly. In no event shall there be an adjustment to the Contract Price solely on account of the Contractor encountering such Hazardous Materials.

- 12.10.9. Notwithstanding any provision of the Drawings or the Specifications to the contrary, it is the intent of the District that Asbestos Construction Building Materials ("ACBMs") not be used or incorporated into any portion of the Work. In the event that any portion of the Work depicted in the Drawings or the Specifications shall require materials or products which the Contractor knows, or should have known with reasonably diligent investigation, to contain ACBMs, Contractor shall promptly notify the Architect and the Project Inspector of the same so that an appropriate alternative can be selected in a timely manner so as not to delay the progress of the Work. Contractor warrants to the District that there are no materials or products used or incorporated into the Work, which contain ACBMs. Whether before or after completion of the Work, if it is discovered that any product or material forming a part of the Work or incorporated into the Work contains ACBMs, the Contractor shall at its sole cost and expense remove such product or material in accordance with any laws, rules, procedures and regulations applicable to the handling, removal and disposal of ACBMs and to replace such product or material with non-ACBM products or materials and to return the affected portion(s) of the Work to the finish condition depicted in the Drawings and Specifications relating to such portion(s) of the Work. Contractor's obligations under the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, the Contractor's completion of the Work or the District's acceptance of the Work. In the event that the Contractor shall fail or refuse, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of the District's written notice to the Contractor of the existence of ACBM materials or products in the Work, the District may thereafter proceed to cause the removal and replacement of such materials or products in any manner which the District determines to be reasonably necessary and appropriate; all costs, expenses and fees, including without limitation fees and costs of consultants and attorneys, incurred by the District in connection with such removal and replacement shall be the responsibility of the Contractor and the Contractor's Performance Bond Surety.
- 12.10.10. Contractor, Subcontractor, or any tiers thereof, are prohibited from using any material or substance containing lead.
- 12.10.11. Contractor shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about the Contractor's Site. Contractor's obligations hereunder shall include without limitation, the transportation and disposal of any Hazardous Materials in strict conformity with any and all applicable laws, regulations, orders, procedures or ordinances.

12.11. TOOLS AND EQUIPMENT

- 12.11.1. Contractor shall provide and ensure that all tools are used in accordance with the Manufacturers' recommendations, have required guards in place, and are maintained in good Working order.
- 12.11.2. Contractor will ensure that excess flow valves are installed on air manifolds and compressors supplying air to >1/2 inch (or equivalent metric) ID hoses.
- 12.11.3. Contractor will not use job-made tools of any kind on the Project. All tools and equipment shall be used and maintained in accordance with Manufacturer recommendations. If exceptions to this rule are needed, they must be brought to the District's attention for review and acceptance prior to use.

- 12.11.4. Contractor shall only permit properly trained and certified employees to use powder-actuated tools. Documentation of the employees training shall be made available to the District and each employee using such tools shall carry qualification cards. Control shall be kept of the powder-actuated charges. Each cartridge shall be accounted for and properly stored. No live or spent cartridges shall be left on the ground or disposed of in Project trashcans or other unauthorized on or off-site container.
- 12.11.5. Contractor shall ensure that Work is performed only in areas and at times where adequate illumination exists. Contractor shall provide all lighting required to safely perform Work. Artificial lighting equipment shall be manufactured to a recognized standard acceptable to the District.

12.12. PEST CONTROL

- 12.12.1. The Contractor shall be solely responsible for initiating, maintaining and supervising all requirements of the State of California Healthy Schools Act of 2000, (Article 4, commencing with §17608, to Chapter 5 of Part 10.5 of the Education Code) and the Food and Agricultural Code relating to school safety (Article 17, commencing with §13180, to Chapter 2 of Division 7 of the Food and Agricultural Code), including without limitation:
 - 12.12.2. The Contractor shall obtain from the District Integrated Pest Management Office the approved Pesticide list. The Contractor must use only the Pesticides on the list. If the Contractor wants to request a Pesticide that is not on the list, the Contractor is required to submit to the District the MSDS and the Label of Pesticide for consideration.
 - 12.12.3. The Contractor shall obtain from the District Integrated Pest Management Office a list of those individuals who have requested notification of pesticide application. The Contractor shall notify 72 hours prior to a pesticide application, all staff and parents or guardians of students enrolled at a school, and those who have requested notification, of any pending pesticide application. This notice shall include the product name, the active ingredient or ingredients in the product, and the intended area and date of application.
 - 12.12.4. The Contractor shall post each area of the site where pesticides will be applied with a warning sign. The warning sign shall prominently display the term "Warning - Pesticide Treated Area" and shall include the product name, Manufacturer's name, the United States Environmental Protection Agency's product registration number, intended date of application, areas of application, and reason for the pesticide application. The warning sign shall be visible to all persons entering the treated area and shall be posted twenty-four (24) hours prior to the application and remain posted until seventy-two (72) hours after the application. The Contractor shall be responsible for removing the posted signs in a timely manner after the seventy-two (72) hour posting period.
 - 12.12.5. The Contractor shall prepare a report to the Department of Pesticide Regulation of pesticide applications for each site at which a pesticide application occurred. The report shall include the name and address of the site, date and location of application, pesticide product name, and the quantity of pesticide used.
 - 12.12.6. The Contractor shall be solely responsible for complying with the requirements of the District Integrated Pest Management Policy G-3200. This policy is available online at https://sandiegounified.org/departments/integrated_pest_management.
 - 12.12.7. The Contractor shall ensure that proposed pest control operators are educated and trained in the use of current pesticides approved for use by the District Integrated Pest Management Office, and that applicators follow label directions, precautions, and application regulations.
 - 12.12.8. The Contractor shall provide the District Integrated Pest Management Office with copies of all reports the Contractor is required to prepare and submit to the Department of Pesticide Regulation.

- 12.12.9. The Contractor shall obtain, ten (10) Working days prior to any pesticide application at a site, written approval from the District Integrated Pest Management Office, that the material Specifications proposed for application are for District approved pesticides, and that the area of intended use of the proposed pesticide is consistent with the pesticide label Specifications. The Contractor shall ensure pesticide application is included in the SWPPP or initiate an amendment to the SWPPP to incorporate the application of pesticides to ensure stormwater best management practices are in place to prevent contamination of stormwater or non-stormwater runoff.
- 12.12.10. The Contractor shall provide the District Integrated Pest Management Office certification that any company engaged in pest control Work possess a valid Pest Control Business License and that landscape maintenance Subcontractors who perform pest control Work possess a valid Qualified Applicator's Certificate in the category of Landscape Maintenance (Category B). For Work of a structural nature, the pest control operator must possess either a valid Qualified Applicator's Certificate in the category of Residential, Industrial and Institutional (Category A), or a structural Pest Control License Branch 2 (Field Representative), or Branch 3 (Wood Destroying Organisms).

12.13. REPORTING/INVESTIGATING INCIDENTS AND ACCIDENTS

- 12.13.1. The Contractor's New Employee Orientation shall include information about employee responsibility for reporting all injuries, illnesses, property damage and near miss incidents. Contractor shall promptly report all such occurrences to the District and unless directed otherwise, take the lead in the investigation, documentation and initiation of corrective action. Contractor shall keep records of all incident/accident investigations in a format acceptable to the District and shall provide the District with a copy within 24 hours of the occurrence.
- 12.13.2. Contractor shall develop a written notification and investigation procedure acceptable to the District. The Contractor's Safety Representative shall oversee the investigation of all incident and accident cases and reports. Information derived from such reports shall be issued as "lessons learned" to all employees on the Project.

12.14. ASSESSMENTS AND INSPECTIONS

- 12.14.1. The Contractor shall establish a documented assessment process acceptable to the District which measures compliance with the Project ES&H Execution Plan and Contractor's own ES&H processes.
- 12.14.2. The District may perform periodic safety assessments of the Project. The Contractor shall provide the District with timely, complete and open access to its safety process, files, records, etc., and shall participate in this assessment as required.
- 12.14.3. The Contractor will ensure its personnel are aware of and comply with the procedures to be taken in the event of an inspection by any regulatory agency.
- 12.14.4. The Contractor shall immediately notify the District Construction Manager and Safety Supervisor when a regulatory agency inspector of any type requests entry onto the Jobsite.
- 12.14.5. Following any regulatory agency inspection, the Contractor shall submit a written report to the District Construction Manager or Safety Supervisor which details all aspects of the inspection.

12.15. EMERGENCIES AND EVACUATIONS

- 12.15.1. The Contractor shall develop an Emergency Response Plan and shall provide all emergency equipment and supplies needed to support the Work and each Work location. The plan will address emergency evacuation, medical emergencies, natural disasters, etc. The plan shall be submitted and acceptable to the District. The plan shall include

emergency alarm systems, assembly and evacuation points, an employee head count process, and provisions for employee training before entering the Jobsite. Periodic tests and drills shall be conducted as required.

- 12.15.2. The Contractor shall ensure that Emergency Response Plan requirements are clearly communicated to its Project personnel. Such communication and employee comprehension and participation shall be documented.

12.16. BLOOD BORNE PATHOGENS

- 12.16.1. Contractor employees who are designated as responsible for rendering first aid or medical assistance shall be included in their employer's blood-borne pathogen program in accordance with 29 CFR 1910.1030 and, shall be properly trained regarding their responsibilities, required control measures, and personal safety. Proper personal protective equipment shall be used when exposure hazards exist. Each Contractor employee whose job duties puts them at risk of exposure (i.e. medic, nurse, first aid person, etc.) shall be offered vaccinations and documentation of the vaccination or declination shall be maintained and made available to the District upon request.
- 12.16.2. Contractor shall provide all its employees with a general overview on the hazards associated with blood borne pathogens, possible means of exposure, and proper control methods.

12.17. AIR SURVEILLANCE PROGRAM

- 12.17.1. As required, the Contractor shall develop a written Air Surveillance Procedure. All operations, materials, and equipment shall be evaluated to determine the presence of hazardous environments or if hazardous or toxic agents could be released into the Work environment. All logs and records shall be maintained on-site for sampling, monitoring, and identifying the source of contaminants. These records shall be made available to the District. A competent person, whose resume and qualifications shall be submitted and determined acceptable by the District, shall conduct all evaluations, air monitoring and/or sampling.
- 12.17.2. The Contractor shall perform inspections to identify and mitigate Project and/or public risks and exposures to potential toxic, hazardous or explosive atmospheres.
- 12.17.3. The Contractor shall provide equipment adequate for the environmental sampling and monitoring of atmospheres and shall ensure that the equipment is calibrated per the Manufacturer recommendations.

12.18. HEAT STRESS PREVENTION

- 12.18.1. As required, Contractor shall have operating and emergency procedures for heat stress.
- 12.18.2. Contractor shall ensure that all field employees, especially front line supervisors, are trained on the warning signs/symptoms of early heat related disorders, and instructed on the clothing and Work methods best suited to avoid heat stress. Stay times or monitoring methods shall be developed to reduce the possibility of heat related disorders, if necessary.
- 12.18.3. Contractor shall provide an immediately accessible, adequate, and sanitary potable water supply during all periods of the day and have available electrolyte replacement drinks or tablets during seasons of the year when heat stress may occur.

12.19. HOUSEKEEPING, FIRE PREVENTION & PROTECTION

- 12.19.1. All eating and sanitary facilities shall be maintained in a clean and sanitary condition at all times. Contractor must provide the necessary resources to accomplish this, including

adequate washing facilities with soap and disposable towels and whatever labor is required to clean and maintain a high level of sanitation.

- 12.19.2. Unless specified elsewhere in the contract, Contractor shall provide clean, potable drinking water for its employees in a safe, hygienic manner at all Worksites. Single use cups shall be provided in a sanitary dispenser. These cups shall be replenished as needed during the day and trashcans provided for their disposal. "Community" or common use cups shall not be used.
- 12.19.3. Unless specified elsewhere in the contract, Contractor shall provide and maintain its own sanitary toilet facilities for its employees. The daily facilities cleaning, and maintenance, and method and location of waste disposal shall be to a high standard acceptable to the District.
- 12.19.4. Contractor shall provide all fire protection and prevention equipment necessary for its operations, including, but not limited to fire hoses, nozzles, extinguishers, etc. Contractor shall provide an adequate number of fire extinguishers of the correct size and type for its Work activities. Extinguishers shall be maintained per Manufacturer's recommendations, inspected monthly, and tested annually. Contractor shall train employees in the proper use of fire extinguishers.
- 12.19.5. Contractor shall monitor its Work and office areas to ensure that all doors, stairwells, aisles and means of egress are kept clear and unobstructed at all times.
- 12.19.6. Contractor shall ensure all exits are clearly marked and adequately lighted, and that all emergency lights remain functional.
- 12.19.7. Contractor shall ensure that the handling, storage, and use of flammable and combustible liquids is performed properly, that these liquids are dispensed in safety cans manufactured to a recognized standard acceptable to the District, and areas designated for these activities are maintained in an orderly fashion. All hazardous areas shall be posted with appropriate signs and access shall be controlled.
- 12.19.8. Where temporary welding enclosures are required, Contractor shall ensure that these enclosures are constructed with flame resistant materials (such as fire blanket).
- 12.19.9. Contractor shall instruct its employees in regards to the facility/Project smoking policy and monitor to ensure that posted "no-smoking" zones are observed.
- 12.19.10. Contractor office areas shall be monitored to reduce and control storage and loading of combustible materials. Material shall be well arranged, and aisles shall be maintained open and clear of obstructions. Stored material shall be kept away from heaters, lamps, hot pipes, equipment, and machinery and the use of extension cords minimized.
- 12.19.11. Contractor personnel whose Work tasks are in the vicinity of fire cabinets and equipment, fire hydrants, and fire lanes shall keep them clear and unobstructed.
- 12.19.12. Contractor shall maintain a minimum of 18 inches or 1/2 meter of free space around sprinkler heads when working in facilities having sprinkler systems.
- 12.19.13. Contractor shall ensure that combustible waste containers are emptied regularly; equipment, tables, and floors are free from oil or oily rags; and oily rag containers are kept covered and emptied regularly. Janitor/storage closets shall be maintained in an orderly condition and shall not be used to store quantities of hazardous or toxic chemicals. Electrical, mechanical, and MDF rooms shall be kept in order and free of combustible storage materials.
- 12.19.14. Contractor shall protect its employees against welding and cutting hazards. Contractor's ES&H Plan shall address fire concerns including fire watches where necessary, welding fumes, preservative coatings, respiratory protection, eye/head/body protection, etc.

Welding and cutting apparatus shall be inspected before each use. Cutting torch assemblies shall be equipped with pressure relief valves, back flow prevention devices, and flash arrestors.

- 12.19.15. Contractor shall ensure that employees are trained in and comply with the requirements for proper fire prevention and equipment use when welding or cutting.
- 12.19.16. Contractor shall effectively ground the frame of Arc-welding and cutting machines that incorporate a power outlet.
- 12.19.17. Contractor shall develop a written Cutting, Welding and Grinding Procedure for the maintenance and inspection of welding, grinding, or cutting equipment and ensure that the procedure is implemented and maintained.
- 12.19.18. Unless otherwise specified by the District, Contractor shall not permit open fires on the Jobsite.

12.20. FALL PREVENTION/PROTECTION

- 12.20.1. The Contractor ES&H Plan shall include a written Fall Prevention/Protection Procedure acceptable to the District, which makes maximum use of primary fall protection systems, such as scaffolds, aerial lifts, nets, personnel hoists, etc.
- 12.20.2. Contractor shall require the inspection of fall protection equipment prior to each use.
- 12.20.3. Contractor shall adopt a 100% fall protection policy that makes provision for secondary fall protection (full-body harness) for all employees who are working or traveling more than 6 feet or 2 meters above ground.
- 12.20.4. Contractor shall review its scope of Work to identify the methods to achieve 100% fall protection prior to commencement of such Work. Selection of personal fall protective equipment shall be based on the type of Work; the Work environment, the weight, size, and shape of the user; the type and position of anchorage; and the length of the lanyard. Where lifeline systems are used, anchor points shall be capable of supporting at least 5,000 pounds or 2275 kg. Lifelines shall be installed and maintained by qualified persons who are competent and possess the rigging knowledge necessary to ensure the integrity and safety factors necessary for lifeline system installation. Lanyards shall be secured to vertical lifelines by rope grabs only. Knots, painters-hitches, or loops are not acceptable. Horizontal lifelines shall have tie-off points at least waist high.
- 12.20.5. Contractors using retractable lifeline devices shall secure them by means acceptable to the District and in all cases by a means capable of supporting at least 5000 pounds or 2275 kg.
- 12.20.6. Contractor shall require employees to wear an approved safety harness/lanyard system if they Work from ladders where the fall exposure is more than 6 feet or 2 meters, and they are unable to maintain 3-point contact.

12.21. SCAFFOLDING

- 12.21.1. Contractor shall have a written Scaffolding Procedure and use scaffold material acceptable to the District.
- 12.21.2. Scaffold platforms shall be fully planked or decked out, capable of supporting 4 times the maximum intended load to be imposed upon them, and all sides protected by standard guardrail systems. The top rail shall be approximately 42 inches or 110 cm from the platform. A mid-rail and 4 inch or 10 cm toe-board shall be installed.
- 12.21.3. Contractor erected scaffolds where employees are Working/passing below shall have planking or netting installed from the platform to the top rail.

- 12.21.4. Contractor shall develop a scaffold tagging system which identifies the status of each scaffold. Suggested system uses a red tag to indicate scaffolds under construction or demolition, yellow to indicate scaffolds that are complete but have hazards associated with them, and green to indicate scaffolds erected to a complete, safe standard.
- 12.21.5. Contractor shall erect or modify scaffolds under the direction of a trained, competent scaffold builder whose qualifications must be made available at the District's request. The competent person shall sign all scaffold tags and perform and document inspections before initial use, including initial use following alteration, and daily thereafter.
- 12.21.6. Contractor shall provide safe access/egress to all levels of scaffolds. Scaffold platform accesses shall be protected to prevent the possibility of accidental fall through utilizing secured access gates.
- 12.21.7. Special scaffolds (hanging scaffolds, 2 point suspension scaffolds, etc.) shall be designed by a competent engineer and erected with all necessary personnel safety equipment installed, such as rope grabs and lifelines.
- 12.21.8. Contractor must have a qualified, professional engineer design all scaffolds over 125 feet or 38 meters in height.
- 12.21.9. All scaffolds erected by the Contractor shall have casters, jackscrews, or base plates installed. Mudsills shall be used where required. Scaffolds shall be level and plumb, capable of supporting at least four times the anticipated load, and secured to a solid structure whenever possible.
- 12.21.10. Contractor shall provide scaffold user training to all employees, shall verify employee comprehension by testing and shall maintain training and testing records which will be made available to the District upon request.

12.22. BARRICADES

- 12.22.1. Contractor is responsible for properly erecting and maintaining barricades and barriers in such a manner that they provide adequate protection and do not impede the Work of other Contractors unless the District approves such placement. All floor and roof openings into which persons can accidentally walk or fall through shall be guarded by a physical barrier or covered.
- 12.22.2. Contractor shall barricade all floor openings, or install properly labeled and substantial covers (3/4 inch, or equivalent metric, exterior grade plywood able to withstand at least twice the anticipated load). All floor-opening covers shall be stenciled or painted with this statement: "OPEN HOLE - DANGER, DO NOT REMOVE."
- 12.22.3. Barricades and barriers erected by the Contractor shall have appropriate signs and tags indicating the nature of the hazard and the responsible supervisor. Barricades left after dark on or in close proximity to roadways shall be properly equipped with flashing amber lights.
- 12.22.4. Contractor shall provide and use appropriate barrier devices to identify the nature of the job hazard involved (i.e., yellow and black for "CAUTION" or red and black for "DANGER"). Barrier devices, including barrier tape, shall not be used as a substitute for a barricade as they do not offer adequate protection from falls. Barrier devices shall be used only in those applications where temporary identification of a hazard is needed; but not as a primary means of protecting employees from exposure.
- 12.22.5. Contractor shall ensure that employees understand and comply with barricade and barrier procedures (i.e. prohibited entry into red barrier taped areas).

12.23. FLOOR & WALL OPENINGS

- 12.23.1. Contractor shall review the fall hazards involved in its scope of Work and construct standard handrail systems where required. Handrails shall be constructed with the top rail 42 inches or 110 cm from the floor or platform level and shall have a mid-rail and toe-board. Toe-boards shall extend 4 inches or 10 cm above the floor or platform level.
- 12.23.2. Contractor shall install vertical support posts for handrails at intervals of not more than 8 feet or 2.5 meters.
- 12.23.3. All floor and roof holes through which equipment, materials, or debris can fall shall be covered.

12.24. EXCAVATIONS & TRENCHING

- 12.24.1. Contractor shall not commence any excavation or trenching Work, until they have obtained permission and complied with the conditions of all required approval and permit authorities. Permits shall be kept on file on-site and made available to the District upon request.
- 12.24.2. Contractor shall provide at the Jobsite a competent person whose resume and qualifications have been submitted to and accepted by the District, who will classify all soils and perform daily inspections of all excavations/trenches. These inspections shall be documented, kept on file on-site, and made available to the District upon request.
- 12.24.3. Contractor shall have an engineered drawing for reference showing the location of all underground services and/or utilities, and will make all required notifications prior to commencing any excavation.
- 12.24.4. Contractor shall ensure that spoil material is kept at least 3 feet or 1 meter away from the excavation edge.
- 12.24.5. Where trenches or excavations will exceed 4 feet or 1.5 meters in depth, the Contractor shall use protective systems acceptable to the District. No more than 25 feet or 7 meters of lateral travel shall be required in any trench to reach a ladder. Warning signs and barricades shall be installed in a manner that prevents accidental entry into the trenched or excavated area.

12.25. VESSELS AND CONFINED SPACES

- 12.25.1. Where confined space Work is anticipated, Contractor shall have a written Confined Space Procedure that is acceptable to the District and which requires that all such Work be performed only on the basis of a Contractor issued logged and numbered permit. Contractor is responsible for air evaluation and monitoring in confined spaces. At a minimum, in newly constructed confined spaces with little hazard of airborne contamination, monitoring for oxygen and explosive gasses shall be conducted. Monitoring equipment shall be provided by the Contractor, calibrated to Manufacturer recommendations and all calibration shall be documented. All employees conducting air monitoring shall have proper, documented training. All calibration and training records shall be made available to the District upon request.
- 12.25.2. The Contractor shall ensure that all employees have awareness training regarding the hazards of confined spaces and the procedures to be followed. Special training shall be provided to all entry supervisors, entrants, and attendants. The Contractor shall ensure that entry supervisors know, understand and execute their full responsibilities.
- 12.25.3. Contractor shall review its Work areas and ensure confined spaces have been identified and marked accordingly. Contractor shall examine each confined space before initial entry to evaluate the specific hazards and safety precautions.

12.25.4. Prior to each entry into a confined space Contractor shall ensure:

- Proper ventilation equipment is used to purge or supply air to the confined space,
- All electrical service is low voltage or GFCI protected,
- Adequate access/egress from the confined space is provided,
- A task specific rescue plan has been developed and reviewed with all involved employees, and
- All external sources of atmospheric contamination are isolated.

12.25.5. Contractor shall evaluate all confined spaces for possible heat stress.

12.25.6. Contractor shall ensure that all personnel responsible for safety watches (confined space attendants) are easily identified, properly trained and aware of the duties associated with each emergency situation that may occur within the confined space.

12.25.7. Contractor shall ensure that an emergency rescue team is available for all permit-required confined space entries and that all employees know how to summon assistance.

12.25.8. Contractor shall not permit entry into any permit-required confined space until the permit system has been properly executed. The permit shall be conspicuously posted at the confined space and all entrants must sign a log upon entering and exiting the confined space.

12.26. LOCK OUT/TAG OUT PROCEDURE

12.26.1. Where applicable, Contractor shall develop an effective and compliant written lock-out/tag-out procedure.

12.26.2. Contractor shall ensure that all employees have instruction on the specific lockout/ tagout procedure and comprehension testing shall be conducted to verify knowledge and understanding of the procedure. Records of training and testing shall be kept, filed on-site, and made available to the District upon request.

12.27. PORTABLE LADDERS - CONTROL & INSPECTION

12.27.1. Contractor shall monitor ladders to ensure all ladders used on the Project are constructed of wood or fiberglass (not metal) have non-slip feet, and that wooden ladders have been treated with preservative.

12.27.2. Contractor will erect ladders so that access/egress areas are unobstructed.

12.27.3. Contractor shall have a Ladder Inspection Procedure. A documented quarterly inspection of ladders is recommended.

12.27.4. Contractor will use ladders for egress and/or to conduct low level Work of short duration and will not use ladders in lieu of scaffolds as a primary means of conducting Work of longer duration.

12.28. CRANES AND MATERIAL HANDLING

12.28.1. Contractor shall provide the resources necessary for inspection and maintenance of rigging and lifting equipment and shall monitor all lifts to ensure that acceptable lifting practices are followed.

12.28.2. Tag lines shall be used on all lifts.

12.28.3. Contractors who are performing lifts in excess of 10 tons shall submit a lifting plan to the District for review and acceptance prior to performing the lift. If the lift is over 50 tons or classified as critical (exceeding 90% of the crane capacity chart, any two-crane lift or any lift over operating or occupied facilities, process pipe racks or near power lines) the

Contractor shall submit a detailed rigging plan with all applicable supporting calculations to the District for review and acceptance prior to the lift.

- 12.28.4. Contractor shall designate a qualified supervisor to determine the methods and develop plans for rigging operations to ensure safe lifts.
- 12.28.5. Contractor shall ensure that the equipment operators they provide are adequately trained and informed of their responsibility to operate their equipment within design limits.
- 12.28.6. All cranes supplied by Contractor shall have current, annual, documented inspections of sufficient detail to be acceptable to the District. Documentation of such inspections shall be made available to the District prior to initial Jobsite use.
- 12.28.7. Contractor shall provide and ensure that operators keep daily inspection logs for all equipment. No equipment shall be operated if hazardous conditions are identified.
- 12.28.8. Contractor shall ensure that chain-falls, inertia reels, etc. have a documented inspection annually (including load tests). All rigging equipment shall undergo a visual inspection prior to each use and a documented inspection quarterly (a color code system shall be used to achieve this). All capacities shall be clearly indicated on lifting devices.
- 12.28.9. All rigging shall be stored properly (i.e. on racks or in protected areas).
- 12.28.10. Contractor shall ensure all crane operations maintain minimum safe distances from all high voltage lines. Up to 50KV the distance shall be 10 feet or 3 meters.
- 12.28.11. Contractor shall ensure that the counter weight and housing swing radius of all cranes is properly barricaded whenever it is possible personnel may come into contact with or be struck by them.

12.29. SUSPENDED PERSONNEL PLATFORMS

- 12.29.1. Contractor shall notify the District prior to using any suspended personnel platform and develop a Lift Procedure to be reviewed and accepted by the District prior to their use. The procedure shall include, but not be limited to, employee training, pre-lift meetings, trial lifts, and platform inspection.
- 12.29.2. Personnel platforms (baskets) provided by Contractor shall be designed by a qualified engineer and Manufactured by competent personnel. They shall have permanent markings indicating maximum weight.
- 12.29.3. If the District approves the use of crane suspended personnel platforms, Contractor shall thoroughly inspect the crane/derrick and ensure it has an operational anti two block device and locking devices on the hook. Free fall capacity, if present, shall be positively locked out or disabled. The area under the lift shall be isolated by barrier tape and signs.
- 12.29.4. Contractor shall provide a positive means of communication between the crane operator and employees in a crane suspended personnel platform. Employees in the platform shall wear full body harnesses attached to a designated anchor point.

12.30. ARTICULATING BOOM PLATFORMS

- 12.30.1. Machines Manufactured and used for elevated personnel platform Work (JLG, Hi-lift, etc.) shall be operated and maintained in accordance with Manufacturer recommendations and only by trained and qualified individuals. Training and comprehension test records shall be maintained on file at the Jobsite and made available to the District upon request.
- 12.30.2. All persons inside Work platforms shall wear a full body harness attached to the Manufacturer's designated anchor point. A fire extinguisher shall be provided on all such

equipment. Equipment used to hoist personnel shall not be used for material, if this constitutes a hazard.

12.31. COMPRESSED GAS CYLINDERS

- 12.31.1. Contractor shall provide cradles and/or cages for lifting compressed gas cylinders and ensure that cylinders being transported are secured and in the upright position.
- 12.31.2. Unless otherwise directed by the District, and where applicable, the Contractor shall create a Gas Cylinder Use and Storage Procedure that allows for proper use and storage of compressed gas cylinders. The procedure shall include segregation by type, proper signage, protective isolation of fuel gasses from oxygen, provisions to keep cylinder caps in place when provided by the supplier, positive upright securing of bottles, and maintenance of safe distances from ignition sources.
- 12.31.3. Contractor shall ensure that each individual cylinder turned off by a key wrench is provided with a key wrench whenever in use.

12.32. ELECTRICAL EQUIPMENT INSPECTION / ASSURED GROUNDING / GFCI

- 12.32.1. Contractor shall implement use of ground fault circuit interrupters (GFCI) on all temporary electrical applications.
- 12.32.2. Contractor shall train employees regarding electrical inspection and electrical safety.
- 12.32.3. Contractor shall ensure all tools are checked for electrical continuity after repairs are made.

12.33. VEHICLE OPERATIONS

- 12.33.1. Contractor shall ensure all vehicles are registered/licensed, maintained in a roadworthy condition, and operated in a safe manner.
- 12.33.2. Contractor shall ensure all persons operating vehicles are healthy and unimpaired, have appropriate and required operator's licenses, and observe established road regulations and/or Jobsite regulations.
- 12.33.3. Contractor shall provide a seat belt for each vehicle passenger and enforce the wearing of seat belts any time a vehicle is in motion.

ARTICLE 13

13. TESTS AND INSPECTIONS

13.1. TESTS; INSPECTIONS; OBSERVATIONS

- 13.1.1. If the Contract Documents, laws, ordinances or any public authority with jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved (collectively "Testing"), the Contractor shall give the Architect and the Project Inspector written notice of the readiness of such Work for Testing at least two (2) Working days prior to the time for the conducting of such Testing. If testing is by an authority other than the District, the Contractor shall inform the Architect and Project Inspector not less than two (2) Working days prior to the date fixed for such Testing. Contractor shall indicate on the Contract Schedule the dates of special tests or inspections.
- 13.1.2. The Contractor shall not cover up any portion of the Work subject to testing and inspection prior to the completion, inspection, punch list correction, and sign-off by the Project Inspector of same. In the event that any portion of the Work subject to Testing shall be covered up by Contractor prior to completion, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary without adjustment of the Contract Price or the Contract Time on account thereof. Work such as, but not limited to drywall, insulation, ceiling tile installation, roofing, and concrete shall not be commenced without the approval of the Project Inspector.
- 13.1.3. Costs for special tests and inspection of materials shall be paid by the District as provided for herein. The Contractor shall provide all materials to be tested at no additional cost to the District. The Contractor shall provide safe access to all locations where materials are to be tested. Within twenty (20) days after the establishment of the Accepted Contract Schedule pursuant to Article 6.5 hereof, the District shall submit to the Contractor a written list of the portions of the Work subject to special tests or inspections to be paid for by the District along with the number of hours or costs of testing or inspection allocated for each such portion of the Work. Should any act, omission or other conduct of the Contractor, any of its Subcontractors, of any tier, or Material Suppliers cause the number of hours or the costs of such tests or inspections to exceed that set forth in the District's list submitted pursuant to the foregoing, the Contractor shall be solely responsible for all such excess costs and the District may deduct such amount from any portion of the Contract Price then or thereafter due the Contractor.
- 13.1.4. The District shall select duly qualified person(s) or testing laboratory(ies) to conduct the special tests and inspections to be paid for by the District and required by the Contract Documents. All such tests and inspections shall be in conformity with Title 24 of the California Code of Regulations. Where inspection or testing is to be conducted by an independent laboratory or testing agency, materials or samples thereof shall be selected by the laboratory, testing agency, the Project Inspector or the Architect and not by the Contractor, Subcontractor or any tier thereof.
- 13.1.5. If the Architect, the Project Inspector, or public or quasi-public authority having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval, ("Additional Tests") the Architect and the Project Inspector shall, upon written authorization from the District, instruct the Contractor to make arrangements for such Additional Tests by an entity acceptable to the District, and the Contractor shall give timely notice to the Architect and the Project Inspector of when and where the Additional Tests are to be made so the District's representative(s) and the Architect may observe such procedures. The District shall bear the costs of such Additional Tests, except to the extent that such Additional Tests reveal any failure of the Work to comply with the requirements of the Contract Documents, in which case the Contractor shall bear all costs made necessary by such failures, including without limitation, the costs of corrections, repeat

tests, inspections or approvals and the costs of the Architect's services or its consultants in connection therewith.

- 13.1.6. It is the Contractor's responsibility when calling for testing or inspections to verify and confirm that the Work is complete, according to Contract Documents and ready for inspection. Any re-inspections due to incomplete Work are subject to re-inspection fees at a minimum rate of \$100 per hour.

13.2. DELIVERY OF CERTIFICATES

- 13.2.1. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

13.3. TIMELINESS OF TESTS, INSPECTIONS AND APPROVALS

- 13.3.1. Tests or inspections required and conducted pursuant to the Contract Documents shall be made or arranged by Contractor to avoid delay in the progress of the Work.

ARTICLE 14**14. UNCOVERING AND CORRECTION OF WORK****14.1. INSPECTION OF THE WORK**

14.1.1. All Work done and all materials and equipment forming a part of the Work or incorporated into the Work are subject to inspection by the Architect and the Project Inspector in conformity with the Contract Documents. The Contractor shall, at its cost and without adjustment to the Contract Price or the Contract Time, furnish any facilities necessary for sufficient and safe access to the Work for purposes of inspection at any and all times requested by the Architect, the District's representative(s), DSA or any other public or quasi-public authority with jurisdiction over the Work or any portion thereof.

14.1.2. Inspections, tests, measurements, or other acts of the Architect and the Project Inspector hereunder are for the sole purpose of assisting them in determining that the Work, materials, equipment, progress of the Work, and quantities generally comply and conform with the requirements of the Contract Documents. No inspection by the Architect or District Project Inspector shall constitute or imply acceptance of Work inspected.

14.2. UNCOVERING OF WORK

14.2.1. If any portion of the Work is covered contrary to the request of the Architect, the Project Inspector or the requirements of the Contract Documents, it must, if required by the Architect or the Project Inspector, be uncovered for observation by the Architect and the District's Representative and be replaced at the Contractor's expense without adjustment of the Contract Time or the Contract Price.

14.3. REJECTION OF WORK

14.3.1. Prior to the District's Final Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work which is defective or not in conformity with the Contract Documents may be rejected by the Architect or the Project Inspector and the Contractor shall correct such rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the Project Inspector or even if they failed to observe the defective or non-conforming Work, materials or equipment.

14.4. CORRECTION OF WORK

14.4.1. The Contractor shall promptly correct any portion of the Work rejected by the Architect or the Project Inspector for failing to conform to the requirements of the Contract Documents, or which is determined by them to be defective, whether observed before or after Substantial Completion, and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby. The Contractor shall bear all costs of correcting and/or replacing destroyed or damaged construction, and components which do not operate properly, whether completed or partially completed, of the District or separate contractors, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective. Contractor is also responsible for restoring permanent facilities used during the Work to their original or specified condition.

14.4.2. The Contractor shall, at its sole cost and expense, remove from the Site all portions of the Work, which are defective or are not in accordance with the requirements of the Contract Documents, which are neither corrected by the Contractor nor accepted by the District.

14.4.3. If the Contractor fails to commence to correct defective or non-conforming Work within three (3) days of notice of such condition and promptly thereafter complete the same within a reasonable time, the District may correct it in accordance with the Contract Documents. If the Contractor does not proceed with correction of such defective or non-conforming Work within the time fixed herein, the District may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage after written notice, the District may sell such materials or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including without limitation compensation for the Architect's services and other expenses made necessary thereby. If such proceeds of sale do not cover costs, which the Contractor should have borne, the Contract Price shall be reduced by the deficiency. If payments of the Contract Price then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and the Surety shall promptly pay the difference to the District.

14.5. ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

14.5.1. The District may, in its sole and exclusive discretion, elect to accept Work which is defective or which is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable.

ARTICLE 15

15. WARRANTIES

15.1. CONTRACTOR'S WARRANTY

15.1.1. The Contractor warrants to the District that all materials and equipment furnished under the Contract Documents shall be new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents. All Work shall be performed in accordance with accepted industry practices and shall be of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If required by the Architect or the District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Any Work or portion thereof not conforming to these requirements may be deemed defective. Where there is an approved substitution of, or alternative to, material or equipment specified in the Contract Documents, the Contractor warrants to the District that such installation, construction, material, or equipment shall equally perform the function and have the quality of the originally specified material or equipment. The Contractor expressly warrants the merchantability, the fitness for use, and quality of all substitute or alternative items in addition to any warranty given by the Manufacturer or supplier of such item.

15.2. DISTRICT'S FINAL ACCEPTANCE; WARRANTY PERIOD

15.2.1. For Projects that are completed in their entirety and not performed in phases, the warranty or guarantee period under the Contract Documents shall be for a period of two (2) years and shall commence on the date of Final Acceptance of the Work, unless specified.

15.2.2. For Projects that are completed in phases during performance of the Work, the warranty or guarantee period under the Contract Documents is for a period of two (2) years and shall commence on the date of Substantial Completion for the District's partial use or occupancy of portions of the Work, as certified by the Architect and the District, unless otherwise specified.

15.2.3 Nothing in this section shall be deemed to shorten the otherwise applicable statute of limitations period for claims by the District against Contractor for defects (latent or patent) in the Work.

15.3. WARRANTY WORK

15.3.1. If within two (2) years after the date of Final Acceptance, or Substantial Completion as provided in Article 15.2.2 above, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, or otherwise contrary to the warranties contained in the Contract Documents, the Contractor shall commence all necessary corrective action not more than seven (7) days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. In the event that Contractor shall fail or refuse to commence correction of any such item within said seven (7) day period or to diligently prosecute such corrective actions to completion, the District may then without further notice cause such corrective Work to be performed and completed. In such event, Contractor and Contractor's Performance Bond Surety shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of the District in securing and overseeing such corrective Work.

15.3.2. Nothing contained herein shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract Documents. The obligations of the Contractor hereunder shall be in addition to, and not in lieu of, any other obligations imposed by any special guarantee or warranty required by the Contract Documents, guarantees or warranties provided by any Manufacturer of any item or equipment forming

a part of, or incorporated into the Work, or otherwise recognized, prescribed or imposed by law. Neither the District's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and Workmanship incorporated therein.

15.4. GUARANTEE

15.4.1. Upon completion of the Work, Contractor shall execute and deliver to the District the form of Guarantee included within the Contract Documents. Pursuant to Article 7.4.2 herein, Contractor's execution and delivery of the form of Guarantee is an express condition precedent to any obligation of the District to disburse the Final Payment to the Contractor.

15.5. SURVIVAL OF WARRANTIES

15.5.1. The provisions of this Article 15 shall survive the Contractor's completion of Work under the Contract Documents, the District's Final Acceptance or the termination of the Contract.

ARTICLE 16

16. SUSPENSION OR TERMINATION OF WORK AND FORCE MAJEURE

16.1. DISTRICT'S RIGHT TO SUSPEND WORK

16.1.1. The District may, without cause, and without invalidating or terminating the Contract, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine. The Contractor shall resume and complete the Work suspended by the District in accordance with the District's directive, whether issued at the time of the directive suspending the Work or subsequent thereto.

16.2. ADJUSTMENTS TO CONTRACT PRICE AND CONTRACT TIME

16.2.1. In the event the District shall order suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided, however, that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any such adjustment of the Contract Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of which shall remain as reflected in the Cost Breakdown submitted by the Contractor pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

16.3. TERMINATION FOR CAUSE

16.3.1. The District may terminate the Contract upon the occurrence of any one or more of the following events of the Contractor's default: (i) if the Contractor refuses or fails to prosecute the Work with diligence as shall insure Substantial Completion of the Work within the Contract Time, or if the Contractor fails to substantially Complete the Work within the Contract Time; (ii) if the Contractor becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to reorganize or for protection under any bankruptcy or similar laws, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract Documents within ten (10) days of receipt of a request for such assurance from the District; (iii) if the Contractor repeatedly fails to supply sufficient skilled Workmen or suitable materials or equipment; (iv) if the Contractor repeatedly fails to make prompt payments to any Subcontractor, of any tier, or Material Suppliers or others for labor, materials or equipment; (v) if the Contractor disregards laws, ordinances, rules, codes, regulations, orders applicable to the Work or similar requirements of any public entity having jurisdiction over the Work; (vi) if the Contractor disregards proper directives of the Architect or the Construction Manager under the Contract Documents; (vii) if the Contractor performs Work which deviates from the Contract Documents and neglects or refuses to correct such Work; or (viii) if the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents. Once the District determines that sufficient cause exists to justify the action, the District may terminate the Contract without prejudice to any other right or remedy the District may have, after giving the Contractor and the Surety at least seven (7) days advance written notice of the effective date of termination. The District shall have the sole discretion to permit the Contractor to remedy the cause for the termination without waiving the District's right to terminate the Contract, or otherwise waiving, restricting or limiting any other right or remedy of the District under the Contract Documents or at law.

- 16.3.2. In the event that the Contract is terminated pursuant to this Article 16.3, the District may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Contractor from the site. The District may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor without liability to the Contractor. In exercising the District's right to prosecute the completion of the Work, the District may also take possession of all materials and equipment stored at the site of the Work or for which the District has paid the Contractor but which are stored elsewhere, and finish the Work as the District deems expedient. In exercising the District's right to prosecute the completion of the Work, the District shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and the District shall not be required to obtain the lowest figure for completion of the Work. In the event that the District takes bids for remedial Work or completion of the Work, the Contractor shall not be eligible for the award of such contract(s).
- 16.3.3. In the event that the Contract is terminated pursuant to this Article 16.3, the District may demand that the Surety take over and complete the Work. The District may require that in so doing, the Surety not utilize the Contractor in performing and completing the Work. Upon the failure or refusal of the Surety to take over and begin completion of the Work within twenty (20) days after demand therefore, the District may take over the Work and prosecute it to completion as provided for above.
- 16.3.4. The District shall, in its sole and exclusive discretion, have the option of requiring any Subcontractor or Material Supplier to perform in accordance with its Subcontract or Purchase Order with the Contractor and assign the Subcontract or Purchase Order to the District or such other person or entity selected by the District to complete the Work.
- 16.3.5. In the event of termination under this Article 16.3, the Contractor shall not be entitled to receive any further payment of the Contract Price until the Work is completed. If the unpaid balance of the Contract Price as of the date of termination exceeds the District's direct and indirect costs and expenses for completing the Work, including without limitation, compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work performed prior to the effective date of termination with a reasonable allowance for overhead and profit. If the District's costs and expenses to complete the Work exceed the unpaid Contract Price, the Contractor and/or the Surety shall pay the difference to the District.
- 16.3.6. The Contractor and the Surety shall be liable for all damages sustained by the District resulting from, in any manner, the termination of this Contract under this Article 16.3, and for all costs necessary for repair and completion of the Work over and beyond the Contract Price.
- 16.3.7. In the event the Contract is terminated under this Article 16.3, and it is determined, for any reason, that the Contractor was not in default under the provisions hereof, the termination shall be deemed a Termination for Convenience of the District and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with Article 16.4 hereof.
- 16.3.8. In the event the Contract is terminated pursuant to this Article 16.3, the termination shall not affect or limit any rights or remedies of the District against the Contractor or the Surety. The rights and remedies of the District under this Article 16.3 are in addition to, and not in lieu of, any other rights and remedies provided by law or otherwise under the Contract Documents. Any retention or payment of monies to the Contractor by the District shall not be deemed to release the Contractor or the Surety from any liability hereunder.

16.4. TERMINATION FOR CONVENIENCE OF THE DISTRICT

16.4.1. The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate the Contract in whole or in part when it is in the interest of, or for the convenience of, the District. Notice is deemed given when sent. In such case, the Contractor shall be entitled to payment for: (i) Work actually performed and in place as of the effective date of such termination for convenience of the District, with a reasonable allowance for profit and overhead on such Work, (ii) reasonable termination expenses for reasonable protection of Work in place and suitable storage and protection of materials and equipment delivered to the site of the Work but not yet incorporated into the Work; and (iii) retainage on Work completed, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by payments previously made to the Contractor. The Contractor shall not be entitled to profit and overhead on Work, which was not performed as of the effective date of the termination for convenience of the District. The District's right to terminate under this paragraph shall be in addition to any other rights reserved to the District under this Agreement. Said termination shall not be deemed to be a breach of this Agreement and/or tortious conduct. Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.

16.5 FORCE MAJEURE

16.5.1 A force majeure refers to an unforeseeable extraordinary event or circumstance that occurs after the parties entered into a contract that is beyond their control and prevents, hinders, or delays one or both parties from performing and fulfilling their obligations, in whole or in part, under the contract as a result of war; terrorism; third party strike; riot; epidemic/pandemic, government directives/orders such as mandatory quarantine, travel restrictions, and decree to shutdown; violent forces of nature such as hurricane, flood, earthquake; and other acts of God.

16.5.2 The affected party(ies) shall be excused from the performance of any obligation imposed in the Contract Documents and the exhibits hereto for the duration of the force majeure event provided that the invoking party informs the other party in writing and demonstrates a causal link between the force majeure event and the affected party's failure to perform, without fault or negligence of the affected party, with no alternative means for performing its obligations or that it has taken all reasonable steps to avoid the operation of the force majeure clause ("duty to mitigate"). If Contractor satisfies the requirements herein, Contractor shall be entitled to a non-compensable equitable time extension,

16.5.3 Any non-performance, hindrance of performance, or delay of performance from the affected party(ies) will not be a default hereunder or a grounds for termination of this Contract.

ARTICLE 17

17. STATUTORY REQUIREMENTS

17.1. PROHIBITION ON HARASSMENT

- 17.1.1. The District is committed to providing a campus and Workplace free of sexual harassment and harassment. It is the policy of the District that in connection with all Work performed under the Contract Documents, there will be no discrimination against any prospective or active employee engaged in the Work because of race, color, religion, national origin, ancestry, age, medical condition, marital status, sexual orientation, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.
- 17.1.2. Contractor shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the Workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. The Contractor agrees to comply with applicable federal and California laws, including, but not limited to, Labor Code §1735. Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment Claim. Contractor shall require that any Subcontractor or Sub-Subcontractor performing any portion of the Work adopt and implement policies in conformity with this Article 17.1.
- 17.1.3. Contractor shall not permit any person, whether employed by Contractor, a Subcontractor, of any tier, or any other person or entity, performing any portion of the Work at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to appropriate sanctions in accordance with the anti-harassment policy adopted and implemented pursuant to Article 17.1.2 above. Any such person engaging in a prohibited form of harassment directed to any student, faculty member or staff of the District, or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon the District's receipt of any notice or complaint that any person employed directly or indirectly by Contractor in performing or providing the Work has engaged in a prohibited form of harassment, the District shall promptly undertake an investigation of such notice or complaint. In the event that the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify the Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof.
- 17.1.4. Contractor and the Surety shall defend, indemnify and hold harmless the District and its employees, officers, Board of Education, agents, and representatives from any and all Claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys' fees, which arise out of, or pertain in any manner to: (i) the assertion by any person dismissed from performing or providing Work at the direction of the District pursuant to Article 17.1.3 above; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of the Contractor has engaged in a

prohibited form of harassment directed to or affecting such person. The obligations of the Contractor and the Surety under the preceding sentence shall be in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations shall survive the completion of the Work or the termination of the Contract.

17.2. WAGE RATES; EMPLOYMENT OF LABOR

- 17.2.1. Attention is called to the fact that State of California prevailing wage requirements apply to this project.
- 17.2.2. Pursuant to the provisions of Articles 1 and 2 of Chapter 1, Part 7, Division II, of the Labor Code of the State of California (Labor Code §§1720 *et seq.* and implementing regulations of the Department of Industrial Relations), Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with §16000, for any “public works” (as that term is defined in the statutes), there shall be paid to each Worker of the Contractor, or any Subcontractor, of any tier, engaged in the Work, not less than the general prevailing wage rate, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work contemplated under this Contract regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor, of any tier, and such Worker. For purpose of compliance with prevailing wage law, the Contractor shall comply with provisions applicable to an awarding body. Compliance with state prevailing wage law includes without limitation: payment of at least prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and other obligations as required by law.
- 17.2.3 Copies of the prevailing rate of per diem wages applicable to this Project are on file at the District's office, and shall be made available to any interested party on request; or may be found on the Internet at: <http://www.dir.ca.gov/DLSR/PWD>. The Contractor shall post at appropriate conspicuous weatherproof points on the site of the Project a schedule showing the Prevailing Wage Determinations published by the Director of the California Department of Industrial Relations, which are applicable to the Project.
- 17.2.4 Contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract; and shall ensure that the above requirements are included in all its contracts and any layer of subcontracts for activities for the Project.
- 17.2.5 Contractor shall certify to the District on each Payment Request Form, that prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Contractor and all subcontractors complied with prevailing wage laws. Prior to the release of any retained funds under this Agreement, the Contractor shall submit to the District a certificate signed by the Contractor and all subcontractors performing public works activities stating that prevailing wages were paid as required by law.
- 17.2.6 Failure to comply with prevailing wage laws and/or failure to employ apprentices as required by law shall subject Contractor and/or its Subcontractors to penalties, including forfeitures and debarment under Labor Code §§1775; 1776; 1777.1; 1777.7 and 1813.
- 17.2.7 Nothing contained herein shall be deemed to supersede any applicable laws, orders or regulations issued by competent authority governing wages, hours of Work of the employment of labor, nor to condone any violation of such laws, orders or regulations.

17.3. PAYROLL RECORDS

- 17.3.1. As required by Labor Code §§1700 *et seq.*, (including but not limited to Labor Code §§1776 and 1812), and Title 8 of California Code of Regulations, the Contractor and every

Subcontractor, of any tier, shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the Contractor or Subcontractor has complied with the requirements of §§1771, 1811, and 1815 for any work performed by its employees on the public works project.

17.3.2 The payroll records enumerated under Paragraph 17.3.1 shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor. A certified copy of employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative upon request.

17.3.3 Upon request by the District, the Division of Labor Standards Enforcement (DLSE), or the Division of Apprenticeship Standards of the Department of Industrial Relations, the payroll records of the Contractor, and every Subcontractor, of any tier, shall be available for inspection at all reasonable hours at the principal office of the Contractor or furnished to DIR, within 10 days of receipt of a written request. Failure to comply shall result in applicable penalties.

17.4. COOPERATION AND WITHHOLDING OF CONTRACT PAYMENTS

17.4.1. The Contractor, and every Subcontractor, of any tier, shall cooperate with the DIR, the Labor Commissioner, or DLSE in any investigation of suspected prevailing wage violations. The District shall likewise cooperate and shall withhold contract payments in accordance with any lawful order by DLSE.

17.5. HOURS OF WORK

17.5.1. As required by Labor Code §§1700 *et seq.* (including but not limited to Labor Code §1810), and Title 8 of California Code of Regulations, eight (8) hours of labor shall constitute a legal day's Work. Under Labor Code §1811, the time of service of any Worker employed at any time by the Contractor or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, under Labor Code §1815, Work performed by employees of Contractor or any Subcontractor, of any tier, in excess of 8 hours per day and 40 hours during any one week, shall be permitted upon compensation for all hours Worked in excess of 8 hours per day or 40 hours per week at not less than one and one-half (1½) times the basic rate of pay. Failure to comply with any of the foregoing shall result in applicable penalties.

17.5.2. Any Work performed by Workers necessary to be performed after regular Working hours or on Sundays or other holidays shall be performed without adjustment to the Contract Price or any other additional expense to the District.

17.6. APPRENTICES

17.6.1. It is the duty of the contractor and subcontractors to employ registered apprentices on the public works project and to comply with all aspects of Labor Code §1777.5, relating to Apprentices on Public Works. (1) Notify approved apprenticeship programs of contract award; (2) employ apprentices; (3) pay training fund contributions.

17.6.2 Under Labor Code §1777.5(e) the Contractor and all Subcontractors, of any tier, shall notify an approved training program that can supply apprentices to the area of the Public Works Project. All apprentices employed by the Contractor to perform any of the Work shall be paid the prevailing wages identified by the DIR. Only apprentices, as defined in Labor Code §3077 who are in training under apprenticeship standards and written apprenticeship

Agreements under Labor Code §§3070, *et seq.* are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice Agreements under which such apprentice is training or the Standards established by the Division of Apprenticeship Standards.

- 17.6.3. As required by Labor Code §§1700 *et seq.* (including but not limited to Labor Code §1777.5), and Title 8 of California Code of Regulations, the Contractor and any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade the Contractor and such Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected; provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of the Division of Apprenticeship Standards. The Joint Apprenticeship Committee or Committees, subsequent to approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or such Subcontractor in order to comply with Labor Code §1777.5. The Contractor and Subcontractors shall submit contract award information to the applicable Joint Apprenticeship Committee, which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed.
- 17.6.4 The ratio of work performed by apprentices to journeymen, who shall be employed in the Work, may be the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour (1) of apprentice Work for each five (5) hours of labor performed by a journeyman, except as otherwise provided in §1777.5. Any ratio shall apply during any day or portion of a day when any journeyman or the higher standard stipulated by the Joint Apprenticeship Committee, is employed at the site of the Work and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the completion of the Work. The Contractor shall, however, endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the site of the Work. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a Joint Apprenticeship Committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. This Article shall not apply to Contracts of general Contractors, or to Contracts of Specialty Contractors not bidding for Work through a general or prime Contractor, involving less than Thirty Thousand Dollars (\$30,000).
- 17.6.5 The Contractor or any Subcontractor, of any tier, who performs any of the Work by employment of journeymen or apprentices in any Apprenticeable Craft or Trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Work, to which fund or funds other Contractors in the area of the site of the Work are contributing, shall contribute to the fund or funds in each craft or trade in which it employs journeymen or apprentices in the same amount or upon the same basis and in the same manner as the other Contractors do, but where the trust fund administrators are unable to accept such funds, Contractors not signatory to the trust Agreement shall pay a like amount to the California Apprenticeship Council. The Contractors shall provide proof of such contributions when requested, including checks, check stubs, receipts, or other records required to prove that all required payments were made.
- 17.6.6. Failure to knowingly comply with any of the foregoing shall result in applicable penalties and in addition, upon determination by the Chief of Division of Apprenticeship Standards

under Labor Code §1777.7, the Contractor may be denied the right to bid on any public Works Contract for a period of one (1) year from the date the determination of non-compliance for the first violation and for a period of up to three years for a second or subsequent violation.

17.7. EMPLOYMENT OF INDEPENDENT CONTRACTORS

Pursuant to Labor Code §1021.5, Contractor shall not willingly and knowingly enter into any Agreement with any person, as an independent Contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such person hold a valid Contractor's license issued pursuant to Business and Professions Code §§7000, *et seq.* and such person does not meet the burden of proof of his/her independent Contractor status pursuant to Labor Code §2750.5. In the event that Contractor shall employ any person in violation of the foregoing, Contractor shall be subject to the civil penalties under Labor Code §1021.5 and any other penalty provided by law. In addition to the penalties provided under Labor Code §1021.5, Contractor's violation of this Article 17.7 or the provisions of Labor Code §1021.5 shall be deemed an event of Contractor's default under Article 16.3 of these General Conditions. The Contractor shall require any Subcontractor, of any tier, performing or providing any portion of the Work to adhere to and comply with the provisions of this Article 17.7.

ARTICLE 18

18. MISCELLANEOUS

18.1. GOVERNING LAW

18.1.1. This Contract shall be governed by and interpreted in accordance with the laws of the State of California.

18.2. MARGINAL HEADINGS; INTERPRETATION

18.2.1. The titles of the various Articles of these General Conditions and elsewhere in the Contract Documents are used for convenience of reference only and are not intended to, and shall in no way, enlarge or diminish the rights or obligations of the District or the Contractor and shall have no effect upon the construction or interpretation of the Contract Documents. The Contract Documents shall be construed as a whole in accordance with their fair meaning and not strictly for or against the District or the Contractor.

18.3. SUCCESSORS AND ASSIGNS

18.3.1. Except as otherwise expressly provided in the Contract Documents, all terms, conditions and covenants of the Contract Documents shall be binding upon, and shall inure to the benefit of the District and the Contractor and their respective heirs, representatives, successors-in-interest and assigns.

18.4. CUMULATIVE RIGHTS AND REMEDIES; NO WAIVER

18.4.1. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not in lieu of or otherwise a limitation or restriction of duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the District shall constitute a waiver of a right or remedy afforded it under the Contract Documents or at law nor shall such an action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

18.5. SEVERABILITY

18.5.1. In the event a court or any other governmental agency of competent jurisdiction shall deem any provision of the Contract Documents illegal, invalid, unenforceable and/or void, such provision shall be deemed to be severed and deleted from the Contract Documents, but all remaining provisions hereof, shall in all other respects, continue in full force and effect.

18.6. NO ASSIGNMENT BY CONTRACTOR

18.6.1. The Contractor shall not sublet or assign the Contract, or any portion thereof, or any monies due thereunder, without the express prior written consent and approval of the District, which approval may be withheld in the sole and exclusive discretion of the District. The District's approval to such assignment shall be upon such terms and conditions as determined by the District in its sole and exclusive discretion.

18.7. GENDER AND NUMBER

18.7.1. Whenever the context of the Contract Documents so require, the neuter gender shall include the feminine and masculine, the masculine gender shall include the feminine and neuter, the singular number shall include the plural and the plural number shall include the singular.

18.8. INDEPENDENT CONTRACTOR STATUS

18.8.1. In performing its obligations under the Contract Documents, the Contractor shall be deemed an independent Contractor to the District and not an agent or employee of the District

18.9. NOTICES

18.9.1. Except as otherwise expressly provided for in the Contract Documents, all notices which the District or the Contractor may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by postage prepaid, First Class Certified Return Receipt Requested, United States Mail, addressed to the District or the Contractor at their respective address set forth in the Contract Documents, or such other address (es) as either the District or the Contractor may designate from time to time by written notice to the other in conformity with the provisions hereof. Such notice shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. In the event of personal delivery, such notices shall be deemed effective upon delivery, provided that such personal delivery requires a signed receipt by the recipient acknowledging delivery of the same. In the event of mailed notices, such notice shall be deemed effective on the third Working day after deposit in the mail. Unless otherwise directed by the District, the Contractor's notices to the District shall be addressed as specified in the Supplementary Conditions.

18.9.2. If the notice is given to the surety or other person, by personal delivery to such surety or other person, or by depositing the same in the United States Mail, First Class Certified Return Receipt Requested, enclosed in a sealed envelope, addressed to such surety or person, at the address of such surety or person last communicated by him/her to the party giving the notice, postage prepaid and registered.

18.10. DISPUTES; CONTINUATION OF WORK

18.10.1. Notwithstanding any Claim, dispute or other disagreement between the District and the Contractor regarding performance under the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, to the Contract Documents, the Contractor shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such Claim, dispute or disagreement.

18.11. DISPUTE RESOLUTION.

18.11.1. [Reserved]

18.11.2. Definition of Claim. "Claim," as used herein, means a separate written demand or a separate written assertion by Contractor seeking (a) an extension of time, (b) the payment of money in a sum certain arising from Work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the Claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a Claim or dispute under the Contract. The voucher, invoice, or other request for payment may be converted to a Claim under the Contract, by complying with the submission requirements herein, if it is disputed either as to liability or amount. A written demand or assertion by a Contractor does not become a Claim under this Article until Contractor has received a written determination from Construction Manager under Article 10. If the Contractor fails to submit sufficient substantiating data in strict conformity with Article 10 and/or fails to provide notice in strict conformity with Articles 10.2 and 10.4.1.2, the Contractor shall waive any and all right to pursue any relief as to that Claim. However, the term "Claim" shall not include the following:

- 18.11.2.1. Claims regarding penalties for forfeitures prescribed by statute, or regulation, which a government agency is specifically authorized to administer, settle, or determine;
 - 18.11.2.2. Claims regarding personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death;
 - 18.11.2.3. Claims regarding a latent defect, patent defect, breach of warranty, or guarantee to repair; or
 - 18.11.2.4. Claims regarding stop payment notices.
- 18.11.3. Written Notice of Claim and Request for Meet and Confer Required. If the Contractor disagrees with the Construction Manager's written determination pursuant to Article 10 and intends to further pursue the subject Claim, the Contractor must request in writing the following two items: 1) an executive negotiation session ("Meet and Confer") and pursuant to Public Contract §20104 *et seq.* with the office of the Construction Management Director; and 2) a respective written decision ("Written Decision").
- 18.11.4. Good Faith Attempt to Resolve. The Contractor and District shall make good faith attempts to resolve any and all Claims that may from time to time arise during the performance of the Work covered by this Contract. Notwithstanding the provisions of Public Contract Code §20104, *etc. seq.*, the procedures for dispute resolution set forth therein shall not be commenced until after a dispute subject to resolution under the §20104 procedures has been submitted to Meet and Confer. Pursuant to the Contractor's written request for a Meet and Confer, the District's Construction Management Director or his or her designee will schedule the meeting within a reasonable time, consult with the Supervising Project Manager and the Construction Manager, and issue a Written Decision within ten (10) days of the Meet and Confer, unless action or response by the Contractor to provide additional supporting documentation is required.
- 18.11.5. Written Formal Claim Required. If the Contractor disagrees with the Written Decision from the District, and the Contractor intends to submit a Claim as provided for in Article 18.11.2, the Contractor shall submit its Claim in writing to the Construction Manager in strict conformity with the Claim format set forth below within thirty (30) days of date of Written Decision. Contractor's failure to provide all justifying documentation within thirty (30) days of date of Written Decision shall waive any and all right to pursue any relief as to that Claim.
- 18.11.6. Claim Format. The Contractor (and Subcontractor(s), if the Contractor is submitting the Claim on its/their behalf) shall submit the Claim justification in the following format:
- a. Cover letter containing a statement that it is a Claim, and a summary description of the Claim, amount of the Claim, and clause or section under the Contract under which the Claim is made.
 - b. Copies of documents relating to the Claim as attachments:
 - 1) Specifications
 - 2) Drawings
 - 3) Clarifications (RFI's)
 - 4) Correspondence
 - 5) Other relevant information

- c. Chronology of events
 - d. Detailed analysis of Claim merit
 - e. Time Impact Analysis pursuant to Article 6
 - f. Detailed analysis of Claim cost
 - g. Certification
- 18.11.7. Certification: The Contractor (and Subcontractor(s), if the Contractor is submitting the Claim on its/their behalf) shall submit with the Claim a certification that:
- a. The Claim is made in good faith;
 - b. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
 - c. The amount requested accurately reflects the Contract adjustment for which the Contractor believes the District is liable.
- 18.11.8. The certification shall contain the following statement: "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." Said declaration shall be dated and signed by an authorized person. If the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the Contractor's business affairs.
- 18.11.9. Failure to provide the certification in accordance with the above requirements will result in the Contractor's waiver of any and all right to pursue the subject Claim.
- 18.11.10. If a false, claim is submitted (as defined under the False Claims Act found in California Government Code §§12650 *et seq.*) it will be considered fraudulent and the Contractor may be subject to criminal prosecution under California Penal Code §72 and/or civil liability under False Claims Act. In such case, the District shall be entitled to recover all costs incurred to investigate any False Claim, including but not limited to attorneys' fees and expert fees incurred in connection with said investigation.
- 18.11.11. Formal Claim Review and Determination: Upon receipt of a Claim, the District shall review the Claim and, within a period not to exceed forty-five (45) days, shall provide Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and the Contractor may, by mutual written agreement, extend the forty-five (45) day time period. The District shall process and make payment of any undisputed portion of a Claim within sixty (60) days after the District issues its written statement. Failure by the District to provide a written statement in response to a Claim from the Contractor within the forty-five (45) day time period, or within an agreed upon extended time period, shall result in the Claim being deemed rejected in its entirety. A Claim that is rejected by reason of the District's failure to respond, or failure to timely respond, to the Claim shall not constitute an adverse finding regarding the merits of the Claim or the claimant's responsibility or qualifications. Contractor agrees that strict compliance with Articles 6, 10, and 18 is an express condition precedent to Contractor's right to litigate a Claim. Contractor specifically agrees to assert no Claims in litigation unless there has been strict compliance with Articles 6, 10, and 18.
- 18.11.12. Meet and Confer Meeting. If the Contractor disputes the District's written response, or if the District fails to respond within the time frame prescribed above, the Contractor, within fifteen (15) days of the District's written response or, if the District fails to respond, within fifteen (15) days after the District's response was due, may demand, in a writing sent to the District's Construction Manager by registered mail or certified mail, return receipt requested, with a copy to the Project Manager, an informal conference to meet and

confer for settlement of the issues in dispute. The District shall schedule a meet and confer conference within thirty (30) days of its receipt of the Contractor's written demand.

- 18.11.13. Mediation. Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the District shall provide the 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 sixty (60) days after the District issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation. The expenses and fees of the mediator and the administrative fees shall be divided among the parties equally. Each party shall pay its own legal fees, witness fees, and other expenses. The District and the Contractor shall mutually agree to a mediator within ten (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.

At the District's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Inspector, and/or other District consultants.

- 18.11.14. Post Mediation.

Claims of \$375,000 or Less: Claims between the District and the Contractor of \$375,000 or less shall be resolved in accordance with the procedures established in California Public Contract Code §§20104, *et seq.*; provided, however that California Public Contract Code §20104.2(a) shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such Claim or extend the time for the giving of such notice as provided in the Contract Documents.

Litigation of Claims in Excess of \$375,000: If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.

- 18.11.15. Contractor's Obligation to File a Government Code Claim. Nothing in this Contract, including this Claims Resolution Process, waives, modifies, or tolls the Contractor's obligation to present a timely claim under Government Code section 910, *et seq.* Therefore, in addition to complying with this Claims Resolution Process, the Contractor is required to present Government Code claims to the District pursuant to Government Code section 910, *et seq.* If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the District, the Contractor may proceed under the post-mediation provisions of this Claims Resolution Process.

- 18.11.16. Subcontractors.

Public Contract Code section 9204(d)(5) states that the Contractor may present to the District a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a claim for Work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the

Contractor presented the claim to the District and, if the Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

Contractor is responsible for providing this Dispute Resolution Process to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor are informed of this Dispute Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Dispute Resolution Process will be considered. Contractor shall bind all its Subcontractors to this Dispute Resolution Process and indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Dispute Resolution Process to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor.

ARTICLE 19

19. CONFLICTS IN CONTRACT DOCUMENTS

19.1. ARCHITECT'S RESOLUTION

19.1.1. Conflicts, inconsistencies or ambiguities in the Contract Documents shall be resolved by the Architect, in consultation with the District, in accordance with Article 3.1.7. of the General Conditions.

19.2. INTERPRETATION OF CONTRACT DOCUMENTS

19.2.1. The Contract Documents are complementary and what is required by one part shall be as binding as if required by all unless one or more parts are in conflict with each other. When there are conflicts, Article 19.2.2. of the General Conditions applies. Where any portion of the Contract Documents is silent and information appears elsewhere in the Contract Documents, such other portions of the Contract Documents shall control.

19.2.2. Where conflicts or inconsistencies arise in the Contract Documents, the conflict shall first be resolved by giving precedence to the most recently amended version of the document and in the following order, and if that does not resolve the conflict, by complying with the most stringent requirement:

- Change Orders in reverse order of issuance, issued by the District after receipt of approval of the plans and Specifications from the State of California, Division of State Architect.
- Plans and Specifications approved by the Division of State Architect, limited, however, to the extent that approval relates to the safety of design and construction.
- Executed Agreement.
- Supplementary Conditions.
- General Conditions.
- Construction Documents - Technical Specifications Division 01.
- Construction Documents - Technical Specifications Divisions 02 - 34.
- Construction Documents - Drawings and Exhibits, with figured dimensions controlling over scaled measurements.

END OF GENERAL CONDITIONS - EXHIBITS FOLLOW

Exhibit "A"

Payment – Extra, Additional, Allowances, Contingencies or Deleted Work

PAYMENT	EXTRA/ADDITIONAL/ DELETED WORK	ALLOWANCES/ CONTINGENCIES
<p>1. <u>General Contractor Material and Equipment</u> a. <i>Attach itemized quantity and unit cost plus sales tax.</i> b. <i>Include information where derived, i.e., "Means Building Construction Cost Data" or other source mutually agreed to by all parties.</i></p>		
<p>2. <u>General Contractor Labor</u> <i>Attach itemized hours and rates per certified payrolls, prevailing wage chart and PSA agreements. Rates shall only include a maximum of 15% for payroll burden plus actual costs for Workers' Compensation Insurance. Payment for extra supervision will be paid when extra Work is done in a time period other than normal Working hours.</i></p>		
<p>3. Subtotal: Item #1 plus Item #2</p>		
<p>4. <u>General Contractor's Overhead, Profit, Supervision, Bond Fees</u> <i>(A maximum aggregate total of 16% of Item #3.)</i> <i>This item is not allowed on Extended Overhead.</i></p>		<p>INCLUDED IN CONTRACT SUM</p>
<p>5. Total General Contractor: Item #3 plus Item #4</p>		
<p>6. <u>Subcontractor Material and Equipment</u> c. <i>Attach itemized quantity and unit cost plus sales tax.</i> d. <i>Include information where derived, i.e., "RS Means Building Construction Cost Data" or other source mutually agreed to by all parties.</i></p>		
<p>7. <u>Subcontractor Labor</u> <i>Attach itemized hours and rates per certified payrolls, prevailing wage chart, and PSA agreements. Rates shall only include a maximum of 15% for payroll burden plus actual costs for Workers' Compensation Insurance. Payment for extra supervision will be paid when extra Work is done in a time period other than normal Working hours.</i></p>		
<p>8. Subtotal: Item #6 plus Item #7</p>		
<p>9. <u>General Contractors' Overhead, Supervision, Bond Fees and Profit for Subcontractor Work</u> <i>(A maximum aggregate total of 11% of Item #8.)</i> <i>This item is not allowed on Extended Overhead.</i></p>		<p>INCLUDED IN CONTRACT SUM</p>
<p>10. <u>Subcontractor's Overhead and Profit</u> <i>Maximum aggregate total of 15% of Item #8. Not to be included for Work provided by Contractor. No sub-tier markups allowed. Attach signed Subcontractor documentation on Subcontractor letterhead.</i> <i>This item is not allowed on Extended Overhead.</i></p>		
<p>11. Subtotal: Item #9 plus Item #10.</p>		

TOTAL: Item #5 plus Item #8 plus Item #11.		
ESTIMATED TIME: (Zero, unless indicated; "TBD" not allowed)	_____ CALENDAR DAYS	

EXTRA OR CREDIT CHANGE ORDERS WILL NOT BE CONSIDERED UNLESS THIS EXHIBIT IS COMPLETELY FILLED IN WITH ALL ADDS AND DEDUCTS ACCOUNTED FOR ALONG WITH APPROPRIATE BACKUP DOCUMENTATION. ANY SPACES LEFT BLANK WILL BE DEEMED NO CHANGE TO COST OR TIME.

Cost summaries, breakdowns, back-up or requests shall not be based, in whole or in part, upon any methodology (such as "total cost", "modified total cost" or "Eichleay" formalitic methodologies) that purports to calculate or estimate additional costs of performance of the extra, additional or disputed Work (including, without limitation, the additional costs of delay, disruption, interference, hindrance, unabsorbed overhead, or other impacts) and the cumulative impact of each extra, additional, or deleted Work on other parts of the Work.

For Allowances and Contingencies specified in Section 01 21 00, the Contractor's costs for supervision, overhead, profit, and bonds have been included in the Contract Sum.



ATTACHMENT 1 A

SAN DIEGO UNIFIED SCHOOL DISTRICT
 Facilities Planning Construction
 4850 Ruffner Street
 San Diego, California 92111-1522

This form **MUST** be utilized in conjunction with ATTACHMENT 1 / EXHIBIT A for **ALL** change orders, allowances and contractor contingencies.

CONTRACT NAME: _____
 CONTRACTOR/SUBCONTRACTOR: _____
 GENERAL WAGE DETERMINATION: _____

SDUSD CONTRACT NO. _____
 UNIFIER P.O. NO. _____
 DATE _____

HOURLY LABOR RATE WORKSHEET

Contractor **MUST** enter information in all fields (Excel spreadsheet may be requested). The District's Excel spreadsheet automatically populates the shaded areas below).

CRAFT/TRADE: _____ GROUP NO.: _____ CLASSIFICATION: Apprentice Period Level _____ or Journeyman
 (circle applicable)

Item	Prevailing Wage Rate			Notes
	Regular Time	Overtime	Double Time	
(1) Base Labor Rate	\$ -	\$ -	\$ -	
Fringe Benefits: ¹	Paid to Worker	Paid to Plan/Union		
	<i>(enter rate in appropriate box)</i>			
Health & Welfare ²	\$ -	\$ -	\$ -	
Pension ²	\$ -	\$ -	\$ -	
Vacation ^{2 & 3}	\$ -	\$ -	\$ -	
Training ²	\$ -	\$ -	\$ -	
Other ² (provide description in "Notes")	\$ -	\$ -	\$ -	
Supplemental Dues ² (does not apply to all crafts/trades, please refer to the DIR General Wage Determination for applicability or not)	\$ -	\$ -	\$ -	
	(2a) Total Paid to Worker	(2b) Total Paid to Plan/Union		
Fringe Benefits Totals	\$ -	\$ -		
(2) Fringe Benefits Subtotal (includes both paid to worker & paid to plan/union)	\$ -	\$ -	\$ -	
Travel & Subsistence:	<i>(Fringe Benefit Subtotal that exceeds DIR's total maximum fringes, will not receive credit for the difference)</i>			
Travel (refer to DIR General Wage Determination for applicability or not)	\$ -			
Subsistence (refer to DIR General Wage Determination for applicability or not)	\$ -			
(3) Travel & Subsistence Subtotal	\$ -			
Total Paid Hourly Rate to Worker⁴ (includes line items #1, #2a & #3)	\$ -	\$ -	\$ -	= Hourly Rate Paid to Worker on his/her check
Burden: Taxes & Insurance	BURDEN BASED ON ABOVE RATES			
Social Security (FICA)	\$ -	\$ -	\$ -	
Medicare (FICA)	\$ -	\$ -	\$ -	
Federal Unemployment Insurance (FUTA)	\$ -	\$ -	\$ -	
California Unemployment Insurance (UI)	\$ -	\$ -	\$ -	
Employment Training Tax (ETT)	\$ -	\$ -	\$ -	
Payroll Burden (can not exceed 15%)				
Workers' Compensation Code: _____	\$ -	\$ -	\$ -	
(4) Burden Subtotal	\$ -	\$ -	\$ -	
Contractor Liability Insurance	n/a	n/a	n/a	Included in OH&P per CGC
Small Tools	n/a	n/a	n/a	Included in OH&P per CGC
Other (warranty, record drawings, payment & performance bonds, etc.)	n/a	n/a	n/a	Included in OH&P per CGC
Union Dues	n/a	n/a	n/a	Included in OH&P per CGC
TOTAL HOURLY RATE (includes line item #1, #2, #3 & #4)	\$ -	\$ -	\$ -	= \$ Contractor/Subcontractor paid to worker. ALL fringes, plus burden

¹ Hourly rate for each fringe paid to a bona fide plan/program/union or if paid to the worker must be indicated. Any fringes paid to worker become cash fringes.

² Fringe rates for overtime and double time are the same as regular rate of pay.

³ If paid vacation is added to gross wages, for tax purposes, and then deducted for payment at a later time. Rate must be entered under "Paid to Worker."

⁴ Taxes & Insurance apply to the Total Paid Hourly Rate which includes Base Labor Rate plus ANY fringe benefits paid to worker. PSA projects ALL fringes paid to a plan.

By signing below, the submitter certifies and declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Name & Title: _____ (print name) Company Name: _____

Signature: _____

Rev 03.11.202

1. INDEMNITY

- A. Unless arising solely out of the active negligence, gross negligence or willful misconduct of the Indemnified Parties, the Contractor shall indemnify, defend and hold harmless (i) the District, its Board of Education members, officers, employees, agents and representatives (including the District's Project Inspector, Construction Manager and Project Manager); (hereinafter collectively referred to as the "Indemnified Parties") from and against any and all damages, losses, claims, demands or liabilities of any kind or nature whatsoever, which arise from, or are alleged to arise from, or are in any way connected to, in whole or in part, the Work, the Contract Documents or the acts, omissions or other conduct of the Contractor or any Subcontractor or any person or entity engaged by them in connection with the Work. The Contractor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; (iv) stop payment notice Claims asserted by any person or entity in connection with the Work; and (v) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of the Contractor, any Subcontractor, of any tier, or any other person or entity employed directly or indirectly by Contractor in connection with the Work and their respective agents, officers or employees, and (vi) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of the Contractor, any Subcontractor, of any tier, or any other person or entity employed directly or indirectly by Contractor in connection with the Work and their respective agents, officers or employees. Contractor's obligations hereunder shall include the obligation to defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims asserted, or liability established, for damages or injuries to any person or property which may arise from, or are connected with, or are caused, or claimed to be caused, by the contractor's failure to comply with all of the requirements contained in Education Code, section 45125.1, including, but not limited to, the requirement prohibiting the contractor from using employees who may have contact with pupils who have been convicted of, or have charges pending for, a felony as defined in Education Code 45125.1.
- B. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability covered by this, and such action or proceeding names any of the Indemnified Parties as a party thereto, the Contractor shall, at its sole cost and expense, defend the Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the Indemnified Parties named in such action or proceeding.
- C. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are bound by, Contractor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Contractor shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Contractor's obligations hereunder are binding upon Contractor's Performance Bond Surety and these obligations shall survive notwithstanding Contractor's completion of the Work or the termination of the Contract.

2. INSURANCE**A. Contractor's Insurance**

Contractor shall procure and maintain for the duration of the contract and warranty period insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, his agents, representatives, employees or subcontractors.

B. Minimum Scope of Insurance

1. Coverage shall be at least as broad as:
 - a. Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 00 01) or Insurance Services Office Form (CG 00 09 11 88 Owners and Contractors Protective Liability Coverage Form – Coverage for Operations of Designated Contractor.
 - b. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
 - c. Workers' Compensation insurance as required by the State of California and Employers' Liability insurance.
 - d. Builder's Risk (Course of Construction) insurance (or Installation Floater if project does not involve new or major reconstruction) covering "all risks" of loss (ISO Special Form) through final acceptance of the work.
 - e. Surety bonds as described below.
 - f. Professional Liability (if Design/Build)
 - g. Contractors' Pollution Legal Liability and/or Asbestos Legal Liability (if project involves potential pollution issues)

C. Minimum Limits of Insurance

1. General Liability: (Including operations, products and completed operations)
 - a. **\$2,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the **general aggregate limit shall be twice the required occurrence limit.**
2. Automobile Liability:
 - a. **\$1,000,000** per accident for bodily injury and property damage.
3. Workers Compensation Insurance
 - a. As required by the State of California.
4. Employers Liability Insurance
 - a. **\$1,000,000** each accident, **\$1,000,000** policy limit bodily injury by disease, **\$1,000,000** each employee bodily injury by disease.
- ~~5. Builder's Risk:

 - a. ~~Completed value of the project with no coinsurance penalty provisions.~~~~
6. Property Installation Floater in lieu of Builder's Risk.
 - a. **100% of project value.**
- ~~7. Professional Liability:

 - a. ~~\$1,000,000~~~~
8. Pollution Legal Liability:
 - a. **\$1,000,000**

D. Deductibles and Self-Insured Retentions

1. Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers,

officials, employees and volunteers; or the Contractor shall provide a financial guarantee in the form of a bond satisfactory to the District guaranteeing payment of losses and related investigations, claim administration and defense expenses. Contractor shall be solely and exclusively responsible for the payment of any deductibles, under the required policies of insurance, without adjustment to the Contract Price on account thereof.

E. Other Insurance Provisions

1. The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:
 - a. The District, its officers, officials, employees, and volunteers are to be covered as insureds (“additional insureds”) with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance, or as a separate owner’s policy.
 - b. For any claims related to this project, the Contractor’s insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers, Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.
 - c. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice has been provided to the District.

F. Builder’s Risk (Course of Construction) Insurance

1. Contractor may submit evidence of Builder’s Risk insurance in the form of “Course of Construction” coverage. In either case, the District shall be listed as an insured under the policy.
2. If the scope of work does not involve new, or major reconstruction, (as defined by the District), at the option of the District, an “Installation Floater” will be acceptable to meet this requirement. For such projects, a property installation floater shall be obtained that provide for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation and testing at the District’s site.
3. Builder’s Risk insurance shall be maintained on all insurable Work included under the Contract Documents and Work in Progress, and shall include false-work (which includes but is not limited to temporary structures such as scaffolding, bridge centering, metal work, in which a temporary construction work of which a main work is wholly or partly built until the main work is self-supporting) temporary buildings, transit, debris removal, including demolition, increased cost of construction, architect fees and expenses and flood, including water damage, windstorm, earthquake (if required) and, if applicable, all below and above ground structures, piping, foundations, including underground water and sewer mains, piling, including the ground on which the structure rests, and excavation, backfilling, filling and grading. Insured property shall include portions of the Work

located away from the site but intended for use at the site and shall also cover portions of the Work in transit.

4. Such insurance shall include the interests of the District, any other person with an insurable interest designated by the District, the Contractor and sub-contractors as insureds on the policy.
5. The Builder's Risk insurance shall include a Beneficial Occupancy Clause. The policy shall specifically permit occupancy of the building during construction. The Contractor shall take reasonable steps to obtain consent of its insurance company and delete any provisions with regard to restrictions within any occupancy clauses within the Builders Risk policy.
6. The deductible shall not exceed \$25,000 (except for flood, windstorm, and earthquake (if required), which may have a higher deductible subject to District approval but in no event more than \$100,000) and shall be the responsibility of the Contractor.
7. The Contractor shall submit to the District for its approval all items deemed to be uninsurable. The risk of damage to the Work due to the perils covered by the Builder's Risk "All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the Surety, and no Claims for such loss or damage shall be recognized by the District, nor shall such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

G. Claims Made/Pollution Legal Liability

1. If General Liability, Contractor's Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form.
 - a. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - c. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase extended reporting period coverage for a minimum for five (5) years after completion of contract work.
 - d. A copy of the claims reporting requirements must be submitted to the District for review.
 - e. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability policy shall contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

H. Acceptability of Insurers

1. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the District, and authorized to do business in the State of California. Exception may be made for the State Compensation Insurance Fund when not specifically rated. Coverage provided by non-admitted surplus lines carriers may be accepted provided the insurers are

included in the current California LASLI list and otherwise meet rating requirements.

I. Verification of Coverage

1. Contractor shall furnish the District with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by the Insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The Contractor's insurer shall provide complete copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

J. Waiver of Subrogation

1. Contractor hereby agrees to waive subrogation rights which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the District for all work performed by the Contractor, its employees, agents and subcontractors.

K. Subcontractors

1. Contractor shall require and verify that all listed subcontractors maintain insurance meeting all the requirements stated herein.

L. Maintenance of Insurance

1. Any insurance, including Claims made policies bearing on the adequacy of performance of Work, shall be maintained after the District's Final Acceptance of all the Work, or from the date of Substantial Completion as provided in Article 15.2.2 of the General Conditions, for the full two years correction of Work period and any longer specific guarantee or warranty periods set forth in the Contract Documents. Should such insurance be canceled before the end of such periods and the Contractor fails to immediately procure replacement insurance as specified, the District reserves the right to procure such insurance and to charge the cost thereof to the Contractor. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's defense and indemnity obligations or responsibility for payment of damages from its operations or performance of the Work under the Contract Documents, including without limitation the Contractor's obligation to pay liquidated damages. In no instance shall the District's exercise of its option to occupy and use completed portions of the Work relieve the Contractor of its obligation to maintain insurance required under this Article until the date of Final Acceptance of the Work by the District, or such time thereafter as required by the Contract Documents. The insurer providing any insurance coverage required hereunder shall be to the reasonable satisfaction of the District.

M. Surety Bonds

1. All surety bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

- a. A Bid Bond, certified or cashier's check for ten percent (10%) of the Bidder's offer, to be included with submitted bid documents at time of bid.
 - b. A Performance Bond for one hundred percent (100%) of the Contract Price. Said Performance Bond shall be on the form provided in the bid documents herein.
 - c. A Labor and Material Payment Bond for one hundred percent (100%) of the Contract Price. Said Payment Bond shall be on the form provided in the bid documents herein.
2. The failure or refusal of the Contractor to furnish either the Performance or the Labor and Material Payment Bond in strict conformity with this Article may be deemed by the District as a default by the Contractor of a material obligation hereunder.

3. DISTRICT REPRESENTATIVE

The District Representative's for all work shall be:

Dave Suydam
 Construction Manager
 4860 Ruffner Street
 San Diego, CA 92111-1522
dsuydam@sandi.net

4. HAZARDOUS MATERIALS TRAINING

Prior to commencing work, the Contractor shall provide training for all applicable Contractor employees regarding all Hazardous Substances with which the Contractor's employees may encounter during the course of the contract. The District's Safety Coordinator shall provide the substance inventory, if any, to the Contractor, for the work area involved, prior to the Contractor's employees beginning work on District premises. Contractor shall provide the District's Representative with appropriate documentation evidencing that Contractor's employees have received the appropriate hazardous materials training and information.

5. EMPLOYEE FINGERPRINT VERIFICATION; BARRIERS; EMPLOYEE SURVEILLANCE

- A. At all times when a Site is used or occupied for academic purposes or for other school related functions, no employee or independent contractor to the Contractor or any Subcontractor shall be permitted access to the Site or to perform any Work at the Site unless: (a) such person has submitted her/his fingerprints to the California Department of Justice ("DOJ") pursuant to Education Code §45125.1; (b) the DOJ has ascertained, based upon the submitted fingerprints, that the individual has not been convicted of a felony defined in Education Code §45122.1 and has no criminal felony proceedings (as defined in Education Code §45122.1) pending against her/him; (c) the Contractor or Subcontractor engaging the individual for the Work has received written or electronic verification from the DOJ of the absence of felony convictions and pending felony criminal proceedings; and (d) the Contractor or Subcontractor engaging such individual as an employee or independent contractor has submitted a Fingerprint Certification to the District specifically identifying such individual as having been verified by the DOJ as not having been convicted of a felony and not having pending criminal felony proceeding pending against her/him. The provisions of Education Code §45125.2(a) notwithstanding, erection and maintenance of physical barriers and/or continuous supervision and monitoring are insufficient measures to comply with the requirements of this paragraph when a Site is being used or occupied for academic purposes or other school related functions. At all other times during the Work, as appropriate, or as directed by the District, to limit contact between workers performing the Work and students and for the safety of students, the Contractor shall: (i) erect a physical

barrier around the Work to limit contact between students and the individuals performing Work; or (ii) designate an employee of the Contractor and require each Subcontractor to designate an employee who shall be responsible for the continuous monitoring and supervision of the other employees of the Contractor and Subcontractors, provided that the employees designated for such monitoring and supervision has submitted her/his fingerprints to the Department of Justice under Education Code §45125.1 for verification that she/he has not been convicted of a felony and does not have any criminal proceeding pending against her/him and the Contractor/Subcontractor employee has submitted a Fingerprint Certification attesting to such Department of Justice fingerprint verification and the absence of criminal convictions or pending criminal proceedings. The responsibility for complying with the requirements of Education Code §45125.2 rests solely with the Contractor; the District will not designate any District personnel for surveillance of the Contractor's employees under Education Code §45125.2(a)(3).

- B. In accordance with General Conditions section 7.2 PROGRESS PAYMENTS, Contractor must submit an updated list (see Exhibit C of the General Conditions) of all Contractor's and his Subcontractor's employees with their DOJ fingerprinting status with their monthly payment application. Failure to include the list with their monthly payment application will be reason to reject the application and delay of payment until the payment application has been submitted as required and accepted by the District.
- C. At time of bid, if Contractor checks box 3) on the "Contractor Certification Regarding Background Checks" form stating he will execute the required Department of Justice application and send the required employees to be fingerprinted, Contractor must provide certification with his first payment application that the required employees were indeed fingerprinted. Failure to provide certification will result in delay of payment until such certification is provided to the project's Construction Manager.
- D. Contact www.oag.ca.gov to obtain an ORI number or more information from the Department of Justice regarding this requirement.

6. PROJECT STARTING AND COMPLETION DATES – CONTRACT TIME

Construction for Clairemont High School CTE remodel and throwing facilities improvements shall start per Notice to Proceed (NTP), which is incorporated by reference into the contract, shall progress continuously, and be substantially completed no later than February 28, 2023 for the track throwing facility barrier removal project and no later than July 31, 2023 for the CTE health science and medical tech remodel project.

7. STANDARD AND MODIFIED WORK WEEK

A standard work week is defined as Monday through Friday. A standard work day is defined as eight (8) hours worked between the hours of 7:00 a.m. and 7:00 p.m. during a standard work week, as defined in California Labor Code sections 1810 through 1815.

In order to minimize disruption to the teaching environment, the Contractor may be required, at the District's discretion, to have his employees work a modified work week. A modified work week is defined as any forty (40) hour week *other than a standard work week*.

If the Contractor is required to work a modified work week, the work will be performed at *straight time*. No overtime compensation will be authorized, or paid, by the District for a modified work week schedule. See section 17.5.2 of the General Conditions.

8. LOCATOR SERVICES

The Contractor is responsible for locating all existing utility lines on the work site prior to beginning work, and shall not rely on District provided drawings for their location. In addition, the Contractor is responsible for the procurement and payment of any and all locator services necessary to locate existing utility lines.

9. INVOICING AND PAYMENTS

Original invoices shall be submitted to:

San Diego Unified School District
Physical Plant Operations Center
Attn: Catherine Bendixen
4860 Ruffner Street
San Diego, CA 92111-1522

Contractor shall bill for each DSA project separately. Each invoice/progress payment request must reference the assigned bid/contract number, school name, project description, and name of District representative.

In the event that adjustments are made to the progress payment request, due to stop notices, Labor Compliance issues or backcharges, the Contractor must re-invoice for the amounts deducted.

Contractor must invoice for his retention at the end of the project in order for the release of retention funds to occur.

Pursuant to Labor Code §1773.3, District shall withhold final payment due to the Contractor until at least 30 days after all of the required information in paragraph (2) of subdivision (a) has been submitted, including, but not limited to, providing a complete list of all subcontractors.

10. POST AWARD CONTRACT ADMINISTRATION

All post award correspondence, including requests for subcontractor substitutions, preliminary notices and insurance renewals and updates shall be sent to:

San Diego Unified School District
Contracts Compliance Office
Attn: Mayra Flores, Contract Specialist
4860 Ruffner Street
San Diego, CA 92111
PH: 858-637-6248

11. LIQUIDATED DAMAGES

Pursuant to Article 6.7 of the General Conditions, the amount of liquidated damages to be paid by the Contractor to the District for failure to complete the work specified will be according to the following scale for each calendar day by which completion is delayed beyond the Completion Date:

<u>Total Contract Amount</u>	<u>Liquidated Damages Per Day of Noncompletion</u>
\$10,000 to \$199,999	\$500
\$200,000 to 499,999	\$625
\$500,000 to 1,499,999	\$750
\$1,500,000 to 2,999,999	\$1,250
\$3,000,000 to 4,999,999	\$1,500

\$5,000,000 to 7,000,000
Over \$7,000,000

\$2,500
For each \$1,000,000 over add \$250

Any money due or to become due the Contractor may be retained to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, the District shall have the right to recover the balance from the Contractor or his sureties, who will pay said balance forthwith for each calendar day of delay until the work is completed and accepted, and the Contractor and his surety shall be liable for the amount thereof. Contractor shall not be charged liquidated damages because of any delays in completion of work due to force majeure, as defined at Article 16.5 of the General Conditions. The Contractor shall within 10 days from the beginning of any such delay (unless the District shall grant a further period of time prior to the date of final settlement of the contract) notify the District in writing of the causes of delay; thereupon the District shall ascertain the facts and the extent of the delay and extend the time for completing the work when in its judgment the findings of fact justify such an extension, and its findings of fact thereon shall be final and conclusive on the parties hereto. The additional time granted by the District for completing of the work shall specify the portion of the total thereof, which shall be applied to each segment of the construction schedule yet to be performed according to the terms and conditions of this contract, if any.

12. LIQUIDATED DAMAGES FOR DELAYED SUBMITTALS

The per diem assessment of Liquidated Damages for Contractor's delayed submission of Submittals pursuant to Article 8.1 of the General Conditions is **\$200** per day.

13. ENVIRONMENTAL SAFETY AND HEALTH REQUIREMENTS

Very specific requirements related to environmental, safety and health is outlined in General Conditions Article 12. These requirements include mandatory written programs and daily safety meetings, performance and job hazard analysis, minimum training requirements and minimum personal protection equipment required on the job. All bidders are advised to read Article 12 as compliance is mandatory

14. NOTICES PURSUANT TO ARTICLE 18.9

Notices pursuant to Article 18.9 of the General Conditions should be addressed to:

Director of Construction
San Diego Unified School District
4860 Ruffner Street
San Diego, CA 92111

15. RISK OF LOSS ON CONTRACTOR

The Contractor shall assume the risk of any and all types of loss and damage to the work or any part thereof, to adjoining property, or to materials or things employed in doing the work, or stored on site, until the District has accepted completion of the project. The District, however, will not assume the risk of any loss or damage to materials and things employed by the Contractor in doing the work. The Contractor with due diligence and dispatch, shall replace or repair, at his own expense the work lost or damaged.

16. CONTRACT DOCUMENTS

Pursuant to Article 2.1.5 in the General Conditions, the District shall furnish the Contractor, free of charge, 10 copies of the Drawings and Contract Documents upon award of the contract.

17. ADJUSTMENT TO CONTRACT PRICE

Pursuant to Article 10.4.3 of the General Conditions, the percentage limits allowed for cost mark-ups on overhead, general conditions costs, and profits associated with the change are listed on "Exhibit A" of the General Conditions which is an example of the form to be used for payment for any extra, additional, or allowances, contingencies or deleted work.

18. CONTRACTOR SITE CHECK-IN

Contractor's superintendent is required to check-in at the main office every day that a work crew is on site and classes are in session. A special sign-in sheet will be provided for this purpose.

19. EMPLOYEE IDENTIFICATION BADGES

All Contractor's and their subcontractor's employees who will be working on-site must wear an identification badge at all times. The badge must have a photo of the employee, their name, and the name of the company they work for on the front face, clearly and legibly displayed.

20. KEYS ISSUED FOR CONSTRUCTION

The Contractor may be issued school site master keys, including gate keys, only upon written authorization from the District. Specific terms of site access shall be requested in writing. The request shall be evaluated as to the need for access and the methods available to provide access without issuing keys. Keys shall be authorized only when no other reasonable means of access is available. The Contractor shall be required to sign the District's Master Key Responsibility Agreement form. This form authorizes the District to deduct funds, up to \$60,000, from available contract amounts, if keys are lost or misused. The cost of restoring security to the area(s) compromised by the theft, loss or misuse of keys may require re-keying for one or more buildings and costs could be extensive. The holder of the keys to any school site assumes responsibility for the safekeeping of the keys and their use. Keys must not be modified, duplicated, loaned or made available to others. All lost or stolen keys must be reported immediately through the appropriate District representative. All keys must be returned to the District Authorized Lock Shop Representative on or before the end of the defined 30-day punch list period following the achievement of Substantial Completion. Written confirmation from the District Authorized lock Shop Representative is required before Final payment is made by the District. The return of District issued keys are part of the Final Payment Article 7.4.2.(ix) General Conditions of the Contract obligations. The Contractor may be requested to post a bond or deposit as collateral until the keys are returned. Any Contract Time delay or additional Contract Price expense caused by or due to the theft, loss or misuse of District issued keys shall be to the account of the Contractor.

21. PROJECT STABILIZATION AGREEMENT (PSA)

On July 28, 2009, and as subsequently amended, the San Diego Unified School District's Board of Education approved a Project Stabilization Agreement (PSA), under which the work of this contract falls. The PSA includes, among other provisions: prohibitions on work stoppages or disruptive activity, a dispute resolution procedure, and goals for local hiring. The successful bidder, subcontractors and all others covered by the PSA, regardless of tier, are required to follow the terms and conditions of the PSA. Failure to follow the terms of the PSA shall be considered a breach of contract.

A copy of the Project Stabilization Agreement may be viewed and downloaded at www.sandi.net.

A. Prime Contractor Assent

A representative of the prime contractor with the authority to bind the prime contractor is required to sign the included Letter of Assent which evidences the prime contractor's agreement to be bound by the terms and conditions of the Project Stabilization Agreement for the duration of the work contained in this contract, and submit it to the District at time of bid opening. Should the prime contractor fail to include the signed Letter of Assent with his bid, his bid shall be rejected as non-responsive to the terms and conditions of the bid.

B. Subcontractor Assent and Initiation of Work

No covered subcontractor will be authorized to access the job site for the work contained in this contract until a representative with authority to bind the subcontractor has signed a Letter of Assent which evidences the subcontractor's agreement to be bound by the terms and conditions of the Project Stabilization Agreement (PSA) for the duration of the work contained in this contract. A copy of the PSA may be found at www.sandi.net. A Letter of Assent ready for signature by a subcontractor shall be delivered to the successful bidder under separate cover letter. Copies of the subcontractors Letter of Assent are also available at www.sandi.net and must be delivered to the District's Contract Compliance Office.

A Subcontractor shall submit its signed Letter of Assent at the earliest of the following: 1) at the mandatory Pre-Job Conference described in sections 8.5 and 16.1 of the Project Stabilization Agreement, 2) within 48 hours after the award of the work contained in this contract to the successful bidder, or 3) no later than 48 hours prior to the time the subcontractor desires to gain site access and commence work at the site. This access to the site includes initial mobilization of equipment and materials.

C. Jurisdiction Coordination Meeting

A Jurisdiction Coordination meeting shall be scheduled by the District to permit the awarded contractor, listed subcontractors, and applicable unions to determine all workforce coordination and jurisdictional issues prior to the start of work contained in this contract. The awarded contractor may cancel this meeting by providing written consent to cancellation by the San Diego Building and Construction Trades Council and the Southwestern Regional Council of Carpenters.

D. PSA Contractor Administration Costs

All costs associated with the administration of PSA requirements are included in the Contract Cost and are included in "Exhibit A" limits allowed for cost markups on Change Orders.

22. MULTIPLE DSA PROJECT MANAGEMENT REQUIREMENTS

Work under this Contract will be conducted simultaneously on different DSA projects. The Contractor is required to manage, monitor, generate correspondence, and store documentation for each DSA number separately. The District will accept no document from the Contractor unless the appropriate contract number and DSA number is referenced on the document. The Contract Documents are prepared separately to address each project for its unique conditions. All provisions, including Division 1, of the specifications shall be followed for each project accordingly. Requirements include the following:

- A. Submittals. Submittals shall be submitted separately for each DSA number.
- B. Requests for Information. Requests for Information (RFIs) must be DSA number specific. RFIs that apply to both DSA projects must be submitted separately for each DSA project

under separate cover. RFIs must be sequentially numbered, with no gaps in numbering, for each DSA number.

- C. Pay Applications. Pay applications shall be submitted separately for each DSA number.
- D. Change Orders/Allowance Payment Requests. Change orders and allowance payment requests shall be submitted separately for each DSA number.