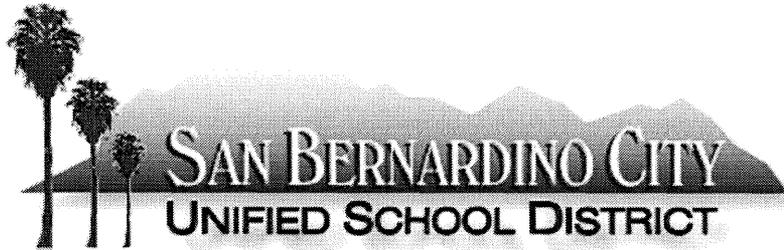


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San Bernardino City Unified School District's "Technology Infrastructure Bid Number 32-05"



**SAN BERNARDINO CITY UNIFIED
SCHOOL DISTRICT**

**777 North F Street
San Bernardino, CA 92410**

TECHNOLOGY INFRASTRUCTURE BID NUMBER 32-05

First Publication: December 2, 2005

Second Publication: December 9, 2005

Bidders

Conference: December 15, 2005 9:00 AM

Bid Submittal and

Opening Date: January 6, 2006 10:00 AM Sharp!

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
BIDDERS PACKAGE

Technology Infrastructure Bid Number – 32-05

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NOTICE TO CONTRACTORS CALLING FOR BIDS

NOTICE IS HEREBY GIVEN that the San Bernardino City Unified School District ("District") of San Bernardino County, California, acting by and through its Governing Board ("Board"), will receive up to, but not later than, **10:00 AM on January 6, 2006**, sealed bids for the award of a contract for:

Technology Infrastructure Bid No. 32-05

All bids shall be made on the bid form furnished by the District, unless otherwise indicated in the bid documents. Vendors who are desirous of securing a copy of the bid including, specifications and proposal forms for the purpose of preparing and submitting a proposal for this work may do so subject to certain conditions, from the Purchasing Department, 777 North F Street, San Bernardino, Ca 92410, or website. A copy of the bid will be posted on the web at:

<http://www.sbcusd.k12.ca.us/new/index.cfm?function=deppage&De=46&Cat=370>

Bids will be received at the Purchasing Department, Bid Box, San Bernardino City Unified School District, 777 N. F Street, San Bernardino, CA 92410 and shall be publicly opened at the above stated time and place. All bids must be clearly marked on the outside of the envelope with the bidder's company name and the bid number. It is the bidder's responsibility to ensure that their bid is received at the location and by the time of opening. No bidder may withdraw their bid for a period of 60 days after the date set for the opening of bids.

Each bid must conform with and be responsive to the contract documents, copies of which are on file and may be obtained from Lenore McCall, Buyer, San Bernardino City Unified School District, 777 North F Street, San Bernardino, CA 92410, (909) 381-1339. Each bid shall be accompanied by (1) the security referred to in the contract documents; (2) the list of proposed subcontractors; (3) the Non-collusion Affidavit; and, (4) a list of three similar jobs that the contractor has completed in the last three years.

A bidder's conference and job-walk will be conducted on **December 15, 2005 at 9:00 AM**, beginning at the District Office address noted above. Contractors wishing to submit a bid to the District for this project are required to attend. Arrive early! Parking may not be readily available!

Bidder shall possess at the time this contract is awarded a C-10 and C-7 License, along with any certifications required by District to perform work.

The District has obtained from the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work for the San Bernardino County area for each trade, craft, classification, or type of work needed to execute the contract. Holiday rates shall be paid as specified in the collective bargaining agreement applicable to each particular trade, craft, classification, or type of work employed on the project.

Copies of schedules of rates so determined are available on the Internet (http://www.dir.ca.gov/DIR/S&R/statistics_research.html) and are on file and available at the District Office address noted above. In accordance with Section 1773.2 of the California Labor Code, the Contractor shall post a copy of the determination of prevailing rate of wages at each jobsite. The schedule of per diem wages is based upon a working day of eight (8) hours. The rate for holiday and overtime work shall be at time plus one-half. The Contractor and any subcontractor(s) shall pay not less than the specified prevailing rates of wages to all workers employed by them in the execution of the contract. In accordance with provisions of Public Contract Code Section 22300, substitution of eligible and equivalent securities for any monies withheld to ensure performance under this contract will be permitted at the request and expense of the Contractor.

The District operates a Labor Compliance Program (LCP) pursuant to California Labor Code Sections 1771.5 and 1771.7. The District's Labor Compliance Program requires, among other things, that each Contractor and Subcontractor comply with prevailing wage as well as other applicable state laws. It also provides for specific penalties for failure to comply with those laws and requirements. Please see a copy of the District's Labor Compliance Program located at the District office for further information.

Copies of this bid are available in the District Purchasing Office or on the Internet at:

<http://www.sbcusd.k12.ca.us/new/index.cfm?function=deppage&De=46&Cat=370>

No bidder may withdraw their bid for a period of ninety (90) days after the date set for the opening of bids. **The District reserves the right to reject any and all bids or to waive irregularities in any bid.**

This bid is subject to the provisions of Education Code Section 45125.1. Contractor's employees are required to submit fingerprints to the Department of Justice where an employee may come into contact with students at any school site.

Local and minority bidders are specifically encouraged. **This is a DVBE bid. All requirement of the Disabled Veteran Business Enterprise must be met including but not limited to bidder proof of publication seeking active participation of Disable Veteran Business Enterprise. San Bernardino City Unified School District is an "Equal Opportunity" employer.**

The District Office will be closed December 23, 2005 through January 2, 2006 and unavailable to answer e-mails, questions or respond/write addendums, during that time so please plan accordingly. All questions regarding this bid must be submitted prior to 9:00 a.m., January 3, 2006.

Ad Dates: December 2 & 9, 2005

Bidders Information
Technology Infrastructure Bid 32-05

1. Specifications will be available from the Purchasing Department, San Bernardino City Unified School District. Qualified, licensed contractors may pick up three (3) sets at no charge. Qualified subcontractors may pick up one (1) set at no charge.

Additional sets are priced at \$100 payable by cash or certified funds made payable to the San Bernardino City Unified School District. These funds are not a deposit and will not be returned.

2. The only legal publication used by the San Bernardino City Unified School District is the San Bernardino County Sun Newspaper. We are not responsible for the accuracy of any information that we did not specifically authorize. If you have questions about what was printed in any publication other than those authorized by the San Bernardino City Unified School District, please contact those publications directly. Bid documents will also be available for download at:

<http://www.sbcusd.k12.ca.us/new/index.cfm?function=depage&De=46&Cat=370>

3. All requests for clarification must be made in writing to Lenore McCall, Buyer, lenore.mccall@sbcsd.k12.ca.us, at the District Purchasing Office.

All requests for pre-bid clarification must be submitted no later than **January 3, 2006 at 9:00 a.m.**

4. The following items must be complete and included with your bid package:

- a) Pages 10, 11 (a – z, as applicable), 13, 14, 15, 16, 17, 22, and 25 of the bid documents.
- b) Pages 34, 47, and 91 of the General Conditions section of the bid document, initialed or signed by a responsible member of the bidding firm.
- c) Bid bond or other acceptable form of security in the amount of at least 10% of the Target School and Administrative sites.
- d) Proof of Publication seeking active participation of Disabled Veteran Business Enterprises.

5. All issued addenda must be acknowledged on Page 10 of the “Bid Boilerplate”. Failure to list all addenda will be grounds for rejection of your bid. If in doubt, you may call the Project Architect’s office to check the number of issued addenda one day prior to the bid submittal time.

6. This is as prevailing wage job. Certified payrolls will be required and will be checked by outside labor representatives. Violations of the labor code will be reported to California Department of Labor and other associated state and federal governmental agencies. The District has a Labor Compliance Program.

7. For purposes of the bid submittal, the clock in the Purchasing Department of the San Bernardino City Unified School District will be considered the official time.

8. Questions regarding the bid documents may be addressed in writing to Lenore McCall, Buyer, Purchasing Department, San Bernardino City Unified School District, 777 North F Street, San Bernardino, CA, 92410. Phone number: (909) 381-1339.

BID NO. – 32-05
OPENING DATE – January 6, 2006
TIME – 10:00 AM

**NOTICE OF PRE-BID
CONFERENCE AND JOB-WALK**

The San Bernardino City Unified School District has scheduled a Pre-Bid Conference and Job-Walk to answer any questions and explain details regarding the bidding requirements, specifications, and scope of the work. This conference and job-walk will give bidding contractors the opportunity to investigate and fully acquaint themselves with the conditions relating to the job so that they may fully understand the facilities, difficulties, restrictions, and any State of California requirements attending the execution of the work. It is the responsibility of all bidders to familiarize themselves with the samples sites to best understand the needs of the District. Bidders will not be allowed to walk District sites at any other time.

Any contractor interested in bidding should attend this job-walk.

Location: District Administration Office
777 North F Street
San Bernardino, CA 92410
Community Room

Date: December 15, 2005
Time: 9:00 AM

Please note that parking at this location is limited, plan to arrive early.

Questions may be directed to Lenore McCall, Buyer, Purchasing Department, (909) 381-1339.
lenore.mccall@sbcusd.k12.ca.us

BID OVERVIEW

“The contract period of this work may begin on or about July 1, 2006 and must be completed within the mutually agreed time for the site specific Work after the start of work, contingent upon successful application of various funding sources. The first year of ERATE work shall be completed no later than 6/30/2007, unless the District agrees upon a different date in writing. The District wishes to award a five (5) year contract to the successful bidder with the District’s option to terminate annually without penalty or cost to the District. Purchase Orders will be issued on an as needed basis throughout the term of the contract. It is imperative that no disruption to the basic school program occur. Refer to the General Conditions, Supplementary General Conditions, and other documents provided to the Contractor for additional information on the time for completion, and phasing schedules for these projects.”

Please note the Liquidated Damages provisions of this bid document.

Thank You for your interest!

Lenore McCall
Buyer, Purchasing Department

BID AWARD CONSIDERATIONS

Pursuant to Section 20103.8 of the California Public Contracts Code, the following method, as indicated by a check mark in the box associated with the statement, shall be used to determine the order of bidders, from lowest to highest. Please note that this method is used to calculate the bids and does not address issues of responsiveness or responsibility:

- The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.
- The lowest bid shall be the lowest total of the bid prices on the base contract for the Reference Sites and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid.
- The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items, depending upon available funds as identified in the solicitation.
- The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before ranking of all bidders from lowest to highest has been determined.

When no box is marked, the default value of the bid award shall be the lowest bid price on the base contract only, without consideration of the prices on the additive or deductive items.

INFORMATION FOR BIDDERS

1. Preparation of Bid Form. The District invites bids on the forms attached to be submitted at such time and place as is stated in the Notice to Contractors. All blanks in the bid form must be appropriately completed. All bids shall be submitted in sealed envelopes bearing on the outside the name of the bidder, bidders address, the bid number, and the name of the project for which the bid is submitted. It is the sole responsibility of the bidder to see that their bid is received no later than the time stated. Any bid received after the scheduled closing time for receipt of bids will be returned to the bidder unopened.
2. Bid Security. Each bid shall be accompanied by a certified or cashier's check payable to the District, or a satisfactory bid bond, in favor of the District, executed by the bidder as principal and a legally admitted California surety insurer as surety, in an amount not less than Ten Percent (10%) of the maximum amount of the bid. The check or bid bond shall be given as guarantee that the bidder shall execute the contract if it is awarded to him in conformity with the contract documents and shall provide the surety bond or bonds as specified therein within five (5) days after notification of the award of the contract to the bidder.
3. Signatures. The bid must be signed in the name of the bidder and must bear the signature in longhand of the person or persons representing the bidder and duly authorized to sign the bid on behalf of the bidder.
4. Modifications. Changes in, or additions to, the bid form, recapitulations of the work bid upon, alternative proposals, or any other modification of the bid form which is not specifically called for in the contract documents may result in the District's rejection of the bid as not being responsive to the invitation to bid. No oral or telephonic modifications of any bid submitted will be considered, and a telegraphic modification may be considered only if the postmark evidences that a confirmation of the telegram duly signed by the bidder was placed in the mail prior to the opening of bids.
5. Erasures. The bid submitted must not contain any erasures, interlineations, or other corrections unless such correction is suitably authenticated by affixing in the margin immediately opposite the correction the initials or surnames of the persons signing the bid.
6. Examination of Site and Contract Documents. Each bidder should attend the pre-bid conference and job-walk and should fully acquaint themselves with the conditions relating to the construction and labor so that they may fully understand the facilities, difficulties, access, and restrictions attending the execution of the work under the contract. Bidders should thoroughly examine and be familiar with the contract documents, drawings, and specifications. The failure or omission of any bidder to receive or examine any contract document, form, instrument, addendum, or other document, or to visit the site and acquaint themselves with conditions there existing, shall in nowise relieve any bidder from any obligation with respect to his bid or to the contract. The submission of a bid shall be taken as prima facie evidence of compliance with this section.
7. Withdrawal of Bids. Any bidder may withdraw his bid either personally by written request or by telegraphic request at any time prior to the scheduled closing time for the receipt of bids.
8. Agreements and Bonds. The Agreement form which the successful bidder, as Contractor, will be required to execute and the forms and amounts of surety bonds, which they will be required to furnish at the time of execution of the Agreement, are included in the contract documents and should be carefully examined by the bidder. The required number of executed copies of the Agreement, the Performance Bond, and the Payment (Labor and Material) Bond is as specified on the forms and in the Supplementary General Conditions. Payment and Performance bonds must be executed by a legally admitted California surety insurer.

9. Interpretation of Plans and Documents. If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the contract documents, drawings, specifications, or related materials, or finds a discrepancy in or omissions from the drawings and specifications, they may submit to the District a written request for an interpretation or correction thereof. The firm submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the contract documents will be made only by addendum duly issued and a copy of such addendum will be mailed, faxed, or otherwise delivered to each person in attendance at the pre-bid conference and job-walk. No person is authorized to make any oral interpretation of any provision in the contract documents to any bidder, and no bidder is authorized to rely on any such unauthorized oral interpretation.

10. Bidders Interested in More than One Bid. No person, firm, organization, or corporation shall be allowed to make or file, or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm, organization, or corporation that has submitted a sub-proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders or making a prime proposal.

11. Award of Contract. The District reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding process. The award of the contract, if made by the District, will be to the lowest responsible bidder thereof.

12. Term of Contract. The District wishes to award a five (5) year contract to the successful bidder with the District's option to terminate annually without penalty or cost to the District. Purchase Orders will be issued on an as needed basis throughout the term of the contract.

13. Pricing. Bidder is to submit one single price. Do not insert multiple or identical prices for E-rate and Non—E-rate work and material; separate prices are not acceptable.

14. Alternates. If alternate bids are called for, the contract may be awarded, at the election of the District, to the lowest responsible bidder on the base bid, or on the base bid and any other alternate or combination of alternates, taken in the order of the listing.

15. Evidence of Responsibility. Upon the request of the District, a bidder whose bid is under consideration for the award of the contract shall submit promptly to the District satisfactory evidence showing the bidder's financial resources, their construction experience, and their organization and plant facilities available for the performance of the contract.

16. Listing of Subcontractors. Each bidder shall submit a list of the proposed subcontractors for this project, properly and currently licensed as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code, 4100 et.seq.). Forms for this purpose are furnished with the contract documents.

17. Worker's Compensation. In accordance with the provisions of Section 3700 of the Labor Code, the Contractor shall secure the payment of compensation to his employees. The Contractor shall sign and file with the District the Certificate Regarding Workers Compensation that is furnished with the contract documents prior to the beginning of work.

18. Bid Deposit Return. Deposits of three (3) or more lowest bidders, the number being at the discretion of the District, will be held for up to ninety (90) days or until posting by the successful bidder(s) of the bonds and certificates of insurance required and return of executed copies of the appropriate Agreement form, whichever first occurs, at which time the deposits will be returned.

19. Forfeiture for Failure to Execute Contract. In the event the bidder to whom an award is made fails or refuses to execute the contract within five (5) calendar days from the date of receiving notification that they are the bidder to whom the contract is awarded, the District may declare the bidder's bid deposit or bond forfeited as damages caused by the failure of the bidder to enter into the contract, and may award the work to the next lowest bidder, or may call for new bids.

20. Non-collusion Affidavit. Bidders on all public works contracts are required to submit an Affidavit of Non-collusion with their bid. This form is included with the bid package and must be dated and signed under penalty of perjury.

21. Anti-Discrimination. It is the policy of the District that in connection with all work performed under contracts, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, sexual orientation, or marital status. The Contractor agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act, beginning with Government Code Section 12900, and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by any of their subcontractors employed on the work.

22. License Requirement. Each Bidder shall possess at the time this contract is awarded a Class C-10 and C-7 (Electrical and Low Voltage Electrical) Contractor's License, current and legally issued by the Contractor's State License Board, pursuant to Public Contract Code Section 3300. The successful bidder must maintain the license throughout the duration of this Contract.

23. Funding and Payment Sources. Each Bidder shall be aware that the prime source of funding for the Work is the Universal Service Administrative Company (USAC), administrator of the Federally-funded E-rate program. The San Bernardino City Unified School District will facilitate payments from USAC to the approved, contracted service provider(s) which meet the established criteria of the E-rate program. District facilitation, in conjunction with its E-rate Consultant, shall be limited to correctly identifying completed projects and completing paperwork specifically identified as the responsibility of the Agency in the USAC manual. District payments to the service provider(s) will be subsequent to payment by USAC and will be made only upon completion of the Work. Progress Payments will NOT be allowed for the Work associated with these projects. Lump sum invoices, presented to the USAC and SBCUSD (for their respective share of the billing) may be presented upon acceptance of the Work by District staff. For more information, refer to the USAC website:

<http://www.sl.universalservice.org/vendor/invoicing.asp>

REFER ALSO TO CONTRACTOR DOCUMENTS FORMS ASSOCIATED WITH THIS BID PACKAGE!

BID FORM AND DESIGNATION OF SUBCONTRACTORS

Technology Infrastructure Bid No. 32-05

Closing Date and Time – January 6, 2006, 10:00 AM

TO: San Bernardino City Unified School District, acting by and through its Governing Board, herein called "District":

1. Pursuant to, and in compliance with your Notice to Contractors Calling for Bids and the other documents relating thereto, the undersigned bidder, having familiarized themselves with the terms of the contract, the local conditions affecting the performance of the contract and the cost of the work at the place where the work is to be done, and with the contract documents, drawings, specifications, addendum, and all other related documents, hereby proposes and agrees to perform, within the time stipulated, the contract, including all of its component parts, and everything required to be performed, and to provide and furnish any and all of the labor, materials, tools, expendable equipment and all utility and transportation services necessary to perform the contract and complete in a workmanlike manner all of the work required in connection with Bid Number 32-05 all in strict conformity with the drawings and specifications and other contract documents, including all noted addenda numbers _____, _____, _____, _____ on file in the office of Lenore McCall, Buyer, Purchasing Department, for the District as listed on Page 11, **Attachment A – Bid Form, of this document.**

2. It is understood that the District reserves the right to reject this bid and that this bid shall remain open and not be withdrawn for the period specified in the Notice to Contractors Calling for Bids.

3. The required security in the amount of at least ten percent (10%) of the total bid is hereto attached.

4. It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned after the opening of the bid, and within the time this bid is required to remain open, or at any time thereafter before this bid is withdrawn, the undersigned will execute and deliver to the District a Contract Agreement in the form attached hereto in accordance with the bid as accepted, and that they will also furnish and deliver to the District the Performance Bond (100%) and Payment Bond (100%), as specified, all within five (5) days after receipt of notification of award, and that the work under the contract shall be commenced by the undersigned bidder, if awarded the contract, on the date to be stated in the District's Notice to the Contractor to Proceed, and shall be completed by the Contractor in the time specified in the contract documents.

5. All notices or other correspondence should be addressed to the undersigned at the address stated below.

6. The undersigned holds a license: Class _____, License Number _____ .

7. The names of all persons interested in the foregoing proposal as principals are as follows:

Important Notice: If Bidder is a corporation, state legal name of corporation, also name corporate officers; if a partnership, state names of partners, if individual, state full name.

ATTACHMENT A – BID FORM

Bid Number: Technology Infrastructure Bid No. 32-05
Opening Date: January 6, 2006
Time: 10:00 AM

Reference Site: Pacific High School

Write out the total amount of your bid: _____ Dollars*

Numeric Bid: \$ _____**
Note: Include Fixed Price of \$25,000 for potential mitigation and repair

Reference Site: Arrowview Middle School

Write out the total amount of your bid: _____ Dollars*

Numeric Bid: \$ _____**
Note: Include Fixed Price of \$25,000 for potential mitigation and repair

Reference Site: Lincoln Elementary School

Write out the total amount of your bid: _____ Dollars*

Numeric Bid: \$ _____**
Note: Include Fixed Price of \$25,000 for potential mitigation and repair

Reference Site: District Board of Education Building

Write out the total amount of your bid: _____ Dollars*

Numeric Bid: \$ _____**
Note: Include Fixed Price of \$25,000 for potential mitigation and repair

*In the event of a conflict between the written and numeric version of the bid, the written will prevail.

**This Fixed Price may only be used for mitigation and repair and only upon specific approval of the District.

Please sign and date this page:

Company Name: _____

Authorized Signature: _____

Printed Name: _____

Date: _____, _____, 2006

In addition to the four referenced sample sites, please include any additional cost that may be anticipated during the term of this bid/agreement for all sites included in this bid. Please label as Attachment A1-Bid Form and submit with your bid. Please place Attachment A1 to page 167.

*****Please Note: The cost on Attachment A1 will not be used to determine the lowest bidder.**

8. In the event the bidder to whom Notice of Intent to Award Contract is given fails or refuses to post the required bonds and return executed copies of the Agreement form within five (5) calendar days from the date of receiving the Notice of Intent to Award Contract, the District may declare the Bidder's bid deposit or bond forfeited as damages.

9. Pursuant to Section 4552 of the Government Code, in submitting a bid to the District, the bidder offers and agrees that if the bid is accepted, it will assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the District pursuant to the bid. Such assignment shall be made and become effective at the time the District tenders final payment to the bidder.

10. Designation of Subcontractors:

a. In compliance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Sec. 4100, et. seq.) and any amendments thereof, each bidder shall set forth below: (1) the name and the location of the place of business of each subcontractor who will perform work or labor or render services to the prime contractor in or about the construction of the work or improvement to be performed under this contract in an amount in excess of one-half of one percent of the prime contractor's total bid and (2) the portion of the work which will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in this bid.

b. If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of one percent of the prime contractor's total bid, they shall be deemed to have agreed that they are fully qualified to perform that portion themselves, and that they shall perform that portion themselves.

c. No prime contractor whose bid is accepted shall (1) substitute any subcontractor, (2) permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid response, or, (3) sublet or subcontract any portion of the work in excess of one-half of one percent of the prime contractor's total bid as to which his original bid did not designate a subcontractor, except as authorized in the Subletting and Subcontracting Fair Practices Act. Subletting or subcontracting of any portion of the work in excess of one-half of one percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid response shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as public record of the authority awarding this contract, setting forth the facts constituting the emergency of necessity.

11. Hazardous Materials, Asbestos Considerations

a. Potential contractors are herein notified that Hazardous Materials, which could include asbestos related substances, may be present during the construction process. Contractors are strongly encouraged to obtain a copy of the Asbestos Hazardous Emergency Response Act (AHERA) documents on file in the Environmental Safety Office and to follow recognized practices if such materials are encountered during the course of the Work.

b. If hazardous materials are encountered, all Work in the affected area is to immediately cease and the Maintenance and Operations Director is to be notified immediately in order to insure timely mitigation of the potential problem.

SUBCONTRACTOR LISTING

Trade or Portion Work Location Number	Subcontractor Name	Business Location	License Number
--	--------------------	-------------------	----------------

Abatement/HAZMAT _____

Electrical (C-10) _____

General Contracting (B) _____

(Use additional pages if necessary)

Contractor Name: _____ Date: _____

Signed: _____ Phone: _____

Printed Name: _____ Title: _____

Street Address: _____

City, State, Zip Code: _____

Fax Number: _____ E-Mail: _____

Note: If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signature of authorized officers or agents and the document shall bear the corporate seal; if bidder is a partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership, if bidder is an individual, his signature shall be placed above.

BID BOND

(10% of the Target School and Administrative Sites)

Name of Principal _____

Address _____

City of _____, State of _____

as Principal, and _____
a corporation organized and existing under the laws of the State of _____, **legally doing business in California as an admitted surety insurer at:**

Address _____

City of _____, State of California, as Surety, are indebted to San Bernardino City Unified School District hereinafter called the District, in the sum of **TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID** of the Principal submitted to the District for which payment Principal and Surety bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITION OF THE OBLIGATION OF THIS BOND IS THAT THE PRINCIPAL has submitted the accompanying bid dated _____, 2005 for:

Technology Infrastructure Bid No. 32-05

NOW THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within sixty (60) days after said opening; and if the Principal is awarded the contract, and shall within the period specified therefore, or if no period be specified, within five (5) days after the prescribed forms are presented to him for signature, enter into a written contract with the District, in accordance with the bid as accepted and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract and for the payment for labor and materials used for the performance of the contract or in the event of the withdrawal of said bid within the period specified or the failure to enter into such contract and give such bonds within the time specified, if the Principal shall pay the District the difference between the amount specified in said bid and the amount for which the District may procure the required work and/or supplies, if the latter amount be in excess of the former, together with all costs incurred by the District in again calling for bids, then the above obligation shall be void and of no effect, otherwise to remain in full force.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract on the call for bids, or to the work to be performed there-under, or the specifications accompanying the same, shall in anywise affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

In the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all costs incurred by the District in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above-named on the _____ day of _____, 2006.

(Corporate Seal)

Principal

BY _____

(Typed or Printed Name)

(Title)

(Corporate Seal)

Surety

BY _____

Address: _____

(Typed or Printed Name)

City, State, Zip: _____

(Title)

Phone Number: _____

E-Mail: _____

(Attach Attorney-In-Fact Certificate)

Technology Infrastructure Bid No. 32-05

This form must be completed and submitted with your bid package.

**NONCOLLUSION AFFIDAVIT TO BE
EXECUTED BY BIDDER AND SUBMITTED WITH BID**

_____, being first duly sworn, deposes and says that he or she is _____ of the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

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

(Date)

(Signature)

Technology Infrastructure Bid No. 32-05

This form must be completed, notarized, and submitted with your bid package.

GENERAL CONTRACT

THIS GENERAL CONTRACT (this "General Contract") is made as of _____, in the County of San Bernardino, State of California, by and between the **SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT** (hereinafter called the "**District**"), and ***Contractor Name*** (hereinafter called "**Contractor**").

IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONSIDERATIONS STATED HEREIN, the receipt and sufficiency of which are hereby acknowledged, the District and Contractor hereby agree as follows:

1. **SCOPE OF WORK**. The Contractor shall perform within the time stipulated herein, and shall provide all labor, equipment, materials, tools, utility services and transportation to complete in a workmanlike manner, in accordance with the terms and conditions of the Contract Documents, as defined in Section 10 below, all of the work (the "**Work**") required in connection with the following titled project, all as more fully described in the Contract Documents (the "**Project**");

Technology Infrastructure 32-05

It is the duty of the Contractor to complete the Work in exact accordance with the Contract Documents and any approved revisions or interpretations thereto, including, without limitation, all Project Requests for Information, Submittal Endorsements and Architectural and Engineering Field Directives and Inspector Non-compliance Notices. The Contractor shall be liable to the District for any damages arising as a result of a failure to fully comply with its obligations hereunder and, except as otherwise expressly provided in Section 8 of the General Terms and Conditions, shall not be excused from such obligations by any act or omission of the Architect (as defined in Section 7 below), any licensed engineer whose stamp appears on the drawings, the Inspector (as defined in Section 7 below) or any specialty inspector, any representative of the Division of the State Architect (DSA), the District or the State of California.

2. **CONTRACT PRICE**. The District shall pay to the Contractor as full consideration for the faithful performance of the Contract, subject to any additions or deductions ordered or approved by the District by any Change Order (as described and provided for in the General Terms and Conditions), the lump sum price of: _____ **DOLLARS** (*Bid Amount*) (the "**Contract Price**"), which shall be payable to the Contractor in progress payments from time to time in accordance with Section 6 of the General Terms and Conditions.

3. **CONTRACT TIME**. The Work shall be commenced on the date stated in the District's Notice to Proceed to the Contractor (the "**Starting Date**"), and as specified therein, shall be completed within **the times mutually agreed at the awarding of a specific site contract** from and after the Starting Date (the "**Contract Time**"). If the Work is not completed in conformance with the foregoing, the Contractor shall be subject to liquidated damages in the amount set forth in Section 4 below.

4. **LIQUIDATED DAMAGES**. The agreed upon liquidated damages payable to the District pursuant to Section 7 of the General Terms and Conditions in the event that the Work is not completed within the Contract Time shall be One Thousand Dollars (**\$1,000.00**) for each calendar day that the completion of the Project is so delayed beyond the expiration of the Contract Time.

5. **INSURANCE REQUIREMENTS.** As provided in Section 43 of the General Terms and Conditions, Contractor shall procure and maintain from the Starting Date until final payment under this General Contract is made to the Contractor, and shall require all subcontractors to so procure and maintain for all periods during which such subcontractors are performing any portion of the Work, the insurance described below in the coverage amounts described below.

(a) Builder's Risk Insurance or its equivalent on a so-called all risks basis (including collapse, but excluding coverage for earthquake and flood) on a completed value (non-reporting) form for the full Contract Price (as may be increased from time to time pursuant to Change Orders (as defined in the General Terms and Conditions) or full replacement value, whichever is the greater sum, covering the interest of the District, its contractors and subcontractors in all Work, including, without limitation, all materials and equipment stored on the site to be incorporated in such Work and all materials and equipment already incorporated in such Work.

(b) Comprehensive Bodily Injury and Property Damage Liability Insurance for Combined Single Limit Bodily Injury and/or Property Damage Liability of not less than \$1,000,000 each occurrence. The policy(ies) so secured and maintained shall include coverage for Contractual or Assumed Liability, Contractors Protective (Contingency) Liability, Products Liability or Completed Operations, Hazardous Materials (required when the Contract involves removal of these materials), and Owned, Hired, and Non-owned Automobiles Insurance; and shall be endorsed to the name of the San Bernardino City Unified School District, its Board and all other indemnities described in Section 36 of the General Terms and Conditions as additional insured's and shall provide specifically that any insurance carried by the District which may be applicable to any claim or loss shall be deemed excess and the Contractor's insurance primary despite any conflicting provisions in the Contractor's policy to the contrary. Coverage shall be maintained with no self-insured retention.

(c) Workers' Compensation Insurance in accordance with the provisions of the California Labor Code, adequate to protect it and all subcontractors from claims under Workers' Compensation Acts which may arise from operations under the Contract Documents, whether such operations be by the Contractor or by any subcontractor or anyone directly or indirectly employed by either of them.

(d) All insurance coverage amounts specified above shall be Project-specific to this particular Work, and all such insurance shall cover only risks relating to or arising out of the Project and the Work. The insurance and required amounts of insurance specified above shall not be reduced or encumbered on account of other work contracted for or being performed by Contractor.

(e) Such other insurance in amounts as the District may reasonably deem advisable from time to time for protection against claims, liabilities and losses arising out of or in connection with the Project or the Work; provided that, the additional cost of such insurance shall be added to the Contract Price pursuant to a Change Order in accordance with Section 9 of the General Terms and Conditions.

6. **PROVISIONS REQUIRED BY LAW.** Each and every provision of law and clause required to be inserted into this General Contract and the other Contract Documents shall be deemed to be inserted herein or therein (as applicable) and this General Contract and such other Contract Documents shall be read and enforced as though it were included herein or therein (as applicable), and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the General Contract or any of the other Contract documents (as applicable) shall forthwith be physically amended to make such insertion or correction.

7. **DESIGNATION OF ARCHITECT AND INSPECTOR.** The Architect/Engineer for the Project shall be <<Refer Questions to District Staff>> (or such other person or legal entity as the District may designate from time to time by written notice to the Contractor), and the Inspector shall be <<Refer Questions to

District Staff>> (or such other person or legal entity as the District may designate from time to time by written notice to the Contractor).

8. **DUE AUTHORIZATION**. This General Contract is, and all Contract Documents to be executed by Contractor in connection with the Work and the Project will be, duly authorized, executed and delivered by Contractor, is and will be legal, valid and binding obligations of Contractor enforceable against Contractor in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the right of contracting parties generally), and does not and will not violate any provisions of any agreement to which Contractor is a party or may become a party or to which it is subject or may become subject. The representations and warranties contained in this Section 8 shall be deemed to be remade each day throughout the term of the Contract.

9. **AUTHORIZATION OF SIGNATORIES**. Each individual and entity executing this General Contract hereby represents and warrants that he, she or it has the capacity set forth on the signature page hereof with full power and authority to bind the party on whose behalf he, she or it is executing this General Contract to the terms and provisions hereof.

10. **COMPONENT PARTS OF THE CONTRACT**. The "Contract" consists of the following contract documents, including but not limited to Bid No. 32-05, all of which are component parts of the Contract as if herein set out in full or attached hereto (the "Contract Documents"):

- Notice to Contractors Calling for Bids
- Information for Bidders
- Bid Form
- List of Subcontractors
- Contractor's Certificate Regarding Worker's Compensation
- Bid Bond
- Non-collusion Affidavit
- Deviations Form

- General Contract
- Performance Bond
- Payment Bond
- General Terms and Conditions
- Special Conditions and any Supplementary General Terms and Conditions

- District Site Specific Asbestos/HAZMAT documentation (AHERA)
- Labor Compliance Program (LCP)
- Requests for Information (RFIs)
- Submittal Endorsement
- Specifications

- Addenda Nos. *Addm* as issued
- Drawings
- Change Orders
- Architect/Engineer Field Directives
- Submittal Responses
- Title 24 of the California Code of Regulations
- California Building Code (2000 Edition)
- Prevailing Wage Rate Tables

All of the above-listed Contract Documents are intended to be complementary. Work required by any one of the above-named items and not required by another shall be performed as if required by all.

IN WITNESS WHEREOF, this General Contract has been duly executed by the above named parties, on the day and year first above written.

DISTRICT:

CONTRACTOR:

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

Contractor Name

Mohammad Z. Islam
Assistant Superintendent, Business and Finance

BY _____

BY _____

Authorized Officers
or Agents
(CORPORATE SEAL)

Technology Infrastructure Bid No. 32-05

**CONTRACTOR'S CERTIFICATE
REGARDING WORKERS' COMPENSATION**

Labor Code Section 3700:

"Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.
- (c) For any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay worker's compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was insured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702.

For purposes of this section, "state" shall include the superior courts of California.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of this contract.

NAME _____

TITLE _____

SIGNATURE _____

(In accordance with Article 5 {commencing at Section 1860}, Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

Technology Infrastructure Bid No. 32-05

SUPPLEMENTARY GENERAL CONDITIONS

A. The contract period of this work may begin on or about **July 1, 2006** and must be completed within **the mutually agreed time for the site specific Work** after the start of work, contingent upon successful application of various funding sources.

B. The agreed liquidated damages provision established in Article 7 of the General Conditions is **One Thousand Dollars (\$1,000.00) per calendar day** for each calendar day that the project completion exceeds the completion date set forth above, or a later date approved by the District as an extension of allowable time for completion.

The term "completion" as used in this section shall be construed to mean Substantial Completion.

C. The number of copies of drawings and specifications to be furnished to the Contractor free of charge is five (5) per job.

D. Insurance - As provided in the General Conditions, Contractor shall take out and maintain and require all subcontractors, if any, whether primary or secondary, to take out and maintain coverage as noted below and per **Attachment B - Insurance Requirements**:

Public Liability Insurance for injuries, including accidental death, to any one person in an amount not less than \$1,000,000., and, Subject to the same limit for each person on account of one accident, in an amount not less than \$1,000,000.

Property Damage Insurance in an amount not less than \$1,000,000.

Insurance Covering Special Hazards: The following special hazards shall be covered by rider or riders to above mentioned public liability insurance, or property damage insurance policy or policies of insurance, or by special policies of insurance, in amounts as follows:

Automotive and truck, where operated, in amounts as above.

Material Hoist, where used, in amounts as above.

Fire Insurance: Where work is on existing sites, District will maintain fire insurance on existing structures; Contractor shall take out and maintain coverage on all new structures and new work in existing structures.

Contractor shall name District in all policies, all of which shall be open to inspection by all parties in interest. A minimum 30 day notice of cancellation is required. The Insurance Certificate/Additional Insured section is usually project specific. **The Contractor cannot commence without such proof of insurance.** If the District is damaged by failure of the Contractor to maintain such insurance, it may recover as stipulated elsewhere in the Contract Documents for recovery of damages. District may insure its own interest if Contractor fails to effect or maintain insurance.

E. The number of executed copies of the Agreement, the Performance Bond, and the Labor and Materials Bond required is five (5).

ATTACHMENT B

INSURANCE REQUIREMENTS

PRODUCT VENDOR: *Contractor Name*

Technology Infrastructure Bid No. 32-05

The following coverage noted on the left with an "X" are required (Certificate or Endorsement) with the Combined Single Limits (CSL) as noted on the right. Comparable split limits may be accepted.

CERTIFICATE/ENDORSEMENT	MINIMUM COMBINED SINGLE LIMITS
<p><u>X</u> / _____ Workers' Compensation</p> <hr/> <p><u>X</u> / _____ Employer's Liability</p> <p style="margin-left: 20px;">() Broad Form All States Endorsement</p> <p style="margin-left: 20px;">() Longshoremen's and Harbor Workers' Compensation Act Endorsement</p> <p style="margin-left: 20px;">() _____</p>	<p>Insured - Statutory</p> <p>Self-Insured - <u>\$5,000,000</u></p> <p><u>\$1,000,000</u></p>
<p><u>X / X</u> Comprehensive General Liability</p> <p style="margin-left: 20px;">(X) Premises and Operations</p> <p style="margin-left: 20px;">(X) Contractual Liability</p> <p style="margin-left: 20px;">(X) Independent Contractors</p> <p style="margin-left: 20px;">(X) Products/Completed Operations</p> <p style="margin-left: 20px;">(X) Broad Form Property Damage</p> <p style="margin-left: 20px;">(X) Personal Injury</p> <p style="margin-left: 20px;">(X) Broad Form Liability Endorsement</p> <p style="margin-left: 20px;">() Fire Legal Liability</p> <p style="margin-left: 20px;">() Water craft Liability</p> <p style="margin-left: 20px;">() Incidental Medical Malpractice</p>	<p><u>\$1,000,000</u></p> <p style="margin-left: 20px;">() Explosion Hazard</p> <p style="margin-left: 20px;">() Collapse Hazard</p> <p style="margin-left: 20px;">() Underground Hazard</p> <p style="margin-left: 20px;">() Garage keepers Legal Liab.</p> <p style="margin-left: 20px;">() Hangar keepers Legal Liab.</p> <p style="margin-left: 20px;">(X) Owned Automobiles</p> <p style="margin-left: 20px;">(X) Non owned Automobiles</p> <p style="margin-left: 20px;">(X) Hired Automobiles</p> <p style="margin-left: 20px;">() _____</p>
<p><u>X</u> / <u>X</u> Automobile Liability (if not included in General Liability coverage checked above)</p>	<p>\$ _____</p>
<p>____ / ____ Aviation/Airport Liability (including appropriate General Liability coverage checked above)</p>	<p>\$ _____</p>
<p>____ / ____ Professional Liability</p>	<p>\$ _____</p>
<p>____ / ____ Property Insurance</p> <p style="margin-left: 20px;">() Extended Coverage</p> <p style="margin-left: 20px;">() Vandalism & Malicious Mischief</p> <p style="margin-left: 20px;">() Flood</p>	<p>\$ _____</p> <p style="margin-left: 20px;">() Debris Removal</p> <p style="margin-left: 20px;">() Sprinkler Leakage</p> <p style="margin-left: 20px;">() All Risk</p>

() Earthquake \$ _____

() Other

Reference List

Bidder Name: _____

Bid No.: 32-05

Owner:	
Contact:	
Phone number:	
Value of Contract:	Description of Work

Owner:	
Contact:	
Phone number:	
Value of Contract:	Description of Work:

Owner:	
Contact:	
Phone number:	
Value of Contract:	Description of Work

Owner:	
Contact:	
Phone number:	
Value of Contract:	Description of Work:

Owner:	
Contact:	
Phone number:	
Value of Contract:	Description of Work:

Technology Infrastructure Bid No. 32-05

Sign In (Job Walk) - Bid No. 32-05

Bid Number – 32-05

Room:

NAME	COMPANY	PHONE/FAX NUMBER
1.		<hr/> <hr/>
2.		<hr/> <hr/>
3.		<hr/> <hr/>
4.		<hr/> <hr/>
5.		<hr/> <hr/>
6.		<hr/> <hr/>
7.		<hr/> <hr/>
8.		<hr/> <hr/>
9.		<hr/> <hr/>
10.		<hr/> <hr/>
11.		<hr/> <hr/>
12.		<hr/> <hr/>
13.		<hr/> <hr/>
14.		<hr/> <hr/>

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GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

a. “**Acceptance of Completion**” shall mean the date upon which the District’s Board, based on its consultation with District staff, the Architect and the Inspector, formally accepts Substantial Completion or final completion of the Project, whichever occurs first, and authorizes the execution and recordation of a Notice of Completion for the Project.

b. “**Acts of God**” shall mean only the following occurrences or conditions or effects: earthquakes that measure in excess of a magnitude of 3.5 on the Richter Scale within a five (5) mile radius of the Project Premises.

c. “**Architect**” shall mean the architect or engineer, if any, retained or employed on the Work and specifically identified in the General Contract. In the event there is no architect or engineer on the Work, then the term “Architect” shall be construed to mean the District.

d. “**Architect/Engineer Field Directive**” shall mean a clarification of the Drawings and/or Specifications in the form of Exhibit A attached hereto and incorporated herein by this reference that is directive in nature and issued to the Contractor by the Architect or an engineer working on the Project.

e. “**Board**” shall mean the San Bernardino City Unified School District Board of Education.

f. “**Bulletin**” is defined in Section 8(b) hereof.

g. “**Certificate for Payment**” shall mean the certificate of the Architect given from time to time in accordance with the terms and provisions of Section 6 hereof to fully or partially approve any progress payments requested in a Contractor Payment Request.

h. “**Change Order**” shall mean a written statement executed by the District and the Contractor, in accordance with the terms and provisions of Sections 9 and 10 hereof, ordering a change in the Work or the Drawings or Specifications or other Contract Documents, and/or confirming a change in the Contract Price (whether an increase or decrease thereto) and/or Contract Time (whether an extension or reduction thereof). A Change Order may in the alternative constitute the decision of an arbitrator, if applicable, in accordance with and pursuant to Section 9d hereof.

i. “**Construction Claims**” is defined in Section 56a hereof.

j. “**Contract**” shall mean the contract for the construction and completion of the Project and the performance of all Work by the Contractor, which consists of all of the Contract Documents as a whole.

k. “**Contract Documents**” is defined in Section 10 of the General Contract.

l. “**Contract Price**” shall mean the lump sum price payable to the Contractor for all of the Work, as specifically set forth in the General Contract. The Contract Price may not be changed, altered or otherwise modified except by a Change Order in accordance with the terms and provisions of Sections 9 and 10 hereof.

m. “**Contract Time**” shall mean the number of consecutive calendar days from and after the Starting Date within which the Project and all Work must be completed, which number of calendar days are specifically set forth in Section 3 of the General Contract. The Contract Time may not be changed, altered or otherwise modified except by a Change Order in accordance with the terms and provisions of Sections 9 and 10 hereof.

n. “**Contractor Payment Request**” shall mean a progress payment request, in the form of Exhibit B attached hereto, to be submitted by the Contractor to the District monthly during the progress of the Work in accordance with the terms and provisions of Section 6 hereof.

o. “**Cost of the Work**” is defined in Section 9b hereof.

p. “**Drawings**” shall mean the drawings fastened hereto as the same may be amended, modified or otherwise revised from time to time by Change Order and any revisions or modifications thereto promulgated by the Architect or an Architect/Engineer Field Directive, a response to a Request for Information (RFI) or a Submittal Response returned to the Contractor by the Architect, an engineer or any other District representative working on the Project.

q. “**Default**” is defined in Section 54a hereof.

r. “**District**” shall mean the San Bernardino City Unified School District, and its authorized representative(s).

s. “**General Contract**” shall mean the General Contract executed by the District and the Contractor and attached hereto.

t. “**General Terms and Conditions**” shall mean these General Terms and Conditions.

u. “**Inspector**” shall mean the inspector, if any, retained or employed on the Work and specifically identified in the General Contract.

v. “**Maintenance Bond**” is defined in Section 45 hereof.

w. “**Material-men**” shall mean those organizations or individuals who furnish material or equipment that is incorporated into or used in connection with the Project or the Work. The term “Material-men” shall include, without limitation, vendors, suppliers and manufacturers. The term “Material-men” shall also include all material-men of any tier.

x. “**Notice of Completion**” shall mean the Notice of Completion executed by the District and recorded in the County Records of San Bernardino County, California, promptly after the District’s Acceptance of Completion in accordance with Section 52 hereof.

y. “**Payment Bond**” shall mean that certain Payment Bond for the Work and the Project in the form of Exhibit C attached hereto, issued by a surety that has been approved by the District, in its reasonable discretion, in favor of the District, as obligee.

z. “**Performance Bond**” shall mean that certain Performance Bond for the Work and the Project in the form of Exhibit D attached hereto, issued by a surety that has been approved by the District, in its reasonable discretion, in favor of the District, as obligee.

aa. “**Project**” shall mean the project described in the General Contract.

bb. “**Project Premises**” shall mean the parcel of real property upon which the Project shall be constructed.

cc. “**Project Schedule**” is defined in Section 3 hereof.

dd. “**Record Drawings**” is defined in Section 24g hereof.

ee. “**Retention**” is defined in Section 6a hereof.

ff. “**Request for Information**” shall mean a written request for additional information or clarification of the Contract Documents in the form of Exhibit E attached hereto and incorporated herein by this reference delivered by the Contractor to the District and Architect.

gg. “**Schedule of Values**” is defined in Section 2 hereof.

hh. “**Specifications**” shall mean the specifications fastened hereto (as the same may be amended, modified or otherwise revised from time to time by Change Order or as otherwise provided hereunder).

ii. **“Starting Date”** shall mean the date specified as such in the Notice to Proceed from the District to the Contractor, being the date from which the Contract Time will commence and be calculated.

jj. **“Subcontractor”** shall mean those organizations or individuals who furnish labor and/or materials in connection with the Work or the Project and who do not have a direct written contract with the District, the Architect or any organization or individual (other than Contractor) who has a direct written contract with the District or Architect. The term “Subcontractor” shall include, without limitation, all engineers hired by Contractor or any other Subcontractor. The term “Subcontractor” shall also include all subcontractors of any tier.

kk. **“Submittal Response”** shall mean the District’s response to any Contractor submittal that proposes the use of certain materials and/or methods in connection with the completion of the Project.

ll. **“Substantial Completion”** shall mean the stage in the progress of the Work when the Work is complete in accordance with the Contract Documents, except for certain minor corrective items commonly referred to in the construction industry as “punch list” items, such that the District can occupy or utilize the Project for its intended use; provided that, as a condition precedent to Substantial Completion, the Architect and Inspector shall have each agreed that the Work and Project have reached a stage of substantial completion and the District shall have received all permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial use of the Project.

mm. **“Substitution Request”** is defined in Section 11 hereof.

nn. **“Supplementary General Terms and Conditions”** shall mean the supplementary general terms and conditions fastened hereto (as the same may be amended, modified or otherwise revised from time to time by Change Order or as otherwise provided hereunder).

oo. **“Surety”** shall mean the person, firm, corporation or other entity that executes as surety the Payment Bond and/or Performance Bond. The surety must be an admitted surety insurer pursuant to California Code of Civil Procedure Section 995.120 and is subject to the prior approval of the District, which the District shall grant or withhold in its reasonable discretion.

pp. **“Work”** shall mean the construction and services required by the Contract Documents or reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s

construction obligations and complete the Project. The term "Work" includes labor and materials, or both, incorporated in, or to be incorporated in the construction covered by the Contract Documents or reasonably inferable from the Contract Documents. Unless otherwise specified, the terms "approved", "directed", "satisfactory", "accepted", "acceptable", "proper", "required", "necessary", and "equal", as used in connection with the Work, shall mean as approved, directed, satisfactory, accepted, proper, required, necessary and equal, in the opinion of the Architect.

qq. **"Contractor"** The "Contractor" is equal to the Bidder, the Vendor, the Cabling Contractor and the Data Contractor the entity which will be come legally bound by contract with the District.

This set of General Terms and Conditions and the definitions above are an integral part of the Contract Documents. In addition to signing the General Contract, Contractor shall initial this paragraph immediately below acknowledging that these General Terms and Conditions and the definitions have been read, understood and accepted by Contractor.

Contractor shall not disclaim knowledge of the meaning and effect of any term or provision of these General Terms and Conditions and agrees to strictly abide by their meaning and intent. In the event that Contractor fails to initial below, the District shall have the right to declare the Contract unexecuted and to terminate the Contract in accordance with California Public Contract Code Section 5106.

CONTRACTOR'S
INITIALS _____

2. SCHEDULE OF VALUES

Within four (4) calendar days of the bid opening, all prospective bidders must submit to the District, a schedule of values (the "Schedule of Values") allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect or the District may require. Such values shall include the amount of overhead and profit applicable to each item of the Work and shall include a breakdown between rough and finish Work for the basic trades as well as individual dollar figures for large dollar equipment and materials installed or furnished in connection with the Project. Prior to the processing of any Contractor Payment Request (including a Contractor Payment Request for mobilization), the Schedule of Values must have been approved by the District and the Architect. The approved Schedule of Values shall be used as a basis for reviewing the Contractor Payment Requests that are submitted for payment from time to time. If the District or the Architect objects to any Schedule of Values submitted by the Contractor, the Contractor shall work and cooperate with the party objecting to the same in order to revise the Schedule of Values in a manner that addresses such objecting party's objections. The Schedule of Values will be updated from time to time as may be necessary during the course of construction. Updates to the Schedule of Values shall also be subject to the prior approval of the District and the Architect.

In preparing the Schedule of Values, the Contractor shall carefully list the true cost of each activity or item for which payment will be requested. The Contractor shall not “front-load” the Schedule of Values with false dollar amounts for activities required to be performed in the early stages of the Project Schedule. The District may, in its sole discretion, utilize the costs listed in the Schedule of Values as the true costs of items to be deducted from the Contract Price through credit or deductive Change Order.

3. PROJECT SCHEDULE

Within fourteen (14) days after award of the Contract and prior to the processing of any Contractor Payment Request (including a Contractor Payment Request for mobilization), the Contractor shall submit the following to the District and the Architect for their review and approval (in their sole discretion):

- a. A project schedule setting forth the milestone dates for the Project and stating the start and completion dates of the various stages of the Work (the “Project Schedule”); and
- b. A preliminary schedule of submittals.

The Project Schedule and schedule of submittals must each be approved by the District and the Architect (in their sole discretion). The Project Schedule shall provide for an orderly progression of the Work to completion within the specified milestones and the Contract Time. Approval of the Project Schedule by the District and/or the Architect shall neither impose on the District or the Architect responsibility for the progress or scheduling of the Work nor relieve the Contractor from full responsibility therefore. The Project Schedule shall be prepared in a critical path network format such that no activity has a duration of more than twenty (20) days, shall have the critical path clearly indicated and shall have the total Contract Price allocated among the scheduled activities such that progress payments may be computed accurately from the updates of the critical path schedule. Each of the Contractor’s activities shall be allocated a price, and the sum of the prices of all activities listed on the Project Schedule shall equal the total Contract Price.

The Project Schedule shall be prepared on a PC-based program. For purposes of bidding, the Contractor shall assume that the District will request preparation of a Cost-Loaded Primavera Scheduling Program utilizing the Primavera Scheduling Software Package. However, following bid award, the District fully reserves the right to require an alternate software system without any additional cost to the District. Before preparing the first base line schedule, Contractor shall recommend a software scheduling program for the District’s approval.

In addition to being in a “critical path network format”, as provided above, the Contractor agrees that the Project Schedule shall plot and incorporate certain milestone activities and dates deemed “critical” or “constraining factors” by the District and furnished by the District. Should the District not provide the Contractor with such milestone activities or dates, then the start and finish dates shall be considered the main

constraining elements; however, the District reserves the full right to reject or approve intermediate schedule development.

The completed Project Schedule and all required periodic updates (as required below) shall include, at a minimum, the following items of data:

- a. Critical path;
- b. Earliest and latest dates of completion;
- c. Float for each activity and total Project float;
- d. Manufacturing dates and delivery dates of critical equipment or special equipment designated by the District as essential;
- e. District-designated milestone activities;
- f. Submission dates for all submittals and shop drawings (which may be provided on a separate schedule of submittals); and
- g. All underground Work.

The District and the Architect shall provide the Contractor with their approval or disapproval of the Project Schedule promptly after receipt of the same. If the Project Schedule is not approved, the Contractor shall revise the Project Schedule as necessary based on the District's and the Architect's comments and resubmit to the District and the Architect a revised Project Schedule. No progress payments shall be processed or paid until the Contractor's Project Schedule has been properly prepared and submitted by the Contractor and approved by the District and the Architect.

The Contractor shall submit with each Contractor Payment Request monthly schedule reports to the District and the Architect indicating the current status of the Work and incorporating into such monthly schedule all Change Orders. The reports may include proposed adjustments in the Contractor's Project Schedule, and, additionally shall indicate any revised sequence of the Work as may be necessary to meet specified milestone and final completion dates. No changes in any activity or price allocations shall be permitted except by, and in accordance with, the Change Order provisions set forth in Sections 9 and 10 hereof. Acceptance of the proposed adjustments shall be at the sole discretion of the District and the Architect. If the proposed adjustments are accepted, the Contractor shall, within ten (10) days, submit to the District and the Architect for approval (in their sole discretion) a revised Contractor's Project Schedule indicating the accepted adjustments.

In bidding this Project, Contractor expressly agrees and understands that the following principles will be controlling and shall govern the District's evaluation and interpretation of the Project Schedule and, together with the terms and provisions of Sections 8, 9 and 10 hereof, shall be applied when determining the potential impact of, and monetary costs (if any) resulting from, Project delays:

1. No extended overhead, general conditions money, impact costs, out-of-sequence money or any other type of compensation, by any name or characterization, shall be paid to the Contractor for any delay to any activity not designated as a critical path item on the latest approved Project Schedule, and if any delay occurs to any critical

path item, such compensation shall only be payable to the Contractor in accordance with the terms and provisions of Sections 8, 9 and 10 below.

2. There shall be only one (1) critical path for the Project.

3. In lieu of payment of extended general conditions or overhead or any other cost as specified in subsection 1 above, the District reserves the right to first direct “work orients” to the Contractor’s Project Schedule in order to recover the lost time whenever a District-caused delay (as defined in Section 8) occurs; provided that, the District’s exercise of this right shall neither impose upon the District the responsibility for the progress of the Work or the completion thereof within the Contract Time nor relieve the Contractor from full responsibility therefore or from the responsibility to perform all Work and complete the Project in accordance with the terms and provisions of the Contract Documents.

4. Neither the District nor the Contractor has a right to the float. If the Contractor’s construction progress is ahead of the agreed-upon baseline time schedule and a delay is encountered (even if such delay is a District-caused delay), no compensation of any type will be due the Contractor and the District may claim float days equal to the delay until such float days are exhausted.

4. THE WORK

a. The Work. The Contractor shall perform, diligently prosecute and complete the Work in a good and workmanlike manner within the Contract Time, and in strict conformity with all Contract Documents. All utilities, tools, equipment, apparatus, facilities, transportation, labor and materials necessary for the performance and completion of the Work shall be furnished by the Contractor, at its cost, except for material expressly agreed to be furnished by the District (at its cost) in a writing signed by the District. During the term of this Contract, Contractor shall send proper notices, make all necessary arrangements and perform all other services required for the care and maintenance of all public utilities used in connection with the Project. Contractor shall assume all responsibility concerning the same for which the District may otherwise be liable. By executing the General Contract, the Contractor represents that it has (a) examined the Contract Documents thoroughly, (b) visited the Project Premises to become familiar with local conditions that may in any manner affect the cost, progress or performance of the Work, (c) become familiar with federal, state and local laws, ordinances, rules and regulations that may in any manner affect the cost, progress or performance of the Work, (d) become familiar with the anticipated labor supply and costs, (e) become familiar with local utility company standards and policies, and (f) studied and carefully correlated the Contractor’s observations with the Contract Documents.

b. Interpretation of Contract Documents. The Contract Documents are intended to be complementary, and what is called for by one Contract Document shall be as binding as if called for by all. The intention of the Contract Documents is to include all labor and materials, equipment, transportation and other things necessary for the proper

execution of the Work. When the word “provide” (including derivatives thereof) is used, it shall mean “provide complete in place”, “furnish and install” and deliver materials and equipment F.O.B. destination to the Project Premises, and to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items necessary to properly complete in place, ready for operation or use in accordance with the Drawings and Specifications. Materials or Work described in words which so applied have a well known technical or trade meaning shall be deemed to refer to such recognized standards.

Work that is not particularly shown or specified on the Drawings or Specifications shall be the same as similar parts or Work that are shown or specified. Specifications shall govern as to materials, workmanship, and installation procedures. Drawings and Specifications are intended to be fully cooperative and to agree. If the Contractor or any Subcontractor observes that the Drawings and Specifications are in conflict, or that there is a conflict or inconsistency between Drawings, he or she shall promptly notify the Architect in writing (via a Request for Information) before commencing any Work or layout or making any submittals and before ordering any materials, and any necessary changes shall be adjusted by a written response to the Request for Information and Change Order, if required.

Should any question arise concerning the true meaning of the Drawings and/or Specifications, the point in question shall be resolved by the Architect, subject to the approval of the District. Should the Contractor disagree with such interpretation, the Contractor shall proceed without delay with the Work under question as resolved by the Architect and may initiate the dispute resolution proceedings set forth in Section 56 hereof to resolve its dispute.

Standards, Rules and Regulations referred to are recognized printed standards and shall be considered as one and a part of the Contract Documents within any limits specified. Specifications and accompanying Drawings are intended to delineate and describe the Project and its component parts to such a degree as will enable skilled and competent contractors to intelligently bid upon the Work and to carry said Work to a successful conclusion. In preparing the bid for this Project, any Work called for on the Drawings and not by the Specifications, or vice versa, or called for on one Drawing sheet but not on others, shall be priced and fully included in the bid. For bidding purposes, the Contractor shall bid the more stringent requirement or the more complete and comprehensive process in the event of conflicts or discrepancies in the Drawings or Specifications. Should the District desire, during the construction phase of the Project after bid, to direct the use of the simpler or less comprehensive process of the Work or processes in conflict, the Contractor will be issued an Architect/Engineer Field Directive to this effect and a credit Change Order will be issued for the dollar difference between the District-directed Work or method and the more elaborate or comprehensive Work or method that was used in bidding.

It is not the intention of the Contract Documents to go into detailed descriptions of any materials and/or methods commonly known to the trade under “trade name” or “trade term”. The mere mention or notation of such “trade name” or “trade

term” shall be considered a sufficient notice to Contractor that the Work so named must be completed with all its appurtenances according to the best practices of the trade. The naming of any material and/or equipment shall mean the furnishing and installing of the same, including all incidental and accessory items thereto and/or labor, as per best practices of the trade(s) involved, unless specifically noted otherwise. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

c. Compliance with Laws. Drawings and Specifications (and all other Contract Documents) are intended to comply with all laws, ordinances, rules and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, said laws, ordinances, rules and regulations shall be considered as a part of said Contract Documents within the limits specified therein. If the Contractor observes that portions of the Contract Documents are at variance with any laws, ordinances, rules or regulations applicable to the Project Premises, the Work or the Project, the Contractor shall promptly notify the Architect and the District in writing, and any necessary changes shall be made by Change Order in accordance with Sections 9 and 10 hereof or as otherwise provided in the Contract Documents. The Contractor shall bear all expenses of correcting Work that is done contrary to, or in violation of, said laws, ordinances, rules and regulations if the Contractor knew or should have known that the Work as performed is contrary to, or violates, said laws, ordinances, rules and regulations and if the Contractor performed the same (1) without first consulting the Architect and the District for further instructions regarding said Work or (2) disregarded the Architect’s or the District’s instructions regarding said Work.

5. CONTRACT PRICE

The District shall pay, and the Contractor shall accept in full payment for the Work, the Contract Price, subject to additions and deductions provided for in Change Orders, if any, as hereinafter allowed. Whenever Contractor arranges to work at night or at any time when work is not usually in progress, such work shall be accomplished without extra cost to the District, unless the acceleration in the schedule has been directed by the District after bid award and the delay is not caused by the Contractor. If the District directs the acceleration, the Contract Price shall be equitably adjusted by Change Order.

A reduction in the Contract Price will be made, dollar for dollar, for each overtime or per diem dollar spent by the District in connection with required State Inspections when such per diem or overtime payments are caused by the following:

a. Voluntary acceleration of the Project Schedule by the Contractor which involves weekend Work, Work in excess of forty (40) hours per week, or Work in excess of eight (8) hours in a single day, performed by the Contractor or any Subcontractors or Material-men (of any tier), for which on-site inspection of the accelerated Work is required to be furnished by the District; or

b. Fabrication of materials outside a geographical radius of one hundred (100) air miles from the Project Premises in each direction, when said fabrication requires the presence of a District or State inspector (i.e., steel fabrication or concrete batch mixing).

6. PAYMENT SCHEDULE

a. Progress Payments. On or about the last day of each month during the progress of the Work, the Contractor shall submit to the Inspector of record for preliminary approval a completed Contractor Payment Request form, which will include Contractor's periodic estimate for partial payment, on account of the portion of the Contract Price in proportion to Work completed from the commencement of the Work through the last day of the month and not included and paid pursuant to any previous Contractor Payment Requests. Each Contractor Payment Request shall show the Contractor's reasonable estimate of the percentage of completion of the Work based upon the most updated Schedule of Values and Contractor's reasonable estimate of the portion of the Contract Price allocable to (1) labor, materials and equipment incorporated into the Work during the period commencing on the date of the preceding Contractor Payment Request (or the date of the General Contract if no payments have been made) and ending on the last day of the month, and (2) materials and equipment properly purchased and stored for use in the Project as of the last day of the month; provided that, except as otherwise provided in the next paragraph, the District shall not be obligated to make payment for (and shall not pay for) materials or equipment stored off-site (i.e., not on the Project Premises). The Contractor Payment Request shall also include a request for a pro rata share (based upon the Contract Time) of the general conditions previously approved in the Schedule of Values. Contractor's estimate of percentage of completion shall be subject to final review and approval by the Inspector of record and the Architect, in each such person's reasonable discretion.

Notwithstanding anything to the contrary stated above, the Contractor may include in a Contractor Payment Request (and the District shall pay for) the value of any structural steel, mail order materials, G.F.R.C. panels and other such custom-made materials prepared specifically for the Project and unique to the Project, so long as the following requirements are satisfied:

- (1) The aggregate cost of materials stored off-site shall not exceed _____ Dollars (\$_____) at any time without the written approval of the District to be given or withheld in its sole discretion;
- (2) Title to such materials shall be vested in the District, as evidenced by documentation satisfactory in form and substance to the District, including, without limitation, recorded financing statements, UCC filings and UCC searches;
- (3) With each Contractor Payment Request, the Contractor shall submit to the District a written list identifying each location where materials are stored off-site (which must be a bonded warehouse) and the value of the materials at each location. The

Contractor shall procure insurance satisfactory to the District (in its reasonable discretion) for materials stored off-site in an amount not less than the total value thereof;

- (4) The consent of any Surety shall be obtained to the extent required prior to payment for any materials stored off-site;
- (5) Representatives of the District shall have the right to make inspections of the storage areas at any time; and
- (6) Such materials shall be (a) protected from diversion, destruction, theft and damage to the reasonable satisfaction of the District, (b) specifically marked for use on the Project, and (c) segregated from other materials at the storage facility.

In addition to other required items, each Contractor Payment Request shall be accompanied by (i) a duly executed and acknowledged sworn statement showing all Subcontractors and Material-men with whom the Contractor has entered into contracts, the amount of each such contract, the amount requested for any Subcontractors or Material-men in the Contractor Payment Request, together with similar sworn statements from all such Subcontractors and Material-men, (ii) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from Contractor, and all Subcontractors and Material-men providing labor, services, materials or equipment in connection with the Work, whereby such persons conditionally waive all lien and stop notice rights against the District, the Project and the Project Premises with respect to all payments to be made pursuant to the Contractor Payment Request being submitted, (iii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from Contractor, and all Subcontractors and Material-men providing labor, services, materials or equipment in connection with the Work, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project Premises with respect to all payments made pursuant to all previous Contractor Payment Requests, (iv) copies of all recently issued permits or other governmental licenses and approvals with respect to the Work or the Project, (v) copies of certified payroll records (in the form described in Section 61 hereof) from Contractor and each Subcontractor performing any work during the current payment period, (vi) the monthly schedule report and any updates made to the Project Schedule during the current payment period, (vii) a record drawing review log form as required by Section 24g pertaining to the current payment period and (viii) all other information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the District or the Architect. Each Contractor Payment Request shall be based upon the most updated Schedule of Values submitted by the Contractor in accordance with Section 2 hereof.

Upon approval of the Contractor Payment Request (or any portion thereof), the Inspector shall sign the same and deliver it to the Architect for approval. The Architect shall review each Contractor Payment Request, the supporting documentation and the progress of the Work and shall submit to the District a Certificate for Payment form certifying the amounts owed Contractor based on the percentage of completion of

the Work as of the date of the Contractor Payment Request, and/or a statement that the Contractor Payment Request, or any portion thereof, is rejected and the reasons for rejecting the same, within three (3) days after receipt of the Contractor Payment Request and all supporting documentation. Notwithstanding anything to the contrary stated herein, in accordance with California Public Contract Code Section 20104.50, any Contractor Payment Request (or portion thereof) that is rejected by the Architect or the District shall be returned to the Contractor, together with a document setting forth the reasons why the Contractor Payment Request (or portion thereof) is rejected, as soon as practicable, but not later than seven (7) days after the District's receipt of the Contractor Payment Request. The issuance of a Certificate for Payment will not be a representation that the Inspector or the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and Material-men and other data requested by the District to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Price.

If the Contractor Payment Request is undisputed and in accordance with the Contract Documents and the Architect issues a Certificate for Payment, payment shall be made to the Contractor within thirty (30) days after receipt of the Certificate for Payment by the District as required by California Public Contract Code Section 20104.50(b). The amount paid pursuant to each Contractor Payment Request shall be ninety percent (90%) of the amount certified by the Architect in the applicable Certificate for Payment. The District shall be entitled to retain ten percent (10%) of the value of the Work completed as certified by the Architect to assure the faithful performance of the Contract by the Contractor (collectively, the "Retention"), plus any other amounts that may be retained by the District pursuant to Section 6d below. Any Retention (less any other amounts that the District is otherwise entitled to withhold pursuant to Section 6d below) shall be paid to the Contractor, if at all, at the time of final payment. Notwithstanding the foregoing, the District shall have the option, but not the obligation, in its sole and absolute discretion, to reduce from time to time or at any time the Retention or release any portion of the Retention or any other amounts withheld hereunder prior to the date hereinbefore specified so long as the District does not allow the Retention to fall below the percentages required by California Public Contract Code Section 9203. Any exercise of this option shall not be a waiver of (i) any of the District's rights respecting the Retention or future Retention or the right to withhold other amounts under the Contract Documents or (ii) any other right or remedy that the District has under the Contract Documents, at law or in equity. Contractor shall not be entitled to have any Contractor Payment Requests processed or be entitled to have any payment made for Work performed so long as any lawful or proper direction concerning the Work, or any portion thereof, given by the District, Architect or Inspector shall remain un-complied with. Pursuant to California Public Contract Code Section 20104.50, if the District fails to make a progress payment (or any acceptable portion thereof) within thirty (30) days after the District's receipt of a properly submitted Certificate for Payment therefore (as provided above), the progress payment (or such acceptable portion thereof) shall accrue interest for each day from and after the expiration of the said thirty (30) day period until

it is paid to the Contractor at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

A Certificate for Payment or a progress payment shall not constitute acceptance of Work that is not in accordance with the Contract Documents.

The Contractor shall promptly pay each Subcontractor and Material-man, upon receipt of payment from the District, and in any event no later than ten (10) days after such receipt in accordance with California Public Contract Code Section 10262.5, out of the amount paid to the Contractor on account of such Subcontractor's or Material man's portion of the Work, the amount to which such Subcontractor or Material-man is entitled, less percentages (amounts) actually retained from payments to the Contractor on account of such Subcontractor's or Material man's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor and Material man, require each Subcontractor and Material man to make payments to its sub-Subcontractors and sub-Material-men in a similar manner. In no event shall Contractor be permitted to withhold any sums (other than retention as provided hereinabove) due any Subcontractor or Material-man hereunder on the basis of any claims, retention rights or other rights that Contractor may have against such Subcontractor or Material-man at law, in equity or under contract pertaining to or arising out of any other project other than the Project.

b. Final Payment. If no stop notices or other claims relating to the Work have been served or filed against the District, the Contractor, the Work, the Project or the Project Premises, the final payment, or any part thereof that is not subject to a stop notice or other claim, less any other amounts that may be withheld or retained by the District pursuant to Section 6d below, shall be processed following the thirty-fifth (35th) day after recordation of a Notice of Completion for the Work, but no later than the sixtieth (60th) day after the recordation of the Notice of Completion or final completion of the Project, whichever occurs first, as prescribed by California Public Contract Code Section 7107. The final payment shall be processed in accordance with the submission of a final Contractor Payment Request. Before final payment is due and will be paid under the Contract, the Contractor shall deliver certain items to the District (as reasonably requested by the District prior to final payment), including, but not limited, (1) all maintenance and operating manuals, spare parts, extra stock and special tools required by the Specifications, (2) the marked sets of Record Drawings, (3) reproducible Mylar drawings reflecting the location of any concealed utilities, mechanical or electrical systems and components, (4) any special guaranties and warranties required by the Contract Documents, (5) assignments of all guaranties and warranties from Subcontractors and Material-men, (6) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the District or the District's property might be responsible or encumbered (less amounts withheld by the District) have been paid or otherwise satisfied, (7) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from Contractor, and all Subcontractors and Material-men providing labor, services, materials or equipment in connection with the Work, whereby such persons conditionally waive all lien and stop notice rights against the District, the Project and the Project Premises with respect to all payments to be made to them from the final payment, (8) duly executed

unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from Contractor, and all Subcontractors and Material-men providing labor, services, materials or equipment in connection with the Work, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project Premises with respect to all payments made pursuant to all previous Contractor Payment Requests, (9) copies of certified payroll records (in the form described in Section 61 hereof) from Contractor and each Subcontractor performing any portion of the Work to the extent that such records have not been previously delivered to the District with an earlier Contractor Payment Request, (10) a record drawing review log form for the current payment period and (11) copies of all recently issued or final permits or other governmental licenses and approvals with respect to the Work or the Project. As a condition precedent to final payment, Contractor shall also have satisfied all close-out requirements set forth in Sections 484950 51 hereof. Within ten (10) days following final payment, the Contractor shall deliver to the District duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from Contractor, and all Subcontractors and Material-men providing labor, services, materials or equipment in connection with the Work or the Project, executed by such persons, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Work, the Project and the Project Premises arising out of this Contract, the Work or the Project in general.

c. Changes. Payment for additional work or extra work shall be authorized by Change Order in accordance with the terms and provisions of Sections 9 and 10 hereof.

d. Payments Reduced or Withheld. The District may at any time decline to pay the Contractor, or reduce or withhold any portion of a payment otherwise due the Contractor under the Contract (including, without limitation, the final payment), if:

(i) Any of the Work is defective and such defects are not remedied;

(ii) Any third party claims are filed with respect to the Work or the construction or there is reasonable evidence indicating the probable filing of such claims;

(iii) The Contractor fails to make any payments properly to Subcontractors or Material-men for labor, materials or equipment;

(iv) In the District's opinion, the Work cannot be completed for the unpaid balance of the Contract Price;

(v) In the District's opinion, the Work will not be completed within the Contract Time and the unpaid balance of the Contract Price would not be adequate to cover liquidated damages resulting from the anticipated delay;

(vi) Any damage has occurred to the District or any Subcontractor, Material-man or another contractor, and the Contractor may be liable for such damage;

(vii) The Contractor fails to comply with the Project Schedule;

(viii) The Contractor fails to perform any portion of the Work in accordance with the Contract Documents or otherwise violates any provision of the Contract Documents or fails to discharge any Contractor obligation there-under;

(ix) Any claims, liens or stop notices are filed in connection with the Work or asserted against the District, the Project or the Project Premises or the District has reason to believe it is probable a claim, lien or stop notice will be filed or asserted in connection with any portion of the Work;

(x) The Contractor fails to reimburse the District for any costs or expenses incurred by the District, or amounts advanced by the District, on behalf of the Contractor as may be provided or permitted in this Contract;

(xi) Notification has been given that a penalty will be assessed by any State, local or municipal agency or by the District for violations of any applicable laws, including, without limitation, labor laws and/or fair employment laws; or

(xii) Any testing/inspection costs or payments that become due to the District for failed tests or inspections.

If the District elects to withhold payment from the Contractor pursuant to this Section 6d, then the District will be permitted to withhold such amounts as the District may, in its reasonable discretion, deem necessary to (A) protect the District against any and all liabilities to Subcontractors, Material-men or any other persons as a result of the Work or any of the Contractor's acts or omissions, (B) correct any defective Work or remedy any breach of the Contract Documents, (C) recover and collect liquidated damages in the event completion of the Project is delayed, (D) recover and collect any costs or expenses paid by, or amounts advanced by, the District on behalf of Contractor, (E) collect any penalty that may be assessed against the Contractor for violations of any applicable laws, including, without limitation, labor laws and/or fair employment laws, and/or (F) recover any testing/inspections costs incurred by the District in connection with failed tests or inspections. The District may apply any such withheld amount or amounts to the payment and satisfaction of such claims or obligations at its discretion. In so doing, the District shall be deemed the agent of Contractor and any payment so made by the District shall be considered as a payment made under the Contract by the District to the Contractor and shall be so deducted from the Contract Price due the Contractor. The District shall not be liable to Contractor for any such payments made in good faith. Such payments may be made without prior judicial determination of the claim or the obligation to make such payment. The District will render the Contractor a proper accounting of any such amounts retained or disbursed by the District on behalf of the Contractor.

The Contractor shall promptly pay each Subcontractor or Material-man, upon receipt of payment from the District, and in any event no later than seven (7) days after such receipt in accordance with California Public Contract Code Section 7107, out

of the amount paid to the Contractor on account of such Subcontractor's or Material-man's portion of the Work, the balance of the portion of the Retention to which said Subcontractor or Material-man is entitled, reflecting amounts actually retained from previous payments to the Contractor on account of such Subcontractor's or Material-man's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor and Material-man, require each Subcontractor and Material-man to make payments to sub-Subcontractors and sub-Material-men in a similar manner. In no event shall Contractor be permitted to withhold any sums (other than retention as provided hereinabove) due any Subcontractor or Material-man hereunder on the basis of any claims, retention rights or other rights that Contractor may have against such Subcontractor or Material-man at law, in equity or under contract pertaining to or arising out of any other project other than the Project.

e. Substitution of Securities. Substitution of securities for any monies withheld under this Section 6 will be permitted at the request and expense of the Contractor, but only in accordance with the provisions of California Public Contract Code Section 22300. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Securities eligible for investment under this Section 6e shall include those listed in California Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters or credit, or any other security mutually agreed to by the Contractor and the District.

The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

The escrow agreement used for the purposes of this Section 6e shall be substantially similar to the form set forth in California Public Contract Code Section 22300(f).

7. TIME PERIOD FOR COMPLETION OF THE WORK

The time period for completion of the Work shall be the number of consecutive calendar days stated in the General Contract and shall commence from the Starting Date. By executing the General Contract, the Contractor confirms that the Contract Time is a reasonable period for performing the Work. Any extension thereto shall be authorized under Change Order only in accordance with Sections 8, 9 and 10 below. Time is of the essence in the performance of the Contract.

IT IS AGREED BY THE CONTRACTOR AND THE DISTRICT THAT, BECAUSE IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGE TO THE DISTRICT SHOULD THE ENTIRE WORK AND PROJECT NOT BE COMPLETED WITHIN THE TIME PERIOD SPECIFIED ABOVE PLUS ANY AUTHORIZED EXTENSIONS OF TIME HEREUNDER, THERE SHALL BE ASSESSED AS LIQUIDATED DAMAGES, BUT NOT AS A PENALTY,

THE AMOUNT STATED IN THIS CONTRACT FOR EACH DAY THEREAFTER UNTIL THE DATE THAT PHYSICAL COMPLETION OF THE WORK AND THE PROJECT HAS REACHED SUBSTANTIAL COMPLETION.

CONTRACTOR'S
INITIALS: _____

DISTRICT'S
INITIALS: _____

The District may deduct liquidated damages described in this Section 7 from any unpaid amounts then or thereafter due the Contractor under this Agreement in accordance with Section 6d hereof. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the District at the demand of the District, together with interest thereon from the date of demand until paid at a rate equal to the rate of interest set forth in Section 54d hereof.

8. DELAY IN THE WORK

a. Extension of Contract Time. The District shall extend the time period for completion of the Work by the number of calendar days the Contractor is delayed only when satisfactory evidence is presented to the District, within fifteen (15) calendar days after the commencement of the matter or condition causing the delay, that such delay could not be anticipated at the time of entering into the Contract and is neither caused nor continued by fault or negligence on the part of the Contractor, its Subcontractors, Material-men or others reasonably and customarily under the Contractor's control and is not otherwise caused by the Contractor or within its control. The following shall constitute matters or conditions that may justify an extension to the Contract Time hereunder: an act of God or of a public enemy, act of government, act of any quasi-governmental or publicly-regulated entity including a public utility, labor disputes, fire, abnormal adverse weather, flood, epidemic, quarantine restrictions, riot, strike, freight embargo, unavoidable casualties, and other such causes beyond the Contractor's control. If abnormal adverse weather conditions are the basis of a claim for an extension to the Contract Time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time claimed and could not have been reasonably anticipated at the time of contracting, and that such weather conditions had an adverse effect on the scheduled construction. The District shall ascertain the facts and the extent of the delay, and its findings shall be conclusive. A time extension granted for Work at one site shall not apply to any other site. Any extension of time, if allowed by the District pursuant to this Section 8, shall be authorized under written Change Order.

b. District Liability for Delays. Except as otherwise provided in this Section 8, the District and those acting on its behalf shall not be liable for any damages because of any delay in furnishing the Project Premises or otherwise resulting from any cause beyond the control and without the fault of the District, including, but not restricted to: an act of God or of a public enemy, act of government, act of any quasi-governmental or publicly-regulated entity including a public utility, labor disputes, act of the Contractor or the Contractor's employees, Subcontractors, Material-men or agents, act of any other

contractor on the Project, abnormal adverse weather conditions, fire, flood, epidemic, quarantine restrictions, riot, strike, freight embargo, unavoidable casualties, or act of any third person or entity not subject to the direct control of the District. The sole remedy of the Contractor for any such delay shall be limited to an extension of the Contract Time in accordance with Section 8(a) above. Notwithstanding anything to the contrary stated above, the District may, in its sole and absolute discretion and without obligation to do so, elect to increase the Contract Price for significant delays that are not caused by the Contractor or any person under the Contractor's control where the circumstances warrant such a change in the Contract Price pursuant to a Bulletin in the form of Exhibit F attached hereto and incorporated herein by this reference (a "Bulletin") or a Change Order in accordance with Sections 9 and 10 hereof.

In compliance with, the provisions of California Public Contract Code Section 7102, and because it is agreed by the Contractor and the District that actual damages are impracticable and extremely difficult to ascertain, if the Contractor is delayed in completing the Work due solely to the fault of the District, and where such delay is unreasonable under the circumstances and was not contemplated by the parties at the time of contracting, the Contractor shall be entitled to an appropriate time extension to account for the delay, to be authorized by Change Order, and to pay to Contractor its actual and verifiable out-of-pocket delay damages actually incurred by Contractor for each day of such delay. An extension of the Contract Time shall be the Contractor's sole remedy (and the Contractor shall have no right to actual or liquidated damages) for any delay, hindrance in the performance of the Work, loss in productivity, impact damages or similar claims unless the delay (i) is caused solely by the acts of the District, (ii) is unreasonable under the circumstances, and (iii) was not contemplated by the parties at the time of contracting. If any such District-caused delay occurs, the Contractor expressly agrees to be limited solely to the actual and verifiable out-of-pocket delay damages provided for in this Section 8b.

Notwithstanding anything to the contrary stated above, Contractor hereby acknowledges and agrees that Contractor shall not be entitled to any compensation, under any theory of recovery, for extended overhead, project general conditions, acceleration costs or other costs or expenses, arising or resulting from delays of up to one-hundred twenty (120) days from the date of bid opening in the District's obtaining bid approval from its Board and the State of California (if required). In bidding this Project, Contractor fully agrees and understands that a considerable delay may result from the date of the bid opening until the issuance of the Notice to Proceed and that no compensation shall be due to Contractor for such delay unless such delay exceeds one-hundred twenty (120) days, in which event the Contractor shall be appropriately compensated only for the portion of such delay that exceeds one-hundred twenty (120) days.

c. Change Order Work. The Contractor expressly acknowledges and agrees that any change in the Work performed pursuant to Sections 9 or 10 below shall not be deemed to constitute a delay or other basis for claiming additional compensation based on theories including, but not limited to, acceleration, suspension or disruption to the Project, and further acknowledges that a complete system of compensation for said change in the Work is provided exclusively under said Sections 9 and 10.

9. CHANGES

a. Changes in the Work. The District may, at any time prior to Acceptance of Completion, by delivery of a written Bulletin make changes in the Work or the Contract Documents by alteration, addition, deduction, deviation, or omission, without making the Contract void. The Contractor when so notified by the District shall proceed without delay with the changes described in the Bulletin. The details, workmanship and materials involved in any change in the Work shall conform to the original Drawings and Specifications unless specifically instructed otherwise by the District. All such Work shall be executed under conditions of the original Contract, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

In giving instructions, the Architect, any engineer or any other District representative working on the Project shall have authority to make minor changes in the Work, not involving a change in Contract Price or Contract Time, and not inconsistent with the purposes of the building, via an Architect/Engineer Field Directive. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order from the District, and no claim for addition to the Contract Price or extension to the Contract Time shall be valid unless so ordered by the District.

b. Changes in the Contract Price. The charge or credit to the District resulting from any changes ordered or authorized by the District in writing shall be mutually agreed upon by the District and the Contractor as provided in this Section 9b, or, at the District's option, shall be performed on a time and materials basis in accordance with Section 10 below. In no event shall the Contractor be permitted to cease Work during the negotiation of any Bulletin or Architect/Engineer Field Directive and shall proceed with the ordered change in the Work in a timely manner. Contractor shall increase the amounts of each of the Payment Bond and Performance Bond in proportion to any increase in the Contract Price.

If the District elects to fix the charge or credit resulting from any such change by agreement with the Contractor prior to commencement of the change in the Work, then the District shall so notify the Contractor in the Bulletin whereby it requests the change and the Contractor shall submit its estimate for the change within seven (7) calendar days after the change is requested. If the nature of the change permits, the estimate may be in a lump sum agreed to by the Contractor and the District. However, if required by the District, the Contractor shall submit estimates in sufficient detail to permit verification of all costs comprising the Cost of the Work (as defined below). Such estimates shall be based on either unit prices or detailed labor and material estimates, as required by the District in its sole and absolute discretion.

For changes in the Work performed by the Contractor, only the following shall be used in computing the total "Cost of the Work":

(i) Amount of wages (including employer payment for fringe benefits required by custom) paid (A) laborers, apprentices, journeymen and others who are

dedicated exclusively to the Project and working on the Project on a full-time basis to the extent such wages are incurred in connection with such Change Order Work and (B) foremen, full time superintendents and others retained on a full-time basis to supervise the Project to the extent such wages are incurred while such persons are directly supervising Change Order Work;

(ii) A portion of the wages (including employer payment for fringe benefits required by custom) for project directors, assistant project directors, project managers, assistant project managers, project engineers and other such employees equal to the product of such employee's wages multiplied by the number of hours that such employee actually worked on the Project Premises in connection with the Change Order Work (it being acknowledged and agreed by the parties that hours worked by such employees off-site (e.g., not on the Project Premises) on or in connection with the Change Order Work shall be considered Contractor overhead and compensated via the overhead and profit percentages set forth below and not as a part of the Cost of the Work);

(iii) Cost of services, materials, supplies and equipment, including transportation, directly and actually consumed in connection with the change in the Work; provided that, the rental cost for any hand tool with a replacement value that is less than \$500 shall be excluded from the "Cost of the Work" and all materials credits, cash or bulk discounts given to the Contractor or any Subcontractor or Material-man shall be passed on to the District in full;

(iv) Cost of the rental or use of special machinery and equipment (except as otherwise excluded above) necessary to perform the actual change in the Work (including, without limitation, the additional rental costs for Contractor's field office, temporary fencing and other such rented items and materials, but only to the extent that such rental costs are incurred as a result of the critical path being affected by the change in the Work); and

(v) Cost of applicable taxes, insurance and surety bonds that become due and payable solely because of the change in the Work.

No other amounts shall be included in the calculation of the Cost of the Work.

For Change Order Work performed solely by the Contractor and/or its employees, the Contractor shall add fifteen percent (15%) of the total Cost of the Work for the Contractor's profit, overhead, supervision, and any and all other costs or expenses which are incurred by the Contractor because of the change in the Work.

For Change Order Work performed by a direct Subcontractor of the Contractor, the Subcontractor shall be paid the Cost of the Work actually performed by such Subcontractor plus fifteen percent (15%) of the Cost of the Work performed by such Subcontractor as the Subcontractor's profit, overhead, supervision and any and all other such costs or expenses which are incurred by the Subcontractor because of the change in the Work, and the Contractor may add six percent (6%) of the Subcontractor's Cost of the

Work as the Contractor's profit, overhead, supervision, and any and all other costs or expenses which are incurred by the Contractor because of the change in the Work.

For Change Order Work performed by a sub-Subcontractor, the sub-Subcontractor shall be paid the Cost of the Work actually performed by such sub-Subcontractor, plus fifteen percent (15%) of the Cost of the Work performed by such sub-Subcontractor as the sub-Subcontractor's profit, overhead, supervision and any and all other such costs or expenses which are incurred by the sub-Subcontractor because of the change in the Work, to which the Subcontractor may add five percent (5%) of the sub-Subcontractor's total Cost of the Work and the Contractor may add six percent (6%) of the sub-Subcontractor's total Cost of the Work. No increases above the Cost of the Work, as described in items (i) through (v) listed above, other than the overhead, profit and supervision percentages specifically referenced hereinbefore, shall be allowed regardless of the number of layers or tiers of Subcontractors involved.

When the change involves a deletion of Work, the credit to the District shall be computed as set forth in this Section 9b above, including overhead and profit.

If the District and Contractor agree on the amount of any such charge or credit to the District, both parties shall execute a Change Order memorializing the same. If the District and the Contractor are unable to agree on the amount of any charge or credit to the District resulting from a change in the Work, the Contractor shall, at the District's direction, promptly proceed with and diligently prosecute such change in the Work and the charge or credit to the District resulting there-from shall be determined on a time and materials basis, and if, after completion of the change in the Work, the Contractor or the District disputes the other party's determination of the labor and materials cost incurred in connection with the change in the Work, then the party disputing the same may initiate the dispute resolution procedures pursuant to and otherwise proceed in accordance with Section 9d below.

c. Extension of Time. If the District determines that additional time will be required to complete the Work by reason of a change made pursuant to this Section, or a justified delay has occurred in accordance with Section 8 above, the time for completion of the Work shall be extended by a Change Order for a period commensurate with the number of days by which the entire Project has been extended because of that change or delay, as determined by the District in its reasonable discretion. The parties understand and expressly agree that insofar as the provision of California Public Contract Code Section 7102 may apply to changes in the Work or delays under this Contract, the actual and verifiable out-of-pocket delay damages provided for in Section 8b above, in conjunction with the time extensions provided herein, are intended to, and shall provide, the exclusive and full method of compensation for changes in the Work performed under this Contract and construction delays. If the Contractor disputes the District's proposed time extension or any increase in the Contract Price resulting there-from, the Contractor may proceed in accordance with Section 9d below.

d. Dispute over Estimate of Changes to the Contract Price and/or Contract Time. Should the Contractor and the District fail to agree on the estimate of any charge or

credit to the District and/or additional or reduced time required for proposed changes in the Work or any justified delay under Section 8 hereof, the Contractor when notified by the District shall proceed without delay with the changes or extra Work and shall file a written request for mediation and then arbitration (if necessary), as provided in Section 56 hereof, and, if the matter is not resolved by mediation and goes to arbitration, the decision of the arbitrator on the matter shall constitute the Change Order for such change in the Work or delay, as applicable.

e. Unknown or Concealed Conditions or Mistakes/Omissions in Drawings or Specifications. The Contractor hereby reconfirms that it has intensively reviewed the Drawings and Specifications and the Project Premises and is familiar with all laws, rules and regulations that may be imposed upon the Project or the Work by any governmental entity. The Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time for any concealed or unknown condition encountered in the performance of the Work, or for correcting any mistakes or omissions in the Drawings or Specifications, if the Contractor knew of or should have recognized (given the Contractor's investigation of the Drawings and Specifications, the Project Premises and the proposed Work) the condition or mistake/omission prior to commencement of the Work. Notwithstanding the foregoing, however, if the Contractor makes a proper claim for an adjustment to the Contract Time or Contract Price regarding special or concealed conditions or mistakes/omissions in the Drawings or Specifications which do not fall into the categories set forth above, the Architect will promptly investigate such conditions or mistakes/omissions. If such conditions or mistakes/omissions differ materially and cause an increase or decrease in the Contractor's cost or time required for performance of any part of the Work, and the Contractor has timely and properly made its claim, the Architect will recommend an equitable adjustment to the Contract Time or Contract Price, or both. If the Architect determines that the conditions at the Project Premises are not materially different from those indicated in the Contract Documents or that the conditions or mistakes or omissions in the Drawings or Specifications should have been recognized by the Contractor prior to the commencement of the Work and that no change in either or both of the Contract Time or the Contract Price is justified, then the Architect shall so notify the District and the Contractor in writing stating the reasons. For any claim for any adjustment to the Contract Time or Contract Price to be made properly, such claim must be made by the Contractor in writing with specific detail as to the special or concealed condition or mistakes or omissions (as applicable) and such notice shall be given to the District and the Architect promptly before conditions are disturbed and in no event later than fifteen (15) calendar days after first observance of such conditions, mistakes or omissions. If the Contractor is entitled to an adjustment in the Contract Time and/or Contract Price, the Contractor shall make such claim within the fifteen (15) calendar day period. If such claim is not timely and properly made, it shall be considered waived. In no event shall the existence of any concealed or unknown conditions, or any mistakes or omissions in the Drawings or Specifications, qualify or limit any of the Contractor's obligations under the Contract Documents.

10. TIME AND MATERIALS PRACTICES

If, in the opinion of the Architect and the District, it is not feasible to estimate the charge or credit to the District or additional time required in connection with a proposed change in the Work before such change is performed, or if the District and the Contractor are unable to agree upon the charge, credit or additional time required in connection with a proposed change by agreement in accordance with Section 9b above, then the Contractor shall, upon the authorization of the District (to be given or withheld in its sole and absolute discretion), proceed with the change in the Work on a TIME AND MATERIALS BASIS not to exceed the amounts authorized by California Public Contract Code Section 20118.4 for changes or alterations to contracts. The time and materials costs shall be based upon the Cost of the Work, shall include profit, overhead and supervision percentage fees for the Contractor, Subcontractors and sub-Subcontractors, and shall otherwise be calculated in accordance with the applicable provisions of Section 9b above. The Contractor shall submit to the District and the Architect daily time and material tickets signed by the Inspector of record that include the identification number assigned to the change in the Work, the location and description of the change in the Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not small or expendable tools), and such other evidence of cost or credit as the District may require in its sole discretion. The Contractor shall submit time and materials tickets for such authorized Work on a daily basis. Should the Contractor fail to submit such tickets as specified on a daily basis, the evaluation of the amount of materials used and labor expended will be made by the District, in its sole and absolute discretion. The District shall not be liable to Contractor for time and materials costs which arise or are incurred because of the negligence of or defective or nonconforming work or materials of Contractor or any Subcontractor, Material-man or other person within Contractor's control; because of Contractor's failure to properly supervise the Work or to properly schedule or coordinate the Work; or because of Contractor's failure to comply with any requirements of the Contract Documents.

Upon completion of the change in the Work, a Change Order shall be issued and signed by the District and Contractor based upon the aforesaid records; provided that, if the District disputes the amounts claimed in such records of the Contractor, the District may initiate mediation and/or arbitration proceedings (if necessary) pursuant to Section 56 hereof, and, if the matter is not resolved by mediation and an arbitration hearing is required, then the arbitrator's decision on the matter will constitute the Change Order for the change in the Work. No work shall proceed on a time and materials basis except in the presence of the Inspector or an assigned District representative. All daily time and material tickets must be signed by the Inspector.

11. SUBSTITUTIONS

In accordance with California Public Contract Code Section 3400, whenever in the Specifications any material, process or article is indicated or specified by grade, patent or proprietary name or by name of manufacture, the District is unaware of any material, process or article which is equal to the product or item specified. However, such specification shall be deemed to be used for the purpose of facilitating description of material, process or article desired and shall be deemed to be followed by the words "or equal", and Contractor may, unless otherwise stated, offer any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified by delivering to the District and Architect a completed substitution request in the form of Exhibit G attached hereto and incorporated herein by this reference (a "Substitution Request"); provided that, such Substitution Request is submitted to the District within the time period established for the submission and consideration of such Substitution Requests by the Bidder's Package. If the material, process or article offered by the Contractor in the Substitution Request is not, in the opinion of the Architect and the District, substantially equal or better in every respect to that specified, then the Contractor shall furnish any material, process or article specified. Burden of proof as to quality of any material, process or article proposed in a Substitution Request shall rest with the Contractor. The Contractor shall submit the Substitution Request together with substantiating data for substitution of any "or equal" item on or prior to 5:00 p.m. on the fifth (5th) day prior to the date established by the District for the submission and opening of bids, all as further provided in the Bidder's Package for the Project; no Substitution Requests shall be considered or permitted after such date and time. The Substitution Request shall include proof of the State Fire Marshal's approval, if required, all necessary information, specifications, data and the difference in cost. Provision authorizing submission of "or equal" justification data shall not in any way authorize an extension to the Contract Time.

If requested by the Architect or the District, the Contractor shall, at the Contractor's sole cost and expense, have the proposed substitute material, apparatus, equipment or process tested under the direction of the Architect or the Inspector or other District representative in accordance with the terms and provisions of Section 35 hereof. Quality and strength, physical, chemical or other characteristics, durability finish, or efficiency shall be tested by a testing laboratory selected by the District. It shall be the responsibility of the Contractor to provide all necessary evidence for the Architect and the District to evaluate a proposed substitute. If the Architect and the District accept the proposed substitute, the Contractor agrees to pay for all engineering and design services, including, without limitation, compensation to the Architect and affected engineers for their required time to process such substitution through the Division of the State Architect (DSA), if required, and to make all changes and adjustments in materials or Work of all trades directly or indirectly affected by the substituted item or items at no cost to the District. If the furnished material, process or article is more expensive than that specified, the difference in cost of such material, process or article so furnished shall be borne entirely by the Contractor.

12. SUPERVISION OF THE WORK

a. District. The tools, equipment, apparatus, facilities, transportation, labor and materials shall be furnished, and the Work shall be performed and completed, under the general supervision of and subject to the approval of the Architect, the Inspector and the District. Assigned and designated District representatives, including, without limitation, construction managers or project managers, shall have full access to the Work at all times while Work is underway and being performed.

b. Architect. The Architect shall have the right to accept or reject materials or workmanship and determine when the Contractor has complied with the conditions of the Contract. The Architect shall be the District's representative during the construction period and shall observe the progress and quality of the Work on behalf of the District. The Architect will visit the Project Premises at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. The Architect shall have the authority to act on behalf of the District only to the extent expressly provided in the Contract Documents. The Architect shall have the authority to stop Work whenever such stoppage may be necessary, in the Architect's reasonable opinion, to ensure the proper execution of the Contract. The Architect shall be in the first instance the judge of the performance of this Contract. The Architect shall side neither with the District nor with the Contractor, but shall use its powers under the Contract to enforce its faithful performance by both. The Architect shall, within a reasonable time, make decisions on all claims of the District or the Contractor and on all other matters relating to the execution and progress of the Work, and shall generally have all responsibility and power established by law, including Title 24 of the California Code of Regulations. If the District elects, in its sole discretion, to utilize a project manager or a construction manager, the powers delineated above for the Architect may be shared, in whole or in part, with the project manager or construction manager, as the District may determine in its reasonable discretion.

c. Inspector. One or more inspectors employed by the District (including the Inspector) will be assigned to the Work. The inspectors employed by the District shall represent the Architect and the District on the Work. All Work shall be done under the observation or with the knowledge of the Inspector and/or any specialty trade inspector representing the District as may be applicable. The Inspector and such specialty inspectors shall have free access to any or all parts of the Work at any time. Work done or covered up in the absence of specified or prescribed inspection may be required to be removed and replaced under proper inspection. Contractor shall bear the entire cost of performing all the Work and furnishing all the material necessary for the removal and its subsequent replacement irrespective of whether or not the Work is found to be defective. Whenever Contractor arranges to work at night, or at any time when the Work is not usually in progress, or to vary the period during which the Work is carried on each day, Contractor shall give the District twenty-four (24) hours prior notice so that proper inspection may be provided. Contractor shall furnish the Inspector with reasonable facilities (including, without limitation, the field office described in Section 13 below) for

obtaining such information as may be necessary to keep the Inspector fully informed respecting the progress and manner of the Work and character of materials and equipment. Inspection of the Work shall not relieve the Contractor from any obligation to fulfill the Contract. The Inspector shall have the authority to stop Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its subcontractors and employees accordingly.

d. Contractor. Unless personally present on the Project Premises where Work is being done, the Contractor shall keep on the Work at all times during its progress a competent construction superintendent satisfactory to the District. The superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendence duties with another project or job. The construction superintendent shall not be replaced except with written consent of the District. The construction superintendent shall represent the Contractor in its absence and shall be fully authorized to receive and fulfill any instructions from the Architect, the Inspector, the District or any other District representative. All Requests for Information shall be originated by the superintendent and responses thereto shall be given to the superintendent. No Work shall begin in any day by any Subcontractor or other person on the Project Premises until the superintendent has arrived, nor shall Work continue during any day after the superintendent has departed from the Project Premises. Any authorized replacement of the superintendent must be completed through a smooth transition of duties lasting at least ten (10) working days' duration, with such transition being at no expense to the District. The Contractor shall give efficient supervision over the Work using the best skill and attention. The Contractor and all Subcontractors and Material-men shall at all times enforce strict discipline and good order among the Contractor's, such Subcontractor's or Material-man's (as applicable) employees and shall not employ on the Work any unfit person or anyone not skilled in the portion of the Work assigned. Any person in the employ of the Contractor or any Subcontractor or Material-man whom the District may deem incompetent or unfit, shall be dismissed from the Work and shall not again be employed on it except with the written consent of the District. Prior to the District deeming an employee of the Contractor, Subcontractor or Material-man incompetent or unfit, the District shall serve written notice upon the Contractor setting forth the reasons for its determination, and if it relates to a Subcontractor or Material-man, Contractor shall forward a copy of such notice to the affected Subcontractor or Material-man. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall submit to the Inspector of record on or before 12:00 p.m. of each working day a daily report in the form of Exhibit H attached hereto and incorporated herein by this reference pertaining to the previous working day.

e. Subcontractors and Material-men. The Contractor shall be fully responsible for the acts and omissions of all Subcontractors and Material-men on the Work of every tier. In the event of any dispute or controversy between the Contractor and any Subcontractor or Material-man over any matter whatsoever, performance of the Work required under this Contract shall not be delayed or stopped. The District will deal with Subcontractors, Material-men and others employed in connection with the Work,

only through the Contractor, who shall be responsible for the proper execution of all the Work.

f. Conflicts. In case of conflicts among the parties listed above, the decision of the District shall be final.

13. INSPECTOR'S FIELD OFFICE

The Contractor shall provide for the use of the Inspector and other District representatives on the Project Premises a temporary office of not less than seventy-five (75) square feet of floor area to be located as directed by the Inspector and to be maintained until removal is ordered or authorized by the District. The Inspector's office shall be separate from the Contractor's office area. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Doors shall have a key-type lock or padlock hasp. Windows shall be barred. The office shall also be air conditioned. At no cost to the District, Contractor shall also install and provide, for Inspector's and other District representatives' exclusive use, a facsimile machine and a dedicated phone line for such fax service.

A table satisfactory for study of the Drawings and other plans and two chairs shall be provided by the Contractor. The Contractor shall, at its sole cost and expense, provide and pay for adequate electric lights, free telephone service within the Southern California area, not a payphone, and adequate heat for the field office until removal of such field office is ordered or authorized by the District. Contractor shall also grant to Inspector access to a copy machine located on the Project Premises free of charge.

14. ACCESS TO WORK

The District, the Architect, the Inspector and their representatives shall at all times have access to the Project and the Work wherever it is in preparation or progress. The Contractor shall provide safe and proper facilities for such access so that the District, the Architect, the Inspector and their representatives may perform their functions in connection with the Work or under this Contract. The Contractor, at its sole cost and expense, shall provide sufficient, safe and proper facilities and the labor necessary to move, take and prepare samples for testing of materials and shall move the same for purposes of inspection when ordered to do so by any of the above-named persons.

15. SUBCONTRACTING

a. Subcontracting Generally. The Contractor agrees to bind every Subcontractor and Material-man to the terms of this Contract as far as such terms are applicable to such Subcontractor's or Material-man's Work or services. If the Contractor shall subcontract any part of this Contract, Contractor shall be as fully responsible to the District for acts and omissions of all Subcontractors (of every tier) and of persons either

directly or indirectly employed by such Subcontractors, as the Contractor is for acts and omissions of persons employed directly by the Contractor. The Contractor shall also be so responsible for the acts and omissions of all Subcontractors and Material-men of every tier. Nothing contained in the Contract Documents shall create any contractual relations between any Subcontractor or Material-man and the District; provided that, each subcontract or other contract with a Subcontractor or Material-man shall specifically provide that the District is an intended third party beneficiary thereof. Each such subcontract or other contract shall further specifically provide that the District shall only be responsible for those obligations of the Contractor that accrue subsequent to the District's exercise of any rights under the contingent assignment set forth in subsection d below. The Contractor shall not contract with any Subcontractor or Material-man to whom the District or the Architect has made reasonable objection. The District shall have no obligation to pay or to see to the payment of money to a Subcontractor or Material-man except as may be otherwise required by law.

b. District Consent. The District's consent to or approval of any Subcontractor or Material-man under this Contract shall not in any way relieve the Contractor of its obligations under this Contract with respect to such persons and no such consent or approval shall be deemed to waive any such provisions of this Contract.

c. Subletting and Subcontracting Fair Practices Act. In performance of the Work, the Contractor is required to comply with the "Subletting and Subcontracting Fair Practices Act" (California Public Contract Code Sections 4100, et seq.), and for violation of any provision of said Act, shall be subject to the penalties prescribed in the Act. Failure to comply with the Act shall also constitute a "Default" under this Contract. Should performance or completion of the Work be assumed and undertaken by a guarantor or Surety pursuant to a performance guaranty or bond (including, without limitation, the Performance Bond), such party shall, to the same extent as the Contractor, be obligated to use the same subcontractors which the Contractor would have been required to use under the provisions of the "Subletting and Subcontracting Fair Practices Act".

d. Contingent Assignment of Subcontracts and Other Contracts. Each subcontract and other contract or agreement for any portion of the Work is hereby assigned by the Contractor to the District provided that:

- (i) such assignment is effective only after termination of this Contract by the District as provided herein and only for those subcontracts and other contracts and agreements which the District accepts by notifying the Subcontractor or Material-man (as may be applicable) in writing; and
- (ii) such assignment is subject to the prior rights of the Surety(ies) obligated under the Payment Bond and Performance Bond.

The Contractor shall include adequate provisions for this contingent assignment of subcontracts and other contracts and agreements in each such document.

16. DRUG-FREE WORKPLACE

The Contractor shall remove any worker from the Project Premises when directed to do so by the District or any representative of the District. The District and all of the District's projects are "drug-free" and "tobacco-free" workplaces and, as such, require that the Contractor be subject to the requirements mandated by California Government Code Sections 8350, et seq. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Contractor to police and oversee any and all personnel used in connection with the Work and the Project, whether employed directly or indirectly by Contractor. If Contractor fails to maintain a drug-free workplace as required by the Drug-Free Workplace Act and a tobacco-free workplace, the District may enforce its lawful rights to suspend pending or subsequent payments and to terminate the Contract and may pursue all other rights and remedies in may have against the Contractor at law and/or in equity. The Contractor shall also submit to the District the drug-free workplace certificate required by law within seven (7) days after award of the Contract.

17. TAXES

It is understood and agreed that all taxes applicable to or that may be levied in connection with the Work or the Project will be paid by the Contractor and are included in the Contract Price. If, under federal excise tax law, any transaction hereunder constitutes a sale on which a federal excise tax is imposed, and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purpose of such exemption; and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in the calculation of any bid price.

18. UTILITIES AND SANITARY FACILITIES

All utilities, including, but not limited to, electricity, water, gas, and telephone, used on or in connection with the Work, or, with respect to projects providing for the construction of new buildings, the building under construction, shall be furnished and paid for by the Contractor. For projects involving the construction of new buildings, the District shall be responsible for all utilities charges and fees for the building under construction only upon and after the earlier to occur of Acceptance of Completion and early occupancy of the building by the District as provided in Section 46 hereof. The Contractor shall furnish and install all necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Project Premises where utility is necessary to carry on the Work. The Contractor shall protect all public utilities equipment by enclosing or boxing in, and upon the completion of the Work,

remove all enclosures or protective coverings and leave the Work in a finished condition. Upon completion of the Work, the Contractor shall remove all temporary distribution systems.

If this Contract is for an addition to an existing facility (or otherwise for Work on an existing building or facility), the Contractor may, with the written permission of the District, use the District's existing utilities by making prearranged payments to the District for the utilities used by Contractor and all Subcontractors and Material-men and others employed on the Project.

The Contractor shall provide sanitary temporary toilet building(s) as directed by the District or any District representative for the use of all workmen; provided that, in any event, the ratio of such toilet buildings to workers on the Project Premises shall be at least equal to the ratio required by OSHA regulations. The building(s) shall be maintained in a sanitary condition at all times and shall be left at the Project Premises until removal is directed by the approval of the District or any District representative. Use of toilet facilities at the Project Premises shall not be permitted except by approval of the District or any District representative.

19. FEES, PERMITS, LICENSES, PATENTS AND ROYALTIES; AND PAYMENT THEREFORE

The Contractor and all its employees, Subcontractors, Material-men or agents shall secure and maintain in force for the duration of the Contract and the warranty period such licenses and permits as are required by law and shall conform to all Federal and State of California laws and regulations and County of San Bernardino, City of San Bernardino and other applicable laws, ordinances and regulations covering the Project or the Work

The Contractor shall obtain and pay for all permits and licenses required for the performance of, or in connection with, the Work, and shall give all necessary notices and shall deliver necessary certificates to the District when required except when provided otherwise in the Specifications, and shall pay all royalties and license fees arising from the use of any material, machine, method or process used in performing the Work. All charges, assessments and fees payable in connection therewith are included in the Contract Price and shall be the Contractor's sole responsibility.

20. EASEMENTS

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the District unless otherwise specified in the Contract Documents.

21. SURVEYS

Surveys to determine the location of property lines and corners, and legal limitations and utility locations, will be supplied by the District, at its sole cost and expense. Surveys to determine the location of construction, grading and site work, and all

building layout Work and layout for utility lines and connections, required in connection with the Project or the Work shall be provided by Contractor, at its sole cost and expense.

22. LAWS AND REGULATIONS

Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of the Work as indicated and specified.

23. MATERIAL SAFETY DATA SHEETS AND COMPLIANCE WITH PROPOSITION 65

a. Contractor is required to insure that material safety data sheets for any material requiring a material safety data sheet pursuant to the federal “hazard communication” standard or employee’s right-to-know law are available in a readily accessible place on the Project Premises. The Contractor is also required to insure (i) the proper labeling of any substance brought onto the Project Premises, and (ii) that the person(s) working with the material, or within the general area of the material, is/are informed about the hazards of the substance and follow(s) proper handling and protection procedures.

b. Contractor is required to comply with the provisions of California Health and Safety Code Section 25249.5, et seq., which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. The Contractor agrees to familiarize itself with such statutory provisions and to fully comply with the requirements therein set forth.

24. DETAIL DRAWINGS AND INSTRUCTIONS

a. In case of any ambiguity, conflict or lack of information in the Drawings or Specifications, the Architect shall furnish with reasonable promptness, additional instructions by means of additional drawings or specifications, an Architect/Engineer Field Directive or otherwise as may be necessary for the proper execution of the Work. All such drawings, specifications, Architect/Engineer Field Directives and instruments shall be consistent with the Contract Documents or with true developments thereof and/or reasonable inferences there-from.

b. The Work shall be executed in conformity with all Contract Documents, and the Contractor shall do no Work without proper drawings, specifications and instructions.

c. The Architect will furnish all additional details needed to more fully explain the Work, which details shall be considered as part of the Contract Documents.

d. Should any details be more elaborate, in the reasonable opinion of the Contractor, than scale drawings and specifications warrant, written notice thereof shall be given to the Architect within five (5) days of receipt of the details. In case no such written notice is given to the Architect within such five (5) day period, it will be assumed that the

details are reasonable developments of the scale drawings. If such notice is given, then the claim will be considered by the District and the Architect, and if found justified, the Architect will either modify the Drawings or recommend to the District a Change Order for any extra work involved.

e. All parts of the described and shown construction shall be of the best quality of their respective kinds, and the Contractor is hereby advised to use all diligence to understand fully the required construction and finish, and in no case to proceed with the different parts of the Work without obtaining first from the Architect such directions and/or drawings as may be necessary for the proper performance of the Work.

f. If it is found that the Contractor has varied from the Drawings and/or Specifications in materials, quality, form or finish, or in the amount or value of the materials and labor used, the Architect shall be at liberty, at any time either before or after completion of the Work, to order such improper work removed, remade and replaced, and all Work disturbed by these changes shall be made good at the Contractor's expense, or the Architect shall receive from the Contractor for the District a sum of money (or the District shall deduct from amounts otherwise due the Contractor in accordance with Section 6d hereof a sum of money) equal to the difference in value between the work actually performed and the Work that is called for by the Drawings and Specifications, it being within the Architect's and the District's sole discretion to pursue either course of action.

g. The Contractor shall maintain at the Project Premises, and shall make available to the District, the Architect, the Inspector and other District representatives, one record copy of the Drawings (the "Record Drawings") in good order. The Record Drawings shall be prepared and updated during the prosecution of the Work. The prints for Record Drawing use will be a set of black-line prints provided by the Architect to the Contractor at the start of construction. The Contractor shall maintain the said set in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing Drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings and stub-outs; and (v) such other information as the District, Architect, Inspector or other District representative may reasonably request from time to time. Contractor shall submit a completed record drawing review log form in the form of Exhibit I attached hereto and incorporated herein by this reference together with each Contractor Payment Request in accordance with Section 6 hereof. Final payment and any Retention hereunder shall not be made or paid to the Contractor until the final Record Drawings marked by the Contractor as required herein are delivered to the District.

25. COPIES OF DRAWINGS AND SPECIFICATIONS

FURNISHED

The Contractor will be furnished, free of charge, 10 copies of the Drawings and Specifications, plus 1 set of the Drawings for use as the Record Drawings. Additional copies may be obtained by the Contractor at the cost of reproduction.

26. CONTRACT DOCUMENTS ON PROJECT PREMISES

Contractor shall keep one copy of all Contract Documents, including, without limitation, addenda, Change Orders, Title 24 of the California Code of Regulations, the California Building Code, 1995 Edition, and the prevailing wage rate tables, which are all part of the Contract Documents, on the Project Premises at all times during the progress of the Work. Contractor shall also retain the most recent issue of the Uniform Building Code on the Project Premises. Said documents shall be kept in good order and will be available for review by the Architect, its representatives and the District and its representatives. Contractor shall be acquainted with and comply with the provisions of Title 24 of the California Code of Regulations as they relate to this Project.

27. OWNERSHIP OF DRAWINGS

All drawings, specifications, and copies thereof furnished by the District are its property. They are not to be used on other work and with exception of signed contract sets are to be returned to District on request at completion of the Work. The District shall have the right to copyright all such plans, drawings, specifications and other construction documents, and the District shall have all additional common law, statutory and other reserved rights to such plans, drawings, specifications and other construction documents, and Contractor hereby waives all of the said rights (including, without limitation, the right to copyright any of the Construction Documents).

28. SHOP DRAWINGS AND DIAGRAMS

a. Submittal of Drawings. The Contractor shall check and verify all field measurements and shall submit, with such promptness so as not to cause delay to the Contractor's Work or in the work of any other contractor on the Project Premises, six (6) copies checked and approved by the Contractor of all shop or setting drawings, schedules and materials lists required for the Work of various trades. The Contractor shall further submit, for the Architect's approval, shop and diagram drawings as required by the Specifications or requested by the Architect, of any material and equipment proposed to be used by the Contractor. The Contractor covenants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer. Drawings shall be submitted with a letter of transmittal addressed to the Architect and listing the numbers of the drawings submitted. Drawings must identify

the Project and the Contractor and be complete in every respect. If the drawings have variations from the requirements of the Contract Documents, Contractor shall make specific mention and request approval of such variations in the Contractor's letter of transmittal in order that, if acceptable, suitable action may be taken for acceptance and proper adjustment of the Contract Documents by Change Order. Otherwise, Contractor will not be relieved of the responsibility for executing the Work in accordance with the Contract Documents, even though the drawings have been approved. By approving and submitting shop drawings, samples (as provided by Section 34 below) and other similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. All shop drawings shall be reviewed by the Contractor for coordination of each submittal with the Work of other Subcontractors performing Work on the Project. The Contractor's endorsement shall state that such coordination has taken place and that no conflict exists between the information contained in the submitted shop drawings and any other trade or process used in connection with the Project. All submittals and shop drawings transmitted directly by any Subcontractor or Material-man and not endorsed by the Contractor will be returned as incomplete and no action will be taken thereon by the District.

b. Architect Review of Drawings. Architect shall check and review the drawings only for conformance with design concept of the Project and compliance with information given in the Contract Documents, and shall indicate corrections, if any, and shall return such drawings to the Contractor within fourteen (14) working days after the Architect's receipt thereof. If the drawings have not been given final approval, the Contractor shall make any corrections required by the Architect, re-submit to the Architect corrected copies of the drawings in the same number as the original submittal in accordance with the procedure outlined above and obtain final approval before beginning the Work involved. Upon final approval of the drawings, the Contractor shall furnish such other copies thereof as may be needed for construction. The Architect's approval of such drawings or schedules shall not relieve the Contractor from the responsibility for errors in shop drawings or schedules, or for fitting and construction of the Work, or for deviations from the Drawings or Specifications, or from furnishing materials and Work required by the Contract Documents, which may not be indicated on the approved drawings, unless the Contractor has in writing called the Architect's attention to any such deviation.

29. LAYOUT AND FIELD ENGINEERING

It shall be the Contractor's sole and absolute responsibility to check, verify and determine the accuracy of all measurements and locations contained in the Drawings and Specifications, including, without limitation, the verification of quantities and general information. Any field engineering required for laying out the Work and establishing grades shall be furnished by the Contractor at its sole cost and expense.

Whenever the documentation or Drawings provided by the District, as prepared by various consultants or others, provide or indicate quantities or related

dimensioning, these quantities or information in general shall not be construed as specific requirements for the basis of fabrication, preparation or pricing or installation until verified as accurate by the Contractor and/or its Subcontractors. Contractor shall, at its sole cost and expense, procure, calculate, confirm and obtain accurate reports for quantities and dimensioning. The District shall not be liable (to any degree or in any manner) for any cost, expense or liability resulting from or arising out of Contractor's failure to obtain and verify information. Any information furnished by the District, the Architect, any record engineer, the project manager, the Inspector or any other District representative shall be considered to be "good will" information provided on a courtesy basis without the assumption of any liability or responsibility on the part of the District or such other persons, and all responsibility for checking, verifying and determining the accuracy of all measurements and locations, and for all field engineering required for laying out the Work and establishing grades, shall remain with the Contractor.

30. SOILS INVESTIGATION REPORT

The Contractor has examined the Project Premises and satisfied itself as to site conditions and the character, quality and quantity of surface and subsurface materials that will be encountered in connection with the Work.

When a soils investigation report obtained from test holes at the Project Premises is available, such report shall not be a part of this Contract. Any information obtained from such report, or any information given on any drawings as to subsurface soil conditions or to elevations of existing grades or elevations of underlying rock, is approximate only, is not guaranteed, and does not form a part of the Contract. The Contractor is required to make a visual examination of the Project Premises and must (and is permitted to) make whatever tests the Contractor deems appropriate to determine and assess the underground condition of soil. No claims for allowances or damages because of the Contractor's negligence or failure in acquainting itself with the conditions of the Project Premises as described herein will be recognized by the District.

The following constitute the only exceptions to the Contractor's responsibility stated above:

a. The Contractor shall promptly notify the Architect if foundations, utility installations or facilities or other man-made obstacles are encountered which are not shown or indicated on the Drawings or Specifications, or which are found in a location substantially different from that shown, indicated or specified, and such obstacles were not reasonably apparent from a personal on-site examination of the Project Premises. Any delay to the Project caused as a result of any failure by the District or any utility company to provide for the removal or relocation of any such utility facilities shall justify a corresponding extension to the Contract Time. Contractor shall be compensated for the cost of locating and repairing damage to any existing main or trunk-line utility facilities located on the Project Premises and shall be otherwise compensated as required by California Government Code Section 4215, provided that, (i) any such damage was not caused by the negligence or willful misconduct of Contractor or its Subcontractors or Material-men and (ii) such main and/or trunk-line were not indicated in the Contract

Documents with reasonable accuracy. Additional work that may be required because of the obstacles referenced above shall be handled by a Change Order in accordance with Sections 9 and 10 hereof and in accordance with California Government Code Section 4215.

b. If the Contract Documents require excavation or other Work to a stated elevation and the Architect orders a change of depth or dimension of such subsurface Work, then an adjustment in Contract Price for such change will be made in accordance with Sections 9 and 10 hereof.

31. EXCAVATIONS; SUBSURFACE CONDITIONS

a. For all excavations in excess of five (5) feet involving an estimated expenditure in excess of \$25,000, the Contractor shall submit to the District or, at the District's direction, to its civil or structural engineer, for acceptance a detailed drawing showing the design of shoring, bracing, sloping or other provisions to be made for the protection of workmen from the hazard of caving ground. If such design varies from the standards established by the Construction Safety Orders of the California Division of Industrial Safety, the drawing shall be prepared by a registered civil or structural engineer. None of the aforementioned trenching shall be started before the Contractor receives notification of acceptance from the District or its civil or structural engineer, as applicable. Contractor shall comply with all other applicable requirements of California Labor Code Section 6705, and, as therein provided, no provisions of that Section or this Section 31 shall be construed to impose tort liability upon the District. In any event, 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 Project Premises prior to the commencement of any excavation.

b. In accordance with Section 7104 of the California Public Contract Code, if the Work under this Contract 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:

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

(ii) Subsurface or latent physical conditions at the Project Premises differing from those indicated; or

(iii) Unknown physical conditions at the Project Premises of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in this Contract.

The District will promptly investigate the conditions, and if it finds that the conditions do materially 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, the District will issue a Change Order under the procedures described in Sections 9 and 10 hereof.

In the event that a dispute arises between the District and the Contractor as to 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, then the Contractor shall not be excused from the 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 either by contract or by law and may initiate the dispute resolution proceedings of this Contract in accordance with Section 56 hereof to resolve its dispute.

In addition, the District reserves the right to terminate this Contract should the District determine not to proceed with the Project because of any condition described in this subsection b. In the event of any such termination, the Contractor shall receive payment for all Work actually performed to the effective date of termination. 32.

32. MATERIALS AND WORK

Except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract and the Work within the Contract Time. Unless otherwise specified, all materials used in connection with the Work shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality and done in full compliance with applicable laws and to industry standards or better, if specified.

Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required. Contractor shall be entirely responsible for damage or loss to materials or the Work under this Contract by weather or other causes, except as otherwise expressly provided in this Contract with respect to Acts of God.

Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project Premises by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project Premises. Protection of construction materials and equipment stored on the Project Premises is solely the responsibility of the Contractor.

Contractor shall, after signing the General Contract with the District and receiving approval by the Architect of the submittals and samples, place orders for materials and/or equipment as specified so that delivery of the same may be made

without delays to the performance of the Work. Contractor shall, upon demand from the Architect, furnish to the Architect documentary evidence showing that the orders have been placed. When delivered, materials and equipment shall be completely identified with manufacturer's name, model number, type and other required data stamped thereon or on a tag or label attached thereto; or the materials or equipment shall be delivered in the manufacturer's original containers bearing such identification and other pertinent data as required for complete identification. If materials or equipment are not so identified, an invoice or certificate providing complete identification shall at time of delivery be furnished to the District's Inspector.

The District reserves the right, for any neglect in not complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order to ensure that the Work may be completed within the Contract Time, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by the Contractor upon demand. Any amounts expended by the District pursuant to this paragraph shall accrue interest from the date expended until repaid at the rate set forth in Section 54d hereof.

Materials shall be stored on the Project Premises in such manner so as not to interfere with the Work and as prescribed by all applicable laws, rules, regulations, orders or permits applicable to the Project and so that no portion of the structure shall be overloaded. If Contractor shall cause, permit or allow any part of the building(s) to be overloaded by storing, piling or setting thereon any material or equipment, or by performing thereon any of the Work, Contractor shall do so at its own risk and shall be solely responsible for any and all loss, damage and injury arising or resulting therefrom. Any load on any area in excess of that fixed by the Architect as a safe load within the limits allowed by the applicable building code or other laws, rules or regulations, or any load placed or distributed so as to exceed such safe load, shall be deemed to be overloaded. The Architect may require load tests to be made on any part of the building(s) so overloaded. Said portion of the Work shall support a test load of two times the design load without excessive deflection. These tests shall be made by a testing laboratory selected by the District, and the cost of such tests shall be borne by the Contractor.

Should the Architect, the Inspector or any other District representative consider that the place, manner or form of storage by the Contractor of any materials, or the placing or storage by the Contractor of any equipment, temporary structures or other facilities on public property, on the Project Premises or within the building(s), is obstructing the progress of the Work, or is liable to cause delay in the completion of any Work, or is causing overloading of any portion of the building(s), then the Architect, Inspector or such other District representative shall notify the Contractor in writing to change such place, manner or form of delivery or storage of materials, or placing or storage of equipment, temporary structures or other facilities, and shall fix the time in such notice within which such changes must be made. Upon receipt of such notice, Contractor, at its own cost and expense, shall proceed forthwith to make the changes required in said notice within the time fixed therein.

Materials or work required or necessary to be tested shall be tested under supervision of, as directed by, and at such places as may be convenient to, the Architect, the Inspector or another District representative. The required testing of all structural materials shall be done by a District approved testing laboratory in accordance with the terms and provisions of Section 35b below.

Contractor shall be responsible for all existing structures and improvements within the Work area, and shall provide adequate protection therefore, either by covering or by temporary removal. Any existing structures and/or improvements damaged during construction shall be repaired or replaced with materials, fixtures or equipment of the same kind, quality and size. Any materials or equipment temporarily removed for protection and not damaged shall be reinstalled. Contractor shall be liable for all damage to property of the District or others on the Project Premises within the Work area and all loss thereof by theft, and shall promptly replace or repair, as the case may require, at its sole cost and expense, all such damaged and stolen property.

Contractor shall protect and preserve the Work and the Project Premises, including any adjoining property of the District or others, from all damage or accident, by providing temporary roofs, window and door coverings, boxing, shoring or other construction required.

No materials, supplies, or equipment for the Work under this Contract shall be purchased subject to any chattel mortgage, or under a conditional sale or other agreement by which an interest therein, or in any part thereof, is retained by the seller or supplier thereof. Contractor warrants good title to all materials, supplies and equipment installed or incorporated into the Work and agrees, upon completion of the Work, to deliver the Project Premises, together with all improvements constructed or placed thereon, to the District free of any stop notices, liens, claims or charges.

33. NON-UTILIZATION OF ASBESTOS MATERIAL

a. No asbestos or asbestos-containing products or materials shall be used in this Project or in any tools, devices, clothing or equipment used in connection with the Work or this Project.

b. Asbestos and/or asbestos-containing products or materials shall be defined as all items containing, but not limited to, chrysodile, crocidolite, amosite, anthophyllite, tremolite and actinolite.

c. Any or all products or materials containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

d. Any disputes involving the question of whether or not a product or material will be installed with asbestos-containing equipment shall be settled by electron microscopy, and the cost of any such tests shall be paid by the Contractor.

e. All Work, products or materials found to contain asbestos, or Work, products or materials installed with asbestos-containing equipment, will be immediately rejected and this Work will be removed at no additional cost to the District.

34. SAMPLES

Contractor shall furnish for approval, within thirty-five (35) days following receipt of the Notice to Proceed, all samples as required in the Specifications, together with all submittals, catalogs, required MSDS sheets and supporting data required by the Architect. This provision shall not authorize any extension to the Contract Time. Within fourteen (14) working days from receipt of the same, the Architect will check and approve such samples only for conformance with design concept of the Work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples.

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

Samples of materials and/or articles shall, upon demand, be submitted for tests or examinations and consideration before incorporation of same in the Work is started. Contractor shall be solely responsible for delays due to samples not being submitted in time to allow for proper time to perform tests. Acceptance or rejection will be expressed in writing. Materials furnished must be equal to approved samples in every respect. Samples which are of value after testing will remain the property of the Contractor.

35. TESTS AND INSPECTIONS

a. Tests and Inspections; Payment. If the Contract, the District's instructions, laws, ordinances or any public authority (including, without limitation, the Division of the State Architect (DSA)) require any portion of the Work to be specially tested, inspected or approved, the Contractor shall give notice to the District and any other required authority of its readiness for testing, observation or inspection at least two (2) working days prior to such Work being tested or covered up. If the test or inspection is by an authority other than the District, the Contractor shall nevertheless inform the District of the date fixed for such test or inspection. Required certificates of inspection shall be secured by the Contractor. Observations by the District shall be promptly made, and where practicable at the source of supply. If any Work should be covered up without the approval or consent of the District, it must, if required by the District, be uncovered for examination and satisfactorily reconstructed at Contractor's sole expense in compliance with the Contract Documents.

The Contractor shall notify the District a sufficient time in advance of the manufacture of materials to be supplied by the Contractor under the Contract, which must, by terms of the Contract, be tested in order that the District may arrange for testing of the same at the source of supply. Any materials shipped by the Contractor from the

source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated in the Work without the prior approval of the District and subsequent testing and inspection.

Re-examination of questioned Work may be ordered by the District, and if so ordered, Work must be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the District shall pay the costs of reexamination and replacement of the Work. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay for all such costs. In the event required DSA testing of the Work identifies a failure rate of ten percent (10%) or greater for any system, scope of work, installation or sub-trade that has been specifically targeted, the District may, in its sole discretion, order that all such similar systems, installations, scopes of work or sub-trade work used in connection with the Work be tested, and the cost to test all such work shall be paid by the Contractor.

The District will pay for all tests and inspections; provided that, in addition to the costs to be paid by the Contractor in accordance with the preceding paragraph, the Contractor shall pay for all tests and inspections under any of the following conditions:

- (i) When such costs are stipulated in the provisions of the Contract Documents to be borne by the Contractor;
- (ii) When a material is tested or inspected and fails to meet the requirements of the Specifications and/or Drawings; or
- (iii) When the source of the material is changed after the original test or inspection has been made and approved.

b. Testing Laboratory. The District, with the approval of the Architect or registered engineer, shall select a qualified person or testing laboratory as the testing agency to conduct the test, and all tests shall be conducted in conformance with Section 4-335 of Title 24 of the California Code of Regulations.

Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency or the District's representative and not by the Contractor.

c. Testing Reports. The testing laboratory shall report the results of all tests in writing and shall furnish the number of copies of the report ordered by the District. The reports shall state that the tests were made under the responsible charge of a testing engineer holding a license to practice civil engineering in the State of California; that the material was tested in accordance with the provisions of the Specifications; and that the material tested either passed or failed to pass the test. The District will send one copy of each test report to the Contractor and will distribute copies to the Architect, the Inspector and others required. For tests shown to be required on the "Testing & Inspection Sheet" issued by the Division of the State Architect (DSA), a copy will also be

mailed to DSA, referencing the Project File Number and the DSA manager assigned supervision over the Project

d. Certification of Non-Tested Materials. If a material is not required to be tested, the Architect, the Inspector or the District may require the Contractor to furnish a certificate bearing the official and legal signature of the supplier with each delivery of such material, which certificate shall state that the material complies with the Specifications.

e. Tested Materials on Hand. The Contractor shall have in storage on the Project Premises at all times sufficient quantity of the tested and approved materials so that the progress of the Work will not be delayed because of lack thereof. The Contractor shall not use any material which is required to be tested, nor any material of which tests are being made, until the test reports have been delivered as hereinbefore specified, and said reports show that the material under test conforms to the provisions of the Contract Documents and has been approved by the Architect and the District.

f. Tests or Inspections Not to Delay Work. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

36. CUTTING AND PATCHING

The Contractor shall do all cutting, fitting or patching of the Work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors as shown by, or reasonably implied by, or inferred from, the Drawings and Specifications for the completed structure and shall make good after them as the Architect may direct. Only tradespersons skilled and experienced in cutting and patching shall perform such Work.

All costs incurred as a result of defective or ill-timed work shall be borne by the party responsible therefore.

The Contractor shall not endanger any Work by cutting, excavating, or otherwise altering such Work and shall not cut or alter work of any other contractor except with the consent of the Architect.

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Contractor's risk, subject to replacement at its own expense and without reimbursement under the Contract. Agency approvals shall be obtained by the Architect, not by the Contractor.

Permission to patch any areas or items of the Work shall not constitute a waiver of the District's, the Inspector's or the Architect's right to require complete removal and replacement of the areas or items of the Work if, in the opinion of the Architect, the Inspector or the District, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents.

37. NOISE CONTROL

The Contractor shall be responsible for the installation of noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise is subject to the control of the Environmental Protection Agency's Noise Control Program (Part 204 of title 40, Code of Federal Regulations). If school is in session at any point during the progress of the Project, and, in the District's reasonable discretion, the noise from such Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all such Work around normal school hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall Contractor have a right to receive additional compensation or an extension to the Contract Time as a result of any such rescheduling or the making of such other arrangements. These controls shall be implemented during site preparation and construction.

38. DUST CONTROL

a. The Contractor shall be fully and solely responsible for maintaining and upkeep all areas of the Work and Project Premises, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust in general as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, the Contractor shall take specific care to avoid deposits of airborne dust or other elements that may accumulate on top of equipment, on walls, on floors, furniture and/or any other permanent or movable items. Prior to the commencement of any Work, the Contractor shall determine the probabilities of creating such an environment and provide all of the necessary protective equipment and/or items to contain the dust or airborne elements under a complete and secured control. Such protection devices, systems or methods shall be in accordance with the regulations set forth by the EPA and OSHA, and other applicable State and/or Federal regulations. Additionally, the Contractor shall be the sole party responsible to clean up and remove any and all deposits of dust and other elements. Damages and/or any liability derived from the Contractor's failure to comply with these requirements shall be exclusively the cost of the Contractor, including, without limitation, any and all penalties that may be incurred for violations of local, state and/or federal regulations, and any amounts expended by the District to pay such damages shall be due and payable to the District on demand and shall bear interest from the date expended until repaid at the rate set forth in Section 54d hereof. The District may also retain or withhold any amounts expended hereunder from progress payments otherwise due Contractor in accordance with Section 6d hereof. Contractor shall protect all of the District's property, fixed or movable, and shall replace any damaged item or part thereof and professionally clean any and all items that might become covered or partially covered to any degree by dust or other airborne elements. If school is in session at any point during the progress of the Project, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from such Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the

performance of all such Work around normal school hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall Contractor have a right to receive additional compensation or an extension to the Contract Time as a result of any such rescheduling or the making of such other arrangements.

b. In the event that the Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of this Contract, the District shall so notify the Contractor and the Contractor shall be obligated to take immediate action. Should the Contractor fail to respond with immediate and responsive action and not later than twenty-four (24) hours from the District's notification, the District shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred in connection with such actions shall be the sole responsibility of, and be borne by, Contractor and will bear interest from the date expended until repaid to the District at the rate set forth in Section 54d hereof. The District may also retain or withhold any amounts expended hereunder from progress payments otherwise due Contractor in accordance with Section 6d hereof.

39. CLEANING UP

In addition to its obligations set forth in the Sections above, Contractor at all times shall keep the Project Premises free from debris such as waste, rubbish, and excess materials and equipment caused by the Work; debris shall be removed from such Project Premises at Contractor's sole cost. Contractor shall not leave debris under, in, or about the Project Premises. Upon completion of the Work, Contractor shall clean the interior and exterior of buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration; Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and, at the District's direction, shall remove temporary fencing, barricades, planking and construction toilet(s) and similar temporary facilities from the Project Premises. If the Contractor fails to clean up as provided herein, the District may do so at the sole cost and expense of the Contractor after twenty-four (24) hours written notice to the Project superintendent, and any amounts expended by the District hereunder shall accrue interest from the date of expenditure until paid by the Contractor at the rate set forth in Section 54d hereof. The District may also retain or withhold any amounts expended hereunder from progress payments otherwise due Contractor in accordance with Section 6d hereof. These provisions are in addition to the cleanup requirements found in Division One (1) of the Specifications.

40. SEPARATE CONTRACTS

The District reserves the right to let other contracts in connection with the Work or the Project. Contractor shall afford other contractors a reasonable opportunity for the introduction and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.

If any part of Contractor's Work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to the Architect any defects in such other contractor's work that renders it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report shall constitute Contractor's acceptance of the other contractor's work as fit and proper for reception of the Contractor's Work, except as to defects which may first develop or become noticeable in such other contractor's work after the Contractor has already commenced its Work.

To ensure proper execution of the Contractor's Work, Contractor shall measure and inspect work already in place and shall at once report to the Architect any discrepancy between work executed by any other contractor and the Contract Documents. Assistance required by the Architect in obtaining measurements of information on the Work shall be furnished fully and efficiently by the Contractor. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the District in prosecution of, or in connection with, the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Before starting the various phases of its Work, Contractor shall consult with other contractors on the Project Premises, if any, and with the Architect and Inspector, regarding the installation of such other contractor's work in order to avoid the possibility of conflict in installing Work and the maintenance of Work progression according to the Project Schedule. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Project Premises. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract or contracts for the Project is likely to cause interference with performance of some other contract or contracts, the District shall decide which contractor shall continue or whether work can be coordinated so that the contractors may proceed simultaneously.

The District shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from the award or performance or attempted performance of any other contract or contracts on the Project, or caused by any decision or omission of the District respecting the order of precedence in performance of contracts. Should the Contractor cause damage to the work of another contractor on the Project Premises, Contractor agrees, upon due notice, to settle with such other contractor by agreement or arbitration without cost to the District.

41. RISK OF LOSS ON CONTRACTOR; SAFETY

PRECAUTIONS

Except as otherwise provided in this Section 41, the District assumes no responsibility or liability for the physical condition or safety of the Project Premises or of any improvements thereon. Contractor shall be solely responsible for providing a safe place for performance of the Work. Contractor acknowledges and agrees that any information, materials and test equipment furnished the Contractor by the District, the Architect or any other District representative, excepting the Drawings and Specifications,

are supplied solely for the convenience of the Contractor, and the District makes no representation or warranty regarding the accuracy, completeness or adequacy of such information, materials and data, and the Contractor must verify independently that such items are sufficient to be relied upon in connection with the Work.

Except as otherwise provided in this paragraph, the Contractor shall assume the risk of any and all types of loss or damage to the Work or any part thereof, to adjoining property, or to materials or things employed in doing the Work, or stored on the Project Premises, until the earlier of: (x) the date that the District accepts final completion of all Work (including all "punch-list" items), and (y) the date that the District assumes early occupancy pursuant to Section 46 hereof. The District, however, will not in any event assume the risk of any loss or damage to materials and things employed by the Contractor in doing the Work. Pursuant to California Public Contract Code Section 7105, the District will not hold the Contractor responsible for the cost of repairing or restoring any damage to the Work proximately caused by any Acts of God in excess of five percent (5%) of the Contract Price; provided that, the Work that was damaged by any such Act of God was constructed in accordance with all accepted and applicable building standards and the Drawings and Specifications.

Except as provided in the preceding paragraph with respect to damage caused by Acts of God, the Contractor, with due diligence and dispatch, shall replace or repair, at its own expense, all Work lost or damaged.

The Contractor shall take all necessary precautions for the safety of its employees, Subcontractors, Material-men and others on the Work and shall comply with all applicable safety laws and building codes to prevent accidents or injuries to persons on, about or adjacent to the Project Premises where Work is being performed. Contractor shall erect and install all necessary safeguards, signs, barriers, lights and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the Work whose duty shall be prevention of accidents. The name and position of the person so designated shall be reported to the District. Contractor shall provide and maintain at the Project Premises first-aid supplies for minor injuries.

When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise the utmost care and carry on such activities under the supervision of properly qualified personnel.

In an emergency affecting safety or life, or of Work, or of adjoining property, Contractor, without special instruction or authorization from the Architect or the District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury, and shall so act, without appeal, if so authorized or instructed by the Inspector, the Architect, the District or any other District representative. Any compensation or extension to the Contract Time claimed by the Contractor on account of emergency work shall be determined by Change Order in accordance with Sections 9 and 10 hereof.

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.

Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property and structures, and to avoid damage thereto, and repair any damage thereto caused by construction operations.

Contractor shall (unless the requirement is waived by the Inspector):

Enclose the working area with a substantial barricade, arrange the Work to cause a minimal amount of inconvenience and danger to students and faculty in their regular school activities, and perform Work which may interfere with school routine before or after school hours;

Provide substantial barricades around any shrubs or trees indicated to be preserved (Contractor shall not trim or remove any tree, for any reason, without the prior written approval of the District); Deliver materials to building areas over routes designated by the Architect, the Inspector, an assigned project manager or any other District representative;

When directed by the District, take preventative measures to eliminate objectionable dust;

Confine Contractor's apparatus, the storage of materials, and the operation of its workmen to limits indicated by laws, ordinances, permits or directions of the Architect, the Inspector or any other District representative, and shall not unreasonably encumber the Project Premises with material, and enforce all instructions of the District, the Architect, the Inspector or any other District representative regarding signs, advertising, fires, danger signals, barricades and smoking, and require that all persons employed on the Work comply with all regulations while on the Project Premises; and

Take care to prevent disturbing or covering survey markers, monuments or other devices marking property boundaries or corners, and if such markers, monuments or other devices are disturbed, replace the same using an approved civil engineer at no cost to the District.

42. HOLD HARMLESS CLAUSES

The Contractor shall indemnify, defend and hold the District, the Board, the Architect, its and their officers, employees, agents, consultants, other independent contractors, consultants and representatives, harmless from and against every liability, claim, demand, cost, loss, damage or expense which may accrue or be made by reason of:

a. Any injury to person or property sustained by the Contractor or by any person, firm, corporation, partnership, limited liability company or other entity, including, without limitation, any Subcontractor or Material-man of any tier, employed directly or indirectly by it upon or in connection with the Work;

b. Any injury to person or property sustained by any person, firm, corporation, partnership, limited liability company or other entity, caused by any act, neglect, Default or omission of the Contractor or any person, firm, corporation, partnership, limited liability company or other entity, including, without limitation, any Subcontractor or Material-man of any tier, directly or indirectly employed by it upon or in connection with the Work, whether the injury or damage occurs upon or adjacent to the Work or the Project;

c. The furnishing or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, process, article, or appliance under the Contract;

d. The violation of any applicable laws, rules or regulations of any governmental entity in connection with the Work; or

e. Any failure or alleged failure of the Contractor (or any person hired or employed, directly or indirectly, by the Contractor) to pay any Subcontractor or Material-man of any tier or any other person employed in connection with the Work, and/or the filing of any stop notice or mechanic's lien claim.

The Contractor, at its own cost, expense and risk, shall defend all legal proceedings that may be brought against the District, the Board, its and their officers, employees, agents, consultants, other independent contractors and representatives, on any such liability, claim, demand, cost, loss, damage or expense, and satisfy any resulting judgment that may be rendered against any of them whether or not the liability, claim, demand, cost, loss, damage or expense was actually or allegedly caused wholly or in part through the negligence or other tortuous conduct of any of them; provided that, notwithstanding anything to the contrary stated above, the Contractor shall not be obligated to indemnify any particular indemnities if the liability, claim, demand, cost, loss, damage or expense was actually and solely caused by such indemnities gross negligence or willful misconduct.

43. INSURANCE

The Contractor shall secure and maintain, as a minimum, the insurance described and as set forth in the General Contract.

The Contractor further shall furnish to the District certificates of insurance, signed by an authorized representative of the insurance carrier no later than five (5) days after Board approval of the Contract or prior to the start of construction, whichever occurs first, which certificates shall be endorsed as follows:

“This policy shall not be suspended, cancelled, reduced in coverage or required limits of liability or amounts of insurance or non-renewed until notice has been mailed to the District. Date of suspension, cancellation, reduction or non-renewal may not be less than thirty (30) days after the date of mailing such notice.”

“The insurance afforded by this policy is primary and any other insurance carried by the District with respect to the matters covered by such policy shall be excess and non-contributing.”

The certificates of insurance and insurance policies required under this Contract shall name the District, the Office of Public School Construction, State of California (when the Project is a State-funded project) and all other indemnities described in Section 42 hereof as additional insured’s; provided that, any Builder’s Risk Insurance shall name the District as loss payee there-under. Facsimile or reproduced signatures are not acceptable. If complete and proper insurance certificates as required hereunder are not delivered to the District within the time period provided above, the District may declare the Contract unexecuted and void and, in its discretion, proceed to award the Contract to the next lowest responsible bidder in accordance with California Public Contract Code Section 5106. The District reserves the right to require complete certified copies of the required insurance policies. All insurance policies shall be on a full “occurrence” basis and not a claims made or modified occurrence basis.

Contractor hereby releases the District, the Office of Public School Construction, State of California (when the Project is a State-funded project) and all other indemnities described in Section 42 and their boards, officers, directors, agents, partners, servants and employees from any liability, and on behalf of its insurer, waives any right of subrogation, for any loss or damage to any or all of its or their property, which loss or damage is of the type covered by builder’s risk insurance required to be maintained by it under the Contract Documents, regardless of any negligence on the part of the released persons which may have contributed to or caused such loss or damage. If the insurance policy does not allow a waiver of the right of subrogation of the insurer, Contractor covenants that it will obtain for the benefit of each of the listed persons a waiver of any right of subrogation which the insurer of such person may acquire against any such person by virtue of the payment of any loss covered by such insurance.

The Contractor in signing this Contract hereby certifies, pursuant to Section 1861 of the California Labor Code, as follows:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

The Contractor shall require all Subcontractors engaged on the Work to maintain such insurance as will protect the Contractor and such Subcontractors from all claims and other liabilities as set forth above and in the General Contract (including, without limitation, workers’ compensation insurance), and hereby assures the District that all such Subcontractors will maintain such insurance.

The insurance companies providing the insurance required under this Contract shall be subject to the District's prior written approval, which shall not be unreasonably withheld or delayed.

The Contractor shall not commence Work, nor allow any Subcontractor or other person to commence Work, under this Contract until all required insurance and certificates have been obtained and delivered in duplicate to, and approved by, the District. Failure to maintain the insurance and furnish the required certificates or policies shall constitute a Default by the Contractor and the District may terminate the Contract without waiver of any other remedy it may have pursuant to the provisions of Section 54 hereof.

If the Contractor fails to purchase and maintain any insurance required under this Section 43, the District may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor promptly thereafter or deduct the amount of such premiums from the Contract Price in accordance with Section 6d hereof. Any amounts expended by the District hereunder shall bear interest at the rate set forth in Section 54d hereof from the date expended until repaid to the District.

44. CONTRACT SECURITY

Unless otherwise specified in the Contract Documents, the Contractor shall furnish a surety bond in an amount at least equal to the minimum amount required by California Civil Code Section 3248 (as the same may be amended or re-codified from time to time), or in such greater amount as may be required by the District in its sole and absolute discretion, as security for payment of persons performing labor and furnishing materials in connection with this Contract and shall furnish a separate bond in an amount equal to 100 percent of the Contract Price as security for faithful performance of this Contract. The aforesaid bonds shall be in the forms set forth in Exhibits C and D of this Contract, respectively. Upon request of the Contractor, the District will consider and accept, in its sole discretion, multiple Sureties on such bonds. Only bonds executed by admitted Surety insurers as defined in California Code of Civil Procedure Section 995.120 shall be accepted.

The Contractor shall keep the Surety informed of the progress of the Work. The District shall be notified by the Contractor, in writing, of all communications between the Contractor and the Surety. The District may, in its sole discretion, inform the Surety of the progress of the Work (or lack of progress) or any problems encountered in connection with the Work or the Contractor and may obtain consents, as necessary, to protect the District's rights, interest, privileges and benefits under and pursuant to any bond issued in connection with the Work.

45. MAINTENANCE WARRANTY BOND

If the bid for the Project requires an additional form of security to insure compliance with the requirements of the Guaranty-Warranty provisions of this Contract

set forth in Section 57 hereof, the Contractor shall provide, at its sole cost and expense, a maintenance-warranty-guaranty bond for a sum equal to the lesser of (x) ten percent (10%) of the Contract Price, and (y) One Million Dollars (\$1,000,000) (the "Maintenance Bond"). Such Maintenance Bond will be issued by a Surety meeting the requirements of this Contract. The Maintenance Bond shall cover the entire scope of the Work, shall be in addition to any and all warranties or guaranties issued by manufacturers and suppliers, and shall warrant and guaranty all of the Work for a term equal to the terms of each of the Contractor's warranties and guaranties provided in the Contract Documents so that the Maintenance Bond will fully warrant and guaranty each Contractor warranty and guaranty set forth in the Contract Documents for an equal amount of time as set forth in the Contract Documents. The Maintenance Bond shall further warrant and guaranty a response time of not more than one (1) business day from the time of District's notification to the Contractor of a defect. If the Contractor fails to respond and/or initiate any action for the repair of defects within a period of one (1) business day after notice from the District thereof, the District shall then have the right to summarily execute upon the Maintenance Bond up to its entire value and proceed to remedy and correct the defect without further notice to Contractor..

46. OCCUPANCY OR USE BEFORE ACCEPTANCE OF

COMPLETION

The District may occupy any building or portion thereof or use any improvement contemplated by the Contract prior to the completion of the entire Work. A list of Work to be completed and corrected by the Contractor, if any, shall be prepared and agreed to between the District and the Contractor before any such occupancy or use. Such occupancy or use shall not operate as an acceptance of any part of the Work but shall start the guaranty-warranty period on the structure or portion thereof so occupied or improvement or equipment so used; provided, however, that such occupancy or use shall not start the guaranty-warranty period as to items appearing on the list of Work yet to be completed and corrected or as to structures or improvements (or portions thereof) that are not occupied or used. No such occupancy or use shall be deemed to have occurred unless and until the District has given the Contractor written notice of its intention to so occupy or use any particular structure or improvement specifying the portion or portions of the structure, improvement or equipment which will be deemed so occupied or used. The District and the Contractor shall take reasonable steps to obtain the consent of the Contractor's insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse of or reduction of such insurance.

Such occupancy or use by the District shall relieve the Contractor of (and the District shall assume) the responsibility for injury or damage to said occupied or used portions of the Project resulting from use by the District or the public or from the action of the elements or from any other cause, except injury or damage resulting from the operations, negligence or intentional acts of the Contractor, any Subcontractors or

Material-men of any tier, or their officers, employees or agents. Upon occupancy of any building or portion thereof by the District pursuant to this Section 46, the District shall assume payment of all utility costs and expenses incurred in connection with the building or portion thereof so occupied and shall procure insurance for (or self-insure) the occupied building or portion thereof. The Contractor shall continue to pay all utility costs and expenses and provide insurance for any portion of the Project that is not so occupied by the District and shall coordinate with the District before canceling or reducing insurance coverage.

The Contractor shall not be required to re-clean such occupied portions of the Project before final acceptance, except for cleanup made necessary by Contractor's operations. Nothing in this Section shall be construed as relieving the Contractor from full responsibility for correcting defective work or materials and from removing the same from the Project Premises.

47. CONTRACT/PROJECT CLOSE-OUT

a. The Contractor shall provide all operations necessary for closing out the Contract and assisting in the District's final inspection and examination of the Project, and shall, prior to requesting inspection by the District, inspect and make certain (and fully verify) that all of the Work is complete in accordance with the content and intent of all of the Contract Documents and is in fact ready for the requested inspection.

b. The District will not review, inspect, examine or walk-through any areas or assemblies that are only partially completed.

c. If the Contractor requests an inspection of areas or assemblies that are evidently or excessively incomplete, and/or if, in the reasonable opinion of the District, the Contractor is using the inspection as a means and way to define or determine a scope of Work or to accelerate the Work of a Subcontractor instead of a means to finally inspect a completed portion of the Work, then the Contractor shall be liable for all costs and expenses that the District may incur in connection with any such inspection, inclusive of, but not limited to, personnel salaries, wages, consultant fees, transportation costs, etc., which amounts the District may retain or withhold from the Contract Price in accordance with Section 6d hereof. Such amounts shall bear interest from the date expended until repaid to the District at the rate set forth in Section 54d hereof.

d. The Supplementary General Terms and Conditions contain additional close-out formats and required forms to be completed, if any are required.

48. REQUIREMENTS PREPARATORY TO FINAL

INSPECTION/EXAMINATION

The following shall be conditions precedent to the final inspection/examination of the Project by the District or any of its representatives:

a. All punch-list items shall be completed;

b. All temporary facilities shall have been removed from the Project Premises if the District has so instructed the Contractor;

c. The buildings, Project Premises and all other facilities located thereon shall have been thoroughly cleaned as required by the Contract Documents;

d. All plumbing, mechanical and electrical equipment shall operate quietly and free from vibration;

e. All systems shall function as designed and shall meet specified requirements for the Project; and

f. All operating instructions for equipment shall be properly mounted and posted as specified by the Contract Documents.

49. FINAL INSPECTION EXAMINATION

a. After all the requirements to final inspection have been completed and satisfied, Contractor shall notify the District so that the final inspection can be performed.

b. Contractor shall submit to the District a written certification in the form of Exhibit J attached hereto and incorporated herein by this reference certifying that:

(i) The Work has been inspected by the Contractor for compliance with the Contract Documents and by all public agencies having jurisdiction.

(ii) The Work has been completed in accordance with the Contract Documents.

(iii) All equipment and systems have been tested in the presence of the District's designated representative, and when so required, the Architect, the Inspector and other consultants, inspectors and governing agencies, and all such equipment and systems are operational.

(iv) The Work is fully complete and ready for final examination.

c. Contractor shall schedule final inspection and examination in a sequential manner to facilitate the inspection.

d. Inspector(s) will perform final inspection/examination of the Work within seven (7) days after receipt of the certification described above.

e. Should the Architect and the Inspector consider that the Work is "finally complete", the Contractor shall be required to make the close-out submittals immediately.

f. The District representatives, Contractor, consultants and Inspector will coordinate for occupational authorization.

g. If the Architect or the Inspector determines that the Work is not “finally complete”:

(i) The Contractor shall be so notified in writing, which writing shall describe all of the reasons for the Architect’s or the Inspector’s, as applicable, decision and all points of contention.

(ii) The Contractor shall then take immediate steps to remedy the work that has not been completed (or has not been completed correctly) and notify the District’s Architect, Inspector and consultants in writing upon completion of the same.

(iii) Once remediation has been completed, Contractor shall resubmit a request for final inspection and examination, together with the certification described in Section 49b above, and the District’s representatives and Architect and Inspector will re-inspect the Work within seven (7) days after receipt of such certification.

(iv) The District reserves the right to assess to the Contractor all direct and indirect costs and expenses incurred by the District in connection with any failed inspections if the Work failed to pass inspection as a result of the Contractor’s negligence, error or other wrongful conduct. The District may retain or withhold any amounts assessed hereunder from the Contract Price in accordance with Section 6d hereof. All amounts assessed hereunder shall bear interest from the date assessed until paid to the District at the rate set forth in Section 54d hereof.

50. CLOSE-OUT SUBMITTALS

a. Immediately upon the Architect’s and Inspector’s approval of the final inspection, and in addition to any other submittals required to be made by the Contractor under any other provision of the Contract Documents, the Contractor shall submit the following close-out documentation to the District:

(i) Operations and maintenance data for equipment as required by this Contract, the Specifications, the Drawings, Change Orders, Addenda or any other Contract Document, (including, without limitation, three (3) complete sets of manuals containing manufacturers’ instructions on the operation of each item and apparatus furnished under the Contract Documents) and for such other items when and as directed by the District or the Contract Documents;

(ii) Project Record Drawings;

- (iii) Warranties and bonds for equipment put into service;
- (iv) Keys and keying schedule and “Identification Tagging” master template (if Project Work is tagged);
- (v) Tools, spare parts and maintenance materials;
- (vi) A list of all Subcontractors and Material-men of every tier providing services and/or materials in connection with the Project, in a formal, adequately bound, cataloged form, which shall include the names, addresses, telephone numbers and fax numbers of such persons, and shall further include notices as to where pertinent persons can and may be reached for emergency service, inclusive of nights, weekends and holidays; and
- (vii) A fully executed Guarantee in the form of Exhibit K attached hereto from every Subcontractor and Material-man providing labor or materials in connection with the Work.

Contractor shall certify that each of the items submitted to the District in accordance with this Section 50a above is complete and accurate and all of the items submitted, taken together, cover all of the Work.

b. Contractor shall deliver evidence of compliance with any and all requirements of all applicable governmental regulatory agencies at all levels, including, without limitation, the District, City, State and Federal government and agencies, as may be reasonably required by the District.

c. Contractor shall deliver certificates of inspection for vertical transportation systems, life safety systems and mechanical and electrical Work as may be applicable.

d. Contractor shall deliver certificates of insurance for products and completed operations, bonds, maintenance bonds, warranties and any and all other required certificates as may be applicable and required by any of the Contract Documents.

e. Contractor shall submit Contractor’s final affidavit of payment of debts and complete payroll certifications.

51. ACCOUNTS ADJUSTMENT

a. Upon completion of the Project, Contractor shall submit a final statement of accounting to the District, showing in full detail all adjustments and variations to the Contract Price.

b. When required, the District will prepare a final Change Order showing all final adjustments to the Contract Price, which were not made previously by other Change Orders.

52. ACCEPTANCE OF COMPLETION

The District, through the Board, shall accept completion of the Contract and have the Notice of Completion recorded when the entire Work shall have reached the stage of Substantial Completion or final completion, whichever occurs first, to the satisfaction of the Architect, the Inspector and the District.

If, after Acceptance of Completion, the Contractor fails to correct all “punch-list” items prior to the expiration of the 60 day period immediately following the recordation of the Notice of Completion, the District shall withhold from the final payment, in addition to any other amounts that the District may be permitted to withhold pursuant to Section 6d hereof, an amount equal to one and one-half (1.5) of the Architect’s estimated cost of the correction of all such items until the last of the items has been corrected. At the end of the 60 day period, if there are items remaining to be corrected, the District may request the Contractor in writing to make immediate correction of said items, and if the Contractor fails to make such correction within ten (10) days of the date of the written notice, the District may make the correction and deduct the costs incurred in connection therewith from the amount withheld therefore.

The parties hereby acknowledge and agree that the Board must formally accept Substantial Completion or final completion, as applicable, by Board resolution in order for Acceptance of Completion to occur.

53. CORRECTION OF WORK BEFORE FINAL PAYMENT

Contractor shall promptly remove from the Project Premises all Work condemned by the District as failing to conform to the requirements of the Contract Documents, whether incorporated or not. Contractor shall promptly replace and re-execute its 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 such removal or replacement.

If the Contractor does not remove such condemned Work within a reasonable time, fixed by written notice, the District may remove it and may store the material at Contractor’s expense. If the Contractor does not pay the expenses of such removal within ten (10) days time thereafter, the District may, upon ten (10) days written notice to the Contractor, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all costs and expenses that should have been borne by the Contractor under this Contract.

54. DEFAULT; REMEDIES

a. Default. The following events shall constitute a default of the Contractor under the Contract (each a “Default”):

(i) If the Contractor commences a voluntary action under any chapter of the United States Bankruptcy Code as now or hereafter in effect or if the Contractor takes any equivalent or similar action by filing a petition or otherwise under any other Federal or State law in effect at such time relating to bankruptcy or insolvency; is filed against the Contractor under any chapter of the United States Bankruptcy Code as now or hereafter in effect at the time of filing or if a petition is filed seeking any such equivalent or similar relief against the Contractor under any other Federal or State law in effect at the time relating to bankruptcy or insolvency and such petition or filing is not dismissed within 60 days after being filed;

(iii) If the Contractor makes a general assignment for the benefit of creditors;

(iv) If a trustee, receiver, custodian or agent of the Contractor is appointed under applicable law or under contract whose appointment of authority to take charge of property of the Contractor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the Contractor's creditors;

(v) If the Contractor fails to perform the Work in accordance with the Contract Documents, including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to its construction scheduling responsibilities;

(vi) If the Contractor disregards laws, ordinances, rules or regulations of any public body having jurisdiction;

(vii) If, in the opinion of the District, the Contractor at any time during the progress of the Work fails to perform any obligation or violates any provision of this Contract, including, without limitation, safety requirements;

(viii) If the Contractor admits in writing an inability to pay its debts generally as they become due; or

(ix) If the Contractor fails to make prompt and timely payment to Subcontractors or Material-men of any tier for Work performed and/or materials furnished in connection with the Project or any such Subcontractor or Material-man files a valid stop notice or lien against the District, the Project or the Project Premises.

b. Remedies other than Termination. If a Default occurs, the District may, without prejudice to any other right or remedy, including, without limitation, its right to terminate the Contract pursuant to subsection c below, do any or all of the following: (1) permit the Contractor to continue under this Contract, but make good such deficiencies or

complete the Contract by whatever method the District may deem expedient, and the cost and expense thereof shall be deducted from the Contract Price or paid by the Contractor to the District on demand; (2) if the workmanship performed by the Contractor is faulty, or defective materials are provided, erected or installed, then the District may order the Contractor to remove the faulty workmanship or defective materials and to replace the same with Work or materials that conform to the requirements of the Contract Documents, in which event the Contractor, at its sole cost and expense, shall proceed in accordance with the District's order and complete the same within the period of time given by the District in its notice to the Contractor; and (3) initiate procedures to declare the Contractor a non-responsible bidder for a period of two to five years thereafter. All amounts expended by the District in connection with the exercise of its rights hereunder shall accrue interest from the date expended until paid to the District at the rate set forth in subsection d below. The District may retain or withhold any such amounts from the Contract Price in accordance with Section 6d hereof. If the Contractor is ordered to replace any faulty workmanship or defective materials pursuant to clause (2) above, the Contractor shall replace the same with new Work or materials that conform to the Contract Documents, using methods and materials approved by the Architect and the District, and, at its own cost, shall repair or replace, in a manner and to the extent the Architect or the District shall direct, all Work or material that is damaged, injured or destroyed by the removal of said faulty workmanship or defective material, or by the replacement of the same with acceptable Work or materials. In no event shall anything in this Section 54 be deemed to constitute a waiver by the District of any other rights or remedies that it may have at law or in equity, it being acknowledged and agreed by the Contractor that the remedies set forth in this Section 54 are in addition to, and not in lieu of, any other rights or remedies that the District may have at law or in equity.

In cases other than violation(s) of safety requirements, the District shall first deliver or mail to the Contractor and its Surety at the last address on file in the District's office, a written notice giving the Contractor three (3) business days to cure the Default to the satisfaction of the District (or such longer period as may be necessary under the circumstances if the Default cannot be cured within such three (3) business day period); provided that, in the event that the District elects to terminate the Contract pursuant to subsection c below, the District shall only be required to deliver the seven (7) day termination notice described in said subsection c and shall not be required to deliver the notice described immediately above. In cases of violation(s) of safety requirements, the District may correct the violation(s) in accordance with clause (1) of the immediately preceding paragraph, or if in the District's opinion circumstances permit, the District will notify the Contractor orally that the violation(s) must be corrected within a specified time period. This oral notification will be followed by prompt written notice to the Contractor and the Surety.

c. Termination of Contract. If a Default occurs, the District may, without prejudice to any of its other rights or remedies, including its rights and remedies under subsection b above, after giving the Contractor and its Surety seven (7) days' written notice (provided that, at the District's election, the Contract will automatically terminate upon the occurrence of an event described in Sections 54a(i) or (ii) above without the need for such seven (7) day notice), terminate the Contract or any or all services of the

Contractor hereunder, exclude the Contractor from the Project Premises and take possession of the Project and the Work and of all the Contractor's tools, appliances, construction equipment and machinery at the Project Premises and use the same to the full extent they could be used by the Contractor without liability to the Contractor for trespass or conversion, incorporate in the Work all materials and equipment stored at the Project Premises or off-site and for which the District has paid the Contractor, and finish the Work as the District may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work, including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance of the Contract Price, the Contractor shall pay the difference to the District. The costs incurred by the District in completing the Contract shall be determined by the Architect. When exercising any rights or remedies under this Section, the District shall not be required to obtain the lowest price for work performed. All amounts due to the District or Contractor upon completion of the Work under this Section 54c shall be paid within thirty (30) days after such amount is determined and demand therefore is made in writing by the party to be paid, and any amount not paid within the said thirty (30) day period shall accrue interest from the date of demand until so paid at the rate set forth in subsection d below.

d. Interest on Amounts Due. Except as otherwise provided with respect to progress payments (as set forth in Section 6 hereof), all amounts not paid when due under this Contract shall bear interest at the rate of ten percent (10%) per annum.

55. TERMINATION OF CONTRACT FOR CONVENIENCE

Notwithstanding anything to the contrary stated in the Contract Documents, the District may terminate the Contract for convenience at any time upon ten (10) days' prior written notice to the Contractor. Upon receipt of any such notice of termination for convenience, the Contractor shall immediately, in accordance with the instructions from the District, proceed as follows:

a. cease operations as specified in the notice; provided that, the District, in its sole and absolute discretion, may require the Contractor to complete any Work necessary to facilitate transfer of the Contractor's responsibilities to another contractor;

b. place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract;

c. terminate all subcontracts and orders to the extent they relate to Work terminated (unless the District expressly agrees to assume the same in accordance with Section 15d hereof);

d. proceed to complete the performance of Work not terminated;

e. take actions that may be necessary, or that the District, Architect, Inspector or other District representative may direct for the protection and preservation of the terminated Work; and

f. transfer to the District, in writing, good title to all materials on the Project Premises, or used or to be used on the Project, for which payment has been received from the District, including, without limitation, materials in the process of being fabricated off-site.

Upon such termination, the District's total obligation to the Contractor shall be limited to payment for all Work completed, and materials delivered to the Project Premises (and stored thereon or properly stored off-site in accordance with Section 6b hereof) in connection with the Work, as of the effective date of the termination. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, any claim for anticipated profits.

The District shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims which the District has against the Contractor under the Contract (or any other amounts that the District may withhold or offset against the Contract Price pursuant to the Contract Documents), and (iii) the value of the materials, supplies, equipment and other items that are to be disposed of by the Contractor that are part of the Contract Price.

Final payment to the Contractor hereunder shall be made upon receipt and approval of a final Contractor Payment Request from the Contractor in accordance with the terms and provisions of Section 6 hereof.

56. DISPUTE RESOLUTION

a. Resolution of Construction Claims of \$375,000 or Less. Construction Claims (as defined below) involving an amount or amounts in controversy of \$375,000 or less in the aggregate shall be made and processed pursuant to the terms and provisions of, and the procedures outlined in, California Public Contract Code Sections 20104, et seq. (as may be amended or re-codified from time to time), which procedures (as of September 1, 1996) are set forth in Exhibit L attached hereto. As used herein, "Construction Claims" shall mean a separate demand by the Contractor for (1) an extension to the Contract Time, (2) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for in the Contract Documents or the Contractor is otherwise entitled, or (3) an amount the payment of which is disputed by the District. All mediations and arbitrations shall take place at a location selected by the arbitrator in the City of San Bernardino, California.

b. Resolution of Construction Claims in excess of \$375,000 and Non-Construction Claims.

Construction Claims arising out of or related to the Contract or breach thereof that involve an amount or amounts in controversy in excess of \$375,000 in the

aggregate, and any and all disputes, controversies and/or claims that do not constitute Construction Claims (whether or not such disputes, controversies and/or claims exceed \$375,000 in the aggregate), shall be resolved by formal judicial proceedings initiated in a Federal or State court within the greater San Bernardino, California metropolitan area. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PERSON ARISING OUT OF OR RELATING TO THE CONTRACT DOCUMENTS, THE WORK OR THE PROJECT MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE GREATER SAN BERNARDINO, CALIFORNIA METROPOLITAN AREA, AND BY EXECUTION AND DELIVERY OF THE CONTRACT, EACH PARTY HERETO ACCEPTS FOR ITSELF, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THE CONTRACT DOCUMENTS, THE WORK OR THE PROJECT.

EACH OF THE PARTIES TO THIS CONTRACT HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE CONTRACT DOCUMENTS, THE WORK OR THE PROJECT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THAT RELATIONSHIP, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, ANTITRUST CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON-LAW OR STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS CONTRACT AND ALL OTHER CONTRACT DOCUMENTS AND INSTRUMENTS PROVIDED FOR HEREIN, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS CONTRACT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING, OR HAS HAD AN OPPORTUNITY TO DO SO, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS CONTRACT OR ANY OTHER CONTRACT DOCUMENTS OR DOCUMENT ENTERED INTO BETWEEN THE PARTIES IN CONNECTION WITH THIS CONTRACT, THE WORK OR THE PROJECT. IN THE EVENT OF LITIGATION, THIS CONTRACT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT WITHOUT A JURY.

CONTRACTOR'S
INITIALS: _____

DISTRICT'S
INITIALS: _____

c. JOINDER

NOTWITHSTANDING ANYTHING TO THE CONTRARY STATED HEREIN (INCLUDING, WITHOUT LIMITATION, THE TERMS AND PROVISIONS OF THIS SECTION 56 ABOVE PROVIDING FOR CERTAIN DISPUTE RESOLUTION PROCEDURES), THE DISTRICT AND CONTRACTOR EACH HEREBY CONSENTS TO THE JOINDER OF ANY CLAIM OR CAUSE OF ACTION BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THE CONTRACT DOCUMENTS, THE WORK OF THE PROJECT IN ANY OTHER LEGAL ACTION OR PROCEEDING RELATING TO THE PROJECT, INCLUDING ANY MEDIATION, ARBITRATION OR LITIGATION PROCEEDING INVOLVING THE DISTRICT, A CONSTRUCTION MANAGER, ARCHITECT, OTHER CONTRACTORS AND/OR ANY SUBCONTRACTORS WITH RESPECT TO THE PROJECT, AND EACH PARTY AGREES TO THE JOINDER OF ANY CLAIM OR CAUSE OF ACTION RELATING TO THE PROJECT BY OR AGAINST THE DISTRICT, A CONSTRUCTION MANAGER, ARCHITECT, OTHER CONTRACTORS AND/OR ANY SUBCONTRACTORS WITH RESPECT TO THE PROJECT IN ANY ACTION OR PROCEEDING PROSECUTED UNDER THIS CONTRACT. IT IS HEREBY EXPRESSLY ACKNOWLEDGED AND AGREED BY THE DISTRICT AND CONTRACTOR THAT A CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THE CONTRACT DOCUMENTS OR THE WORK MAY BE RELATED TO VARIOUS CLAIMS AND/OR OTHER CAUSES OF ACTION INVOLVING OTHER PERSONS WORKING ON THE PROJECT (SUCH AS THE CONSTRUCTION MANAGER, OTHER CONTRACTORS, OR ARCHITECT), THAT IT WOULD BE MOST EXPEDITIOUS AND EFFICIENT TO RESOLVE ALL CLAIMS IN A SINGLE PROCEEDING, AND THAT, IN ENTERING INTO THE CONTRACT, EACH PARTY IS RELYING UPON THE OTHER'S CONSENT AND AGREEMENT TO PERMIT ANY CLAIM OR CAUSE OF ACTION RELATING TO THIS CONTRACT OR THE WORK TO BE JOINED IN ANY SUCH OTHER PROCEEDING OR CAUSE OF ACTION INVOLVING SUCH OTHER PERSONS, OR TO PERMIT ANY CLAIM OR CAUSE OF ACTION INVOLVING SUCH OTHER PERSONS TO BE JOINED IN ANY PROCEEDING OR ACTION UNDER (OR RELATING TO) THIS CONTRACT, NOTWITHSTANDING ANY CONTRARY PROVISIONS OF THIS ARTICLE 56 OR ANY MEDIATION, ARBITRATION OR LITIGATION REQUIREMENTS SET FORTH HEREIN.

d. Continuing Contract Performance. Pending final resolution of any claim hereunder (whether or not such claim is a Construction Claim), unless otherwise provided by any term or provision of the Contract Documents or instructed by the District in writing, the Contractor shall proceed diligently with performance of the Work, and the District shall continue to make payment of all undisputed amounts in accordance with the Contract Documents.

57. GUARANTY-WARRANTY

Beside guaranties required elsewhere in the Contract Documents, the Contractor shall, and hereby does, guaranty and warrant that the Project and all Work

executed and materials furnished under the Contract will be free from defects of materials and workmanship for a period of one (1) year after the date of Acceptance of Completion, except that certain specific items of the Work and Project may require a guaranty or warranty for a greater period of time when so provided in any Contract Document and the guaranty period for certain portions of the Work may commence prior to Acceptance of Completion as provided in Section 54 hereof. Immediately upon receipt of written notice from the District, but in no event later than one (1) business day thereafter, the Contractor shall repair or replace, at its own expense, any defective material or Work which may be discovered before Acceptance of Completion or within the above guaranty period, any material or Work damaged thereby, and all adjacent material or Work which may be displaced in connection with the repair or replacement required hereunder. Inspection of or failure to inspect the Work or the Project by the District shall not relieve the Contractor from these obligations. The Contractor shall notify the District upon completion of the repairs.

If the Contractor fails to repair or replace the material or Work as indicated in the preceding paragraph within one (1) business day from the date of receipt of a written notice from the District notifying the Contractor of the defect, the District, with its own forces or by contract, may proceed with the repair or replacement and assess the costs thereof against the Contractor, which costs will bear interest at the rate set forth in Section 54d from the date expended until repaid to the District, and which amount may be withheld or retained from any portion of the Contract Price outstanding and otherwise owing to the Contractor in accordance with Section 6d hereof. When necessary to keep school open or safely operating, the District, with its own forces or by contract, may make such repairs or replacement without advance notice to the Contractor and assess the costs thereof (together with interest as specified above) against the Contractor. Such action by the District will not relieve the Contractor of the guaranties provided in this Section or elsewhere in the Contract Documents. If Contractor fails to repair or replace any Work or material covered by any guaranty or warranty set forth in the Contract Documents within the applicable guaranty or warranty period, the District may elect to declare the Contractor a non-responsible bidder on future District projects in accordance with Section 54b hereof.

Whether the Contractor or the District actually repairs or replaces defective material or Work within the applicable guaranty period pursuant to either of the preceding two paragraphs, the warranty period shall begin anew from the date of completion of the repair or replacement. For example, if an item with a one year warranty requires repair or replacement during the guaranty period, then the guaranty for that item shall expire one (1) year after the completion of the repair or replacement of such item and not one (1) year after Acceptance of Completion.

Contractor further warrants that title to all Work, materials and equipment will pass to the District upon receipt of payment by Contractor therefore, free and clear of all lien rights, stop notice rights, security interests or encumbrances (collectively referred to as liens). The Contractor shall also defend the District, at the Contractor's sole cost and expense, against any and all actions, lawsuits or proceedings brought against the District as a result of claims, liens or stop notices filed against the District, the Project Premises

or otherwise. The Contractor hereby indemnifies, defends and holds harmless the District against any and all such claims, liens and stop notices and agrees to pay any judgment, lien or stop notice claim against the District or the District's property resulting from any actions, lawsuits or proceedings brought to enforce such liens, stop notices or other claims.

This Section does not in any way limit the guaranty on any items for which a longer guaranty is specified, or on any items for which a manufacturer gives a guaranty for a longer period. Contractor shall furnish the District all appropriate guaranty or warranty certificates immediately upon completion of the Project.

No payment by the District, or any partial or entire use or occupancy of the Project by the District, shall constitute an acceptance of any Work not performed in accordance with the Contract Documents and all applicable laws, rules and regulations.

58. OPERATIONAL-TRAINING

a. The Contractor shall train District personnel in the operation of the systems and equipment incorporated, supplied or otherwise delivered in connection with the Work and the Project, and as may be required in other sections of the Contract Documents. The Contractor shall co-ordinate with the District in order to determine the hours of instruction and scope of material to be covered by such training sessions. Except as otherwise provided herein, training of the District's personnel shall not begin until (i) the District has approved the final submitted copy of the operations manuals and training programs and (ii) the building systems and equipment are completed, operational and formally turned over to the District.

b. The Contractor shall submit to the District the proposed scope of training and materials and instruction schedule for the District's review and approval approximately thirty (30) days before the scheduled completion of the buildings for which training is to occur. Mutually agreeable dates for training shall be arranged with the District's representative; provided, however, that the District may, in its sole discretion, require the entire training to be completed before the final operational test.

c. The training required in this Section is in addition to any other scope of training that may be required by the Contract Documents. The Contractor, or Contractor-provided professional training firm, shall work closely with District personnel in the development and implementation of the training program, including, without limitation, preliminary meetings to set guidelines for the program and choose the required written training materials, all of which are subject to the District's approval. Said training shall include, as may be applicable and acceptable to the District, classroom and on-the-job (hands-on) instruction by qualified installation and operation personnel having the necessary knowledge, experience and teaching skills. The use of videotaping during the instruction period is encouraged. If the instruction period is videotaped, all tapes shall be cataloged and delivered to the District as soon as the training is complete.

d. The Contractor may use professional training firms or its own personnel; provided, however, any person engaged in any part or manner of the training program shall be of a professionally qualified and certified level of expertise in his or her particular field. Persons without certifications for training shall not be acceptable.

e. The entire training program shall be furnished by the Contractor at no additional or separate cost to the District. The training program shall not be the subject of any added costs to the District, Change Orders or increases to the Contract Price. The training program shall be reviewed, evaluated, rejected or accepted by the District, with variances as directed if any are deemed convenient. The entire program, materials, tools and other items shall become the property of the District, which shall include, but not be limited to:

(i) Adequate lesson plans, teacher's guides or training aids used to instruct the students (one full set to be delivered for the District's records and used to instruct students); and

(ii) All written materials, e.g., workbooks, manufacturer's instructions, brochures, student tests, charts or other printed or photographed visual aids (these sets, with one complete reproducible master, to be given to the District).

f. Classroom training shall be conducted in a classroom furnished by the Contractor at no additional cost to the District or, when necessary and if convenient to the District, and with the District's approval, in some District-owned facility.

59. CONTRACT AUDITS

Contractor agrees that the District will have the right to review, obtain and copy all records pertaining to the performance of the Work under the Contract. Contractor agrees to provide the District with any relevant information requested and shall permit the District access to Contractor's premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts and other material that may be relevant to a matter under investigation for the purpose of determining compliance with the Contract or with California Public Contract Code Sections 10115, et seq. (as may be amended from time to time). Contractor further agrees to maintain such records for a period of three years after final payment under the Contract. The District may cause a separate audit of the Project and/or Contractor's books and records kept in connection therewith to be made by a certified public accountant from time to time, but in no event more often than once in any six (6) month period. If any statement of Change Order costs incurred by the Contractor in connection with the Project or amounts paid to the Contractor shall be found to be in error such that the Contractor has been overpaid by an amount in excess of two percent (2%) of the amount rightfully due the Contractor pursuant to this Contract, the Contractor shall immediately pay the cost of such audit. Otherwise, the cost of such audit shall be paid by the District. If any such audit shows that the Contractor has been overpaid to any extent, then the Contractor shall immediately refund to the District the

amount of such overpayment, or, at the District's election, the District may deduct such amounts from later payments due to the Contractor under this Contract. All amounts due to the District hereunder shall bear interest from the date of demand until repaid at the rate set forth in Section 54d hereof.

In addition to the above-described rights of the District, pursuant to and in accordance with the provisions of California Government Code Section 8546.7, all books, records, and files of the District, the Contractor, or any Subcontractor or Materialman connected with the performance of Work involving the expenditure of State funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration of such Work, shall be subject to the examination and audit of the Office of the State Auditor of the State of California for a period of three (3) years after final payment is made under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period.

60. WAGE RATES

The District operates a Labor Compliance Program pursuant to California Labor Code Sections 1771.5 and 1771.7. Copies of the Labor Compliance Program are available at the District office.

In compliance with the provisions of the California Labor Code, hereby incorporated herein, all workers employed by the Contractor or any Subcontractor of any tier performing Work under this Contract shall be paid not less than the general prevailing rate of per diem wages in effect at the time of execution of the Contract for each craft, classification or type of worker needed to execute the Work under this Contract. Although the District will rely upon the determinations made by the California State Director of Industrial Relations for wage rates, the District reserves the right to establish wage rates and determine classifications in the event of a dispute, as allowed by law.

Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the California Labor Code, the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to execute the Contract. Holidays shall be as defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed under the Contract.

Per diem wages pursuant to California Labor Code Section 1773.1 shall be deemed to include employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided in said Section 1773.1 of the California Labor Code, apprenticeship or other training programs authorized by Section 3093 of the California Labor Code, and similar purposes when the term per diem wages is used herein.

Pursuant to Section 1773.6 of the California Labor Code, if during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in the prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, he shall make the change available to the District, but the change shall not affect any request for bids or the Contract subsequently awarded.

Pursuant to Section 1815 of the California Labor Code, holiday and overtime work, when permitted by law, shall be paid for at the rate of at least one and one-half (1-1/2) times the specified rate of per diem wages, unless otherwise specified.

There shall be paid to each worker of the Contractor, or any Subcontractors of any tier engaged in Work on the Project, not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor of any tier and such worker.

Pursuant to California Labor Code Section 1775, the Contractor shall forfeit as a penalty to the District not more than Fifty Dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the prevailing wage rates for such work or craft in which such worker is employed for any Work performed under the Contract by the Contractor or any Subcontractor of any tier, except as otherwise provided in Section 1775(b). The difference between the prevailing rates and the amount actually paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall also be paid to each worker by the Contractor or Subcontractor. Such amounts may be retained or withheld from the Contract Price in accordance with Section 6d hereof. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of the Contractor's or Subcontractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages and, if so, the error was promptly and voluntarily corrected upon being brought to the attention of the Contractor or Subcontractor, or the previous record of the Contractor in meeting his or her prevailing wage obligations, or the willful failure by the Contractor or Subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor or Subcontractor had knowledge of his or her obligations under this Section 60. All penalties or forfeitures from prevailing wage violations shall be deposited into the District's general fund, pursuant to California Labor Code Sections 1771.5 and 1771.6.

Any contract executed between the Contractor and any Subcontractor for the performance of Work under this Contract shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the California Labor Code.

The Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by each Subcontractor to each Subcontractor's employees, by periodic review of the certified payroll records of each Subcontractor.

The Contractor and Subcontractor shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury. The District shall review, and, if appropriate, audit payroll records to verify compliance with Chapter 1, Part 7, Division 2 of the California Labor Code.

Upon becoming aware of the failure of any Subcontractor to pay his or her workers the specified prevailing rate of wages, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the Subcontractor for any Work performed under the Contract.

Prior to making final payment to any Subcontractor for any Work performed under the Contract, the Contractor shall obtain and provide to the District an affidavit signed under penalty of perjury from the Subcontractor that the Subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees in connection with the Work and any amounts due pursuant to California Labor Code Section 1813.

The Division of Labor Standards Enforcement shall notify the Contractor within fifteen (15) days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of any Subcontractor to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of any Subcontractor were not paid the general prevailing rate of per diem wages and if the District did not retain sufficient money under the Contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Contractor shall withhold an amount of moneys due the Subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. The Contractor shall pay any money retained from and owed to a Subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the Contractor within one hundred eighty (180) days of the filing of a valid notice of completion or District's acceptance of the Project, whichever occurs later, the Contractor shall pay all moneys retained from the Subcontractor to the District. If the Subcontractor prevails in the enforcement action, the District shall release any funds retained pursuant to this Section 60.

Contractor shall post, at appropriate conspicuous points on the Project Premises, a schedule showing all determined general prevailing wage rates.

The Contractor is responsible for ascertaining and complying with all rates for all crafts utilized in and during the Work. Questions pertaining to prevailing wages should be directed to the following address:

Division of Labor Statistics and Research
P. O. Box 420603
San Francisco, California 94142

(415) 703-4281

Pursuant to California Labor Code Section 1771, the payment of prevailing wage rates is not required on any project of One Thousand Dollars (\$1,000) or less.

61. RECORD OF WAGES PAID: INSPECTOR

Pursuant to Section 1776 of the California Labor Code:

a. Each Contractor and Subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him, her or it in connection with the public work under this Contract. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 of the California Labor Code for any work performed by his or her employees in the public work project under this Contract.

b. The payroll records enumerated under subsection a shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
- (2) A certified copy of all payroll records enumerated in subsection a and copies of all cancelled payroll checks shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (3) A certified copy of all payroll records enumerated in subsection a shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to subparagraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.