

**6.3.1.** Contractor and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in work assigned to that person. It shall be the responsibility of Contractor to ensure compliance with this requirement. District may require Contractor to permanently remove unfit persons from Project Site.

**6.3.2.** Any person in the employ of Contractor or Subcontractor(s) whom District may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of District.

**6.3.3.** The Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

**6.3.4.** If Contractor intends to make any change in the name or legal nature of the Contractor's entity, Contractor must first notify the District. The District shall determine if Contractor's intended change is permissible while performing this Contract.

#### **6.4. Personnel**

**6.4.1.** All persons working for Contractor and Subcontractor(s) shall refrain from using profane or vulgar language, or any other language that is inappropriate on the job site.

**6.4.2.** The Contractor shall employ a full-time superintendent and necessary assistants who shall have complete authority to represent and act on behalf on the Contractor on all matters pertaining to the Work. The superintendent shall be competent and have a minimum of five (5) years of experience in construction supervision on projects of similar scale and complexity. The superintendent shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The superintendent shall not be changed without the written consent of the District unless the superintendent ceases to be employed by the Contractor.

**6.4.3.** The Contractor shall employ a competent estimator and necessary assistants, or contract for sufficient services of an estimating consultant and to process proposed change orders. The estimator shall have a minimum of five (5) years of experience in estimating. The estimator shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The estimator shall not be changed without the written consent of the District unless the estimator ceases to be employed by the Contractor. The Contractor shall submit PCO's requested by the District within fourteen (14) calendar days.

**6.4.4.** The Contractor shall employ a competent scheduler and necessary assistants, or contract for sufficient services of a scheduling consultant. The scheduler shall have a minimum of five (5) years of experience in scheduling. The scheduler shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The scheduler shall not be changed without the written consent of the District unless the scheduler ceases to be employed by the Contractor.

**6.4.5.** Contractor shall at all times enforce strict discipline and good order among Contractor's employees, and shall not employ on the Project any unfit person or anyone not skilled in the task assigned.

**6.4.6.** If Contractor or any Subcontractor on the Project site fails to comply with any provision of paragraph 6.4, the District may have the offending person(s) immediately removed from the site, and such person(s) shall be replaced within three (3) days, at no additional expense to the District. Contractor, on behalf of it and its subcontractors, hereby waives any claim that the provisions of this

paragraph or the enforcement thereof interferes, or has the potential to interfere, with its right to control the means and methods of its performance and duties under this Contract.

#### **6.5. Purchase of Materials and Equipment**

The Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays.

#### **6.6. Documents on Work**

**6.6.1.** Contractor shall at all times keep on the Work Site, or at another location as the District may authorize in writing, one legible copy of all Contract Documents, including Addenda and Change Orders, Construction Change Directives, and titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code, all approved Drawings, Plans, Schedules, and Specifications, and all codes referred to in the Specifications, and made part thereof. These documents shall be kept in good order and available to District, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all authorities having jurisdiction. Contractor shall be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the duties of Contractor, title 24, part 1, California Code of Regulations, § 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly titles 8 and 17. Contractor shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of title 24.

#### **6.6.2. Daily Job Reports.**

**6.6.2.1.** Contractor shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by the Contractor's employee(s) who are present on Site, and must include, at a minimum, the following information:

- 6.6.2.1.1.** A brief description of all Work performed on that day.
- 6.6.2.1.2.** A summary of all other pertinent events and/or occurrences on that day.
- 6.6.2.1.3.** The weather conditions on that day.
- 6.6.2.1.4.** A list of all Subcontractor(s) working on that day,
- 6.6.2.1.5.** A list of each Contractor employee working on that day and the total hours worked for each employee.
- 6.6.2.1.6.** A complete list of all major equipment on Site that day, whether in use or not.
- 6.6.2.1.7.** All complete list of all materials, supplies, and equipment delivered on that day.
- 6.6.2.1.8.** A complete list of all inspections and tests performed on that day.

**6.6.2.2.** Each day Contractor shall provide a copy of the previous day's Daily Job Report to the District or the District's Construction Manager.

#### **6.7. Preservation of Records**

The District shall have the right to examine and audit all Daily Job Reports or other Project records of Contractor's project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; all books, estimates, records, contracts, documents, cost data, subcontract job cost reports, and other data of the Contractor, any Subcontractor, and/or supplier, including computations and projections related to estimating, 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 may be duplicative and/or be in addition to any documents held in escrow by the District. The

Contractor shall make available 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, if available, after the time set forth above.

#### **6.8. Integration of Work**

**6.8.1.** Contractor shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive or be received by work of other contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as District and/or Architect may direct.

**6.8.2.** All cost caused by defective or ill-timed Work shall be borne by Contractor, inclusive of repair work.

**6.8.3.** Contractor shall not endanger any work performed by it or anyone else by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor except with consent of District.

#### **6.9. Obtaining Licenses**

Except for DSA fees or charges, Contractor shall secure and pay for all of its required licenses, and certificates necessary for prosecution of Work before the date of the commencement of the Work or before the licenses, and certificates are legally required to continue the Work without interruption. The Contractor shall obtain and pay, only when legally required, for all licenses and certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract. All final permits and certificates shall be delivered to District before demand is made for final payment.

#### **6.10. Work to Comply With Applicable Laws and Regulations**

**6.10.1.** Contractor shall give all notices and comply with the following specific laws, ordinances, rules, and regulations and all other applicable laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and specified, including but not limited to the appropriate statutes and administrative code sections. If Contractor observes that Drawings and Specifications are at variance therewith, or should Contractor become aware of the development of conditions not covered by Contract Documents that will result in finished Work being at variance therewith, Contractor shall promptly notify District in writing and any changes deemed necessary by District shall be made as provided in Contract for changes in Work.

- 6.10.1.1.** National Electrical Safety Code, U. S. Department of Commerce
- 6.10.1.2.** National Board of Fire Underwriters' Regulations
- 6.10.1.3.** Uniform Building Code, latest addition, and the California Code of Regulations, title 24, including amendments
- 6.10.1.4.** Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- 6.10.1.5.** Industrial Accident Commission's Safety Orders, State of California
- 6.10.1.6.** Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes
- 6.10.1.7.** Americans with Disabilities Act
- 6.10.1.8.** Education Code of the State of California
- 6.10.1.9.** Government Code of the State of California

- 6.10.1.10. Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies
- 6.10.1.11. Public Contract Code of the State of California
- 6.10.1.12. California Art Preservation Act
- 6.10.1.13. U. S. Copyright Act
- 6.10.1.14. U. S. Visual Artists Rights Act

6.10.2. Contractor shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.)

6.10.3. If Contractor performs any Work that it knew, or through exercise of reasonable care should have known, to be contrary to any applicable laws, ordinance, rules, or regulations, Contractor shall bear all costs arising therefrom.

6.10.4. Where Specifications or Drawings state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall, or other body or agency, Contractor shall be responsible for satisfying requirements of such bodies or agencies.

#### **6.11. Safety/Protection of Persons and Property**

6.11.1. The Contractor will be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours.

6.11.2. The wearing of hard hats will be mandatory at all times for all personnel on Site. Contractor shall supply sufficient hard hats to properly equip all employees and visitors.

6.11.3. Any construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the Work Site.

6.11.4. Implementation and maintenance of safety programs shall be the sole responsibility of the Contractor.

6.11.5. The Contractor shall furnish to the District a copy of the Contractor's safety plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.

6.11.6. Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care, Project Completion and final acceptance by District. Contractor shall not be responsible for damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

6.11.7. Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. Contractor shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.

**6.11.8.** Hazards Control – Contractor shall store volatile wastes in covered metal containers and remove them from the Site regularly, which shall be daily when appropriate for the type of hazardous wastes to be removed. Contractor shall prevent accumulation of wastes that create hazardous conditions. Contractor shall provide adequate ventilation during use of volatile or noxious substances.

**6.11.9.** Contractor shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to District by Contractor.

**6.11.10.** Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, Contractor shall correct such violation promptly.

**6.11.11. Storm Water Permits.** Contractor shall comply with any District storm water requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

**6.11.11.1.** Contractor shall hire a qualified engineer as a subconsultant to perform the Work of the Project related to being the District's Qualified SWPPP (Storm Water Pollution Prevention Plan) Contractor ("QSD").

**6.11.11.2.** Contractor shall perform the Work of the Project related to being the District's Qualified SWPPP (Storm Water Pollution Prevention Plan) Practitioner ("QSP").

**6.11.11.3.** As the District's QSP, Contractor shall be responsible for storm water and non-storm water visual observations, sampling, and analysis per the District's SWPPP.

**6.11.11.4.** Contractor shall strictly follow the requirements to implement all the provisions of the SWPPP including, without limitation, preparation of monitoring and recording reports and providing those to the District.

**6.11.11.5.** Contractor's indemnity obligations as indicated in the Facilities Lease are applicable to any damages, penalties, fees, charges, or related expenses assessed or charged to the District by any water boards or agencies with jurisdiction related to compliance with the Storm Water Permits.

**6.11.12.** In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, shall act, at its discretion, to prevent such threatened loss or injury. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.

**6.11.13.** All salvage materials will become the property of the Contractor and shall be removed from the Site unless otherwise called for in the Contract Documents. However, the District reserves the right to designate certain items of value that shall be turned over to the District unless otherwise directed by District.

**6.11.14.** All connections to public utilities and/or existing on-site services shall be made and maintained in such a manner as to not interfere with the continuing use of same by the District during the entire progress of the Work.

**6.11.15.** Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, such as extreme heat, cold, rain, snow, dry winds, flooding, or dampness.

**6.11.16.** The Contractor shall protect and preserve the Work from all damage or accident, providing any temporary roofs, window and door coverings, boxing, or other construction as required by the Architect. The Contractor shall be responsible for existing structures, walks, roads, trees, landscaping, and/or improvements in working areas; and shall provide adequate protection therefore. If temporary removal is necessary of any of the above items, or damage occurs due to the Work, the Contractor shall replace same at his expense with same kind, quality, and size of Work or item damaged. This shall include any adjoining property of the District and others.

**6.11.17.** Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations of the Contractor.

**6.11.18.** Contractor shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District, Construction Manager or Architect, and shall not interfere with the Work or unreasonably encumber Premises or overload any structure with materials. Contractor shall enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site.

**6.11.19.** Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. No verbal or physical contact with neighbors, students, and faculty, profanity, or inappropriate attire or behavior will be permitted. District may require Contractor to permanently remove non-complying persons from Project Site.

**6.11.20.** Contractor shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, Contractor shall have a civil engineer, registered as a professional engineer in California, replace them at no cost to District.

**6.11.21.** In the event that the Contractor enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, Contractor shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification shall be approved by the District prior to the commencement of any Work on or about the adjacent property. The Contractor shall also indemnify the District as provided in the indemnification provision herein. These provisions shall be in addition to any other requirements of the owners of the adjacent property.

#### **6.12. Working Evenings and Weekends**

Contractor may be required to work evenings and/or weekends at no additional cost to the District. Contractor shall give the District seventy-two (72) hours notice prior to performing any evening and/or weekend work. Contractor shall perform all evening and/or weekend work only upon District's approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Contractor shall reimburse the District for any Inspector charges necessitated by the Contractor's evening, weekend and/or legal holiday work, unless the District has agreed to be responsible for such costs at the District's expense in advance of the evening and/or weekend work.

#### **6.13. Cleaning Up**

**6.13.1.** The Contractor shall provide all services, labor, materials, and equipment necessary for protecting the Work, all school occupants, furnishings, equipment, and building structure from damage until Project Completion and final acceptance by District. Dust barriers shall be provided to isolate dust and dirt from construction operations. Upon Project Completion, Contractor shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Contractor must erect the necessary warning signs and barricades to ensure the safety of all school occupants. The Contractor at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

**6.13.2.** Contractor at all times shall keep Premises free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. Contractor shall not leave debris under, in, or about the Premises, but shall promptly remove same from the Premises on a daily basis. If Contractor fails to clean up, District may do so and the cost thereof shall be charged to Contractor. If Contract is for work on an existing facility, Contractor shall also perform specific clean-up on or about the Premises upon request by the District as it deems necessary for the continuing education process. Contractor shall comply with all related provisions of the Specifications.

**6.13.3.** If the Construction Manager, Architect, or District observes the accumulation of trash and debris, the District will give the Contractor a 24-hour written notice to mitigate the condition.

**6.13.4.** Should the Contractor fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the District, the District will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Guaranteed Project Cost, or District may withhold those amounts from payment(s) to Contractor.

## **7. SUBCONTRACTORS**

**7.1.** Contractor shall provide the District with information for all of Contractor's Subcontracts and Subcontractors.

**7.2.** No contractual relationship exists between the District and any Subcontractor, supplier, or sub-subcontractor by reason of this Contract.

### **7.3. Bidding for Subcontractor Work**

**7.3.1.** Contractor is required to receive at least three (3) bona fide bids from Subcontractors for all scopes of work on the Project that constitute more than three percent (3%) of the total Project scope. Prior to the Contractor seeking bids, the District and Contractor may negotiate a different minimum number of bona fide bids from Subcontractors, which shall be as indicated in **Exhibit K** to the Facilities Lease.

**7.3.2.** Contractor shall provide all bids received from all Subcontractors to the District and shall justify, to the District's satisfaction, if Contractor does not choose the lowest bidding Subcontractor for a specific scope of work.

**7.3.3.** Contractor must seek District's prior approval if it wishes to provide fewer than the minimum number of bona fide bids from Subcontractors.

**7.3.4.** All Subcontractors must be prequalified to work on District projects.

7.4. Contractor agrees to bind every Subcontractor by terms of Contract as far as those terms are applicable to Subcontractor's work. If Contractor shall subcontract any part of this Contract, Contractor shall be as fully responsible to District for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by Contractor. The divisions or sections of the Specifications are not intended to control the Contractor in dividing the Work among Subcontractors or limit the work performed by any trade.

7.5. District's consent to, or approval of, or failure to object to, any Subcontractor under this Contract shall not in any way relieve Contractor of any obligations under this Contract and no such consent shall be deemed to waive any provisions of this Contract.

7.6. Contractor is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein all including, without limitation, section 1775 and the Contractor's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws.

7.7. The Contractor shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.

7.8. Contractor is solely responsible for settling any differences between the Contractor and its Subcontractor(s) or between Subcontractors.

7.9. Contractor must include in all of its subcontracts the assignment provisions as indicated in the Termination section of these General Construction Provisions.

## **8. OTHER CONTRACTS/CONTRACTORS**

8.1. District reserves the right to let other contracts, and/or to perform work with its own forces, in connection with the Project. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Contractor's Work with the work of other contractors.

8.2. In addition to Contractor's obligation to protect its own Work, Contractor shall protect the work of any other contractor that Contractor encounters while working on the Project.

8.3. If any part of Contractor's Work depends for proper execution or results upon work of District or any other contractor, the Contractor shall inspect and promptly report to the District in writing before proceeding with its Work any defects in District's or any other contractor's work that render Contractor's Work unsuitable for proper execution and results. Contractor shall be held accountable for damages to District for District's or any other contractor's work that Contractor failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute Contractor's acceptance of all District's or any other contractor's work as fit and proper for reception of Contractor's Work, except as to defects that may develop in District's or any other contractor's work after execution of Contractor's Work.

8.4. To ensure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the District in writing any discrepancy between that executed work and the Contract Documents.

8.5. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of District's or any other contracts that have been or may be awarded by District in prosecution of the Project to the end that Contractor may perform this Contract in light of the other contracts, if any.



8.6. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Site, the Premises, or of the Project. Contractor shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Premises and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Contractor's Contract, Contractor shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the District of the resolution.

## **9. DRAWINGS AND SPECIFICATIONS**

9.1. A complete list of all Drawings for the Project is to be found as an index on the Drawings themselves, and/or may be provided to the Contractor and/or in the Table of Contents.

9.2. Materials or Work described in words that so applied have a well known technical or trade meaning shall be deemed to refer to recognized standards, unless noted otherwise.

9.3. **Trade Name or Trade Term.** It is not the intention of this Contract to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of "trade name" or "trade term" shall be considered a sufficient notice to Contractor that it will be required to complete the work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.

9.4. The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.

9.5. Contract Documents are complementary, and what is called for by one shall be binding as if called for by all. As such, Drawings and Specifications are intended to be fully cooperative and to agree. However, if Contractor observes that Drawings and Specifications are in conflict, Contractor shall promptly notify District and Architect in writing, and any necessary changes shall be made as provided in the Contract Documents.

9.6. Should any question arise concerning the intent or meaning of the Contract Documents, including the Plans and Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, these General Construction Provisions shall control over the Facilities Lease, which shall control over the Site Lease, which shall control over Division 1 Documents, which shall control over Division 2 through Division 49 documents, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings. In no case shall a document calling for lower quality and/or quantity material or workmanship control. However, in the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity shall be resolved in favor of the interpretation that will provide District with the functionally complete and operable Project described in the Drawings and Specifications. In case of ambiguity, conflict, or lack of information, District will furnish clarifications with reasonable promptness.

9.7. Drawings and Specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, the laws, ordinances, rules, and regulations shall be considered as a part of the Contract within the limits specified. Contractor shall bear all expense of correcting work done contrary to said laws, ordinances, rules, and regulations and for which the Contractor knew or reasonably should have known did not comply with those laws, ordinances, rules, and regulations.

### **9.8. Ownership of Drawings**

All copies of Plans, Drawings, Designs, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by District, are the property of

District. They are not to be used by Contractor in other work and, with the exception of signed sets of Contract Documents, are to be returned to District on request at completion of Work, or may be used by District as it may require without any additional costs to District. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. District hereby grants the Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings prepared for the Project in the execution of their Work under the Contract Documents.

## **10. CONTRACTOR'S SUBMITTALS AND SCHEDULES**

### **10.1. Construction Schedule**

The Contractor shall prepare a Construction Schedule that complies with the construction schedule attached to the Facilities Lease as **Exhibit F** ("Construction Schedule") and shall provide all schedules and construction progress documentation as required in the Contract Documents. All items on the Schedule of Values must have a specific completion date on the Construction Schedule, or District has approved the Construction Schedule and the Construction Schedule is loaded and detailed as required by the Contract Documents.

### **10.2. Schedule of Values**

The Contractor has provided and the District has approved a Schedule of Values as **Exhibit G** for all of the Work, which is comprised of quantities and prices of items aggregating the Guaranteed Project Cost and subdivided into component parts. This Schedule of Values includes, at a minimum, the following information and the following structure:

#### **10.2.1.1. Divided into at least the following categories:**

- 10.2.1.1.1.** Overhead and profit;
- 10.2.1.1.2.** Supervision;
- 10.2.1.1.3.** General conditions;
- 10.2.1.1.4.** Layout;
- 10.2.1.1.5.** Mobilization;
- 10.2.1.1.6.** Submittals;
- 10.2.1.1.7.** Bonds and insurance;
- 10.2.1.1.8.** Closeout documentation;
- 10.2.1.1.9.** Demolition;
- 10.2.1.1.10.** Installation;
- 10.2.1.1.11.** Rough-in;
- 10.2.1.1.12.** Finishes;
- 10.2.1.1.13.** Testing;
- 10.2.1.1.14.** Punch list and acceptance.

#### **10.2.1.2. Divided by each of the following areas:**

- 10.2.1.2.1.** Site work;
- 10.2.1.2.2.** By each building;
- 10.2.1.2.3.** By each floor.
- 10.2.1.2.4.** By division of work.

#### **10.2.1.3. The Schedule of Values shall not provide for values any greater than the following percentages of the Guaranteed Project Cost:**

- 10.2.1.3.1. Mobilization and layout combined to equal not more than 1%;
- 10.2.1.3.2. Submittals, samples and shop drawings combined to equal not more than 2%;
- 10.2.1.3.3. Bonds and insurance combined to equal not more than 3%.
- 10.2.1.3.4. Punchlist and acceptance value shall not be no less than 1%.
- 10.2.1.3.5. No Schedule of Value (except noted above) shall be greater than 1%.

10.2.1.4. Closeout Documentation shall have a value in the schedule of values of not less than 2%.

10.2.1.5. The Schedule of Values shall not be modified or amended by the Contractor without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District. The Schedule of Values shall only be modified by an executed Change Order.

10.3. **Safety Plan.** Contractor's Safety Plan specifically adapted for the Project. Contractor's Safety Plan shall comply with the following requirements and shall be submitted to the District for information purposes only:

10.3.1. All applicable requirements of California Division of Industrial Safety ("CalOSHA") and/or of the United States Occupational Safety and Health Administration ("OSHA").

10.3.2. All provisions regarding Project safety, including all applicable provisions in these General Construction Provisions.

10.3.3. Contractor's Safety Plan shall be in English and in the language(s) of the Contractor's and its Subcontractors' employees.

10.4. **Complete Subcontractor List.** The name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for Project Completion, plus all information required in the Contract Documents. This includes the subcontractor Bid and fully executed Contract.

10.5. Contractor must provide all schedules both in hard copy and electronically, in a format (e.g., Microsoft Project or Primavera) approved in advance by the District.

10.6. The District will review the schedules submitted and the Contractor shall make changes and corrections in the schedules as requested by the District and resubmit the schedules until approved by the District.

10.7. The District shall have the right at any time to revise the schedule of values if, in the District's sole opinion, the schedule of values does not accurately reflect the value of the Work performed.

10.8. **Monthly Progress Schedule(s)**

10.8.1. Contractor shall provide Monthly Progress Schedule(s) to the District. A Monthly Progress Schedule shall update the approved Construction Schedule or the last Monthly Progress Schedule, showing all work completed and to be completed. The monthly Progress Schedule shall be in a format acceptable to the District and contain a written narrative of the progress of work that month and any changes, delays, or events that may affect the work. The process for District approval of the Monthly Progress Schedule shall be the same as the process for approval of the Construction Schedule.

10.8.2. Contractor shall also submit Monthly Progress Schedule(s) with all payment applications.

10.9. **Material Safety Data Sheets (MSDS)**

Contractor is required to ensure Material Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Material Safety Data Sheet per the Federal "Hazard Communication" standard, or employees right to know law. The Contractor is also required to ensure proper labeling on substance brought onto the job site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. Two additional copies of the Material Safety Data Sheets shall also be submitted directly to the District.

**10.10. Logistics Plan.** Contractor shall provide a staging and logistics plan identifying laydown areas, loading and unloading areas, crane locations, fence locations, temporary utility connections, trailer locations, and emergency evacuation meeting area. This Logistics Plan must be approved by the District prior to the Contractor mobilizing on the Site

## **11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS**

### **11.1. Site Investigation**

Contractor has made a careful investigation of the Site and is familiar with the requirements of the Contract and has accepted the known existing conditions of the Site.

### **11.2. Soils Investigation Report & Site Due Diligence**

**11.2.1.** When a soils investigation report obtained from test holes at Site is available, that report shall be available to the Contractor but shall not be a part of this Contract. Any information obtained from that report or any information given on Drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of this Contract. Contractor may reasonably rely thereon, however the District makes no warranty regarding the completeness or accuracy of any such report or other information regarding subsurface conditions. Contractor acknowledges that it has made visual examination of Site and has made whatever tests Contractor deems appropriate to determine underground condition of soil.

**11.2.2.** If Contractor encounters subsurface or latent conditions at Site materially differing from those shown on Drawings or indicated in Specifications, or for unknown conditions of an unusual nature that differ materially from those ordinarily encountered in the Work of the character provided for in the Contract Documents, Contractor shall give notice to the District immediately before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions.

**11.2.2.1.** The District will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, will equitably adjust the Contract Sum or Contract Time, or both.

**11.2.2.2.** If the District determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the District will notify Contractor in writing, stating the reasons.

**11.2.2.3.** If after receiving the response, Contractor still intends to pursue a Claim, it shall provide written notice within ten (10) days after it has received the decision.

**11.2.2.4.** Conditions will not be qualified as concealed or unknown if they were readily visible or reasonably observable.

**11.2.3. Contractor's's Diligence.** Contractor's agreement to the Contract Price confirms that it has made a careful examination of the Contract Documents, that it has a complete understanding of the nature, extent, and location of Work to be performed and that it expressly represents that it has fully completed the following:

**11.2.3.1.** Contractor has visited the Project Site, if required, and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions and federal, state and local laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto;

**11.2.3.2.** Contractor has conducted or obtained and has understood all examinations, investigations, explorations, tests, reports, and studies that pertain to the subsurface conditions, as-built conditions, underground facilities, and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance, or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Guaranteed Project Cost, within the Contract Time, and in accordance with the other terms and conditions of Contract Documents, including specifically the provisions of the General Construction Provisions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by Contractor for such purposes;

**11.2.3.3.** Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents;

**11.2.3.4.** Contractor has given the District prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and the actual conditions, and the written resolution thereof by the District is acceptable to Contractor;

**11.2.3.5.** Contractor has made a complete disclosure in writing to the District of all facts bearing upon any possible interest, direct or indirect, that Contractor believes any representative of the District or other officer or employee of the District presently has or will have in this Contract or in the performance thereof or in any portion of the profits thereof;

**11.2.3.6.** Contractor is charged with all information and knowledge that a reasonable contractor would ascertain from having performed this required work, investigation, research, and analysis. The Guaranteed Project Cost includes entire cost of all work "incidental" to completion of the Work.

**11.2.3.7. Conditions Shown on the Contract Documents:** Information as to underground conditions, as-built conditions, or other conditions or obstructions, indicated in the Contract Documents, e.g., on Drawings or in Specifications, has been obtained with reasonable care, and has been recorded in good faith. However, District only warrants, and Contractor may only rely, on the accuracy of limited types of information.

**11.2.3.7.1.** As to above-ground conditions or as-built conditions shown or indicated in the Contract Documents, there is no warranty, express or implied, or any representation express or implied, that such information is correctly shown or indicated. This information is verifiable by independent investigation and Contractor is required to make such verification. Contractor shall rely on the results of its own independent investigation. Contractor shall not rely on District-supplied information regarding above-ground conditions or as-built conditions.

**11.2.3.7.2.** As to any subsurface condition shown or indicated in the Contract Documents, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated. District is not responsible for the completeness of such information for preparing a proposal or construction; nor is District responsible in any way for any conclusions or opinions of Contractor drawn from such information; nor is District responsible for subsurface conditions that are not specifically shown (for example, District is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown).

**11.2.4. Conditions Shown in Reports and Drawings Supplied for Informational Purposes:** Reference is made to the document entitled Geotechnical Data (if attached), and the document entitled Existing Conditions (if attached), for identification of:

**11.2.4.1. Subsurface Conditions:** Those reports of explorations and tests of subsurface conditions at or contiguous to the Project Site that have been utilized by Architect in preparing the Contract Documents; and

**11.2.4.2. Physical Conditions:** Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Project Site that has been utilized by Architect in preparing the Contract Documents.

**11.2.4.3.** These reports and drawings are not Contract Documents and, except for any "technical" data regarding subsurface conditions specifically identified in Geotechnical Data and Existing Conditions, and underground facilities data, Contractor may not in any manner rely on the information in these reports and drawings. Subject to the foregoing, Contractor must make its own independent investigation of all conditions affecting the Work and must not rely on information provided by District.

### **11.3. Access to Work**

District and its representatives shall at all times have access to Work wherever it is in preparation or progress, including storage and fabrication. Contractor shall provide safe and proper facilities for such access so that District's representatives may perform their functions.

### **11.4. Layout and Field Engineering**

**11.4.1.** All field engineering required for layout of this Work and establishing grades for earthwork operations shall be furnished by Contractor at its expense. This Work shall be done by a qualified, California-registered civil engineer and/or surveyor (as appropriate) approved in writing by District and Architect.

**11.4.2.** The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. District shall not be liable for any claim for allowances because of Contractor's error or negligence in acquainting itself with the conditions at the Site.

**11.4.3.** Contractor shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Contractor shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.

**11.5. Utilities & Sanitary Facilities**

Contractor shall provide all required utilities and sanitary facilities.

**11.6. Surveys**

Contractor shall provide surveys done by a California-licensed civil engineer surveyor to determine locations of construction, grading, and site work as required to perform the Work.

**11.7. Regional Notification Center**

The Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Contractor unless an inquiry identification number has been assigned to the Contractor or any Subcontractor and the Contractor has given the District the identification number. Any damages arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Contractor and shall not be considered for an extension of the Contract time.

**11.8. Existing Utility Lines**

**11.8.1.** Pursuant to Government Code section 4215, District assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Site at the time of commencement of construction under this Contract with respect to any such utility facilities that are not identified in the Plans and Specifications. Contractor shall not be assessed for liquidated damages for delay in Project Completion caused by failure of District or the owner of a utility to provide for removal or relocation of such utility facilities.

**11.8.2.** Locations of existing utilities provided by District shall not be considered exact, but approximate within reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care nor costs of repair due to Contractor's failure to do so. District shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

**11.8.3.** No provision herein shall be construed to preclude assessment against Contractor for any other delays in Project Completion. Nothing in this Article shall be deemed to require District to indicate the presence of existing service laterals, appurtenances, or other utility lines, within the exception of main or trunk utility lines. Whenever the presence of these utilities on the Site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Site of the construction.

**11.8.4.** If Contractor, while performing Work under this Contract, discovers utility facilities not identified by District in Contract Plans and Specifications, Contractor shall immediately notify the District and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the District shall be borne by the Contractor.

**11.9. Notification**

Contractor understands, acknowledges and agrees that the purpose for prompt notification to the District pursuant to these provisions is to allow the District to investigate the condition(s) so that the District shall have the opportunity to decide how the District desires to proceed as a result of the condition(s). Accordingly, failure of Contractor to promptly notify the District in writing, pursuant to these provisions, shall constitute Contractor's waiver of any claim for damages or delay incurred as a result of the condition(s).

**11.10. Hazardous Materials**

**11.10.1.** District is the generator of any hazardous materials that are on the Site and which are not brought to the Site by Contractor. Contractor is solely responsible for the exacerbation of Hazardous Materials. The cost of assessment, storage, and disposal of such shall be included in the Work.

**11.10.2.** Contractor shall give written notice to District, Construction Manager, and Architect promptly, before any of the following conditions are disturbed, and in no event later than twenty-four (24) hours after first observance, of any:

**11.10.2.1.** Material that Contractor believes may be material that is hazardous waste or hazardous material, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;

**11.10.2.2.** Other material that may present a substantial danger to persons or property exposed thereto in connection with Work at the Project Site.

**11.10.3.** Contractor's written notice shall indicate whether the hazardous waste or material was shown or indicated in the Contract Documents to be within the scope of Work, and whether the materials were brought to the site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible. As used in this section the term "hazardous materials" shall include, without limitation, asbestos, lead, Polychlorinated biphenyl (PCB), petroleum and related hydrocarbons, and radioactive material.

**11.10.4.** In response to Contractor's written notice, the District shall investigate the identified conditions.

**11.10.5.** If District determines that conditions do not involve hazardous materials or that no change in terms of Contract is justified, District shall so notify Contractor in writing, stating reasons. If District and Contractor cannot agree on whether conditions justify an adjustment in Contract Price or Contract Time, or on the extent of any adjustment, Contractor shall proceed with the Work as directed by District.

**11.10.6.** If after receipt of notice from District, Contractor does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume Work under special conditions, then District may order that portion of Work connected with the hazardous condition or affected area, be deleted from the Work, or performed by others, or District may invoke its rights to terminate the Contract in whole or in part. District will determine entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Time as a result of deleting such portion of Work, or performing the Work by others.

**11.10.7.** If Contractor stops Work in connection with any hazardous condition and in any area affected thereby, Contractor shall immediately redeploy its workers, equipment, and materials, as necessary, to other portions of the Work to minimize delay and disruption.

**11.10.8. Additional Warranties and Representations**



**11.10.8.1.** Contractor represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Project Site and the Work, training, and ability to comply fully with all applicable law and contract requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to address adequately the actual or potential dangers of Contract performance).

**11.10.8.2.** Contractor represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state, and other governmental and quasi-governmental requirements applicable to the Work.

**11.10.8.3.** Contractor represents and warrants that it has studied carefully all requirements of the Specifications regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in the Contract, and prior to submitting its bid, has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. Contractor accepts the risk that any specified procedure will result in a completed Project in full compliance with the Contract Documents.

#### **11.10.9. Monitoring and Testing**

**11.10.9.1.** District reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, Work monitoring, and any other tests (in addition to testing required under the agreement or applicable law), to monitor Contract requirements of safe and statutorily compliant work methods and (where applicable) safe re-entry level air standards under state and federal law upon completion of the job, and compliance of the work with periodic and final inspection by public and quasi-public entities having jurisdiction.

**11.10.9.2.** Contractor acknowledges that District has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement, and post-abatement air monitoring, that District shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of the Work by Contractor. In the event District elects to perform these activities and tests, Contractor shall afford District ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests. Contractor will include the potential impact of these activities or tests by District in the Contract Price and the Scheduled Completion Date.

**11.10.9.3.** Notwithstanding District's rights granted by this paragraph, Contractor may retain its own industrial hygiene consultant at Contractor's own expense and may collect samples and perform tests including, but not limited to, pre-abatement, during abatement, and post-abatement personal air monitoring, and District reserves the right to request documentation of all such activities and tests performed by Contractor relating to the Work and Contractor shall provide that documentation immediately upon request, but in no event later than **THREE (3)** days upon request.

#### **11.10.10. Compliance with Laws**

**11.10.10.1.** Contractor shall perform safe, expeditious, and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal, and disposal industry, the applicable law, and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of

the law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.

**11.10.10.2.** Contractor represents that it is familiar with and shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work relating to:

**11.10.10.2.1.** The protection of the public health, welfare and environment;

**11.10.10.2.2.** Storage, handling, or use of asbestos, PCB, lead, petroleum based products or other hazardous materials;

**11.10.10.2.3.** The generation, processing, treatment, storage, transport, disposal, destruction, or other management of asbestos, PCB, lead, petroleum, or hazardous waste materials or other waste materials of any kind; and

**11.10.10.2.4.** The protection of environmentally sensitive areas such as wetlands and coastal areas.

#### **11.10.11. Disposal**

**11.10.11.1.** Contractor has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the Project Site and for each waste disposal facility. Contractor must comply fully at its sole cost and expense with these regulations and any applicable law. District may, but is not obligated to, require submittals with this information for it to review consistent with the Contract Documents.

**11.10.11.2.** Contractor shall develop and implement a system acceptable to District to track hazardous waste from the Project Site to disposal, including appropriate "Hazardous Waste Manifests" on the EPA form, so that District may track the volume of waste deposited in each landfill and receive from each facility a certificate of receipt.

**11.10.11.3.** Contractor shall provide District with the name and address of each waste disposal facility prior to any disposal, and District shall have the right to reject any proposed disposal facility. Contractor shall not use any disposal facility to which District has objected. Contractor shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to District.

#### **11.10.12. Permits**

**11.10.12.1.** Before performing any of the Work, and at such other times as may be required by applicable law, Contractor shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. Contractor shall submit evidence satisfactory to District that Contractor and any disposal facility:

**11.10.12.1.1.** Have obtained all required permits, approvals, and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable law, and

**11.10.12.1.2.** Are in compliance with all such permits, approvals and the regulations.

For example, before commencing any work in connection with the Work involving asbestos-containing materials, or PCBs, or other hazardous materials subject to regulation, Contractor agrees

to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to District. Contractor shall not conduct any Work involving asbestos-containing materials or PCBs unless Contractor has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, and bonds that are required by governmental or quasi-governmental authorities, and all fees, deposits, tap fees, offsite easements, and asbestos and PCB disposal facilities expenses necessary for the prosecution of the Work, shall be procured and paid for by Contractor. Contractor shall give all notices and comply with the all applicable laws bearing on the conduct of the Work as drawn and specified. If Contractor observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying District in writing of such fact. If Contractor performs any Work contrary to applicable laws, it shall bear all costs arising therefrom.

**11.10.12.2.** In the case of any permits or notices held in District's name or of necessity to be made in District's name, District shall cooperate with Contractor in securing the permit or giving the notice, but the Contractor shall prepare for District review and execution upon approval, all necessary applications, notices, and other materials.

**11.11. No Signs**

Neither the Contractor nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences trailers, offices, or elsewhere on the Site without specific prior written approval of the District.

**12. TRENCHES**

**12.1. Trenches Greater Than Five Feet**

Pursuant to Labor Code section 6705, if the Guaranteed Project Cost exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, promptly submit to the District and/or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

**12.2. Excavation Safety**

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

**12.3. No Tort Liability of District**

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the District or any of its employees.

**12.4. No Excavation Without Permits**

The Contractor shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

## **12.5. Discovery of Hazardous Waste and/or Unusual Conditions**

**12.5.1.** Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four feet below the Surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

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

**12.5.1.2.** Subsurface or latent physical conditions at the Site differing from those indicated.

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

**12.5.2.** The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described herein.

**12.5.3.** In the event that a dispute arises between 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 that pertain to the resolution of disputes and protests.

## **13. INSURANCE AND BONDS**

**13.1. Contractor's Insurance.** The Contractor shall comply with the insurance requirements as indicated in the Facilities Lease.

### **13.2. Contract Security - Bonds**

**13.2.1.** Contractor shall furnish two surety bonds issued by a California admitted surety insurer as follows:

**13.2.1.1. Performance Bond:** A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.

**13.2.1.2. Payment Bond:** A bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with this Contract.

**13.2.2.** Cost of bonds shall be included in the Guaranteed Project Cost.

**13.2.3.** All bonds related to this Project shall be on the forms provided in the Contract Documents and shall comply with all requirements of the Contract Documents.

## **14. WARRANTY/GUARANTEE/INDEMNITY**

**14.1. Warranty/Guarantee**

**14.1.1.** The Contractor shall obtain and preserve for the benefit of the District, manufacturer's warranties on materials, fixtures, and equipment incorporated into the Work.

**14.1.2.** In addition to guarantees required elsewhere, Contractor shall, and hereby does guarantee and warrant all Work furnished on the job against all defects for a period of ONE (1) year after the later of the following dates:

**14.1.2.1.** Project Completion,

**14.1.2.2.** The commissioning date for the Project, if any.

At the District's sole option, Contractor shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a ONE (1) year period from date of completion as defined above without expense whatsoever to District. In the event of failure of Contractor and/or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, Contractor and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Contractor and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

**14.1.3.** If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required above. If Contractor or Surety cannot be contacted or neither complies with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the above provision, proceed to make any and all corrections and/or provide attentions the District believes are necessary. The costs of correction or attention shall be charged against Contractor and Surety of the guarantees provided in this Article or elsewhere in this Contract.

**14.1.4.** The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District.

**14.1.5.** Nothing herein shall limit any other rights or remedies available to District.

**14.2. Indemnity** Contractor shall indemnify the District as indicated in the Facilities Lease.

**15. TIME**

**15.1. Computation of Time / Adverse Weather**

**15.1.1.** The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor and only if all of the following conditions are met:

**15.1.1.1.** The weather conditions constitute Adverse Weather, as defined herein;

**15.1.1.2.** Contractor can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

15.1.1.3. The Contractor's crew is dismissed as a result of the Adverse Weather; and

15.1.1.4. The number of days of delay for the month exceeds the following parameters. The District and Contractor may negotiate a different minimum number of days, which shall be as indicated in **Exhibit K** to the Facilities Lease:

January	<u>11</u>	July	<u>0</u>
February	<u>10</u>	August	<u>0</u>
March	<u>10</u>	September	<u>1</u>
April	<u>6</u>	October	<u>4</u>
May	<u>3</u>	November	<u>7</u>
June	<u>1</u>	December	<u>10</u>

15.1.2. A day-for-day extension will only be allowed for those days in excess of those indicated herein.

15.1.3. The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

**15.2. Hours of Work**

Work shall be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the District and approval of any required governmental agencies.

**15.3. Progress and Project Completion**

**15.3.1. Time of the Essence**

Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Facilities Lease, the Contractor confirms that the Contract Time is a reasonable period for Project Completion.

**15.3.2. No Commencement Without Insurance**

The Contractor shall not commence operations on the Project or elsewhere prior to the effective date of insurance and bonds. The date of commencement of the Work shall not be changed by the effective date of such insurance. If Contractor commences Work without insurance and bonds, all Work is performed at Contractor's peril and shall not be compensable until and unless Contractor secures bonds and insurance pursuant to the terms of the Contract Documents and subject to District claim for damages.

**15.3.3. Sufficient Forces**

Contractor and Subcontractors shall continuously furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule to obtain Project Completion within the Contract Time.

**15.4. Schedule**

Contractor shall provide to District, Construction Manager, and Architect a schedule in conformance with the Contract Documents and as required in these General Construction Provisions.

**15.5. Expeditious Completion**

The Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

**16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES**

**16.1. Liquidated Damages**

Contractor and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Facilities Lease for each calendar day of delay beyond the Contract Time. Contractor and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

**16.2. Excusable Delay**

**16.2.1.** Contractor shall not be charged for liquidated damages because of any delays beyond the Contract Time which are not the fault of Contractor or its Subcontractors, including acts of God as defined in Public Contract Code section 7105, acts of enemy, epidemics, and quarantine restrictions. Contractor shall, within five (5) calendar days of any delay, notify District in writing of causes of delay including documentation and facts explaining the delay. District shall review the facts and extent of any delay and shall grant extension(s) of time for completing Work when, in its judgment, the findings of fact justify an extension. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted if Contractor has timely submitted the Construction Schedule as required herein.

**16.2.2.** Contractor shall notify the District pursuant to the claims provisions in these General Construction Provisions of any anticipated delay and its cause. Following submission of a notice of delay, the District may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and Project Completion might be delayed thereby.

**16.2.3.** In the event the Contractor requests an extension of Contract Time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. If the Contractor fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any claim for delay must include the following information as support, without limitation:

**16.2.3.1.** The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

**16.2.3.2.** Specific logical ties to the Construction Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.)

**16.2.3.3.** A revised Construction Schedule must be submitted.

**16.3. No Additional Compensation for Delays Within Contractor's Control**

**16.3.1.** Contractor is aware that governmental agencies, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. Accordingly, Contractor has included in the Guaranteed Project Cost, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Thus, Contractor is not entitled to make a claim for damages or delays arising from the review of Contractor's drawings.

**16.3.2.** Contractor shall only be entitled to compensation for delay when all of the following conditions are met:

**16.3.2.1.** The District or its consultants, employees, architects or contractors are responsible for the delay;

**16.3.2.2.** The delay was not reasonably anticipated by District and Contractor; and

**16.3.2.3.** Contractor complies with the claims procedure of the Contract Documents.

**16.4. Float or Slack in the Schedule**

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the District or the Contractor, however it shall be used as necessary to accommodate delays in the progress of the Work which may occur during the course of construction, as determined by the District. Contractor shall not be entitled to an extension of time for any claimed delays to the extent that such delays may be covered by the float.

**17. CHANGES IN THE WORK**

**17.1. No Changes Without Authorization**

**17.1.1.** There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's governing board has authorized the same and the cost thereof has been approved in writing by Change Order. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

**17.1.2.** Contractor shall perform immediately all work that has been authorized by a fully executed Change Order. Contractor shall be fully responsible for any and all delays and/or expenses caused by Contractor's failure to expeditiously perform this Work.

**17.1.3.** Should any Change Order result in an increase in the Guaranteed Project Cost, the cost of that Change Order shall be agreed to, in writing, in advance by Contractor and District. In the event that Contractor proceeds with any change in Work without a Change Order executed by the District, Contractor waives any claim of additional compensation or time for that additional work.

**17.1.4.** Contractor understands, acknowledges, and agrees that the reason for District authorization is so that District may have an opportunity to analyze the Work and decide whether the District shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.



## **17.2. Architect Authority**

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Guaranteed Project Cost, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order or by Architect's response(s) to RFI(s).

## **17.3. Change Orders**

**17.3.1.** A Change Order is a written instrument prepared and issued by the District and/or the Architect and signed by the District (as authorized by the District's governing board), the Contractor, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following:

**17.3.1.1.** A description of a change in the Work;

**17.3.1.2.** The amount of the adjustment in the Guaranteed Project Cost, if any; and

**17.3.1.3.** The extent of the adjustment in the Contract Time, if any.

**17.3.2.** If a Change Order is required to be approved by DSA, the District may call it a Construction Change Document.

## **17.4. Price Request**

### **17.4.1. Definition of Price Request**

A Price Request ("PR") is a written request prepared by the District or the Architect requesting the Contractor to submit to the District and/or the Architect an estimate of the effect of a proposed change in the Work on the Guaranteed Project Cost and the Contract Time.

### **17.4.2. Scope of Price Request**

A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable Contractor to provide the cost breakdowns required herein. The Contractor shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

## **17.5. Proposed Change Order**

### **17.5.1. Definition of Proposed Change Order**

A Proposed Change Order ("PCO") is a written request prepared by the Contractor requesting that the District and the Architect issue a Change Order based upon a proposed change to the Work. A PCO shall be submitted by the Contractor to the Owner within 10 days of the event giving rise to the PCO. Contractor's failure to submit a PCO within 10 days of the event giving rise to the PCO shall be a complete waiver all rights to additional compensation or time otherwise resulting from the events giving rise to the PCO.

### **17.5.2. Changes in Guaranteed Project Cost**

A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Guaranteed Project Cost.

**17.5.3. Changes in Time**

A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If Contractor fails to request a time extension in a PCO, then the Contractor is thereafter precluded from requesting time and/or claiming a delay.

**17.5.4. Unknown and/or Unforeseen Conditions**

If Contractor submits a PCO requesting an increase in Guaranteed Project Cost and/or Contract Time that is based at least partially on Contractor's assertion that Contractor has encountered unknown and/or unforeseen condition(s) on the Project, then Contractor shall base the PCO on provable information that demonstrates that the unknown and/or unforeseen condition(s) were actually or reasonably unknown and/or unforeseen. If not, the District shall deny the PCO and the Contractor shall complete the Project without any increase in Guaranteed Project Cost and/or Contract Time based on that PCO.

**17.6. Format for Proposed Change Order**

**17.6.1.** The following format(s) on the following two (2) pages shall be used as applicable by the District and the Contractor (e.g. Change Orders, PCO's) to communicate proposed additions and deductions to the Contract, supported by attached documentation

**FORMAT FOR PROPOSED CHANGE FOR SUBCONTRACTOR PERFORMED WORK**

	<b>SUBCONTRACTOR PERFORMED WORK</b>	<i>ADD</i>	<i>DEDUCT</i>
<b>(A)</b>	<u><b>Labor Charge</b></u> 1. <b>Hours.</b> Attach total itemized hours.  2. <b>Rate.</b> This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations ("DIR") for the applicable labor category.		
<b>(B)</b>	<u><b>Labor Burden &amp; Worker's Compensation Charge</b></u> 1. This shall be no more than twenty percent (20%) of item <b>(A)</b> , the Labor Charge.  2. This shall be the total cumulative charge permitted for all Subcontractors or all labor performed by the Subcontractor or Subcontractor's Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)).		
<b>(C)</b>	<u><b>Subtotal (A+B)</b></u>		
<b>(D)</b>	<u><b>Material Charge</b></u> Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s).		
<b>(E)</b>	<u><b>Equipment Charge</b></u> Attach invoice(s) from supplier(s).		
<b>(F)</b>	<u><b>Subtotal (C+D+E)</b></u>		
<b>(G)</b>	<u><b>Subcontractor's Overhead and Profit Charge</b></u> 1. This shall be no more than five percent (5%) of item <b>(F)</b> .  2. This shall be the total cumulative mark-up permitted for the Subcontractor and Subcontractor's Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)).		
<b>(H)</b>	<u><b>Subtotal (F+G)</b></u>		
<b>(I)</b>	<u><b>Contractor's Overhead, Profit, Bond and Insurance</b></u> 1. This shall be no more than five percent (5%) of Item <b>(H)</b> .  2. This shall be the total mark-up permitted for Contractor.		
<b>(J)</b>	<u><b>Subtotal (H+I)</b></u>		
<b>(K)</b>	<u><b>Time</b></u>	<u>          </u> Days	
<b>(L)</b>	<u><b>Contractor's Home Office Overhead</b></u>  This shall be no more than \$200 times the number of days of Item <b>(K)</b> (i.e., not to exceed \$200/day)		
<b>(M)</b>	<u><b>TOTAL (J+L)</b></u>		

**FORMAT FOR PROPOSED CHANGE FOR CONTRACTOR PERFORMED WORK**

	<u>CONTRACTOR PERFORMED WORK</u>	<i>ADD</i>	<i>DEDUCT</i>
(A)	<u><b>Labor Charge</b></u> 1. <b>Hours.</b> Attach total itemized hours.  2. <b>Rate.</b> This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations ("DIR") for the applicable labor category.		
(B)	<u><b>Labor Burden &amp; Worker's Compensation Charge</b></u> 1. This shall be no more than twenty percent (20%) of item (A), the Labor Charge.  2. This shall be the total cumulative charge permitted for all labor performed by Contractor.		
(C)	<u><b>Subtotal (A+B)</b></u>		
(D)	<u><b>Material Charge</b></u> Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s).		
(E)	<u><b>Equipment Charge</b></u> Attach invoice(s) from supplier(s).		
(F)	<u><b>Subtotal (C+D+E)</b></u>		
(G)	<u><b>Contractor's Overhead, Profit, Bond and Insurance</b></u> 1. This shall be no more than five percent (5%) of Item (F).  2. This shall be the total mark-up permitted for Contractor.		
(H)	<u><b>Subtotal (F+G)</b></u>		
(I)	<u><b>Time</b></u>	_____ Days	
(J)	<u><b>Contractor's Home Office Overhead</b></u>  This shall be no more than \$200 times the number of days of Item (I) (i.e., not to exceed \$200/day)		
(M)	<u><b>TOTAL (H+J)</b></u>		

**17.6.2.** All proposed cost requests by Contractor for a change shall include a complete itemized breakdown with the following detail:

**17.6.2.1.1. Labor.** Labor breakdown by trade classification, wage rates, and estimated hours. Labor costs shall only include fringe benefits indicated by governing trade organizations. Wages shall not exceed current prevailing wages in the locality for performance of the changes.

**17.6.2.1.1.1.** The Contractor's or Subcontractors' labor burden and Workers' Compensation premium shall only be charged as indicated herein. In no event shall Contractor include any other charges than as indicated herein without the prior written approval of the District.

**17.6.2.1.2. Material.** Material quantities, and types of products, and transportation costs, if applicable.

**17.6.2.1.3. Equipment.** Equipment breakdown by make, type, size, rental rates, equipment hours and transportation costs, if applicable.

**17.6.2.1.3.1.** The equipment costs shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates or Caltrans rates, whichever is less. Hourly, daily, weekly, or monthly rates shall be used, whichever is lower. Hourly rates including operator shall not be used.

**17.6.2.1.3.2.** The actual time to be paid for equipment shall be the time that the equipment is in productive operation on the Work under Contract Modification. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to and from the project site. No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site in any other way than upon the work directly related to the Contract Modification.

**17.6.2.1.3.3.** Individual pieces of equipment having a replacement value of one thousand dollars (\$1,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein.

**17.6.2.1.3.4.** Payment to the Contractor for the use of equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to the Contractor incidental to the use of the equipment.

**17.6.2.1.3.5.** Should Contractor, or any of its owners, officers, directors or agents, hold any ownership interest in any company, organization, association or corporation from whom rental equipment is secured. Contractor shall immediately notify District of such and the price set for any such rental shall be agreed upon in advance by the Contractor and the District.

**17.6.2.1.4. Overhead and Profit.** Markup for overhead and profit, which shall be used to compensate Contractor for all costs for all administration, general conditions, and supervision, including, without limitation:

**17.6.2.1.4.1.** All field, field office and home office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftsmen, schedulers, consultants, watchmen, payroll clerks, administrative assistants, labor compliance costs and secretaries.

**17.6.2.1.4.2.** All field, field office and home office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service and long distance telephone calls, fax machines, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under \$1000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to regulatory requirements including compliance to safety regulations, safety programs and meetings, cartage, warranties, As-Built Drawings, as well as any related maintenance costs.

**17.6.2.1.4.3.** Administrative functions such as, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, expediting, engineering, drawing, detailing, revising shop drawings, carting, cleaning, protecting the work, and other incidental Work related to the change.

**17.6.2.1.4.4.** All other costs and taxes required to be paid, but not included under direct costs as defined above including, without limitation, payroll taxes, social security, etc.

**17.6.2.1.4.5.** All costs for Contractor's bonds and insurance.

**17.6.2.1.4.6.** Taxes: Federal excise tax shall not be included. District will issue an exemption on request.

**17.6.2.1.5.** Justification for any adjustment in Contract Time including a schedule analysis identifying critical schedule activities delayed by the request.

## **17.7. Change Order Certification**

**17.7.1.** All Change Orders and PCOs must include the following certification by the Contractor:

The undersigned Contractor approves the foregoing as to the changes, if any, and the Guaranteed Project Cost specified for each item and as to the extension of time allowed, if any, for Project Completion, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by the governing board of the District.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

## **17.8. Determination of Change Order Cost**

**17.8.1.** The amount of the increase or decrease in the Guaranteed Project Cost from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the District's discretion:

**17.8.1.1.** District acceptance of a PCO;

**17.8.1.2.** By amounts contained in Contractor's schedule of values, if applicable;

**17.8.1.3.** By agreement between District and Contractor.

**17.8.2.** If the District has put in contingency(s) and/or allowance(s) in **Exhibit "C"** to the Facilities Lease, then approved Change Order(s) may be paid out of those contingency(s) and/or allowance(s), pursuant to **Exhibit "C"** and if agreed to by the District.

**17.9. Deductive Change Orders**

All deductive Change Order(s) must be prepared pursuant to the provisions herein. If Contractor offers a proposed amount for a deductive Change Order(s), Contractor shall include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of its deducted work. Any deviation from this provision shall not be permitted without the District's prior written approval.

**17.10. Construction Change Directives / Unilateral Change Orders**

**17.10.1.** A Construction Change Directive (or Unilateral Change Order) is a written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work. The District may as provided by law, by Construction Change Directive and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. If all or a portion of the Project is being funded by funds requiring approval by the State Allocation Board (SAB), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are released by the Office of Public School Construction (OPSC). Any dispute as to the sum of the Construction Change Directive or timing of payment shall be resolved pursuant to the Payment and Claims and Disputes provisions herein. **A Construction Change Directive is NOT a Construction Change Document (which is defined above as a Change Order that DSA must approve).**

**17.10.2.** The District may issue a Construction Change Directive in the absence of agreement on the terms of a Change Order.

**17.11. Discounts, Rebates, and Refunds**

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein. Such discounts and rebates generated as a result of early payments shall only be credited to the District, provided that the District provides Contractor with early payment in order to secure such discounts and rebates.

**17.12. Accounting Records**

With respect to portions of the Work performed by Change Orders, the Contractor shall keep and maintain cost-accounting records satisfactory to the District, which shall be available to the District on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

**17.13. Notice Required**

If the Contractor desires to make a claim for an increase in the Guaranteed Project Cost, or any extension in the Contract Time for Project Completion, it shall notify the District pursuant to the provisions herein. No claim shall be considered unless made in accordance with this subparagraph. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Guaranteed Project Cost or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

**17.14. Applicability to Subcontractors**

Any requirements under this Article shall be equally applicable to Change Orders issued to Subcontractors by the Contractor to the extent as required by the Contract Documents.

**17.15. Alteration to Change Order Language**

Contractor shall not alter Change Orders or reserve time in Change Orders. Contractor shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

**17.16. Failure of Contractor to Execute Change Order**

Contractor shall be in default of the Contract if Contractor fails to execute a Change Order when the Contractor agrees with the addition and/or deletion of the Work in that Change Order.

**17.17. Allowances**

To the extent any item or portion of the Work is required by the Contract Documents to be priced as an Allowance, any amounts remaining in the Allowance which are to be deducted from the Guaranteed Project Cost shall be calculated according to the provisions of **Exhibit "C"** to the Facilities Lease and the Deductive Change Order provisions herein.

**18. REQUESTS FOR INFORMATION**

**18.1.** Any Request for Information ("RFI") shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. The Contractor shall make suggestions and interpretations of the issue raised by each Request for Information. A Request for Information cannot modify the Guaranteed Project Cost, Contract Time, or the Contract Documents.

**18.2.** The Contractor shall be responsible for any costs incurred for professional services that District may deduct from any amounts owing to the Contractor, if Contractor makes multiple Requests for Information that request interpretation(s) or decision(s) of a matter where the information sought is equally available to the Contractor. District, at its sole discretion, shall deduct from and/or invoice Contractor for all the professional services arising herein.

**18.3.** Requests for Information shall comply with all requirements of the Contract Documents.



18.4. Prior to submitting the RFI, Contractor shall diligently review the Contract Documents for information responsive to the RFI, including information incorporated by reference. Contractor should not issue RFI's regarding information contained in or inferable from the Contract Documents, including information incorporated by reference. An RFI is invalid if the RFI response is contained in or inferable from the Contract Documents.

18.5. Contractor shall be responsible for preparing and submitting RFI's so as to not cause delay to the progress of the Work nor to cause any impact to the Contractor's labor productivity. An RFI may be considered untimely if not submitted within **Forty Eight (48) hours** of receipt from a Contractor's subcontractor. Untimely submission of any RFI will preclude Contractor from asserting any claims for delay or for labor impact against the District.

## **19. PAYMENTS**

### **19.1. Guaranteed Project Cost**

As compensation for Contractor's construction of the Project, the District shall pay Contractor pursuant to the terms of **Exhibit "C"** to the Facilities Lease.

### **19.2. Applications for Tenant Improvement Payments**

#### **19.2.1. Procedure for Applications for Tenant Improvement Payments**

19.2.1.1. Not before the fifth (5<sup>th</sup>) day of each calendar month during the progress of the Work, Contractor shall submit to the District and the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Each Application for Tenant Improvement Payment shall be notarized, if required, and supported by the following or each portion thereof unless waived by the District in writing:

- 19.2.1.1.1. The amount paid to the date of the Application for Tenant Improvement Payment to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- 19.2.1.1.2. The amount being requested under the Application for Tenant Improvement Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- 19.2.1.1.3. The balance that will be due to each of such entities after said payment is made;
- 19.2.1.1.4. A certification that the As-Built Drawings and annotated Specifications are current;
- 19.2.1.1.5. Itemized breakdown of work done for the purpose of requesting partial payment;
- 19.2.1.1.6. An updated and acceptable construction schedule in conformance with the provisions herein;
- 19.2.1.1.7. The additions to and subtractions from the Guaranteed Project Cost and Contract Time;
- 19.2.1.1.8. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;

- 19.2.1.1.9. The percentage of completion of the Contractor's Work by line item;
- 19.2.1.1.10. Schedule of Values updated from the preceding Application for Tenant Improvement Payment;
- 19.2.1.1.11. A duly completed and executed conditional waiver and release upon progress payment compliant with Civil Code section 8132 from each subcontractor of any tier and supplier to be paid from the current progress payment;
- 19.2.1.1.12. A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 8134 from each subcontractor of any tier and supplier that was paid from the progress payment from sixty (60) days prior; and
- 19.2.1.1.13. A certification by the Contractor of the following:

*The Contractor warrants title to all Work performed as of the date of this payment application. The Contractor further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the District has been informed.*

- 19.2.1.1.14. Contractor shall be subject to the False Claims Act set forth under Government Code section 12650 et seq., for information provided with any Application for Progress Payment.
- 19.2.1.1.15. If the District has requested and if not previously submitted as requested, all remaining certified payroll record ("CPR(s)") for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment.

#### 19.2.1. Prerequisites for Tenant Improvement Payments

19.2.1.1. First Payment Request: The following items, if applicable, must be completed before the District will accept and/or process the Contractor's first payment request:

- 19.2.1.1.1. Schedule of unit prices, if applicable;
- 19.2.1.1.2. Receipt by Architect of all submittals due as of the date of the payment application;
- 19.2.1.1.3. Copies of authorizations and licenses from governing authorities;
- 19.2.1.1.4. Initial progress report;
- 19.2.1.1.5. Surveyor qualifications;
- 19.2.1.1.6. Written acceptance of District's survey of rough grading, if applicable;
- 19.2.1.1.7. List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;

19.2.1.1.8. All bonds and insurance endorsements; and

19.2.1.1.9. Resumes of Contractor's project manager, and if applicable, job site secretary, record documents recorder, and job site superintendent.

19.2.1.2. No Waiver of Criteria. Any payments made to Contractor where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Contractor may pay its Subcontractors and suppliers. Contractor agrees that failure to submit such items may constitute a breach of contract by Contractor and may subject Contractor to termination.

### **19.3. District's Approval of Application for Tenant Improvement Payment**

19.3.1. Upon receipt of an Application for Tenant Improvement Payment, The District shall act in accordance with both of the following:

19.3.1.1. Each Application for Tenant Improvement Payment shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the Application for Tenant Improvement Payment is a proper Application for Tenant Improvement Payment.

19.3.1.2. Any Application for Tenant Improvement Payment determined not to be a proper Application for Tenant Improvement Payment suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. An Application for Tenant Improvement Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Tenant Improvement Payment is not proper. The number of days available to the District to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the District exceeds this seven-day return requirement.

19.3.1.3. An Application for Tenant Improvement Payment shall be considered properly executed if funds are available for each payment request from a Schedule of Value line item in the Application for Tenant Improvement Payment, and payment is not delayed due to an audit inquiry by a financial officer or auditor of the District, the County, or the State.

19.3.1.3.1. An Application for Tenant Improvement Payment shall be considered improperly executed and returned, if payment is requested from a Schedule of Value line item that exceeds the percentage of work performed in that pay period for that scope of work, or that does not have funds available or that have been exhausted for that Schedule of Value line item, or if an Application for Tenant Improvement Payment includes line items not shown in the Schedule of Values of **Exhibit G**.

19.3.2. The District's review of the Contractor's Application for Tenant Improvement Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Tenant Improvement Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

19.3.2.1. Observation of the Work for general conformance with the Contract Documents,

19.3.2.2. Results of subsequent tests and inspections,

**19.3.2.3.** Minor deviations from the Contract Documents correctable prior to Project Completion, and

**19.3.2.4.** Specific qualifications expressed by the Architect.

**19.3.3.** District's approval of the certified Application for Tenant Improvement Payment shall be based on Contractor complying with all requirements for a fully complete and valid certified Application for Tenant Improvement Payment.

**19.3.4.** Payments to Contractor

Within thirty (30) days after District approval of the Application for Tenant Improvement Payment, Contractor shall be paid a sum equal to ninety percent (90%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld as allowable herein. Upon District's approval of the Application for Tenant Improvement Payment, the District shall withhold a sum equal to ten percent (10%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) which shall comprise the Lease Payments to made by the District to Contractor under the Facilities Lease ("Lease Payment"). The value of the Work completed shall be Contractor's best estimate. No inaccuracy or error in said estimate shall operate to release the Contractor, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.

**19.3.5.** No Waiver

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of this Contract. The District may correct or require correction of any error subsequent to any payment.

**19.3.6.** Warranty of Title

**19.3.6.1.** If a lien or a claim based on a stop payment notice of any nature should at any time be filed against the Work or any District property, by any entity that has supplied material or services at the request of the Contractor, Contractor and Contractor's Surety shall promptly, on demand by District and at Contractor's and Surety's own expense, take any and all action necessary to cause any such lien or a claim based on a stop payment notice to be released or discharged immediately therefrom.

**19.3.6.2.** If the Contractor fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or a claim based on a stop payment notice has been so released, discharged, or secured, the District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Contractor under the Contract.

**19.3.7.** Decisions to Withhold Payment

**19.3.7.1.** Reasons to Withhold Payment

The District may withhold payment to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. The District

may withhold payment to such extent as may be necessary to protect the District from loss because of, but not limited to:

- 19.3.7.1.1. Defective Work not remedied within **FORTY-EIGHT (48)** hours of written notice to Contractor;
- 19.3.7.1.2. Stop payment notices or other liens served upon the District as a result of the Contract;
- 19.3.7.1.3. Liquidated damages assessed against the Contractor
- 19.3.7.1.4. The cost of Project Completion if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Guaranteed Project Cost or by the Contract Time;
- 19.3.7.1.5. Damage to the District or other contractor(s);
- 19.3.7.1.6. Unsatisfactory prosecution of the Work by the Contractor:
- 19.3.7.1.7. Failure to store and properly secure materials;
- 19.3.7.1.8. Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;
- 19.3.7.1.9. Failure of the Contractor to submit As-Built Drawings;
- 19.3.7.1.10. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- 19.3.7.1.11. Unauthorized deviations from the Contract Documents;
- 19.3.7.1.12. Failure of the Contractor to prosecute the Work in a timely manner in compliance with the milestones within the Construction Schedule, established progress schedules, and/or completion dates;
- 19.3.6.2.1. If requested by the District, the failure to provide certified payroll records acceptable to the District for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment;
- 19.3.6.2.2. Failure to properly pay prevailing wages as defined in Labor Code sections 1720 et seq. and/or failure to comply with any other Labor Code requirements;
- 19.3.7.1.13. Failure to properly maintain or clean up the Site;
- 19.3.7.1.14. Payments to indemnify, defend, or hold harmless the District;
- 19.3.7.1.15. Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;

19.3.7.1.16. Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;

19.3.7.1.17. Contractor is otherwise in breach, default, or in substantial violation of any provision of this Contract.

19.3.7.1.18. Extra services for Architect.

19.3.7.1.19. Extra services for the Inspector including but not limited to overtime tests and inspection or reinspection required due to Contractor's failed tests or installation of unapproved or defective materials and Contractor's requests for inspection and Contractor's failure to attend the inspection.

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

19.3.7.2. Reallocation of Withheld Amounts. District may, in its reasonable discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, District shall make such payments on behalf of Contractor only after providing fourteen (14) days prior written notice to Contractor, requesting the Contractor provide information in response to same. District shall consider all information provided by Contractor in exercising its discretion to pay any such claim or obligation. These payments may be made without prior judicial determination of claim or obligation. District will render Contractor an accounting of funds disbursed on behalf of Contractor.

19.3.7.3. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after **FORTY-EIGHT (48)** hours written notice to the Contractor and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Guaranteed Project Cost by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Guaranteed Project Cost (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

#### 19.3.8. Payment After Cure

When Contractor removes the grounds for declining approval, payment shall be made for amounts withheld because of them. No interest shall be paid on any amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

#### 19.4. Subcontractor Payments

##### 19.4.7. Payments to Subcontractors

No later than seven (7) days after receipt of each Tenant Improvement Payment, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

##### 19.4.8. No Obligation of District for Subcontractor Payment

The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

**19.4.9. Joint Checks**

Provided Contractor is in breach of its payment obligations to its subcontractors and after 14 days written notice, District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District.

**20. COMPLETION OF THE WORK**

**20.1. Completion**

**20.1.1.** The Project may only be accepted by action of the governing board of the District.

**20.1.2.** District will accept the Project and may have a Notice of Completion recorded when Project Completion has been achieved in accordance with the Contract Documents and to the satisfaction of District.

**20.1.3.** District, at its sole option, may accept the Project and have a Notice of Completion recorded when Project Completion has been completed to the satisfaction of District, except for minor corrective items, as distinguished from incomplete items. If Contractor fails to complete all minor corrective items within thirty-five (35) days after the date of the District's acceptance of the Project, District shall withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed.

**20.1.4.** At the end of the thirty-five (35) day period, if there are any items remaining to be corrected, District may elect to proceed as provided herein related to adjustments to Guaranteed Project Cost, and/or District's right to perform the Work of the Contractor.

**20.2. Closeout Procedures**

**20.2.1.** In addition to the closeout procedures indicated herein, Contractor shall comply with all the closeout requirements, procedures, and actions as indicated in all Contract Documents.

**20.2.2. Punch List**

The Contractor shall notify the Architect when Contractor considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected ("Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**20.2.3. Closeout Requirements**

**20.2.3.1. Utility Connections**

Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

**20.2.3.2. As-Built Drawings**

- 20.2.3.2.1.** Contractor shall provide exact "as-built" of the Work upon Project Completion as indicated in the Contract Documents ("As-Built Drawings").
- 20.2.3.2.2.** Contractor is liable and responsible for any and all inaccuracies in As-Built Drawings, even if inaccuracies become evident at a future date.
- 20.2.3.2.3.** Upon Project Completion and as a condition precedent to approval of final payment, Contractor shall obtain the Inspector's approval of the corrected prints and provide to the District the As-Built Drawings and information on disk. When completed, Contractor shall deliver corrected sepia's and diskette/CD/other data storage device acceptable to District with AutoCAD file to the District.

**20.2.3.3. Maintenance Manuals:** Contractor shall prepare all operation and maintenance manuals and date as indicated in the Contract Documents.

**20.2.3.4. Closeout Documentation:** Contractor shall provide all Closeout Documentation, which shall include the following, without limitation:

- 20.2.3.4.1.** A full set of As-Built's, as further indicated herein
- 20.2.3.4.2.** All Maintenance Manuals, operations manual(s), and related information, as further indicated herein
- 20.2.3.4.3.** All Warranties, as further indicated herein
- 20.2.3.4.4.** Verified report(s) for all scope(s) of work (DSA 6-C, Rev 03/22/13, or more recent revision if available).

**20.3. Final Inspection**

**20.3.1.** Contractor shall comply with Punch List procedures as provided herein and in all the Contract Documents, and maintain the presence of its District-approved project superintendent and project manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Contractor demobilize its forces prior to completion of the Punch List. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Contractor and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

**20.3.2.** Upon Contractor's completion of all items on the Punch List and any other uncompleted portions of the Work, the Contractor shall notify the District and Architect, who shall again inspect such Work. If the Architect finds the Work complete and acceptable under the Contract Documents, the Architect will notify Contractor, who shall then jointly submit to the Architect and the District its final Application for Payment.

**20.3.3. Final Inspection Requirements**

**20.3.3.1.** Before calling for final inspection, Contractor shall determine that the following have been performed:

- 20.3.3.1.1.** The Work has been completed.



- 20.3.3.1.2. All life safety items are completed and in working order.
- 20.3.3.1.3. Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.
- 20.3.3.1.4. Electrical circuits scheduled in panels and disconnect switches labeled.
- 20.3.3.1.5. Painting and special finishes complete.
- 20.3.3.1.6. Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.
- 20.3.3.1.7. Tops and bottoms of doors sealed.
- 20.3.3.1.8. Floors waxed and polished as specified.
- 20.3.3.1.9. Broken glass replaced and glass cleaned.
- 20.3.3.1.10. Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site.
- 20.3.3.1.11. Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.
- 20.3.3.1.12. Finished and decorative work shall have marks, dirt, and superfluous labels removed.
- 20.3.3.1.13. Final cleanup, as provided herein.

#### **20.4. Costs of Multiple Inspections**

More than two (2) requests of the District to make a final inspection shall be considered an additional service of District, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Contractor and if funds are available, withheld from remaining payments.

#### **20.5. Beneficial Occupancy or Use Prior to Project Completion**

##### **20.5.1. District's Rights to Beneficial Occupancy or Use**

The District may, at its sole discretion, have Beneficial Occupancy or use of any completed or partially completed portion of the Project at any stage. Neither the District's Final Acceptance, the making of Final Payment, nor the Beneficial Occupancy or use of the Project, in whole or in part, by District shall constitute acceptance of the Project 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. The District and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Disputes and Claims provisions herein, with the added provision that during the dispute process, the District shall have the right to Beneficial Occupancy or use any portion of the Project that it needs or desires to use.

##### **20.5.2. Inspection Prior to Beneficial Occupancy or Use**

Immediately prior to partial Beneficial Occupancy or use of the Project, the District, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Work.

**20.5.3. No Waiver**

Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Project shall not in of itself constitute or acceptance of the Project not complying with the requirements of the Contract Documents.

**21. FINAL PAYMENT**

**21.1. Final Payment**

Upon receipt and approval of a valid and final Application for Tenant Improvement Payment, the Architect will issue a final Certificate of Tenant Improvement Payment. The District shall thereupon jointly inspect the Work and either accept the Project as complete or notify the Architect and the Contractor in writing of reasons why the Project is not complete. Upon acceptance of the Project (absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the District shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of final Tenant Improvement Payment from the District, pay the amount due Subcontractors. The amount of the final Tenant Improvement Payment shall be equal to the remaining value of the work performed less the total amount to be paid as Lease Payments pursuant to Exhibit C .

**21.2. Prerequisites for Final Tenant Improvement Payment** The following conditions must be fulfilled prior to Final Tenant Improvement Payment:

**21.2.1.** A full and final waiver or release of all Stop payment notices in connection with the Work shall be submitted by Contractor, including a release of Stop payment notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop payment notice rights.

**21.2.2.** A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 8136 from each subcontractor of any tier and supplier to be paid from the current progress payment;

**21.2.3.** A duly completed and executed unconditional waiver and release upon final payment compliant with Civil Code section 8138 from each subcontractor of any tier and supplier that was paid from the previous progress payment; and

**21.2.4.** The Contractor shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.

**21.2.5.** Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

**21.2.6.** Contractor must have completed all requirements set forth under "Closeout Procedures," Including, without limitation, an approved set of complete As-Built Drawings.

**21.2.7.** Architect shall have issued its written approval that final payment can be made.

21.2.8. The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents.

21.2.9. The Contractor shall have completed final clean up as provided herein.

21.2.10. After approval by the District of the Architect's Certificate of Payment,

21.2.11. After the satisfaction of the conditions set forth herein, and

21.2.12. After thirty-five (35) days following Project Completion.

21.2.13. No interest shall be paid on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents.

## **22. UNCOVERING OF WORK**

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the District, the Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Guaranteed Project Cost or Contract Time.

## **23. NONCONFORMING WORK AND CORRECTION OF WORK**

### **23.1. Nonconforming Work**

23.1.1. Contractor shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the District or other contractors caused thereby.

23.1.2. If Contractor does not remove or reasonably begin and diligently remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed five (5) calendar days, District may remove it and may store any material at Contractor's expense. If Contractor does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Contractor.

### **23.2. Correction of Work**

#### **23.2.1. Correction of Rejected Work**

Pursuant to the notice provisions herein, the Contractor shall promptly correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Project Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

#### **23.2.2. One-Year Warranty Corrections**

If, within one (1) year after the date of Project Completion or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the District to do so. This period of one (1) year shall be extended with respect to portions of the Work first performed after Project Completion by the period of time between Project Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract and termination of the Contract. The District shall give such notice promptly after discovery of the condition.

### **23.3. District's Right to Perform Work**

**23.3.1.** If the Contractor should neglect to prosecute or reasonably begin and diligently prosecute the Work properly or fail to perform any provisions of this contract, the District, after **five (5) calendar days** written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

**23.3.2.** If it is found at any time, before or after Project Completion, that Contractor has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, District may require at its option:

**23.3.2.1.** That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Contractor at no additional cost to the District;

**23.3.2.2.** That the District deduct from any amount due Contractor the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

**23.3.2.3.** That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Contractor's nonconforming Work, in which case the District shall either issue a deductive Change Order or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Contractor.

## **24. TERMINATION AND SUSPENSION AND SCOPE REDUCTION**

The Parties' rights to terminate the Project are as indicated in the Facilities Lease. In the event of a termination of the Facilities Lease and notwithstanding any other provision in the Contract Documents, the Surety shall remain liable to all obligees under the Payment Bond and to the District under the Performance Bond for any claim related to the Project.

### **24.1. Emergency Termination of Public Contracts Act of 1949**

**24.1.1.** In addition to the Parties' right to termination under the Facilities Lease, this Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

**24.1.1.1.** Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or

a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

**24.1.1.2.** Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

**24.1.1.3.** Compensation to the Contractor shall be determined on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price shall control. The District, at its sole discretion, may adopt the Guaranteed Project Cost as the reasonable value of the work done or any portion thereof.

**24.2. Suspension of Work.**

**24.2.1.** In the event that sufficient funds are not appropriated to complete the Project or the District determines that sufficient funds are not available to complete the Project, District may terminate or suspend the completion of the Project at any time by giving written notice to the Contractor.

**24.2.2.** In the event that the District exercises this option, the District shall pay for any and all Work and materials completed or delivered onto the Site for which value is received, and the value of any and all Work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials paid for shall include a factor of six percent (6%) for the Contractor's overhead and profit and there shall be no other costs or expenses paid to Contractor. All work, materials and orders paid for pursuant to this provision shall become the property of the District.

**24.2.3.** District may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as District may determine. When the District resumes the Project, the parties will attempt to negotiate an adjustment in the GPC for increases or decreases in the cost of performance of the Project caused by suspense, delay or interruption. If the parties cannot agree on an adjusted GPC, the District may terminate the leases as permitted herein.

**24.3. Scope Reduction.**

In cases of suspension, partial or complete termination, or at the discretion of the District, the District reserves the right to unilaterally approve a deductive Change Order to reduce scope of work or perform work with other forces or its own forces.

**25. DISPUTES AND CLAIMS**

**25.1. Performance during Dispute and Claim Resolution Process.** The Contractor shall diligently proceed with Work on the Project at the same time that Disputes and Claims are addressed under this Article. It is the intent of District to resolve Disputes with the Contractor as close to the events giving rise to the Disputes as possible, and to avoid stale or late Claims and the late documenting of Claims. Contractor failure to diligently proceed in accordance with the District's instructions or the Contract terms will be considered a material breach of this Agreement and a waiver of Contractor's rights under this Agreement.

**25.2. Waiver.** If Contractor fails to timely submit any written notices required under the terms of the Contract or in this Disputes and Claims section, Contractor waives and releases its rights regarding further review of its Dispute or Claim, unless Contractor and District mutually agree in writing to other time limits.

**25.3. Intention.** The Dispute and Claims Resolution Process required herein are intended to provide a concise mechanism for resolving Disputes and Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Disputes and Claims that are not contemporaneously resolved.

**25.4. Exclusive Remedy.** Compliance with the notice provisions of the Contract as well as the claim submission procedures described in this Disputes and Claims section is an express condition precedent to Contractor's right to commence litigation, file a claim under the California Government Code, or commence any other legal action. The Contractor cannot bring assert or bring any Claim in any Government Code claim or subsequent legal action until that Claim has gone through the Dispute and Claims Resolution Process herein. The District hereby exercises the power conferred upon it by Government Code Sections 930.2 and 930.4 to augment claims presentation procedures and create its own Dispute and Claims Resolution Process as an exclusive remedy as indicated in this Disputes and Claims section.

**25.5. Other Provisions.** If portions of the Contract, other than this Disputes and Claims section establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Disputes and Claims section shall control the resolution of all Disputes and Claims.

**25.6. Subcontractors.** Contractor is responsible for providing this Disputes and Claims section 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 the Dispute and Claims resolution process in this Disputes and Claims section. No Claim submitted by any party that fails to follow the provisions of this Disputes and Claims section will be considered. Contractor shall 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 Disputes and Claims section to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor.

**25.7. Dispute and Claim Resolution Process**

**25.7.1. Dispute:** A Dispute is a written demand by Contractor or by Subcontractor(s) or others who make a demand or request by and through Contractor during performance of the Work for an adjustment of the Contract Time, GPC, interpretation of the Contract Documents, or other relief with respect to the Contract Documents for which Contract has previously provided written notice to the District pursuant to the terms of the Contract which remain unresolved. A PCO may be a Dispute, but the Parties agree that a PCO shall only be a Dispute if:

**25.7.1.1.** The District states in writing that it disagrees with the terms of a PCO and directs the Contractor to utilize the Dispute Resolution Process, or

**25.7.1.2.** The District rejects in whole or in part a PCO and the Contractor states in writing that it is utilizing the Dispute Resolution Process for the portion of the PCO that the District rejected.

**25.7.2. Claim:** A Claim is a Dispute that remains unresolved after conclusion of the Dispute Resolution Process identified below. Individual unresolved Disputes may be aggregated into one or more Claim(s).

**25.7.3. Dispute Resolution Process (Not for Claims)**

**25.7.3.1. Identifying, Presenting and Documenting a Dispute**

**25.7.3.1.1.** Every Dispute shall be stated with specificity in writing and signed by Contractor under penalty of perjury and presented to the District within ten (10) calendar days from the date Contractor discovers or reasonably should discover, that an act, error or omission of District, its agents or employees, or action, condition or other situation has occurred that may entitle Contractor to an adjustment of the GPC and/or Contract Time. Contractor shall provide this writing even if Contractor has not yet been damaged, delayed, or incurred extra cost when Contractor discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Dispute. The writing shall:

**25.7.3.1.1.1.** Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Dispute;

**25.7.3.1.1.2.** Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the GPC, milestones and/or Contract Time adjustments; and

**25.7.3.1.1.3.** Identify in detail line-item costs if the Dispute seeks money.

**25.7.3.1.1.4.** If the Dispute involves extra work, a detailed cost breakdown of the amounts the Contractor is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Dispute is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within seven (7) days of the date the cost reflected in the record is incurred. At the request of District, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).

**25.7.3.1.1.5.** If the Dispute involves an error or omission in the Contract Documents:

**25.7.3.1.1.5.1.** An affirmative representation under penalty of perjury by Contractor and any affected Subcontractors and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and

**25.7.3.1.1.5.2.** A detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Contractor, its Subcontractors and suppliers, prior to submitting a proposal for the Work.

**25.7.3.1.1.6.** Contractor shall not be entitled to compensation for escalation of materials costs unless Contractor demonstrates to the satisfaction of the District that such cost escalation is the result of unusual, unforeseeable market conditions, not the fault of the Contractor, and were not reasonably foreseeable at the time of the award of the Contract. Contractor shall provide evidence to District of the costs included in the Contract for those materials and that those costs were reasonable at the time and that Contractor timely ordered the materials at issue.

**25.7.3.1.2.** The writing shall be accompanied by all documents substantiating Contractor's position regarding the Dispute. A Dispute that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.

**25.7.3.1.3.** Contractor acknowledges that its failure, for any reason, to give written notice (with supporting documentation to permit the District's review and evaluation) within the time frame required by the provisions in this Disputes and Claims section, or its actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which the Contractor believes there should be an adjustment of the GPC or Contract Time shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Contract Time or the GPC on account of any such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. Contractor further acknowledged that strict compliance with the requirements of the provisions in this Disputes and Claims section is an express condition precedent to Contractor's right to arbitrate or litigate a claim. Contractor specifically agrees to assert no demands or claims in arbitration or litigation unless there has been strict compliance with the provisions in this Disputes and Claims section.

**25.7.3.1.4. Architect's and/or Construction Manager's ("AE/CM") Initial Decision.** The District's AE/CM shall issue a written decision regarding the Dispute to the Contractor within ten (10) calendar days of receipt of the written Dispute from the Contractor.

**25.7.3.2. Meet and Confer**

**25.7.3.2.1. Where There Is No Agreement:** If there is no agreement between Contractor and the AE/CM on a Dispute, then within ten (10) calendar days of the date of the District's written decision in response to a Dispute or PCO, Contractor shall give written notice of its demand for a meet and confer meeting with District staff. A meet and confer meeting with District staff shall be a condition precedent to Contractor seeking any further relief, including a demand for review as indicated below, in connection with the District's rejection.

**25.7.3.2.2. Where There Is Partial Agreement:** If Contractor and the AE/CM partially agree on a Dispute but do not reach complete agreement, then the AE/CM shall issue a written decision or prepare a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, Contractor shall give written notice of its demand for a meet and confer meeting with District staff. A meet and confer meeting with District staff shall be a condition precedent to Contractor seeking any further relief, including a demand for review as indicated below, in connection with the District's rejection.

**25.7.3.2.3.** District and Contractor shall schedule the meet and confer meeting as soon as reasonably possible after Contractor's written notice of its demand for a meet and confer meeting.

**25.7.3.3. Contractor Demand for Review of Dispute**

**25.7.3.3.1.** Contractor shall submit a written demand for review to the District with copy to the AE/CM, within ten (10) calendar days of the meet and confer meeting. The written demand for review shall include copies of all documentation the Contractor intends to rely upon in substantiating Contractor position regarding the Dispute, including any supplementary documentation the Contractor deems appropriate for the District's consideration.

**25.7.3.3.1.1. District's Written Decision.** The District will review the Dispute and issue a written decision to Contractor within thirty (30) calendar days from the date the demand for review and supporting documentation are received. The District have the option to meet with Contractor, or with Contractor and any other party, before issuing a decision.



25.7.3.3.1.2. If no decision is issued within thirty (30) days after the demand for review, the District will be deemed to have rejected Contractor's Dispute in its entirety, and Contractor shall proceed with the Claim Resolution Process below.

25.7.3.3.1.3. If the District's decision completely resolves the Dispute, the District will prepare and process a Change Order, if applicable, or proceed accordingly.

25.7.3.3.1.4. If the District rejects the Contractor's Dispute in whole or in part or does not issue a timely written response, and if Contractor ever intends to seek relief regarding the unresolved issues of the Dispute, then Contractor shall proceed with the Claim Resolution Process below.

25.7.3.3.1.5. Contractor's costs incurred in seeking relief under this Disputes and Claims section are not recoverable from District.

**25.7.4. Claim Resolution Process.**

25.7.4.1. If Contractor's Dispute has not been resolved during the Dispute Resolution Process, the Contractor shall submit within thirty (30) days of the District's written decision, a Claim with the required documentation set forth below for District's consideration.

25.7.4.2. Contractor shall furnish three (3) certified copies of the required Claim documentation. The Claim documentation shall be complete when furnished. The evaluation of Contractor's Claim will be based on District records and the Claim document furnished by Contractor.

25.7.4.3. Contractor's Claim documentation shall conform to generally accepted accounting principles and shall be in the following format:

25.7.4.3.1. General Introduction

25.7.4.3.2. General Background Discussion

25.7.4.3.3. Index of Issues (listed numerically)

25.7.4.3.4. For each issue, provide the following information and begin each issue on a new page:

25.7.4.3.4.1. Background

25.7.4.3.4.2. Chronology

25.7.4.3.4.3. Contractor's position including all reason(s) for District's potential liability

25.7.4.3.4.4. Supporting documentation of merit or entitlement

25.7.4.3.4.5. Supporting documentation of damages

25.7.4.3.5. All critical path method schedules, both as-planned, monthly updates, schedule revisions, and as-build along with the computer disks of all schedules related to the Claim.

25.7.4.3.6. Productivity exhibits (if appropriate)

25.7.4.3.7. Summary of Damages for each issue

**25.7.4.4.** Supporting documentation of merit or entitlement for each issue shall be cited by reference, photocopies, or explanation. Supporting documentation may include, but shall not be limited to the Contract Documents; correspondence; conference notes; shop drawings and submittals; shop drawing logs; survey books; inspection reports; delivery schedules; test reports; daily reports; subcontracts; fragmentary CPM schedules or time impact analyses; photographs; technical reports; requests for information; field instructions; and all other related records necessary to support the Contractor's Claim.

**25.7.4.5.** Supporting documentation of damages for each issue shall be cited, photocopied, or explained. Supporting documentation may include, but shall not be limited to, any or all documents related to the preparation and submission of the proposal; certified, detailed labor records, including labor distribution reports; material and equipment procurement records; construction equipment ownership costs records or rental records; job cost reports; Subcontractor or vendor files and cost records; service cost records; purchase orders; invoices; Project as-planned and as-built cost records; general ledger records; variance reports; accounting adjustment records; and any other accounting materials necessary to support the Contractor's Claim.

**25.7.4.6.** Contractor shall include in its Claim documents all issue items and information that Contractor contends are part of its Claim. Issues not included in the Claim documents shall not be considered.

**25.7.4.7.** Each copy of the Claim documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents.

**25.7.4.8.** The District may withhold from a progress payment and/or the final payment an amount not to exceed 150 percent of the disputed amount. The District may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy.

**25.7.4.9. District's Written Decision.** The District will render a written decision to the Contractor relative to the Claim. The District's written decision shall be final and binding on the party(ies), unless Contractor requests mediation pursuant to this subsection.

**25.7.4.10. Mediation.** Within thirty (30) days after the District renders its written decision, the Contractor may request that the parties submit the Claim to mediation. Absent a request for mediation, the District's written decision is final and binding on the parties.

**25.7.4.11. Litigation.** If, after a mediation as indicated above, the parties have not resolved the Claim, the receiving party's decision made pursuant to mediation will be conclusive and binding regarding the Dispute unless the submitting party commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the conclusion of such mediation or one (1) year following the accrual of the cause of action, whichever is later.

**25.7.5.** The District shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to the District by the Contractor or any Subcontractor under the standards set forth in Government Code section 12650 *et seq.* Any Contractor or Subcontractor who submits a false claim shall be liable to the District for three times the amount of damages that the District sustains because of the false claim. A Contractor or Subcontractor who submits a false claim shall also be liable to the District for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$11,000 for each false claim.