

**REEF SUNSET UNIFIED
SCHOOL DISTRICT**

**205 N. Park Ave,
Avenal, CA 93204**



AVENAL E.S KINDERGARTEN PROJECT

PROJECT MANUAL

BIDDING AND CONTRACT DOCUMENTS

PRE-BID JOB WALK: **Tuesday November 24, 2020 at 09:00 AM**

BID OPENING: Thursday, December 3, 2020 @ 2:00pm
Reef Sunset Unified School District

BOARD APPROVAL: Thursday, December 17, 2020

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SECTION 00010

NOTICE TO CONTRACTORS CALLING FOR BIDS

DISTRICT: REEF SUNSET UNIFIED SCHOOL DISTRICT

PROJECT IDENTIFICATION: AVENAL E.S
KINDERGARTEN PROJECT

PROJECT NO:

BIDS DUE BY: Thursday, December 3, 2020 @ 2:00pm

ARCHITECT'S ESTIMATE: \$600,000.00

SUBMIT BIDS TO: Reef Sunset Unified School District C/O
Caldwell Flores Winters
815 Colorado Blvd. Suite 201
Los Angeles, CA 90041.
Also transmit one PDF copy via email to
vinapuri@cfwinc.com & sburkett@cfwinc.com

BID AND CONTRACT DOCUMENTS AVAILABLE:

PRE-BID JOB WALK LOCATION: Avenal Elementary School
500 South First Avenue, Avenal, CA 93204
NOTE: CHECK IN AT FRONT OFFICE

JOB WALK DATE/TIME: Tuesday, November 24, 2020 @ 09:00A.m.

- **NOTICE IS HEREBY GIVEN** that Reef Sunset Unified School District, acting by and through its Board of Trustees, hereinafter the “District” will receive up to, but not later than the above-stated date and time, sealed Bid Proposals for the Contract for the Work generally described as: **Bid, AVENAL E.S KINDERGARTEN PROJECT.** CONSTRUCTION SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING MAIN ITEMS OF WORK:

- The Contractor is responsible for all necessary materials, labor and equipment required to safely perform the following work:
 - Partial demolition and addition to one classroom building, with new site improvements consisting of two new shade structures, landscaping, hardscaping, play equipment structures and the

relocation of three portable buildings to be decommissioned on site, with all the above as shown on plans and specs.

- 1.01 Prequalification Requirements.** Per California Assembly Bill (AB) 1565; ALL GENERAL CONTRACTORS AND MECHANICAL, ELECTRICAL AND PLUMBING SUBCONTRACTORS MUST BE PREQUALIFIED, if the project is valued at \$1 million or more and funded whole or in part with State Facility Bond funds. Use the drop box link for the prequalification package which needs to be submitted to sburkett@cfwinc.com & vinapuri@cfwinc.com five days prior to the bids due dead line.

<https://www.dropbox.com/scl/fi/j142rfgfpupn4qwbu0v3d/Attachment-A-Prequalification-Questionnaire.docx?dl=0&rlkey=tqr91ekiv75fj40wpo4gwx43m>

If you have any questions regarding the prequalification process, please contact Varun Inapuri at vinapuri@cfwinc.com .

- 1.01.1 Submittal of Bid Proposals.** All Bid Proposals shall be submitted on forms furnished by the District. Bid Proposals must conform with, and be responsive to, the Bid and Contract Documents, copies of which may be obtained from the District as set forth above. Only Bid Proposals submitted to the District prior to the date and time set forth above for the public opening and reading of Bid Proposals shall be considered.
- 1.01.2 Bid and Contract Documents.** Bid and Contract documents are available at <https://www.rsusd.net/> or the link provided:

https://aparchitectsm-sp-my.sharepoint.com/:f/g/personal/aparchitects_aparchitects_net/Et-KA4PB8DZJveWr13NOD1IBXoWh1ZdDuX8PO2ijB38Mda?e=PUH1y5

All questions may be directed to Varun Inapuri, asst. program Manager, at vinapuri@cfwinc.com.

- 1.03 Bid Proposal.** Each Bid Proposal shall consist of:
- A. Bid Proposal
 - B. Bid Security
 - C. PWC-100 OSD Contractors Data Form-DIR Registration
 - D. List of Subcontractors
 - E. Non-Collusion Affidavit
 - F. DVBE

All information or responses of a Bidder in its Bid Proposal and other documents accompanying the Bid Proposal shall be complete, accurate and true; incomplete, inaccurate or untrue responses or information provided therein by a Bidder may be grounds for the District to reject such Bidder's Bid Proposal for non-responsiveness.

1.04 Job-Walk. The District may conduct more than one **PRE-BID JOB WALK** for the Work. The initial Pre-Bid Job Walk is to be held at the location, date and time stated above. Important information may be provided at the Pre-Bid Job Walk and although not mandatory it is recommended that bidders attend.

1.05 Prevailing Wage Rates; Employment of Apprentices and Labor Compliance Program. The Project is subject to the provisions of Labor Code §§1720 *et seq.* and regulations set forth in Title 8 §§16000 *et seq.* of the California Code of Regulations which govern the payment of prevailing wages on public works projects. All bidders shall be governed by and required to comply with these statutes and regulations in connection with the Project. Pursuant to Labor Code §1771, the Contractor receiving award of the Contract and Subcontractors of any tier shall pay not less than the prevailing wage rates to all workers employed in the execution of the Contract. Bidders shall comply with applicable statutes and regulations, including but not limited to Labor Code §§ 1771, 1775, 1777.5, 1813 and 1815.

Pursuant to Labor Code §1773, the Director of the Department of Industrial Relations has determined the generally prevailing rates of wages in the locality in which the Work is to be performed. Pursuant to Labor Code §1773.2, copies of these determinations, entitled “PREVAILING WAGE SCALE”, are maintained at the District’s offices located at 205 N. Park Ave, Avenal, CA 93204 and are available to any interested party upon request. Copies of rate schedules are also available on the Internet at http://www.dir.ca.gov/DIR/S&R/statistics_research.html. The Contractor awarded the Contract for the Work shall post a copy of all applicable prevailing wage rates for the Work at conspicuous locations at the Site of the Work.

Bidders are directed to Article 4.21 of Section 00700 (General Conditions) and to Section 00900 (Labor Compliance Program Manual and Forms) for detailed requirements concerning payment of prevailing wage rates, payroll records, hours of work, employment of apprentices, and the District’s LCP requirements and enforcement procedures.

No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

1.06 Contractors License Classification. In accordance with the provisions of California Public Contract Code §3300, the District requires that Bidders possess the following classification(s) of California Contractors License at the time that the Contract for the Work is awarded: **B (General Building)**

- 1.07 Contract Time.** Final completion of the work shall be achieved within **One Hundred and Eighty Days (180) CALENDAR DAYS** beginning January 18, 2021 and ending June 18, 2020. *Failure to achieve Final Completion within the Contract Time will result in the assessment of Liquidated Damages.*
- 1.08 Bid Security.** Each Bid Proposal shall be accompanied by Bid Security in an amount not less than **TEN PERCENT (10%)** of the maximum amount of the Bid Proposal, inclusive of any additive Alternate Bid Item(s). Failure of any Bid Proposal to be accompanied by Bid Security in the form and in the amount required shall render such Bid Proposal to be non-responsive and rejected by the District.
- 1.09 No Withdrawal of Bid Proposals.** No Bidder shall withdraw its Bid Proposal for a period of **sixty (60) days** after the award of the Contract by the District's Board of Trustees. During this time, all Bidders shall guarantee prices quoted in their respective Bid Proposals.
- 1.10 Substitute Security.** In accordance with the provisions of California Public Contract Code §22300, substitution of eligible and equivalent securities for any monies withheld by the District to ensure the Contractor's performance under the Contract will be permitted at the request and expense of the Contractor. The foregoing notwithstanding, the Bidder to whom the Contract is awarded shall have **thirty (30) days** following action by the District's Board of Trustees to award the Contract to such Bidder to submit its written request to the District to permit the substitution of securities for retention. The failure of the Bidder to make such written request to the District within said thirty (30) day period shall be deemed a waiver of the Bidder's rights under California Public Contract Code §22300.
- 1.11 Waiver of Irregularities.** The District reserves the right to reject any or all Bid Proposals or to waive any irregularities or informalities in any Bid Proposal or in the bidding.
- 1.12 Award of Contract.** The District proposes to award a separate Contract for Work If the Bid Proposal requires Bidders to propose prices for Alternate Bid Items, the District's selection of Alternate Bid Items, if any, for determination of the lowest priced Bid Proposal and for inclusion in the scope of the Contract to be awarded shall be in accordance with this Notice and the Instructions for Bidders.
- 1.13 Inquiries and Clarifications.** This document is for informational purposes and shall not relieve the Bidder of the requirements to fully familiarize himself with all the factors affecting the Project and his Bid. The District shall cease issuing any addenda no later than 72 hours before the time of the bid opening. The last RFI to be received by the District shall be **5:00pm, Tuesday, December 1, 2020**. Verbal communication by either party with regard to this matter is invalid. Inquiries shall be sent to: Jose Vargas,

A.P Architects, 3434 Truxtun Avenue, Suite 240 Bakersfield, CA 93301, (661) 327-1690, jvargas@aparchitects.net. Subject line of email should read “**RFI for Avenal E.S Kindergarten Project**”.

- 1.14 Disabled Veteran Business Enterprise Participation Goals.** The District has established a participation goal of three percent (3%) for Disabled Veteran Business Enterprises (“DVBE”) of the Work of the Contract. The District’s forms of DVBE Participation Program Policy and Report are included in the Contract Documents.

END OF SECTION

SECTION 00100

INSTRUCTIONS FOR BIDDERS

1.01 Preparation and Submittal of Bid Proposal.

- A. Bid Proposal Preparation.** All information required by the bid forms must be completely and accurately provided. Numbers shall be stated in both words and figures where so indicated in the bid forms; conflicts between a number stated in words and in figures are governed by the words, except where the figures represent an express, correctly calculated sum. Partially completed Bid Proposals may be deemed non-responsive. Bid Proposals submitted on other than the bid forms included herein shall be deemed non-responsive. Bid Proposals not conforming to these Instructions for Bidders and the Notice to Contractors Calling for Bids (“Call for Bids”) may be deemed non-responsive and rejected. Each Bidder is solely responsible for all costs and expenses incurred by the Bidder in preparing and submitting a Bid Proposal to the District.
- B. Bid Proposal Submittal.** Bid Proposals shall be submitted at the place designated in the Call for Bids in sealed envelopes bearing on the outside the Bidder’s name and address along with an identification of the Work for which the Bid Proposal is submitted. Bidders are solely responsible for timely submission of Bid Proposals to the District at the place designated in the Call for Bids.
- C. Date and Time of Bid Proposal Submittal.** A Bid Proposal is considered submitted only if the outer envelope containing the Bid Proposal is stamped by the District’s date/time stamp machine at the place designated for submittal of the Bid Proposal. The date/time stamp is controlling and determinative as to the date and time of the Bidder’s submittal of its Bid Proposal. Bid Proposals received after the date and time specified in the Call for Bids are non-responsive and will be returned to the Bidder unopened.
- D. Alternate Bid Item(s).** If the Bid Proposal forms do not specifically call for the submittal of alternate bid item(s) and a Bidder submits alternate bid item(s), the District may deem the Bid Proposal to be non-responsive and reject the same. In the event that alternate item(s) are specifically called for in the Bid Proposal forms, any Bid Proposal which does not include bid(s) for the alternate item(s) may result in the Bid Proposal being deemed by the District to be non-responsive and rejected. In the event that bids for alternate item(s) are specifically called for in the Bid Proposal forms, the Bidder is referenced to the provisions of the Contract Documents permitting the District, during performance of the Work of the Contract Documents, to add or delete such alternate item(s) with the cost or

credit (inclusive of all direct and indirect costs, supervision, overhead and profit) for such alternate item(s) to be in the amount(s) set forth in the Bidder's Bid Proposal for such alternate item(s).

- 1.02 Bid Security.** Bid Security shall be in the form of: (a) cash, (b) a certified or cashier's check made payable to the District or (c) a Bid Bond, in the form and content attached hereto, in favor of the District executed by the Bidder as a principal and an Admitted Surety Insurer under Code of Civil Procedure §§995.120 and 995.311 as surety (the "Bid Security") in an amount not less than the stated percentage of the maximum amount of the Bid Proposal. Any Bid Proposal submitted without the required Bid Security is non-responsive and will be rejected.
- 1.03 Signatures.** All bid forms shall be executed by an individual duly authorized to execute the same on behalf of the Bidder.
- 1.04 Modifications.** Changes to the Bid Proposal which are not specifically called for or permitted may result in the District's rejection of the Bid Proposal as being non-responsive. No oral or telephonic modification of any submitted Bid Proposal will be considered. A written modification may be considered only if actually received by the District ten (10) days prior to the scheduled closing time for receipt of Bid Proposals.
- 1.05 Erasures; Inconsistent or Illegible Bid Proposals.** Bid Proposals must not contain any erasures, interlineations or other corrections unless the same are suitably authenticated by affixing in the margin immediately opposite such erasure, interlineation or correction the surname(s) of the person(s) signing the Bid Proposal. Any Bid Proposal not conforming to the foregoing may be deemed by the District to be non-responsive. If any Bid Proposal, or portions thereof, is determined by the District to be illegible, ambiguous or inconsistent, the District may reject such a Bid Proposal as being non-responsive.
- 1.06 Examination of Site and Contract Documents.** Each Bidder shall, at its sole cost and expense, inspect the Site to become fully acquainted with the Contract Documents and conditions affecting the Work. The failure of a Bidder to receive or examine any of the Contract Documents or to inspect the Site shall not relieve such Bidder from any obligation with respect to the Bid Proposal, the Contract or the Work required under the Contract Documents. The District assumes no responsibility or liability to any Bidder for, nor shall the District be bound by, any understandings, representations or agreements of the District's agents, employees or officers concerning the Contract Documents or the Work made prior to execution of the Contract. Bidder is charged with all information and knowledge that a reasonable bidder would ascertain from having performed this required work, investigation, research, and analysis. Bid prices must include entire cost of all work "incidental" to completion of the Work. The submission of a Bid Proposal shall be deemed prima facie evidence of the Bidder's full compliance with the requirements of this section.

1.06.1 Conditions Shown on the Contract Documents: Information as to underground conditions, as-built conditions, or other conditions or obstructions, indicated in the Contract Documents has been obtained with reasonable care, and has been recorded in good faith. However, District only warrants, and Contractor may only rely on, the accuracy of limited type of information as set forth herein.

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

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

1.06.2 Conditions Shown in Reports and Drawings Supplied for Information Purposes: Any reports of explorations or tests of subsurface conditions at or contiguous to the Site that have been utilized by Architect in preparing the Contract Documents are not Contract Documents and, except for any “technical” data regarding subsurface conditions specifically identified in such reports and underground facilities data, Contractor may not in any manner rely on the information in these reports and drawings. Subject to the foregoing, Contractor must make its own independent investigation of all conditions affecting the Work and must not rely on information provided by District.

1.06.3 Site Investigation. Each Bidder shall complete the tasks listed below as a condition to bidding, and submission of a Bid shall constitute the Bidder’s express representation to District that Bidder has fully completed the following:

(a) Bidder has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as built conditions, and all local conditions and federal state and local laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of

construction to be employed by Bidder and safety precautions and programs incident thereto;

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

(c) Bidder has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, test, reports, and studies with the terms and conditions of the Contract Documents;

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

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

1.07 **Withdrawal of Bid Proposal.** Any Bidder may withdraw its Bid Proposal without penalty by written request received by the District prior to the scheduled closing time for the receipt of Bid Proposals. Requests for withdrawal of bid proposals after scheduled closing time shall be in accordance with Public Contract Code §§5100 et seq.

1.08 **Documents Required Upon Award of Contract.** The Agreement which the successful Bidder, as Contractor, will be required to execute along with the other documents which will be required to be furnished are included in the Contract Documents and shall be carefully examined by the Bidder.

1.09 **Interpretation of Drawings, Specifications or Contract Documents.** Any Bidder in doubt as to the true meaning of any part of the Contract Documents or who finds discrepancies, errors or omissions therein; or who finds variances in any of the Contract Documents with applicable rules, regulations, ordinances and/or laws, may submit to the

District a written request for an interpretation or correction thereof. It is the sole and exclusive responsibility of the Bidder to submit such request not less than eleven (11) days prior to the scheduled closing for the receipt of Bid Proposals. Interpretations or corrections of the Contract Documents will be by written addendum issued by the District, a copy of which will be sent to each Bidder who attends the mandatory pre-bid job walk. No person is authorized to render an oral interpretation or correction of any portion of the Contract Documents to any Bidder, and no Bidder is authorized to rely on any such oral interpretation or correction. Failure to request interpretation or clarification of any portion of the Contract Documents pursuant to the foregoing is a waiver of any discrepancy, defect or conflict therein.

- 1.10 Request for Substitutions Prior to Bid Opening.** By action of the District’s Board of Trustees taken on January 14, 2004 pursuant to Public Contract Code §3400, the District has adopted District Standards (“Standard Specifications”) specifying certain products, materials, systems, equipment and supplies (see Section 01010 of the Contract Specifications). Any Bidder may submit Request(s) for Substitution on the form provided herein, together with all substantiating data, no later than fourteen (14) days prior to the scheduled closing time for receipt of the Bid Proposals, in accordance with Public Contract Code §3400, for any products, materials, systems, equipment or supplies other than those set forth in the District’s Standard Specifications. The District shall use its best efforts to consider and act upon such Request for Substitution in a timely fashion. Actions taken, if any, concerning the Request for Substitution will be by written addendum issued by the District, a copy of which will be sent to each Bidder who attends the mandatory pre-bid job walk. In the absence of written addendum, the Request for Substitution shall be deemed denied for purposes of the District’s evaluation of the Bid Proposals and award of the Contract.
- 1.11 District’s Right to Modify Contract Documents.** Before the scheduled closing time for receipt of Bid Proposals, the District may modify the Work, the Contract Documents, or any portion(s) thereof by the issuance of written addenda disseminated to all Bidders who have attended the mandatory pre-bid job walk. If the District issues any addenda, the failure of any Bidder to acknowledge such addenda in its Bid Proposal may render the Bid Proposal non-responsive.
- 1.12 Bidders Interested in More Than One Bid Proposal.** No person, firm, corporation or other entity shall submit or be interested in more than one Bid Proposal for the same Work; provided, however, that a person, firm or corporation that has submitted a sub-proposal to a Bidder or who has quoted prices for materials to a Bidder is not thereby disqualified from submitting a sub-proposal, quoting prices to other Bidders or submitting a Bid Proposal for the proposed Work to the District.
- 1.13 Bidder’s Qualifications.** Each Bidder shall submit with its Bid Proposal a Statement of Bidder’s Qualifications which is included within the Contract Documents. All

information required by the Statement of Bidder's Qualifications shall be completely and fully provided. Any Bid Proposal not accompanied by the Statement of Bidder's Qualifications completed with all information required and bearing the signature of the Bidder's duly authorized representative under penalty of perjury will render the Bid Proposal non-responsive and rejected. If the District determines that any information provided by a Bidder in the Statement of Bidder's Qualifications is false or misleading, or is incomplete so as to be false or misleading, the District may reject the Bid Proposal submitted by such Bidder as being non-responsive.

1.14 Award of Contract

- A. Waiver of Irregularities or Informalities.** The District reserves the right to reject any and all Bid Proposals or to waive any irregularities or informalities in any Bid Proposal or in the bidding.

- B. Award to Lowest Responsive Responsible Bidder.** The District proposes to award a separate Contract for Work for each of the five school sites identified in the Bid Proposal. The award of the Contract for each school site, if any, will be to the responsible Bidder submitting the lowest responsive bid for that school site in its Bid Proposal on the basis of the school site Base Bid Proposal, or the school site Base Bid Proposal and Alternate Bid Items, if any, selected in accordance with these Instructions for Bidders.

- C. Selection of Alternate Bid Items; Basis of Award of Contract.** The selection of Bid Alternates for determination of the lowest Bid Proposal will be based upon the Base Bid Proposal alone or a combination of the Base Bid Proposal and one or more Bid Alternates as selected by the District in accordance with the following "blind bidding" procedures. After opening timely submitted Bid Proposals and before the public reading of the Bid Proposals, District staff who will not be engaged in the selection of Bid Alternates ("Clerical Staff") will assign each Bidder an alphabetical letter for identification purposes. The Clerical Staff will mask all portions of the Bid Proposal and other documents submitted with Bid Proposals so that the identity of each Bidder and each listed subcontractor is not revealed. The Clerical Staff will maintain a list ("Bidders List") which identifies each Bidder's name and a corresponding alphabetical letter assigned to each Bidder. After completing the Bidders List, the Clerical Staff will publicly read the Bid Proposal amounts of each Bidder for the Base Bid as well as each Bid Alternate. In this public reading, Bidders will not be identified by name, only by alphabetical letter assigned to each Bidder. After the public reading of Bid Proposals, the Clerical Staff will provide the Project Manager, Architect and District staff responsible for selection of Bid Alternates ("Review Team") copies of the Bid Proposals with the identities of Bidders and listed subcontractors masked. Bid Proposals reviewed by the Review Team will identify Bidders only

by alphabetical letters. At such time as the Review Team has completed its review of the Bid Proposals, has selected Bid Alternates and has determined which Bidder (by the alphabetical letter designation assigned by Clerical Staff) has submitted the lowest Bid Proposal based upon the Base Bid and any combination of the Bid Alternates as determined by the Review Team, the Clerical Staff will make available to the Review Team the Bidders List so that the identity of the Bidder to be awarded the Contract can be identified. Until such time as the Review Team has completed review of Bid Proposals and determination of which Bidder has submitted the lowest responsive Bid Proposal, there will be no communication between members of the Clerical Staff and members of the Review Team regarding the identities of Bidders or listed subcontractors or any disclosure of any portion of the Bidders List.

- D. Alternate Bid Items Not Included in Award of Contract.** During performance of the Work, it is the District's option to add or delete from the scope of the Work Alternate Bid Items that were not included in the award of Contract. District may elect to have work done at price(s) set forth in the Alternate Bid Items Proposal.
- E. Responsive Bid Proposal.** A responsive Bid Proposal shall mean a Bid Proposal which conforms, in all material respects, to the Bid and Contract Documents.
- F. Responsible Bidder.** A responsible Bidder is a Bidder who has the capability in all respects to perform fully the requirements of the Contract Documents and the moral and business integrity and reliability that will assure good faith performance. In determining responsibility, the following criteria will be considered: (i) the ability, capacity and skill of the Bidder to perform the Work of the Contract Documents; (ii) whether the Bidder can perform the Work promptly and within the time specified, without delay or interference; (iii) the character, integrity, reputation, judgment, experience and efficiency of the Bidder; (iv) the quality of performance of the Bidder on previous contracts, by way of example only, the following information will be considered: (a) the administrative, consultant or other cost overruns incurred by the District on previous contracts with the Bidder; (b) the Bidder's compliance record with contract general conditions on other projects; (c) the submittal by the Bidder of excessive and/or unsubstantiated extra cost proposals and claims on other projects; (d) the Bidder's record for completion of work within the contract time and the Bidder's compliance with the scheduling and coordination requirements on other projects; (e) the Bidder's demonstrated cooperation with the District and other contractors on previous contracts; (f) whether the work performed and materials furnished on previous contracts was in accordance with the Contract Documents; (v) the previous and existing compliance by the Bidder with laws and ordinances relating to contracts; (vi) the sufficiency of the financial resources and ability of the Bidder to perform the work of the Contract Documents; (vii) the quality, availability and

adaptability of the goods or services to the particular use required; (viii) the ability of the Bidder to provide future maintenance and service for the warranty period of the Contract; (ix) whether the Bidder is in arrears on debt or contract or is a defaulter on any surety bond; (x) such other information as may be secured by the District having a bearing on the decision to award the Contract, to include without limitation the ability, experience and commitment of the Bidder to properly and reasonably plan, schedule, coordinate and execute the Work of the Contract Documents and whether the Bidder has ever been debarred from bidding or found ineligible for bidding on any other projects. The ability of a Bidder to provide the required bonds will not of itself demonstrate responsibility of the Bidder. Upon request of the District, Bidder must promptly submit satisfactory evidence of any of the items listed above.

1.15 Subcontractors

- A. Designation of Subcontractors; Subcontractors List.** Each Bidder shall submit a list of its proposed Subcontractors for the proposed Work as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code §§4100 et seq.) on the form furnished (Section 00215). The District may request that one or more apparent low Bidders provide to the District within seventy two (72) hours of bid opening the license numbers and value of work for each listed subcontractor submitted by Bidder. Any Bidder's failure to comply with the District's request may deem such Bidder's bid non-responsive and subject to rejection by the District.
- B. Work of Subcontractors.** The organization or arrangements of the Specifications and Drawings shall not limit the extent of the Work of the Contract Documents. Accordingly, all Bidders are encouraged to disseminate all of the Specifications, Drawings and other Contract Documents to all persons or entities submitting sub-bids to the Bidder. The omission of any portion or item of Work from the Bid Proposal or from the sub-bidders' sub-bids which is reasonably inferable from the Contract Documents is not a basis for adjustment of the Contract Price or the Contract Time.

1.16 Workers' Compensation Insurance. Pursuant to California Labor Code §3700, the successful Bidder shall secure Workers' Compensation Insurance for its employees engaged in the Work of the Contract. The successful bidder shall sign and deliver to the District the Workers Compensation Insurance certificate provided in Section 00415 prior to performing any of the Work under the Contract.

1.17 Bid Security Return. The Bid Security of three or more low Bidders, the number being solely at the discretion of the District, will be held by the District for ten (10) days after the period for which Bid Proposals must be held open (which is set forth in the Call for

Bids) or until posting by the successful Bidder(s) of the bonds, certificates of insurance required and return of executed copies of the Agreement, whichever first occurs, at which time the Bid Security will be returned to them.

- 1.18 Forfeiture of Bid Security.** If the Bidder awarded the Contract fails or refuses to execute the Agreement within ten (10) days from the date of receiving notification that it is the Bidder to whom the Contract has been awarded, the District may declare the Bidder's Bid Security forfeited as damages caused by the failure of the Bidder to enter into the Contract and may thereupon award the Contract for the Work to the responsible Bidder submitting the next lowest responsive Bid Proposal or may call for new bids, in District's sole and exclusive discretion.
- 1.19 Contractor's License.** No Bid Proposal will be considered from a Bidder who, at the time Bid Proposals are opened, is not licensed to perform the Work of the Contract Documents, in accordance with the Contractors License Law, California Business & Professions Code §§7000 et seq. This requirement is not a mere formality and cannot be waived by the District or its Board of Trustees. The required California Contractor's License classification(s) for the Work is set forth in the Call for Bids. The Contractor will be required to maintain the license(s) through the duration of the Contract. Any questions concerning a Contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 2600, Sacramento, CA 95826.
- 1.20 Anti-Discrimination.** It is the policy of the District that 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 or marital status. All Bidders agree to comply with the District's anti-discrimination policy and all applicable Federal and California anti-discrimination laws including but not limited to the California Fair Employment & Housing Act beginning with California Government Code §12940 et seq. and California Labor Code §1735. In addition, all Bidders agree to require like compliance by any Subcontractor employed by them on the Work of the Contract.
- 1.21 Mandatory Job-Walk.** The District will conduct a Mandatory Job Walk at the time and place designated in the Call for Bids. The District may, in its sole and exclusive discretion, elect to conduct one or more Job Walks in addition to that set forth in the Call for Bids, in which event the District shall notify all Bidders who have obtained the Contract Documents pursuant to the Call for Bids of any such additional Job Walk. If the District elects to conduct any Job Walk in addition to that set forth in the Call for Bids, the District shall, in its notice of any such additional Job Walks, indicate whether Bidders' attendance at such additional Job-Walks is/are mandatory; in the event that any such additional Job-Walks is/are designated as being mandatory, the provisions of this section 1.21 shall be deemed to apply to such additional Job-Walks. The failure of any Bidder to have its authorized representative present at the Job Walk will be grounds for the District to reject such bid and the Bid Proposal will be returned to the Bidder

unopened. A Bidder may have more than one authorized representative and/or representatives of its Subcontractors present at the Job Walk; provided, however that attendance by representatives of the Bidder's Subcontractors without attendance by a representative of the Bidder shall not be sufficient to meet the Bidder's obligations hereunder and will be grounds for the District to declare the Bid Proposal of such Bidder to be non-responsive.

- 122 Drug Free Workplace Certificate.** In accordance with California Government Code §§8350 et seq., the Drug Free Workplace Act of 1990, the successful Bidder will be required to execute a Drug Free Workplace Certificate concurrently with execution of the Agreement. The successful Bidder will be required to implement and take the affirmative measures outlined in such provisions. Failure of the successful Bidder to comply with the measures outlined in such provisions may result in penalties, including without limitation, the termination of the Agreement, the suspension of any payment of the Contract Price otherwise due under the Contract Documents and/or debarment of the successful Bidder.
- 123 Compliance with Immigration Reform and Control Act of 1986.** The Bidder is solely and exclusively responsible for employment of individuals for the Work of the Contract in conformity with the Immigration Reform and Control Act of 1986, 8 USC §§1101 et seq. (“IRCA”); the successful Bidder shall also require that any person or entity employing labor in connection with any of the Work of the Contract shall so similarly comply with the IRCA.
- 124 Notice of Intent to Award Contract.** Following the public opening and reading of Bid Proposals, the District will issue a Notice of Intent to Award the Contract, identifying the Bidder to whom the District intends to award the Contract and the date/time/place of the District’s Board of Trustees meeting at which award of the Contract will be considered.
- 125 Bid Protest.** Any Bidder submitting a Bid Proposal to the District may file a protest of the District’s intent to award the Contract provided that each and all of the following are complied with:
- A. The bid protest is in writing;
 - B. The bid protest is filed and received by the District’s Assistant Superintendent, Business & Fiscal Services (“Assistant Superintendent”) not more than five (5) calendar days following the date of issuance of the District’s Notice of Intent to Award the Contract; and
 - C. The written bid protest sets forth, in detail, all grounds for the bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions

must be supported by competent, admissible and creditable evidence.

Any bid protest not conforming to the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the District's Assistant Superintendent or designee shall review and evaluate the basis of the bid protest. The District's Assistant Superintendent or designee shall provide the Bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The District's Board of Trustees will render a final determination and disposition of a bid protest by taking action to adopt, modify or reject the disposition of a bid protest as reflected in the written statement of the District's Assistant Superintendent or designee. Action by the District's Board of Trustees relative to a bid protest shall be final and not subject to appeal or reconsideration by the District, any employee or officer of the District or the District's Board of Trustees. The issuance of a written statement by the Assistant Superintendent (or designee) and subsequent action by the District's Board of Trustees shall be express conditions precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District's intent to award the Contract, the District's disposition of any bid protest or the District's decision to reject all Bid Proposals. In the event that any such legal or equitable proceedings are instituted and the District is named as a party thereto, the prevailing party(ies) shall recover from the other party(ies), as costs, all attorneys' fees and costs incurred in connection with any such proceeding, including any appeal arising therefrom.

- 126 Public Records.** All documents included in Bid Proposals become the exclusive property of the District upon submittal to the District. All Bid Proposals and other documents submitted in response to the Call for Bids become a matter of public record, except for information contained in such Bid Proposals deemed to be Trade Secrets (as defined in California Civil Code §3426.1). Financial documents submitted in support of a Bidder's Statement of Qualifications will not be disclosed by the District nor become a matter of public record pursuant to California Government Code §6255. However, A Bidder that indiscriminately marks all or most of its Bid Proposal as exempt from disclosure as a public record, whether by the notations of "Trade Secret," "Confidential," "Proprietary," or otherwise, may render the Bid Proposal non-responsive and rejected. The District is not liable or responsible for the disclosure of such records, including those exempt from disclosure if disclosure is deemed required by law, by an order of Court, or which occurs through inadvertence, mistake or negligence on the part of the District or its officers, employees or agents. At such time as Bid Proposals are deemed a matter of public record, pursuant to the above, any Bidder or other party shall be afforded access for inspection and/or copying of such Bid Proposals, by request made to the District in conformity with the California Access to Public Records Act, California Government Code §§6250, et. seq.

127 Prevailing Wage Rates, Employment of Apprentices.

- A. Payment of Prevailing Wage Rates.** The Bidder and all potential Subcontractors shall utilize the relevant prevailing wage rate determinations in the PREVAILING WAGE SCALE established by the Director of the Department of Industrial Relations in effect on the first advertisement date of the Notice to Contractors Calling For Bids in preparing the Bid Proposal and all component price quotations. Pursuant to Labor Code §1773.2, copies of these determinations are maintained at the District's Business Services offices located at 1051 South A Street, Oxnard, California 93030, and are available to any interested party upon request. Copies of rate schedules are also available on the Internet at http://www.dir.ca.gov/DIR/S&R/statistics_research.html.
- B. Notice to Subcontractors.** Bidders shall notify all potential Subcontractors submitting price quotations for portions of the Work of the requirements concerning payment of prevailing wage rates, payroll records, hours of work, and employment of apprentices set forth in Article 4.21 of Section 00700 (General Conditions).
- C. Fingerprinting.** The successful Bidder will be required to assure that its employees, subcontractors of any tier, material suppliers, and consultants do not have direct contact with the District's students during the performance of the Contract in compliance with Education Code §§45125.1 and 45125.2. To ensure these provisions, Bidder's employee supervising and monitoring all employees shall be fingerprinted, and proof of same shall be provided to the District prior to start of on-site Work. The supervising employee will continuously supervise and monitor all employees and workers while on school grounds. In addition, Bidder shall install physical barriers (fencing or other appropriate barricades) at the worksite to limit contact with students. All costs associated with these provisions are the responsibility of the Bidder.

END OF SECTION

SECTION 00210

BID PROPOSAL

TO: REEF SUNSET UNIFIED SCHOOL DISTRICT, a California School District, acting by and through its Board of Trustees (“District”), 205 N. Park Ave, Avenal, CA 93204.

FROM:

(Name of Bidder as listed on License)

(Address)

(City, State, Zip Code)

(Telephone)

(Fax)

(Name(s) of Bidder's Authorized Representative(s) & Title)

1.01 Bid Proposal.

A. Bid Proposal Amount. Pursuant to and in compliance with the Notice to Contractors Calling for Bids, the Instructions for Bidders and the other documents relating thereto, the undersigned Bidder, having reviewed the Instructions for Bidders and all other Contract Documents and upon compliance with all requirements therein with reference to the submittal of this Bid Proposal, hereby proposes and agrees to perform the Contract including, without limitation, all of its component parts; to perform everything required to be performed; to provide and furnish any and all of the labor, materials, tools, equipment, applicable taxes, and services necessary to perform the Work of the Contract in strict compliance with the Contract Documents and complete in a workmanlike manner all of the Work required for each school site Project described in **Bid No.## AVENAL E.S KINDERGARTEN PROJECT**

for the sum of:

1. AVENAL E.S KINDERGARTEN PROJECT:

Bid Amount: \$ _____
(Bid Amount in Figures)

Dollars
(Bid Amount in Words)

NOTE: *The District is also requiring a Schedule of Values to be included as part of your Bid Proposal.*

B. Acknowledgment of Bid Addenda. In submitting this Bid Proposal, the undersigned Bidder acknowledges receipt of all Bid Addenda issued by or on behalf of the District, as set forth below. The Bidder confirms that this Bid Proposal incorporates and is inclusive of, all items or other matters contained in Bid Addenda.

_____ **No Addenda Issued**
(initial)

_____ **Addenda Nos. _____ received, acknowledged and**
(initial) **incorporated into this Bid Proposal.**

1.02 Rejection of Bid; Holding Open of Bid. It is understood that the District reserves the right to reject this Bid Proposal and that this Bid Proposal shall remain open and not be withdrawn for the period of time specified in the Call for Bids, except as provided by law.

1.03 Documents Comprising Bid Proposal. The undersigned Bidder has submitted as its Bid Proposal the following:

1. Bid Proposal and Schedule of Values (00210);
2. List of Subcontractors (00215);
3. Non-Collusion Affidavit (00220);
4. PWC-100 OSD Contractors Date Form-DIR Registration (00225)
5. Bid Security (Cash/Cashier's Check/Certified Check/Bid Bond –00260);
6. DVBE (00520);

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

1.04 Award of Contract. It is understood and agreed that if written notice of the acceptance of this Bid Proposal and award of the Contract thereon is mailed or delivered by the

District to the undersigned after the opening of Bid Proposals and within the time this Bid Proposal is required to remain open or at any time thereafter before this Bid Proposal is withdrawn, the undersigned will execute and deliver to the District the Agreement in the form attached hereto in accordance with the Bid Proposal as accepted within seven (7) calendar days after notification of acceptance and award. Concurrently with delivery of the executed Agreement to the District, the Bidder awarded the Contract shall deliver to the District: (1) the Labor and Material Payment Bond; (2) the Performance Bond; (3) the Drug-Free Workplace Certificate; (4) Certificates of Insurance evidencing all insurance coverages required to be provided under the Contract Documents; (5) the Certificate of Workers' Compensation Insurance; (6) Fingerprinting Certificate; and (7) DVBE Participation Certificate. The Work under the Contract Documents shall be commenced by the undersigned Bidder, if awarded the Contract, on the date stated in the District's Notice to Proceed issued pursuant to the Contract Documents. Completion of the Work shall be achieved within the Contract Time specified in the Contract Documents.

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

1.06 Contractor's License. The undersigned Bidder is currently and duly licensed in accordance with the California Contractors License Law, California Business & Professions Code §§7000 et seq., under the following:

License Number: _____
 Class ____ Expiration Date ____ Class ____ Expiration Date _____
 Class ____ Expiration Date ____ Class ____ Expiration Date _____

By executing this Bid Proposal, the Bidder hereby certifies that: (a) it is duly licensed, in the necessary class(es), for performing the Work of the Contract Documents; (b) that such license shall be in full force and effect throughout the duration of the performance of the Work under the Contract Documents; and (c) that all Subcontractors providing or performing any portion of the Work of the Contract Documents shall be so similarly and appropriately licensed to perform or provide such portion of the Work.

1.07 Designation of Subcontractors. In compliance with the Subletting and Subcontracting Fair Practices Act (California Public Contract Code §§4100, et seq.) and amendments thereof, each Bidder shall set forth in the Subcontractors List: (a) the name and location of the place of business of each Subcontractor who will perform work or labor or render services to the Bidder in or about the construction of the Work to be performed under the Contract Documents in an amount in excess of one-half of one percent (0.5%) of the Bidder's Bid Proposal; and (b) the trade and/or portion of the Work which will be performed by each listed Subcontractor. The Bidder shall list only one Subcontractor for

each trade and/or portion of the Work as is defined by the Bidder in its Bid Proposal. If a Bidder fails to list a Subcontractor for a portion of the work in excess of one-half of one percent (0.5%) of the Bidder's Bid Proposal or if the Bidder specifies more than one Subcontractor for the same portion of Work to be performed under the Contract Documents valued in excess of one-half of one percent (0.5%) of the Bidder's Bid Proposal amount, the Bidder shall be deemed to have agreed that it is fully qualified to perform that portion of the Work itself and that it shall perform that portion of the Work.

1.08 Confirmation of Figures. By submitting this Bid Proposal, the Bidder confirms that it has checked all of the above figures and understands that neither the District nor any of its agents, employees or representatives shall be responsible for any errors or omissions on the part of the undersigned Bidder in preparing and submitting this Bid Proposal.

1.09 Acknowledgment and Confirmation. The undersigned Bidder acknowledges its receipt, review and understanding of the Drawings, the Specifications and other Contract Documents pertaining to the proposed Work. The undersigned Bidder certifies that the Contract Documents are, in its opinion, adequate, feasible and complete for providing, performing and constructing the Work in a sound and suitable manner for the use specified and intended by the Contract Documents. The undersigned Bidder certifies that it has, or has available, all necessary equipment, personnel, materials, facilities and technical and financial ability to complete the Work for the amount bid herein within the Contract Time and in accordance with the Contract Documents. The undersigned Bidder certifies that its bid amount includes funds sufficient to allow the Bidder to comply with all applicable local, state and federal laws and regulations governing the labor and services to be provided for the performance of the Work of the Contract and shall indemnify, defend and hold District harmless from and against any and all claims, demands, losses, liabilities and damages arising out of or relating to Bidder's failure to comply with applicable law in this regard.

THE UNDERSIGNED DECLARES UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE REPRESENTATIONS MADE IN THIS BID PROPOSAL ARE TRUE AND CORRECT.

By: _____
(Signature)

(Corporate Seal)

(Typed or Printed Name of Bidder's Authorized Representative)

Title: _____

END OF SECTION

SECTION 00215

– AVENAL E.S KINDERGARTEN PROJECT

Contractor's name

LIST OF SUBCONTRACTORS

1. Licensed Name of Subcontractor	2. Address of Office, Mill or Shop	3. Trade or Portion of Work	5. License No.	6. \$\$ Value of Work
			MUST BE Filled out	Fill out ONLY if requested by District
			MUST BE Filled out	Fill out ONLY if requested by District
			MUST BE Filled out	Fill out ONLY if requested by District
			MUST BE Filled out	Fill out ONLY if requested by District
			MUST BE Filled out	Fill out ONLY if requested by District
			MUST BE Filled out	Fill out ONLY if requested by District
			MUST BE Filled out	Fill out ONLY if requested by District

[Duplicate and attach additional page(s) as required.]

Name of Contractor: _____
Authorized Signature: _____

SECTION 00220

NON-COLLUSION AFFIDAVIT

STATE OF CALIFORNIA
COUNTY OF _____

I, _____ being first duly sworn, deposes and says that I
(Typed or Printed Name)
am the _____ of _____, the party
(Title) (Bidder Name)
submitting the foregoing Bid Proposal (the "Bidder"). In connection with the foregoing Bid Proposal, the undersigned declares, states and certifies that:

- 1.01 The Bid Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.
- 1.02 The Bid Proposal is genuine and not collusive or sham.
- 1.03 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 other bidder or anyone else to put in sham bid, or to refrain from bidding.
- 1.04 The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
- 1.05 All statements contained in the Bid Proposal and related documents are true.
- 1.06 The Bidder has not, directly or indirectly, submitted the 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 person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

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

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

Signature

(Address)

Name Printed or Typed

(City, County and State)

(_____)_____
(Area Code and Telephone Number)

SECTION 00260

BID BOND

KNOW ALL MEN BY THESE PRESENTS,

That we, _____, as Principal, and _____, as Surety, are held and firmly bound, along with our respective heirs, executors, administrators, successors and assigns, jointly and severally, unto **REEF SUNSET UNIFIED SCHOOL DISTRICT**, hereinafter "Obligee," for payment of the penal sum hereof in lawful money of the United States, as more particularly set forth herein.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal has submitted the accompanying Bid Proposal for the Work commonly described as **AVENAL E.S KINDERGARTEN PROJECT** and the Bid Proposal must be accompanied by Bid Security.

WHEREAS, subject to the terms of this Bond, the Surety is firmly bound unto the Obligee in the penal sum of **TEN PERCENT (10%)** of the maximum amount of the Bid Proposal submitted by the Principal to the Obligee, as set forth above, inclusive of additive alternate bid items, if any.

NOW THEREFORE, if the Principal shall not withdraw said Bid Proposal within the period specified therein after the opening of the same, or, if no period be specified, for sixty (60) days after opening of said Bid Proposal; 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 Obligee, in accordance with the Bid Proposal as accepted, and give such bond(s) 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 Proposal within the period specified for the holding open of the Bid Proposal or the failure of the Principal to enter into such Contract and give such bonds within the time specified, if the Principal shall pay the Obligee the difference between the amount specified in said Bid Proposal and the amount for which the Obligee 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 Obligee in again calling for Bids or otherwise procuring said Work or supplies, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

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

In the event that suit or other proceeding is brought upon this Bond by the Obligee, the Surety shall pay to the Obligee all costs, expenses and fees incurred by the Obligee in connection therewith, including without limitation, attorneys' fees.

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

Bidder:
(corporate Seal)

(Principal's Name)

By: _____
(Signature)

(Typed or Printed Name & Title)

(Address)

Surety
(Corporate Seal)

(Surety's Name)

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

(Attach Attorney-in-Fact Certificate)

(Typed or Printed Name)

(Address of Surety's Office where Bond is issued)

(Area Code and Telephone Number of Surety)

SECTION 00310

AGREEMENT # _____

THIS AGREEMENT is made this 17th day of December, 2020, in the City of Avenal, County of King's, State of California, by and between **REEF SUNSET UNIFIED SCHOOL DISTRICT**, a California School

District, hereinafter called the "District" and _____, hereinafter called the "Contractor", with a principal place of business located at _____

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

- 1.01 The Work.** Within the Contract Time and for the Contract Price, subject to adjustments thereto pursuant to the Contract Documents, the Contractor shall perform and provide all necessary labor, materials, tools, equipment, utilities, services and transportation to complete in a workmanlike manner and in strict compliance with the terms and conditions of the Contract Documents all of the Work required in connection with the work of improvement commonly referred to as:

Bid ##

AVENAL E.S KINDERGARTEN PROJECT

Contractor shall complete all Work covered by the Contract Documents, including without limitation, the Drawings and Specifications prepared by the Architect, and other Contract Documents enumerated in Article 5 below, along with all modifications and addenda thereto, in strict accordance with the Contract Documents.

- 1.02 Contract Time.** Final completion of the work shall be achieved as indicated below:

Phase 1:

Construction Phase

Start: 9/18/17

Final Completion: 7/18/18

Failure to achieve Final Completion within the Contract Time will result in the assessment of Liquidated Damages.

- 1.03 Contract Price.** The District shall pay the Contractor as full consideration for the Contractor's full, complete and faithful performance of the Contractor's obligations under the Contract Documents, subject to any additions or deduction as provided for in the Contract Documents, the Contract Price of _____ Dollars (\$_____). The Contract Price is based upon the Contractor's Base Bid Proposal. The District's payment of the Contract Price shall be in accordance with the Contract Documents.

- 1.04 Liquidated Damages.** In the event of the failure or refusal of the Contractor to achieve Completion of the Work of the Contract Documents within the Contract Time, as adjusted, or

completion of the Interim Milestones as provided in the Contract Special Conditions, the Contractor shall be subject to assessment of Liquidated Damages in accordance with the Contract Documents.

1.05 The Contract Documents. The Contract Documents consist of the following:

- | | |
|--|-----------------------------------|
| Notice to Contractors Calling for Bids | PWC-100 OSD Contractors Data Form |
| Instructions for Bidders | Drug Free Workplace Certification |
| Bid Proposal | Fingerprinting Certificate |
| Subcontractors List | DVBE Participation Goal |
| Non-Collusion Affidavit | Guarantee |
| Bid Security Agreement | Project Forms |
| Labor and Material Payment Bond | General Conditions |
| Performance Bond | Special Conditions |
| Certificate of Workers Compensation | Specifications |
| | Drawings |

1.06 Authority to Execute. The individual(s) executing this Agreement on behalf of the Contractor is/are duly and fully authorized to execute this Agreement on behalf of Contractor and to bind the Contractor to each and every term, condition and covenant of the Contract Documents.

IN WITNESS WHEREOF, this Agreement has been duly executed by the District and the Contractor as of the date set forth above.

DISTRICT

CONTRACTOR

REEF SUNSET UNIFIED SCHOOL DISTRICT,
a California School District

(Contractor's License Number)

By: _____
Khai Nyugen, CBO

By: _____

Name: _____

Title: _____
(Corporate Seal)

END OF SECTION

SECTION 00400

**LABOR AND MATERIAL PAYMENT BOND
CIVIL CODE §3247**

KNOW ALL MEN BY THESE PRESENTS,

That we, _____, as Principal, and _____, as Surety, are held and firmly bound, along with our respective heirs, executors, administrators, successors and assigns, jointly and severally, unto **REEF SUNSET UNIFIED SCHOOL DISTRICT**, hereinafter "Obligee", for payment of the penal sum of _____ Dollars (\$) in lawful money of the United States, as more particularly set forth herein.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Education, has awarded to the Principal a Contract for the Work commonly described as:

AVENAL E.S KINDERGARTEN PROJECT

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

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

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

The term "Claimant" shall refer to any person, corporation, partnership, proprietorship or other entity including without limitation, all persons and entities described in California Civil Code §3181, providing or furnishing labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard for whether such labor, materials or services were sold, leased or rented. This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

In the event that suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorneys' fees pursuant to California Civil Code §3250.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or to the specifications or other Contract Documents, shall in anyway affect the Surety's obligations under this Bond, and Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, to the Work, to the specifications or other Contract Documents.

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

(Corporate Seal)

(Principal Name)

By: _____

(Signature)

(Typed or Printed Name)

Title: _____

(Corporate Seal)

(Surety Name)

By: _____

(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

(Typed or Printed Name of Attorney-in-Fact)

(Address)

(Area Code and Telephone Number of Surety)

SECTION 00410

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS,

That we _____, as Principal,
and _____, as Surety, are held and firmly bound, along with our respective heirs, executors, administrators, successors and assigns, jointly and severally, unto **REEF SUSNET UNIFIED SCHOOL DISTRICT**, hereinafter "Obligee", for payment of the penal sum of _____ Dollars (\$) in lawful money of the United States, as more particularly set forth herein.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by action of its Board of Education, has awarded to the Principal a Contract for the Work commonly described as:

**BID ##
AVENAL E.S KINDERGARTEN PROJECT**

WHEREAS, the Principal, on or about _____20_, entered into a contract with the Obligee for performance of the Work; the Agreement and all other Contract Documents set forth therein are incorporated herein and made a part hereof by this reference.

WHEREAS, by the terms of the Contract Documents ("Contract"), the Principal is required to furnish a bond ensuring the Principal's prompt, full and faithful performance of the Work of the Contract.

WHEREAS, the Principal and the Surety, jointly and severally, bind themselves, their heirs, executors, administrative, successors and assigns, to the Obligee for the prompt, full and faithful performance of the Contract, which is incorporated herein by this reference.

NOW, THEREFORE, if the Principal shall promptly, fully and faithfully perform each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract as said Contract may be modified or amended from time to time; and if the Principal shall indemnify and save harmless the Obligee and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, stop notices, costs, and fees of every description, whether imposed by law or equity, which may be incurred by the Obligee by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract, including all modifications and amendments thereto, and any warranties or guarantees required thereunder; then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

In the event the Principal is declared by the Obligee to be in breach or default in the performance of the Contract, then, after written notice from the Obligee to the Surety, as provided for herein, the Surety shall either remedy the default or breach of the Principal or shall take charge of the Work of the Contract and complete the Contract with a Contractor other than the Principal at its own expense; provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Obligee.

If the Surety does not proceed to cure or remedy the Principal's default(s) of its performance of the Contract with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen (15) calendar days after receipt of a written notice from Obligee to the Surety demanding that the Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to Obligee.

Within fifteen (15) calendar days of Obligee's written notice to the Surety of the failure of performance of the Contract by the Principal, it shall be the duty of the Surety to give to the Obligee an unequivocal notice in writing of the Surety's election to remedy the default(s) of the Principal promptly, or to arrange for performance of the Contract promptly by a Contractor other than the Principal, time being of essence to this Bond. In said Notice of Election, the Surety shall state the date of commencement of its cure or remedy of the Principal's default(s) or its performance of the Contract. The Surety's obligations for cure or remedy, include but are not limited to: correction of defective or incomplete work and completion of the Contract, additional legal, design professional and delay costs arising from Surety's actions or failure to act; and liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance by the Principal. The Surety shall give prompt written notice to the Obligee upon completion of the cure or remedy of the Principal's default(s) of its performance of the Contract.

In the event the Surety shall fail to issue its Notice of Election to Obligee within the time provided for herein above, the Obligee may thereafter cause the cure or remedy of the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be each jointly and severally liable to the Obligee for all damages and costs sustained by the Obligee as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion exceeding the then remaining balance of the Contract Price.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, including but not limited to the Contract Amount, or to the Work to be performed thereunder or to the specifications or other Contract Documents, shall in anyway affect the Surety's obligations under this Bond, and Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, to the Work, to the specifications or other Contract Documents.

Principal and Surety agree that if Obligee is required to engage the services of an attorney in connection with enforcement of this Bond, each shall pay Obligee's costs and reasonable

attorney's fees incurred, with or without suit, in addition to the above penal sum.

The guarantees contained in this Bond survive Final Completion of the Work called for in the Contract Documents with respect to the obligations and liabilities of the Principal, which survive Final Completion of the Work.

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

(Corporate Seal)

(Principal Name)
By: _____
(Signature)

(Typed or Printed Name)
Title: _____

(Corporate Seal)

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

(Attach Attorney-in-Fact Certificate)

(Typed or Printed Name of Attorney-in-Fact)

(Address)

(Area Code and Telephone Number of Surety)

SECTION 00415

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

I, _____ the _____,
(Name) (Title)

of _____, declare, state and certify that:
(Company Name)

1.01 I am aware that California Labor Code §3700(a) and (b) provides:

"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 either as an individual employer, or one employer in a group of employers, 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 or her employees."

1.02 I am aware that the provisions of California Labor Code §3700 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 this Contract.

By: _____
(Signature)

(Date)

SECTION 00417

DRUG-FREE WORKPLACE CERTIFICATION

I, _____ the _____,
(Name) (Title)
of _____, declare, state and certify that:
(Contractor Name)

- 1.01 I am aware of the provisions and requirements of California Government Code §§8350 et seq., the Drug Free Workplace Act of 1990.
- 1.02 I am authorized to certify, and do certify, on behalf of Contractor that a drug free workplace will be provided by Contractor by doing all of the following:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying actions which will be taken against employees for violation of the prohibition;
 - B. Establishing a drug-free awareness program to inform employees about all of the following:
 - 1. The dangers of drug abuse in the workplace;
 - 2. Contractor's policy of maintaining a drug-free workplace;
 - 3. The availability of drug counseling, rehabilitation and employee- assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations;
 - C. Requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.
- 1.03 Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code §8355 by, inter alia, publishing a statement notifying employees concerning: (a) the prohibition of any controlled substance in the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code §8355(a) and requiring that the employee agree to abide by the terms of that statement.

1.04 Contractor and I understand that if the District determines that Contractor has either: (a) made a false certification herein, or (b) violated this certification by failing to carry out and to implement the requirements of California Government Code §8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code §§8350, et seq.

1.05 Contractor and I acknowledge that Contractor and I are aware of the provisions of California Government Code §§8350, et seq. and hereby certify that Contractor and I will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

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

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

(Signature)

(Typed or Printed Name)

SECTION 00510

BACKGROUND CHECK AND FINGERPRINTING PROCEDURES FOR CONTRACTORS

The successful Bidder will be required to assure that its employees, subcontractors of any tier, material suppliers, and consultants do not have direct contact with the District's students during the performance of the Contract in compliance with Education Code §§ 45125.1 and 45125.2. To assure these provisions, the successful Bidder's supervisor shall be fingerprinted, and proof of same shall be provided to the District prior to start of on-site work. The supervisor will monitor the workers' conduct while on school grounds. In addition, the successful Bidder shall barricade the Work area to separate its workers from the students. Costs associated with this process are the responsibility of the successful Bidder.

The Contractors' construction supervisors or their unsupervised employees who will be working outside of fenced areas during the school hours **must** have submitted a fingerprint identification card to the Department Of Justice (DOJ) and have a proof of clearance in the form of an affidavit filed in the Oxnard School District's Purchasing Office **prior to** the start of the Work.

California Education Code §§45125.1 and 45125.2 require that criminal checks be completed for contractors (Contracting Firm) who provide architectural, construction, janitorial, administrative, landscape, transportation, food-related, or other similar services to school districts.

The undersigned does hereby certify to the Board of Trustees of the REEF SUNSET UNIFIED School District as follows:

That I am a representative of the Contractor currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor.

Contractor certifies that it has taken the following actions with respect to the construction Project that is the subject of the Contract:

1. Pursuant to Education Code §45125.2, Contractor has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, which will limit contact between Contractor's employees and District pupils at all times (mandatory for all Projects); AND
2. The Contractor has complied with the fingerprinting requirements of Education Code §45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code §45122.1. A complete and accurate list of Contractor's employees and of all its subcontractors' employees who may

come in contact with District pupils during the course and scope of the Contract is attached hereto;
AND/OR

3. Pursuant to Education Code §45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of each employee who will be supervising Contractor's employees and its subcontractors' employees is:

Name: _____

Title: _____

AND/OR

4. The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with District pupils.

Contractor's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: _____

Proper Name of Contractor: _____

Signature: _____

By: _____

Its: _____

SECTION 00520

DISABLED VETERAN BUSINESS ENTERPRISE (“DVBE”) PARTICIPATION GOAL

1. **DVBE Participation Policy.** The District is committed to achieving the legislatively and administratively established Participation Goal for Disabled Veteran Business Enterprises ("DVBEs") in accordance with California Education Code §17076.11. Through the DVBE participation program, the District encourages contractors to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract.
2. **Definitions.**
 - 2.1 **Disabled Veteran.** A "Disabled Veteran" means a veteran of the military, naval, or air service of the United States with at least ten percent (10%) service-connected disability who is domiciled in the State of California.
 - 2.2 **Disabled Veteran Business Enterprise.** A "Disabled Veteran Business Enterprise" ("DVBE") means a business enterprise certified by the Office of Small and Minority Business, State of California, Department of General Services, pursuant to Military and Veterans Code §999, or an enterprise certifying that it is a DVBE by meeting all of the following requirements: (a) it is a sole proprietorship at least fifty-one percent (51%) owned by one or more Disabled Veterans, or in the case of a publicly owned business, at least fifty-one percent (51%) of its stock is owned by one or more Disabled Veterans; or a subsidiary wholly owned by a parent corporation, but only if at least fifty-one percent (51%) of the voting stock of the parent corporation is owned by one or more Disabled Veterans; or a joint venture in which at least fifty-one percent (51%) of the joint venture's management and control and earnings are held by one or more Disabled Veteran; (b) the management and control of the daily business operations are by one or more Disabled Veterans; provided that the Disabled Veteran(s) exercising management and control of the business enterprise are not required to be the same Disabled Veteran(s) who is/are the equity Owner(s) of the business enterprise; and (c) it is a sole proprietorship, corporation, or partnership with its home office located in the United States and which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business. The terms "foreign corporation" "foreign firm" and "foreign-based business" shall be deemed to mean a business entity that is incorporated or which has its principal headquarters located outside the United States of America.
3. **DVBE Participation Goal.** The term "Participation Goal" is a numerically expressed objective for DVBE participation in performing the Work of the Contract. The Participation Goal is not a quota, set-aside or rigid proportion. Through action of the District’s Board of Education, the District has established a DVBE Participation Goal of **Three Percent (3%)** of the total Contract Amount.

4. Monitoring of DVBE Participation and Submission of Report.

4.1 **Certification of Participation.** At the time of execution of the contract, the Contractor will provide a statement to the District of anticipated participation of Disabled Veteran Business Enterprises in the contract.

4.2 **Submission of Report.** During performance of the Contract, Contractor shall monitor the Work of the Contract, award of subcontracts and contracts for materials, equipment and supplies for the purpose of determining DVBE participation in the Work of the Contract. Contractor shall report on a monthly basis all DVBE's utilized in the performance of the Work, the type or classification of the Work performed by each such DVBE and the dollar value of the Work performed by each such DVBE. In addition, upon completion of the Work of the Contract, Contractor shall submit a report to the District in the form attached hereto identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each such DVBE and the dollar value of the Work performed by each such DVBE. The submission to the District of such report shall be deemed a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. The submission of such report shall be in addition to, and not in lieu of, any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment. The District reserves the right to request additional information or documentation from the Contractor evidencing efforts to comply with the DVBE Participation Goal.

4.3 **Contract Audit.** Contractor agrees that the District, or its designee, shall have the right to review, obtain and/or copy any and all writings, materials, documents and other records pertaining to the performance of the Contract. Contractor agrees that the District, or its designee, shall have access to any of Contractor's premises upon reasonable notice, during usual business hours for the purpose of interviewing employees and inspecting and/or copying such writings, materials, documents and other documents which may be relevant to a matter under investigation for the purpose of determining compliance with the DVBE Participation Goal.

**CERTIFICATION – PARTICIPATION OF
DISABLED VETERAN BUSINESS ENTERPRISES
IN ACCORDANCE WITH EDUCATION CODE 17076.11**

I certify that I have read the foregoing SECTION 00520 DISABLED VETERAN BUSINESS ENTERPRISE (“DVBE”) PARTICIPATION GOAL and will comply with the requirements as set forth in this contract.

Signature

Typed or Printed Name

Title

Company

Street Address

City, State, Zip

Telephone

Fax

E-mail

DVBE PARTICIPATION REPORT

Contractor Name: _____

Project Name: _____

Project Bid Number: _____

Date: _____

<i>Firm Name of DVBE</i>	<i>Trade/Portion of Work</i>	<i>Value of Work</i>

Does the cumulative dollar value of the foregoing DVBE participation meet or exceed three percent (3%) of the final Contract Amount, as adjusted by all change orders?

YES _____ NO _____

If your response is "NO", please attach to this Report a detailed description of the reasons for your failure to achieve the District's DVBE Participation Goal.

SECTION 00530

GUARANTEE

REEF SUNSET UNIFIED SCHOOL DISTRICT

_____ (Contractor's Name) hereby unconditionally guarantees that the work performed under and pursuant to District's Contract No. _____ for the Project known as **BID ## AVENALE S KINDERGARTEN PROJECT** ("Project") has been done in strict accordance with the requirements of the Contract and therefore further guarantees the work of the contract to be and remain free of defects in workmanship and materials for a period of one (1) year from the date of acceptance of the Project by the District's Board of Trustees, unless a longer guarantee period is called for by the Contract Documents, in which case the terms of the longer guarantee shall govern. The Contractor hereby agrees to repair or replace any and all work, together with any other work which may have been damaged or displaced in so doing, that may prove to be not in accordance with the requirements of the Contract or that may be defective in its workmanship or materials within the guarantee period specified, without any expense whatsoever to the District, ordinary wear and tear and unusual abuse and neglect only excepted. The Contractor has provided contract bonds which will remain in full force and effect during the guarantee period.

The Contractor further agrees that within ten (10) calendar days after being notified in writing by the District of any work not in accordance with the requirements of the contract or any defects in the work, he will commence and prosecute with due diligence all work necessary to fulfill the terms of this guarantee, and to complete the work within a reasonable period of time. In the event he fails to so comply, he does hereby authorize the District to proceed to have such work done at the Contractor's expense and he will pay the cost thereof upon demand. The District shall be entitled to all costs, including reasonable attorneys' fees, necessarily incurred upon the Contractor's refusal to pay the above costs.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to the health or safety of the employees of the District, or its property or licensees, the District may undertake at the Contractor's expense without prior notice, all work necessary to correct such hazardous condition when it was caused by the work of the Contractor not being in accordance with the requirements of this contract, or being defective, and to charge the same to the Contractor as specified in the preceding paragraph.

The guarantee set forth herein is not intended by the parties, nor shall it be construed, as in any way limiting or reducing the District's rights to enforce all terms of the contract referenced hereinabove or the time for enforcement thereof. This guarantee is provided in addition to, and not in lieu of, the District's rights on such contract.

CONTRACTOR'S SIGNATURE

SUBCONTRACTOR'S SIGNATURE

Representative to be contacted for services:

Name: _____

Address: _____

Phone No.: _____

Fax No.: _____

SECTION 00600

CONSTRUCTION FORMS

PART 1 – GENERAL

1.01 FORMS INCLUDED

- A. Request for Information (RFI)
- B. Field Clarification (FC)
- C. Substitution Request
- D. Change Order (CO)
- E. Daily Report
- F. Contractor Payment Request
- G. Final Inspection Certificate
- H. Construction Change Directive (CCD)

END OF SECTION



REQUEST FOR INFORMATION

Project: Avenal E.S Kindergarten Project

RFI No.: _____

Contractor:

BID NO.: ##

Owner: Reef Sunset Unified School District
205 N. Park Ave
Avenal, CA. 93204

Architect: A.P Architects
3434 Truxtun Avenue, Suite 240
Bakersfield, CA 93204

Drawing No.: _____

Specification Section: _____

CONTRACT No.: __-__

<input type="checkbox"/> The information is requested for the following reason:			
<input type="checkbox"/> Direction not given in Contract Documents	<input type="checkbox"/> Specifications Reference	<input type="checkbox"/> Interpretation of Contract Documents	<input type="checkbox"/> Shop Drawings Reference
<input type="checkbox"/> Conflict in Contract / Contract Drawings	<input type="checkbox"/> Other		
INFORMATION REQUESTED:			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
POSSIBLE COST IMPACT: YES NO		POSSIBLE TIME IMPACT: YES NO	
REPLY:			
POSSIBLE COST IMPACT: YES <input type="checkbox"/> NO <input type="checkbox"/>		POSSIBLE TIME IMPACT: YES <input type="checkbox"/> NO <input type="checkbox"/>	

Attachments:

Response:

By: _____

Date: _____

FIELD CLARIFICATION

TO CONTRACTOR: _____ FC No.: _____

FROM: _____ Date: _____

SCHOOL: _____ Project No.: _____

PROJECT: _____ Contract No.: _____

SUBJECT: _____

Reference: Drawings: _____ Specifications: _____

The following is issued as a clarification of the Contract Documents without any additional cost and/or time impact to the Contract:

List of Attachments: _____

Project Manager: _____ Date: _____

This document provides information or clarification only and does not constitute authorization or direction to proceed with additional work. If, in the opinion of the Contractor, the clarification has impact to the Contract amount and/or time, the Contractor must advise _____ in writing within five (5) days of receipt that the clarification constitutes issuance of a change order. The Contractor's notice shall be accompanied and appropriately supported with justification, reasoning and references where the contract requirements have been exceeded due to the clarification. Otherwise, this Field Clarification will stand as clarifications to the Contract Documents without any additional costs and/or time impact to the District.



SUBSTITUTION REQUEST

Project: Avenal E.S Kindergarten project

Contractor: _____ **SUB. REQ. NO.:** _____

Owner: Reef Sunset unified School District
205 N. Park Ave,
Avenal, CA. 93204

Architect: A.P Architects.
3434 Truxtun Avenue, Suite 240
Bakersfield, CA 93204

Item: _____ **Specification Section:** _____

<p>We hereby submit for your consideration the following product comparison of the specified item and the proposed substitution:</p>		
Comparison:	Specified Item:	Substitution:
1. Product Name/Model		
2. Manufacturer Information		
3. Product Cost		
4. Delivery Time		
5. Product Characteristics		
6. Dimensions/Effects		
7. Guarantee/Warranty		
8. ICBO No.		

9. UL Rating		
--------------	--	--

Architects:

- Approved
- Not Approved

By: _____

RSU.S.D:

- Approved
- Not Approved

By: _____



CHANGE ORDER

Date:

CHANGE ORDER NO. _____

PROJECT: Avenal E.S Kindergarten Project

RSU.S.D. BID No. ##
RSU.S.D. Agreement No.

OWNER: Reef Sunset USD
205 N. Park Ave
Avenal, CA. 93204

ARCHITECT A.P Architects
3434 Truxton Ave,
Avenal, CA 93204

CONTRACTOR:

Attn:

Architects Proj. No.:
D.S.A. File No.:
D.S.A. App. No.:

CONFORMANCE WITH CONTRACT DOCUMENTS, PROJECT MANUAL, DRAWINGS AND SPECIFICATION. All Change Order work shall be in strict conformance with the Contract Documents, Project Manual, Drawings, and Specifications as they pertain to work of a similar nature.

ORIGINAL CONTRACT SUM..... \$

NET CHANGE - ALL PREVIOUS CHANGE ORDERS \$

ADJUSTED CONTRACT SUM \$

NET CHANGE - \$

Total Change Orders to Date:..... \$

ADJUSTED CONTRACT SUM THROUGH CHANGE ORDER NO \$

Commencement Date:

Original Completion Date:

Original Contract Time:

Time Extension for all Previous Change Orders:

Time Extension for this Change Order:

Adjusted Completion Date:

Percentage

Item	Description	Unforeseen Condition (UFO)	Additional Scope (AS)	Design Clarification (DC)	Code Requirement
1.					
2.					
3.					
4.					
5.					
6.					
	Totals				

Total Change Order No \$ _____

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND DEPT. SUPT. BUSINESS SERVICES OR PURCHASING DIRECTOR*

APPROVAL (REQUIRED):

ARCHITECT: _____ DATE: _____

CONTRACTOR: _____ DATE: _____

RECOMMENDED FOR APPROVAL:

RSUSD DSA INSPECTOR: _____ DATE: _____

DEPUTY SUPERINTENDENT BUSINESS AND FISCAL SERVICES: _____ DATE: _____

APPROVAL (REQUIRED):

BOARD APPROVAL _____ DATE: _____

DEPUTY. SUPT./PURCHASING DIRECTOR: _____ DATE: _____

DSA APPROVAL _____ DATE: _____

DAILY REPORT

School:	AVENALElementary School	Report No.:	
Project:	KINDERGARTEN PROJECT	Date:	_____ Day: _____
Bid No.:	##	Architect	_____
Contractor:		Proj. No:	_____
		Average	_____
		Work Force:	_____

TEMPERATURE:	PRECIPITATION:	SKY:	WIND:

ACTIVITY:

EQUIPMENT:					
<u>Description</u>	<u>Source</u>	<u>Units</u>	<u>Type</u>	<u>Work Area</u>	

FIELD FORCE LABOR:							
<u>Category</u>	<u>Source</u>	<u>Supv.</u>	<u>Frmn.</u>	<u>Jrny.</u>	<u>Appr.</u>	<u>Work Area</u>	<u>Remarks</u>
TOTALS:							

Signed By: _____ **Date:** _____

Copies:	<input type="checkbox"/>	Owner	<input type="checkbox"/>	Contractor	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	File
----------------	--------------------------	-------	--------------------------	------------	--------------------------	--	--------------------------	--	--------------------------	--	--------------------------	------

CONTRACTOR'S PAYMENT REQUEST

CONTRACTOR: _____ PAYMENT REQUEST No. _____

ADDRESS: _____

BID No.: **##** AGREEMENT No.: - SITE: **AVENAL E.S**

PROJECT: **AVENAL E.S Kindergarten Project** PURCHASE ORDER NO. _____

PERIOD ENDING: _____

1. Original Agreement Amount	\$ _____
2. Net Change by Change Order Through C.O.# _____	\$ _____
3. Revised Agreement Amount to Date (Lines 1 + 2)	\$ _____
4. Value of Work Completed to Date (per Schedule of Values)	\$ _____
5. Less 5% Retention of Completed Work	< \$ _____ >
6. Less prior Billings	< \$ _____ >
7. CURRENT AMOUNT DUE THIS REQUEST	\$ _____
8. Adjustments/Withholdings	\$ _____
9. ADJUSTED TOTAL	\$ _____

CERTIFICATE OF THE CONTRACTOR: I hereby certify that the work performed and the materials supplied to date, as shown on the above, represents the actual value of accomplishment under the terms of the Contract (and all authorized changes thereto) between the undersigned and the Oxnard School District relating to the above-referenced project. I further certify that payments, less applicable retention, have been made through the period covered by previous payments received from the District, to (1) all my subcontractors (sub-contractors) and (2) for all materials and labor used in or in connection with the performance of this Contract. I further certify I have complied with Federal, State and Local tax laws, including Social Security laws and Unemployment Compensation laws and Workman's Compensation laws insofar as applicable to the performance of this Contract. I hereby certify that I have complied with all of the requirements of the Contract Documents including, but not limited to Section 6 and 60 of the General Conditions.

INDICATION OF PROJECT STATUS IS A NECESSARY CONDITION OF PAYMENT. INITIAL correct certification:
 I hereby certify that we have completed _____ or have not completed _____ a sufficient portion of the work of this Contract to maintain our current completion schedule (contract plus change orders), have updated the "as built" drawings through the date of this payment request, and are familiar with the liquidated damages clause contained in this Contract. **(Please sign Request Form in any color ink other than black)**

1). Contractor:
 By: _____
 Date: _____

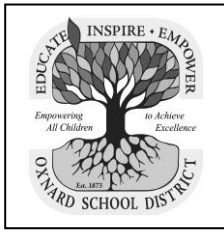
4). Architect:
 By: _____
 Date: _____

2). DSA Inspector:
 By: _____
 Date: _____

5). Deputy Superintendent, Business and Fiscal Services
 By: _____
 Date: _____

3). Project Manager:
 By: _____
 Date: _____

6). Director of Purchasing:
 By: _____
 Date: _____



FINAL INSPECTION CERTIFICATE

Project: REEF SUNSET USD

Date of Issuance:

Owner: Reef Sunset unified School District
205 N. Park Ave,
Avenal, CA. 93204

Architect: A>P Architects
3434 Truxton Ave, Suite
240, AVENAL, CA 93204

Contractor:

O.S.D. Bid No.: ##
O.S.D. Agreement No.: __-__
Architect's Project No.:

This is to certify that the work for Agreement No. __, Avenal E.S Kindergarten Project Project, has been inspected by the General Contractor for compliance with the Contract Documents and by all public agencies having jurisdiction and that the work has been completed in accordance with the Contract Documents. The General Contractor also certifies that all equipment and systems have been tested in the presence of the District's Inspector of Record and other consultants, inspectors and governing agencies, and that all such equipment and systems are operational and ready for use.

The undersigned certifies that the work is fully complete and ready for final examination by the District.

General Contractor

By: _____

Title: _____



CONSTRUCTION CHANGE DIRECTIVE

DATE:

FILE No.:

CCD No.

DSA No.:

Project: AVENAL E.S Kindergarten Project
RSU.S.D. Bid No. ##

RSU.S.D. Agreement No: __-__

Contractor:

Owner: Reef Sunset Unified School District
3434 Truxtun Ave,
Bakersfield CA
93204

You are hereby directed to make change(s) in this Contract:

1a. Lump Sum (increase)(decrease) of _____

1b. Unit Price of \$ _____ per lin.ft.

1c. Labor and Material, percentage of overhead and profit as provided in the Section 10 of the General Conditions.

1d. Other as follows:

2a. The Contract Time is proposed to be (increased) (decreased) by () days.

2b. The Contract Time is proposed to be Unchanged.

When signed by the Owner and received by the Contractor, this document becomes effective IMMEDIATELY as a Construction Change Directive and the Contractor shall proceed with the change(s) described above.

RECOMMENDED FOR APPROVAL

Architect

RECOMMENDED FOR APPROVAL:

O.S.D. Project Manager

BY: _____ DATE: _____ BY: _____ DATE: _____

Signature by the Contractor indicates the Contractor's agreement with the proposed adjustments in Contract Sum and Contract Time set forth in this Construction Change Directive and that contractor shall execute a change order consistent with this Construction Change Directive which change order shall be subject to approval by the District.

CONTRACTOR:

BY: _____ DATE: _____

SECTION 00700

**GENERAL CONDITIONS
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GENERAL CONDITIONS

ARTICLE 1: DEFINITIONS; GENERAL

1.1 Architect. The Architect is the person or entity identified as such in the Agreement; references to the "Architect" includes the Architect's authorized representative and his, her or its successor(s).

1.2 Construction Equipment. "Construction Equipment" is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.

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

1.4 Contract Document Terms. The term "provide" means "provide complete in place" or to "furnish and install" such item. Unless otherwise provided in the Contract Documents, the terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the District, its agents or representatives. The term "typical" as used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as "typical" in all other similar areas; Work in such other areas shall conform to that shown as "typical" or as reasonably inferable therefrom.

1.5 Contractor. The Contractor is the person or entity identified as such in the Agreement; references to "Contractor" include the Contractor's authorized representative.

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

1.7 Days. Unless otherwise expressly stated, references to "days" in the Contract Documents shall be deemed to be calendar days.

1.8 Deferred Approval Items. Deferred approval items are those items that shall not be started until detailed plans, specifications, and engineering calculations have been accepted and signed by the Architect or Engineer.

1.9 District. The "District" refers to **Reef Sunset Unified School District** and its authorized representatives, including the Project Manager, the District's Board of Trustees and the District's officers, employees, agents and representatives.

1.10 District's Inspector. The District's Inspector is the individual designated and employed by the District in accordance with the requirements of Title 24 of the California Code of Regulations.

The District's Inspector shall be authorized to act on behalf of the District as provided for in the Contract Documents and in Title 24 of the California Code of Regulations, as the same may be amended from time to time.

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

1.12 Drawings and Specifications. The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing generally, the design, location and dimensions of the Work and may include without limitation, plans, elevations, sections, details, schedules, notes or diagrams. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services. The Drawings and Specifications are intended to delineate and describe the Work and its component parts so as to permit skilled and competent contractors to bid upon the Work and prosecute the same to completion.

1.13 Intent and Correlation of Contract Documents.

1.13.1 Work of the Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable therefrom as being necessary to produce the intended results. Organization of the Specifications into divisions, sections or articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Where any portion of the Contract Documents is silent and information appears elsewhere in the Contract Documents, such other portions of the Contract Documents shall control. Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified.

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

1.13.3 Conflict in Contract Documents. The Contract Documents are intended to be fully cooperative and to agree. If Contractor observes any conflict, inconsistency or ambiguity, Contractor shall promptly notify the District and the Architect in writing of such conflict, inconsistency or ambiguity prior to commencement of affected Work. If a conflict, inconsistency or ambiguity arises, the following order or precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to create an absurd or costly result: Special Conditions shall take precedence over General Conditions, Specifications shall take precedence over

Drawings and shall govern as to materials, workmanship and installation procedures. Plans identify the scope and location of the Work. With regard to Drawings, larger details govern over smaller scale drawings, addenda and change order drawings govern over contract drawings, contract drawings govern over standard drawings.

1.14 Material Supplier. A Material Supplier is any person or entity who only furnishes materials, equipment or supplies for the Work without fabricating, installing or consuming them in the Work.

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

1.16 Project Manager. The Project Manager, if any, is the individual or entity designated as such in the Special Conditions. The Project Manager is an independent contractor retained by the District and shall be authorized and empowered to act on behalf of the District. The removal or replacement of the designated Project Manager shall not result in adjustment of the Contract Price or the Contract Time or otherwise affect, limit or restrict Contractor's obligations hereunder.

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

1.18 Shop Drawings; Samples; Product Data (“Submittals”). Shop Drawings are diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor of any tier, manufacturer, Material Supplier, or distributor to illustrate some portion of the Work. Samples are physical examples of materials, equipment or workmanship forming a part of, or to be incorporated into the Work. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. Shop Drawings, Samples and Product Data prepared or furnished by the Contractor or any of its Subcontractors or Material Suppliers are collectively referred to as “Submittals”.

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

1.20 Subcontractors; Sub-Subcontractors. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work. "Subcontractor" does not include a separate contractor to the District or subcontractors of any separate contractor. A Sub-Subcontractor is a person or entity of any tier, who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site.

1.21 Special Conditions. If made a part of the Contract Documents, Special Conditions are special or supplemental provisions, not otherwise provided for in the Agreement or the General Conditions.

1.22 Surety. The Surety is the person or entity that executes, as surety, the Contractor's Labor and

Material Payment Bond and/or Performance Bond or other bonds provided by the Contractor.

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

ARTICLE 2: DISTRICT

2.1 Information Required of District.

2.1.1 Surveys; Site Information. District may provide information concerning physical characteristics of the Site. Information not provided by the District concerning physical characteristics of the Site, which is required, shall be obtained by Contractor without adjustment to the Contract Price or the Contract Time.

2.1.2 Drawings and Specifications. All of the Drawings and the Specifications shall remain the property of the District; the Contractor shall not use the Drawings or the Specifications in connection with any other work of improvement other than the Work of the Project.

2.1.3 Furnishing of Information. Information or services to be provided by the District under the Contract Documents shall be furnished by the District with reasonable promptness to avoid delay in the orderly progress of the Work. Information about existing conditions furnished by the District under the Contract Documents is obtained from sources believed to be reliable, but the District neither guarantees nor warrants that such information is complete and accurate. The Contractor shall verify all information provided by the District. To the extent that the Contract Documents depict existing conditions on or about the Site, or the Work involves the renovation, removal or remodeling of existing improvements, or the Work involves any tie-in or other connection with any existing improvements, the conditions and/or existing improvements depicted in the Contract Documents are as they are believed to exist.

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

2.3 Partial Occupancy or Use.

231 District's Right to Partial Occupancy. The District may occupy or use any completed or partially completed portion of the Work, provided that the District and the Contractor have accepted, in writing, the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, utilities, damage to the Work, insurance and the period for correction of the Work and commencement of warranties required by the Contract Documents for such portion of the Work partially used or occupied by the District. If the Contractor and the District are unable to agree upon the matters set forth above, the District may nevertheless use or occupy any portion of the Work, with the responsibility for such matters subject to resolution in accordance with the Contract Documents. Immediately prior to such partial occupancy or use of the Work, or portions thereof, the District, the District's Inspector, the Contractor and the Architect shall jointly inspect the portions of the Work to be occupied or to be used to determine and record the condition of the Work. The District's use or occupancy of the Work or portions thereof pursuant to the preceding shall not be deemed "completion" of the Work as that term is used in Public Contract Code §7107.

232 No Acceptance of Defective or Nonconforming Work. Unless otherwise expressly agreed upon by the District and the Contractor, the District's partial occupancy or use of the Work or any portion thereof, shall not constitute the District's acceptance of the Work not complying with the requirements of the Contract Documents or which is otherwise defective.

2.4 The District's Inspector. In addition to the authority and rights of the District's Inspector as provided for elsewhere in the Contract Documents, all of the Work shall be performed under the observation of the District's Inspector in accordance with the provisions of Title 24 of the California Code of Regulations. The District's Inspector shall have access to all parts of the Work at any time, wherever located, including shop inspections, and whether partially or completely fabricated, manufactured, furnished or installed. The performance of the duties of the District's Inspector under the Contract Documents shall not relieve or limit the Contractor's performance of its obligations under the Contract Documents.

ARTICLE 3: ARCHITECT

3.1 Architect's Administration of the Contract.

3.1.1 Administration of Contract. The Architect will provide administration of the Contract as described in the Contract Documents, and will be one of the District's representatives during construction until the time that Final Payment is due the Contractor. The Architect will advise and consult with the District, the Project Manager and the District's Inspector with respect to the administration of the Contract and the Work. The Architect shall have the responsibilities and powers established by law, including Title 24 of the California Code of Regulations.

3.1.2 Periodic Site Observations. The Architect will visit the Site 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 will not be required to make exhaustive or continuous Site observations to check quality or quantity of the Work. On the basis of Site observations as an architect, the Architect will keep the District informed of the progress of the Work, and will endeavor to guard the District against defects and deficiencies in the Work.

3.13 Contractor Responsibility for Construction Means, Methods and Sequences. The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, these being solely the Contractor's responsibility. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

3.14 Verification of Applications for Payment. In accordance with Article 8 hereof, the Architect will review the Contractor's Applications for Progress Payments and for Final Payment, verify the extent of Work performed and the amount properly due the Contractor on such Application for Payment.

3.15 Rejection of Work. The Architect is authorized to reject Work which is defective or does not conform to the requirements of the Contract Documents. Whenever the Architect considers it necessary or advisable, additional inspections or testing of the Work may be conducted, whether or not such Work is fabricated, installed or completed. Neither this authority of the Architect nor a decision made in good faith by the Architect to exercise or not to exercise such authority shall give rise to a duty or responsibility to the Contractor, Subcontractors, Material Suppliers, their agents or employees, or other persons performing portions of the Work.

3.16 Architect's Review of Submittals. The Architect will review and approve or take other appropriate action upon the Contractor's Submittals, but only for the limited purpose of checking for conformance with the design concept expressed in the Contract Documents. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's Submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect's review of Submittals shall not constitute approval of safety measures, programs or precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item in a Submittal shall not indicate approval of an assembly of which the item is a component. The Architect's review and return of Submittals will normally require a minimum of fourteen (14) days from date of receipt of complete submittal. Deferred approval submittals indicated in the Contract Documents require additional time for processing and review of all submittals.

3.17 Changes to the Work; Change Orders. The Architect will prepare Change Orders and may authorize minor changes in the Work in accordance with Article 9.9 hereof.

3.18 Completion. The Architect will conduct observations to determine the date(s) of interim milestones, if any, and the dates of Substantial and Final Completion. The Architect will verify that the Contractor has complied with all requirements of the Contract Documents and is entitled to receipt of Final Payment.

3.19 Interpretation of Contract Documents. The Architect will interpret and decide matters concerning the requirements of the Contract Documents on written request of either the District or the Contractor, or as deemed necessary. The Architect's response to such requests will be made in writing with reasonable promptness and within the time limits specified in the Contract Documents. Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings with transmittal letter. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both the District and the Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith. The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 4: THE CONTRACTOR

41 Communications. All communications regarding the Work, the performance thereof or the Contract Documents shall be in writing; oral communications, unless reduced to writing, are not binding on the parties. Communications between the Contractor and the District shall be through the Project Manager. Communications between separate contractors, if any, shall be through the Project Manager. Contractor shall make all written communications concerning the Project available to the District upon request.

42 Contractor Review of Contract Documents.

421 Examination of Contract Documents. The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the District pursuant to the Contract Documents and shall at once report to the District any errors, inconsistencies or omissions discovered. If the Contractor performs any Work knowing, or with reasonable diligence should have known that, it involves an error, inconsistency or omission in the Contract Documents without prior written notice to the District of the same, the Contractor shall assume full responsibility for such performance and shall bear all attributable costs for correction of the same.

422 Field Measurements. Prior to commencement of the Work, or portions thereof, the Contractor shall take field measurements and verify field conditions at the Site and shall

carefully compare such field measurements and conditions and other information known to the Contractor with information provided in the Contract Documents. Errors, inconsistencies or omissions discovered shall be reported to the District at once.

423 Dimensions; Layouts and Field Engineering. Dimensions indicated in the Drawings are intended for reference only. The Contractor shall be solely responsible for dimensioning and coordinating the Work of the Contract Documents. All field engineering required for laying out the Work and/or establishing grades for earthwork operations shall be by the Contractor at its expense. Any field engineering or other engineering to be provided or performed by the Contractor under the Contract Documents and required or necessary for the proper execution or installation of the Work shall be provided and performed by an engineer duly registered under the laws of the State of California in the engineering discipline for such portion of the Work.

424 Request for Information. If the Contractor encounters any condition which the Contractor believes, in good faith and with reasonable basis, is the result of an ambiguity, conflict, error or omission in the Contract Documents (collectively “the Conditions”), it shall be the affirmative obligation of the Contractor to timely notify the District, in writing, of the Conditions encountered and to request information from the District necessary to address and resolve any such Conditions before proceeding with any portion of the Work affected or which may be affected by such Conditions. If the Contractor fails to timely notify the District in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions, the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Price. In requesting information of the Architect to address and resolve any Conditions, the Contractor shall act with promptness in submitting any such written request so as to allow the Architect a reasonable period of time to review, evaluate and respond to any such request, taking into account the then current status of the progress and completion of the Work and the actual or potential impact of any such Conditions upon the completion of the Work within the Contract Time. The Contract Time shall not be subject to adjustment in the event that the Contractor shall fail to timely request information from the Architect. The Architect's responses to any such Contractor request for information shall conform to the standards and time frame set forth in Article 3.1.9 of these General Conditions. The foregoing provisions notwithstanding, in the event that the Architect reasonably determines that any of Contractor's request(s) for information: (i) does not reflect adequate or competent supervision or coordination by the Contractor or any Subcontractor; or (ii) does not reflect the Contractor's adequate or competent knowledge of the requirements of the Work or the Contract Documents; or (iii) is not justified for any other reason, Contractor shall be liable to the District for all costs incurred by the District associated with the processing, reviewing, evaluating and responding to any such request for information, including without limitation, fees of the Architect and any other design consultant to the Architect or the District. In the event that the Architect makes such a determination, the District may deduct such costs from

any portion of the Contract Price then or thereafter due the Contractor.

425 Work in Accordance With Contract Documents. The Contractor shall perform all of the Work in strict conformity with the Contract Documents and approved Submittals.

43 Site Investigation; Subsurface Conditions.

431 Contractor Investigation. The Contractor shall be responsible for, and by executing the Agreement acknowledges, that it has carefully examined the Site and has taken all steps it deems reasonably necessary to ascertain all conditions which may affect the Work, or the cost thereof, including, without limitation, conditions bearing upon transportation, disposal, handling or storage of materials; availability of labor or utilities; access to the Site; and the physical conditions and the character of equipment, materials, labor and services necessary to perform the Work. Any failure of the Contractor to do so will not relieve it from the responsibility for fully and completely performing all Work without adjustment to the Contract Price or the Contract Time. The District assumes no responsibility to the Contractor for any understandings or representations concerning conditions or characteristics of the Site, or the Work, made by any of its officers, employees or agents prior to the execution of the Agreement, unless such understandings or representations are expressly set forth in the Agreement.

432 Subsurface Data. By executing the Agreement, the Contractor acknowledges that it has examined the subsurface data available and satisfied itself as to the character, quality and quantity of surface and subsurface materials, including without limitation, obstacles which may be encountered in performance of the Work, insofar as this information is reasonably ascertainable from an inspection of the Site, review of available subsurface data and analysis of information furnished by the District under the Contract Documents. Subsurface data or other soils investigation report provided by the District hereunder are not a part of the Contract Documents. Information contained in such data or report regarding subsurface conditions, elevations of existing grades, or below grade elevations are approximate only and is neither guaranteed nor warranted by the District to be complete and accurate. The Contractor shall examine all subsurface data to make its own independent interpretation of the subsurface conditions and acknowledges that its bid is based upon its own opinion of the conditions which may be encountered. The District assumes no responsibility for any conclusions or interpretations made by Contractor on the basis of available subsurface data or other information furnished by District under the Contract Documents.

433 Subsurface Conditions.

433.1 Procedures. If the Work under the Contract Documents 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's Inspector, in writing, of any: (i) material that the Contractor believes may be

material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I or Class II or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to Contractor prior to award of the Contract; or (iii) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Contract Documents. If upon notice to the District of the conditions described above and upon the District's investigation thereof, the District determines that the conditions so materially differ or involve such hazardous materials which require an adjustment to the Contract Price or the Contract Time, the District shall issue a Change Order in accordance with Article 9 hereof. In accordance with California Public Contract Code §7104, any dispute arising between the Contractor and the District as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse the Contractor from the completion of the Work within the Contract Time and the Contractor shall proceed with all Work to be performed under the Contract Documents. The District reserves the right to terminate the Contract pursuant to Article 15.2 hereof should the District determine not to proceed because of any condition described in (i), (ii) or (iii) above.

4.3.3.2 Trenching. For all excavations in excess of five (5) feet involving an estimated expenditure in excess of \$25,000, Contractor shall submit to the District 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 Contractor receives notification of acceptance from the District. Contractor shall comply with all other applicable requirements of California Labor Code §6705, and as therein provided, no provisions of that Section or this Section shall be construed to impose tort liability upon the District. In any event, 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 commencement of any excavation.

44 Supervision and Construction Procedures.

44.1 Supervision of the Work. The Contractor shall supervise and direct performance of the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents, unless Contract Documents give other specific instructions concerning these matters. The Contractor shall be responsible for inspection of completed or partially completed portions of Work to determine that such portions are in proper condition to receive subsequent Work.

442 Responsibility for the Work; Coordination of the Work. The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and all other persons performing any portion of the Work under a contract with the Contractor. The Contractor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Project Manager, District's Inspector or the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor. The Contractor shall be responsible for all necessary or appropriate coordination of the Work and component parts thereof so that Final Completion of the Work will be achieved within the Contract Time and the Work will be completed for the Contract Price. The coordination of the Work is a material obligation of the Contractor hereunder and shall include without limitation, conducting regular coordination meetings with its Subcontractors and Material Suppliers, sequencing the operations of Subcontractors and Material Suppliers, and adapting its planned means, methods and sequences of construction operations as necessary to accommodate field or changed conditions at the Site.

443 Surveys. The Contractor shall prepare or cause to be prepared all detailed surveys necessary for performance of the Work. The Contractor shall be responsible for the establishment, location, maintenance and preservation of benchmarks, reference points and stakes for the Work, the cost of which shall be included within the Contract Price. The Contractor shall be solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes.

444 Construction Utilities. The Contractor shall arrange for the furnishing of and shall pay the costs of all utility services, including, without limitation, electricity, water, gas and telephone necessary for performance of the Work and the Contractor's obligations under the Contract Documents. The Contractor shall furnish and install necessary or appropriate temporary distributions of utilities, including meters, to the Site. Any such temporary distributions shall be removed by the Contractor upon completion of the Work. The costs of all such utility services, including the installation and removal of temporary distributions thereof, shall be borne by the Contractor and included in the Contract Price.

445 Existing Utilities; Removal, Relocation and Protection. In accordance with California Government Code §4215, the District shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site which are not identified in the Drawings, Specifications or other Contract Documents. Contractor shall be compensated for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings, Specifications and other Contract Documents with reasonable accuracy, and for equipment on the Site necessarily idled during such work. Contractor shall not be assessed Liquidated Damages for delay in completion of the Work

when such delay is caused by the failure of the District or the utility district to provide for removal or relocation of such utility facilities. Nothing in this Article 4.4.5 shall be deemed to require the District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Site. If the Contractor encounters utility facilities not identified by the District in the Drawings, Specifications, or other Contract Documents, the Contractor shall immediately notify, in writing, the District and the utility owner. In the event that such utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a price determined in accordance with Article 9 of these General Conditions.

45 Labor and Materials.

451 Payment for Labor, Materials and Services. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, applicable taxes, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work.

452 Employee Discipline and Skills. The Contractor shall enforce strict discipline and good order among the Contractor's employees, the employees of any Subcontractor of any tier, and all other persons performing any part of the Work at the Site. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall dismiss from its project employees and direct any Subcontractor of any tier to dismiss from their employment on the project any person deemed by the District to be unfit or incompetent to perform Work and thereafter, the Contractor shall not employ nor permit the employment of such person for performance of any part of the Work without the prior written consent of the District, which consent may be withheld in the reasonable discretion of the District.

453 Contractor's Superintendent and Project Manager. The Contractor shall employ a competent superintendent, project manager and all necessary assistants who shall be in attendance at the Site at all times during performance of the Work. The Contractor's communications relating to the Work or the Contract Documents shall be through the Contractor's superintendent and/or project manager. The superintendent shall represent the Contractor at the Site and communications given to the superintendent shall be binding as if given to the Contractor. The Contractor shall dismiss from the project the superintendent, project manager or any of his/her assistants if they are deemed, in the sole reasonable judgment of the District, to be unfit, incompetent or incapable of performing the functions assigned to them. In such event, the District shall have the right to approve of the replacement superintendent, project manager or assistant.

454 Prohibition on Harassment.

4.5.4.1 District's Policy Prohibiting Harassment. The District is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color religion, national origin, ancestry, age, medical condition, marital status, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.

4.5.4.2 Contractor's Adoption of Anti-Harassment Policy. Contractor shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim. Contractor shall require that any Subcontractor or Sub-subcontractor performing any portion of the Work to adopt and implement policies in conformity with this Article 4.5.4.

4.5.4.3 Prohibition on Harassment at the Site. Contractor shall not permit any person, whether employed by Contractor, a Subcontractor, Sub-subcontractor, or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to appropriate sanctions in accordance with the anti-harassment policy adopted and implemented pursuant to Article 4.5.4.2 above. Any person performing or providing Work on or about the Site who engages in a prohibited form of harassment directed to any student, faculty member or staff of the District or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon the District's receipt of any notice or complaint that any person employed directly or indirectly by Contractor in performing or providing the Work has engaged in a prohibited form of harassment, the District will promptly undertake an investigation of such notice or complaint. In the event that the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify the Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District's determination

that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, the District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof. Contractor and the Surety shall defend, indemnify and hold harmless the District and its employees, officers, Board of Trustees, agents, and representatives from any and all claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys' fees, which arise out of, or pertain in any manner to: (i) the assertion by any person dismissed from performing or providing work at the direction of the District pursuant to this Article 4.5.4.3; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of the Contractor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of the Contractor and the Surety under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

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

47 Permits, Fees and Notices; Compliance with Laws.

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

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

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

48 Submittals.

481 Purpose of Submittals. Shop Drawings, Product Data, Samples and similar submittals (collectively “Submittals”) are not Contract Documents. The purpose for submission of Submittals is to demonstrate, for those portions of the Work for which Submittals are required, the manner in which the Contractor proposes to provide or incorporate such item of the Work in conformity with the information given and the design concept expressed in the Contract Documents.

482 Contractor's Submittals.

4.8.2.1 Prompt Submittals. The Contractor shall review, confirm and submit to the Architect with the number of copies of Submittals within the timeframes required by the Contract Documents. Contractor’s submission of Submittals in conformity with the Submittal Schedule is a material consideration of the Contract. In the event that the District reasonably determines that all or any portion of any Submittal fails to comply with the requirements of the Contract Documents and/or such Submittals are not otherwise complete and accurate so as to require re-submission more than one (1) time, Contractor shall bear all costs associated with the review and approval of such resubmitted Submittals; provided that such costs are in addition to, and not in lieu of, any liquidated damages imposed under the Contract Documents for Contractor's delayed submission of Submittals. Submittals not required by the Contract Documents may be returned without action. No adjustment to the Contract Time or the Contract Price shall be granted to the Contractor on account of its failure to make timely submission of any Submittals.

4.8.2.2 Approval of Contractor’s Confirmation of Submittals. All Submittals prepared by Subcontractors, of any tier, Material Suppliers, manufacturers or distributors shall bear the written approval of the Contractor thereto prior to submission to the Architect for review. Any Submittal not bearing the Contractor's written approval shall be subject to return to the Contractor for re-submittal in conformity herewith, with the same being deemed to not have been submitted. Any delay, impact or cost associated therewith shall be the sole and exclusive responsibility of the Contractor without adjustment of the Contract Time or the Contract Price.

4.8.2.3 Verification of Submittal Information. By approving and submitting Submittals, the Contractor represents to the District and Architect that the Contractor has determined and verified materials, field measurements, field construction criteria, catalog numbers and similar data related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

4.8.2.4 Information Included in Submittals. All Submittals shall be accompanied by a written transmittal or other writing by the Contractor providing an identification of

the portion of the Drawings or the Specifications pertaining to the Submittal, with each Submittal numbered consecutively for ease of reference along with the following information: (i) date of submission; (ii) project name; (iii) name of submitting Subcontractor; and (iv) if applicable, the revision number. The foregoing information is in addition to, and not in lieu of, any other information required for the Architect's review, evaluation and approval of the Contractor's Submittals.

4.8.2.5 Contractor Responsibility for Deviations. The Contractor shall not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by the Architect's approval of Submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission of the Submittal and the District has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the Architect's approval thereof.

4.8.2.6 No Performance of Work without Approval. The Contractor shall perform no portion of the Work requiring the Architect's review and approval of Submittals until the Architect has completed its review and granted its approval of such Submittal. The Contractor shall not perform any portion of the Work forming a part of a Submittal or which is affected by a related Submittal until the entirety of the Submittal or other related Submittal has been fully approved.

483 Architect Review of Submittals. The purpose of the Architect's review of Submittals and the time for the Architect's return of Submittals to the Contractor shall be as set forth elsewhere in the Contract Documents, including without limitation, Article 3.1.6 of the General Conditions. If the Architect returns a Submittal as rejected or requiring correction(s) and re-submission, the Contractor, so as not to delay the progress of the Work, shall promptly thereafter resubmit a Submittal conforming to the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in order to obtain the Architect's approval. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals. The Architect's review of the Submittals is for the limited purposes described in the Contract Documents.

484 Deferred Approval Items. In the event that any portion of the Work is designated in the Contract Documents as a "Deferred Approval" item, Contractor shall be solely and exclusively responsible for the preparation of Submittals for such item(s) in a timely manner so as not to delay or hinder the completion of the Work within the Contract Time.

49 Materials and Equipment.

49.1 Specified Materials, Equipment. Except as otherwise provided, references in the

Contract Documents to any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number, with or without the words "or equal" shall be deemed to establish a minimum standard of quality or performance, and shall not be construed as limiting competition.

492 Approval of Or Equal, Substitutions or Alternatives. The Contractor may propose to furnish alternatives or substitutes for a particular item specified in the Contract Documents, provided that the Contractor provides advance written notice to the District of such proposed or equal, substitution or alternative and certifies to the District that the quality, performance capability, functionality and appearance of the proposed alternative or substitute will meet or exceed the quality, performance capability, functionality, and appearance of the item or process specified, and must demonstrate to the District that the use of the substitution or alternative is appropriate and will not delay completion of the Work or result in an increase to the Contract Price. The Contractor shall submit all data to the District to permit the Architect's proper evaluation of the proposed substitution or alternative. The Contractor shall not provide, furnish or install any substitution or alternative without the District's prior approval of the same; any alternative or substitution installed or incorporated into the Work without first obtaining the District's approval of the same shall be subject to removal pursuant to Article 12 hereof. The District's decision shall be final regarding the approval or disapproval of the Contractor's proposed substitutions or alternatives. The District's approval of any Contractor-proposed substitution shall be in accordance with Change Order procedures set forth in Article 9 and as otherwise specified in the Contract Documents.

493 Placement of Material and Equipment Orders. Contractor shall, after award of the Contract, promptly and timely place all orders for materials and/or equipment necessary for completion of the Work so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Contractor shall require that any Subcontractor of any tier performing any portion of the Work similarly place orders for all materials and/or equipment to be furnished by any such Subcontractor. Upon request of the District, the Contractor shall furnish reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, including without limitation, orders for materials and/or equipment to be provided, furnished or installed by any Subcontractor of any tier.

494 District's Right to Place Orders for Materials and/or Equipment. If the Contractor fails or refuses to provide reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, or should the District determine, in its sole and reasonable discretion, that such orders have not been placed in a manner that assures timely delivery of such materials and/or equipment to the Site so the Work can be completed without delay or interruption, the District shall have the right, but not the obligation, to place such orders on behalf of the Contractor. If the District exercises such right, the District's conduct in that regard does not assume control of

the work. Rather, Contractor remains responsible for the means, methods, techniques, sequences or procedures for completion of the Work and is not relieved from any of Contractor's obligations under the Contract Documents, including without limitation, completion of the Work within the Contract Time and for the Contract Price. If the District exercises the right hereunder to place orders for materials and/or equipment on behalf of Contractor pursuant to the foregoing, Contractor shall reimburse the District for all costs and fees incurred by the District in placing such orders; such costs and fees may be deducted by the District from the Contract Price then or thereafter due the Contractor.

4.10 Safety.

4.10.1 Safety Programs. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety programs required by applicable law, ordinance, regulation or governmental orders in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. The Contractor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs.

4.10.2 Safety Precautions. The Contractor shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors of any tier; and (iii) other property or items at the site of the Work, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities whether or not designated for removal, relocation or replacement in the course of construction. The Contractor shall erect and maintain, as required by existing conditions and conditions resulting from performance of the Contract, reasonable safeguards for safety and protection of property and persons, including, without limitation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Districts and users of adjacent sites and utilities. The Contractor shall give or post all notices required by applicable law and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

4.10.3 Safety Coordinator. The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents and the implementation and maintenance safety precautions and programs. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the District.

4.10.4 Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, to prevent threatened damage, injury or loss.

411 Hazardous Materials.

411.1 Use of Hazardous Materials. In the event that the Contractor, any Subcontractor or anyone employed directly or indirectly by them shall use, at the Site, or incorporate into the Work, any material or substance deemed to be hazardous or toxic under any law, rule, ordinance, regulation or interpretation thereof (collectively "Hazardous Materials"), the Contractor shall comply with all laws, rules, ordinances or regulations applicable thereto and shall exercise all necessary safety precautions relating to the use, storage or disposal thereof. Unless otherwise provided, Contractor shall be solely responsible for the transportation and disposal of any Hazardous Materials on or about the Site.

411.2 Prohibition on Use of Asbestos Containing Building Materials ("ACBMs"). Notwithstanding any provision of the Drawings or the Specifications to the contrary, it is the intent of the District that ACBMs not be used or incorporated into any portion of the Work. If any portion of the Work depicted in the Drawings or the Specifications shall require materials or products which the Contractor knows, or should have known with reasonably diligent investigation, to contain ACBMs, Contractor shall promptly notify the District of the same so that an appropriate alternative can be made in a timely manner so as not to delay the progress of the Work. Contractor warrants to the District that there are no materials or products used or incorporated into the Work which contain ACBMs. Whether before or after completion of the Work, if it is discovered that any product or material forming a part of the Work or incorporated into the Work contains ACBMs, the Contractor shall at its sole cost and expense remove such product or material in accordance with any laws, rules, procedures and regulations applicable to the handling, removal and disposal of ACBMs and to replace such product or material with non-ACBM products or materials and to return the affected portion(s) of the Work to the finish condition depicted in the Drawings and Specifications relating to such portion(s) of the Work. Contractor's obligations under the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, the Contractor's completion of the Work or the District's acceptance of the Work. In the event that the Contractor shall fail or refuse, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of the District's written notice to the Contractor of the existence of ACBM materials or products in the Work, the District may thereafter proceed to cause the removal and replacement of such materials or products in any manner which the District determines to be reasonably necessary and appropriate; all costs, expenses and fees, incurred by the District in connection with such removal and replacement shall be the responsibility of the Contractor and the Contractor's Performance Bond Surety.

411.3 Encountering of Hazardous Materials. If the Contractor encounters Hazardous Materials at the Site which have not been rendered harmless or for which there is no provision in the Contract Documents for their containment, removal, abatement or handling, the Contractor shall immediately stop the Work in the affected area and shall immediately

notify the District, in writing, of such condition. The Contractor shall diligently proceed with the Work in all other unaffected areas. The Contractor shall proceed with the Work in the affected area only after the Hazardous Materials have been rendered harmless, contained, removed or abated. Adjustments, if any, to the Contract Time or Price shall be made in accordance with Articles 7 and 9.

4114 Material Safety Data Sheets. Contractor is required to insure that Material Safety Data Sheets (MSDS) for any material requiring a MSDS pursuant to the federal “hazard communication” standard or employee’s right-to-know law are available in a readily accessible place on the Work premises. The Contractor is also required to insure (i) the proper labeling of any substance brought onto the Work premises, and (ii) that the persons working with the material, or within the general area of the material, are informed about the hazards of the substance and follow proper handling and protection procedures.

4115 Compliance with Proposition 65. Contractor is required to comply with the provisions of California Health and Safety Code § 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 set forth therein.

412 Maintenance of Documents.

4121 Documents at Site. The Contractor shall maintain at the Site: (i) one record copy of the Drawings, Specifications and all addenda thereto; (ii) Change Orders approved by the District and all other modifications to the Contract Documents; (iii) Submittals reviewed by the Architect; (iv) Requests for Information and responses thereto; (v) Record Drawings; (vi) Material Safety Data Sheets (“MSDS”) accompanying any materials, equipment or products delivered or stored at the Site or incorporated into the Work; and (vii) all building and other codes or regulations applicable to the Work, including without limitation, Title 24, Part 2 of the California Code of Regulations. During performance of the Work, all documents maintained by Contractor at the Site shall be available to the District, the Project Manager, the Architect, the District’s Inspector and DSA for review, inspection or reproduction. Upon completion of the Work, all documents maintained at the Site by the Contractor pursuant to the foregoing, except for (vii), shall be assembled and transmitted to the District.

4122 Maintenance of Record Documents. During its performance of the Work, the Contractor shall continuously maintain Record Documents which are marked to indicate all field changes made to adapt the Work depicted in the Documents to field conditions, changes resulting from Change Orders and all concealed or buried installations, including without limitation, piping, conduit and utility services. The Record Documents shall be clean and all changes, corrections and dimensions shall be marked in a neat and legible manner in a contrasting color. The District’s inspection or review shall not be deemed to be the District’s approval or verification of the completeness or accuracy of the Record Documents. The

failure or refusal of the Contractor to continuously maintain complete and accurate Record Documents or to make available the Record Documents for inspection and review by the District may be deemed by the District to be Contractor's default of a material obligation hereunder. Payments to the Contractor are conditioned upon continuous maintenance and completion of the Record Documents pursuant to Articles 8.3.2 and 8.3.3. If the Contractor fails or refuses to continuously maintain the Record Documents in a complete and accurate manner, the District may take appropriate action to cause such maintenance, and all costs incurred in connection therewith shall be charged to the Contractor; the District may deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.

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

4.14 Noise and Dust Control. The Contractor shall be responsible for complying 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 (Code of Federal Regulations, Title 40, Part 204). The Contractor shall be solely responsible for maintaining all areas of the Work free from all materials and products that by becoming airborne may cause respiratory inconveniences to District students and personnel. Damages and/or any liability derived from the Contractor's failure to comply with these requirements shall be the sole cost of the Contractor, including all penalties incurred for violations of local, state and/or federal regulations.

4.15 Cutting and Patching. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly in accordance with the Contract Documents. Only tradespersons skilled and experienced in cutting and patching shall perform such work. The Contractor shall not damage or endanger any portion of the Work, or the fully or partially completed construction of the District or separate contractors by cutting, patching, excavation or other alteration. The Contractor shall not cut, patch or otherwise alter the construction by the District or separate contractor without the prior written consent of the District or separate contractor thereto, which consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold consent to the request of the District or separate contractor to cut, patch or otherwise alter the Work.

4.16 Clean-Up. The Contractor shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material, rubbish or excess materials and equipment, placed, caused by performance of the Work. The Contractor shall maintain the Site in a "rake-clean" standard on a daily basis. Prior to completion of the Work, Contractor shall remove from the Site all rubbish, waste and excess material, tools, Construction Equipment, machinery, temporary facilities and barricades, and any other items which are not the property of the District under the Contract

Documents. Upon completion of the Work, the Site and all adjoining areas shall be left in a neat and broom clean condition satisfactory to District. The Project Manager is authorized to direct the Contractor's clean-up obligations hereunder. If the Contractor fails to clean up as provided for in the Contract Documents, the District may do so, and all costs incurred in connection therewith shall be charged to the Contractor; the District may deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.

417 Access to the Work. The Contractor shall provide the DSA, the District, the Project Manager, the District's Inspector, the Architect and the Architect's consultant(s) with access to the Work, whether in place, preparation and progress and wherever located.

418 Information for the District's Inspector. The Contractor shall furnish the District's Inspector access to the Work for obtaining such information as may be necessary to keep the District's Inspector fully informed respecting the progress, quality and character of the Work and materials, equipment or other items incorporated therein.

419 Inspector's Field Office. The Contractor shall provide and include in the Contract Price a temporary furnished office at the Site, if specified in the Contract Documents, for use by the District, the Project Manager and the District's Inspector, until removal of the same is authorized by the District.

420 Patents and Royalties. The Contractor and the Surety shall defend, indemnify and hold harmless the District and its agents, employees and officers from any claim, demand or legal proceeding arising out of or pertaining, in any manner, to any actual or claimed infringement of patent rights in connection with performance of the Work under the Contract Documents.

421 Prevailing Wage Rates; Employment of Labor.

421.1 Determination of Prevailing Rates. Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2 of the California Labor Code at §§1770 et seq., 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. These rates are on file at the District's principal office. The Contractor shall post, at appropriate and conspicuous locations on the Site, a schedule showing all determined general prevailing wage rates.

421.2 Payment of Prevailing Rates. This Project is a public works project as defined in Labor Code §1720, and must be performed in accordance with the requirements of Labor Code §§1720 to 1815 and Title 8 California Code of Regulations §§16000 to 17270, which govern the payment of prevailing wage rates on public works projects. The Contractor, and any Subcontractor, of any tier, shall pay their workers engaged in the Work 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. Contractor, consistent with California Public Contract Code §6109, is prohibited from

performing a portion of work with a Subcontractor who is debarred pursuant to Labor Code §§1777.1 or 1777.7.

4213 Prevailing Wage Penalty. The Contractor shall, as a penalty, forfeit up to Fifty Dollars (\$50.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier. Pursuant to California Labor Code §1775, the difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4214 Sufficient Contract Price. Contractor represents and warrants that the Contract Price includes sufficient funds to allow Contractor and all Subcontractors to comply with all applicable laws and contractual agreements. Contractor shall defend, indemnify and hold the District harmless from and against any and all claims, demands, losses, liabilities and damages arising out of or relating to the failure of Contractor or any Subcontractor to comply with any applicable law in this regard, including, but not limited to Labor Code §2810. Contractor agrees to pay any and all assessments, including wages, penalties, forfeitures and liquidated damages, made or asserted against the District in relation to any such failure.

4215 Payroll Records.

4215.1 Submission of Certified Payroll Records to District. Pursuant to California Labor Code §1776, the Contractor and each Subcontractor, of any tier, shall keep an accurate certified payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each person employed for the Work. If there is no work in a given week or on a given day, Contractor and each Subcontractor must keep a certified Non-Performance payroll record, indicating “no work” for that week or day(s). Contractor shall submit all certified payroll records to the Program Manager in complete, unredacted form with an original signature on the Statement of Compliance along with, and as a condition to, its Application for Payment.

4215.2 Inspection of Certified Payroll Records. Additionally, the certified payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis: (i) a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request; (ii) a certified copy of all payroll records shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations; (iii) a certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that 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, the requesting

party shall, prior to being provided the records, reimburse the cost 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; (iv) the Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; (v) any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. The Contractor shall inform the District of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change or location and address.

4.21.5.3 Submission of Payroll Records. Contractor shall provide, and shall cause all Subcontractors to provide, payroll records as defined in Title 8 California Code of Regulations §16000 to the District, within ten (10) days of written request, at no cost to the District. The District will not return documents to Contractor.

4.21.5.4 Penalty For Noncompliance. In the event of noncompliance with the requirements of this Article 4.21.5, the Contractor shall have ten (10) days in which to comply, subsequent to receipt of written notice specifying in what respects the Contractor must comply herewith. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the District, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from any portion of the Contract Price then or thereafter due the Contractor. The responsibility for compliance with the foregoing provisions shall rest upon the Contractor.

4.21.5.5 Liquidated Damages. Should Contractor neglect, fail or refuse to submit any documents pursuant to this Article 4.21.5, Contractor agrees to pay to the District the sum of twenty-five (\$25) dollars per worker per day in liquidated damages, not as a penalty but as liquidated damages, for every day beyond ten (10) days after such documents are due. The liquidated damages amounts are agreed upon by and between the Contractor and the District because of the difficulty of fixing the District's actual damages in the event of failure to submit such documents. The Contractor and District specifically agree that said amounts are reasonable estimates of the District's damages in such event, and that such amounts do not constitute a penalty. The Contractor and District acknowledge and agree that the liquidated damages contained in this provision are reasonable under the circumstances existing at the time of the Contractor's execution of the Contract.

4216 Hours of Work.

4.21.6.1 Limits on Hours of Work. Pursuant to California Labor Code §1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code §1811, the time of service of any worker employed at any time by the Contractor or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of Contractor or any Subcontractor, of any tier, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

4.21.6.2 Penalty for Excess Hours. The Contractor shall pay to the District a penalty of Twenty-five Dollars (\$25.00) for each worker employed on the Work by the Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of Labor Code §1810 et seq.

4.21.6.3 Contractor Responsibility. Any Work performed by workers necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without adjustment to the Contract Price or any other additional expense to the District.

4.21.7 Apprentices.

4.21.7.1 Employment of Apprentices. Labor Code §1777.5 and Title 8 California Code of Regulations §200 et seq. provide detailed requirements for employing apprentices on public works projects. Contractor is responsible for compliance with Labor Code §1777.5 and applicable regulations on the Project. This responsibility includes, but is not limited to, the obligation to employ properly registered apprentices and pay such apprentices at least the prevailing wage rate for their appropriate apprentice classification. Only apprentices, as defined in California Labor Code §3077 who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code §§3070 et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training. Any apprentices employed to perform any of the Work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. This Article 4.21.7 shall not apply to contracts of general contractors, or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contract involves less than Thirty Thousand Dollars (\$30,000.00). The term "Apprenticeable Craft or Trade," as used herein shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

4.21.7.2 Apprenticeship Certificate. When the Contractor or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, the Contractor and such Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for and obtain a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected, provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of Apprenticeship. Contractors or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards for that craft or trade.

4.21.7.3 Contract Award Information. Contractor shall submit contract award information using the Division of Apprenticeship Standards (DAS 140) Form to the applicable apprenticeship committee within ten (10) days of the date of execution of contract and no later than the first day of work as per Title 8 California Code of Regulations §230. Contractor shall submit a copy of the completed DAS 140 Form to the District's Labor Compliance Program at the same time.

4.21.7.4 Ratio of Apprentices to Journeymen. The ratio of Work performed by apprentices to journeymen, who shall be employed in the Work, may be no higher than the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five hours of labor performed by a journeyman, except as otherwise provided in California Labor Code §1777.5. Any ratio shall apply during any day or portion of a day when any journeyman is employed at the site of the Work and shall be computed on the basis of the hours worked during the day by journeymen so employed. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Contract, and Subcontractors before the end of the subcontract. The Contractor shall, however, endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the site of the Work. Any Work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the hourly ratio required by this Article. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of an apprenticeship committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. Upon proper showing by the Contractor or Subcontractor that it employs apprentices in such craft or trade in the State of California on all of its contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 ratio as set forth in this Article and California Labor Code §1777.5.

4.21.7.5 Exemption from Ratios. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions are met: (i) unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%) or; (ii) the number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen, or; (iii) the Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis, or; (iv) if assignment of an apprentice to any Work performed under a public works contract would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

4.21.7.6 Contractor's Compliance. The responsibility of compliance with this Article for all Apprenticeable Trades or Crafts is that of the Contractor. In the event the Contractor knowingly fails to comply with the provisions of this Article and California Labor Code §1777.5, pursuant to California Labor Code §1777.7, the Contractor shall forfeit, as a civil penalty, not more than One Hundred Dollars (\$100.00) for each calendar day of noncompliance. A contractor or subcontractor that knowingly commits a second or subsequent violation of this Article and California Labor Code §1777.5 shall forfeit as a civil penalty not more than Three Hundred Dollars (\$300.00) for each calendar day of noncompliance. Notwithstanding the provisions of California Labor Code §1727, upon receipt of a determination that a civil penalty has been assessed by the Chief of the Division of Apprenticeship Standards, the District shall withhold such amount from the Contract Price then due or to become due. In the event a Contractor or Subcontractor is determined by the Chief to have knowingly committed a serious violation of Labor Code §1777.5, the Chief may also deny the Contractor or Subcontractor and its responsible officers the right to be on or be awarded or perform work as a subcontractor on any public works contract for a period of up to one (1) year for a first violation and up to three (3) years for a second or subsequent violation.

4.21.8 Employment of Independent Contractors. Pursuant to California Labor Code §1021.5, Contractor shall not willingly and knowingly enter into any agreement with any person, as an independent contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such person hold a valid contractors license issued pursuant to California Business and Professions Code §§7000 et seq. and such person does not meet the burden of proof of his/her independent contractor status pursuant to California Labor Code §2750.5. In the event that Contractor shall employ

any person in violation of the foregoing, Contractor shall be subject to the civil penalties under California Labor Code §1021.5 and any other penalty provided by law. In addition to the penalties provided under California Labor Code §1021.5, Contractor's violation of this Article 4.21.8 or the provisions of California Labor Code §1021.5 shall be deemed an event of Contractor's default under Article 15.1 of these General Conditions. The Contractor shall require any Subcontractor of any tier performing or providing any portion of the Work to adhere to and comply with the foregoing provisions.

422 Labor Compliance Program. Pursuant to California Labor Code §1771.7, District has implemented a Labor Compliance Program. (See Section 00900). Contractor shall post “Notice of Initial Approval” of the District's Labor Compliance Program at the Site in accordance with 8 California Code of Regulations §16429. The Labor Compliance Program includes, without limitation, provisions requiring Contractor to comply with the prevailing rates of wages, maintenance and submission of weekly certified payroll records, employment of apprentices and, compliance with legal hours of work, and debarment. Contractor, and any Subcontractors, are required to comply with the requirements of the Labor Compliance Program, at no additional cost to District. Contractor shall include, and shall require the Subcontractors to include, contractual provisions in all contracts they enter into for the performance of the Work, requiring each Subcontractor, of every tier, who furnishes any labor for the performance of Work, to comply with these provisions at no additional cost. Contractor and all Subcontractors shall comply with California Labor Code §§1720-1781, applicable regulations and the Labor Compliance Program, and shall pay appropriate penalties for failure to comply pursuant to the California Labor Code, including, but not limited to, Sections 1775, 1776, 1777.7 and 1813, and the Labor Compliance Program. Contractor will be responsible for all failures by all Subcontractors, to comply with the District’s LCP requirements. Contractor shall attend any pre-construction meetings held by the District and/or its Labor Compliance Program representatives to discuss labor requirements. Contractor and the Subcontractors shall allow the District, its Labor Compliance Program, the Department of Industrial Relations and designated representatives of each to conduct worker interviews at the Site during working hours. Compliance by Contractor with the requirements of this Article shall be a condition to Contractor’s right to payment under its Applications for Payment. For questions or assistance concerning the Labor Compliance Program, please contact Lisa Wenninger, Director of Purchasing, 1051 South A Street, Oxnard, CA 93030, (805)487-3918, x241.

423 Assignment of Antitrust Claims. Pursuant to California Public Contract Code §7103.5, the Contractor and its Subcontractor(s), of any tier, hereby offers and agrees to assign to the District all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C. §15) or under the Cartwright Act (California Business and Professions Code §§16700 et seq.), arising from purchases of goods, services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time the District tenders Final Payment to the Contractor, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under California Public Contract Code §7103.5, the assignor thereof shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were

paid by the assignor but were not paid by the District as part of the Contract Price, less the expenses incurred by the District in obtaining that portion of the recovery. Upon demand in writing by the assignor, the District shall, within one year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose: and (i) the District has not been injured thereby; or (ii) the District declines to file a court action for the cause of action.

ARTICLE 5: SUBCONTRACTORS

51 Subcontracts. Any Work performed for the Contractor by a Subcontractor shall be pursuant to a written agreement between the Contractor and such Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and District, in writing, elects to assume the Subcontract. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to Article 15.1 hereof, subject to the prior rights of the Surety obligated under a bond relating to the Contract. Upon request, the Contractor shall provide to the District copies of executed Subcontracts and Purchase Orders, including amendment thereto, to which Contractor is a party within seven (7) days of District's request for same. The Contractor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders shall be deemed the Contractor's default of a material term of the Contract Documents.

52 Substitution of Listed Subcontractor.

5.2.1 Substitution Process. Any request of the Contractor to substitute a listed Subcontractor will be considered only if such request is in strict conformity with this Article 5.2 and California Public Contract Code §4107. All costs and fees incurred by the District in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs and fees may be deducted by the District from the Contract Price then or thereafter due the Contractor.

5.2.2 Responsibilities of Contractor Upon Substitution of Subcontractor. Neither the substitution nor the District's consent to Contractor's substitution of a listed Subcontractor shall relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Price. In the event that the District determines that revised or additional Submittals are required of the newly substituted Subcontractor, the District shall promptly notify the Contractor, in writing, of such requirement and the time for submittal. In the event that the revised or additional Submittals are not submitted by Contractor within the time specified, Contractor shall be subject to the per diem assessments for late Submittals as set forth in Article 4.8 of these General Conditions. Any revised or additional Submittals required pursuant to this Article 5.2.2 shall conform with the requirements of Article 4.8 of these General Conditions. Contractor shall reimburse the District for all fees and costs

incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this Article 5.2.2; the District may deduct such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In the event that additional or revised Submittals are required pursuant to this Article 5.2.2, such requirement shall not result in an increase to the Contract Time or the Contract Price.

ARTICLE 6: INSURANCE; INDEMNITY; BONDS

61 Workers' Compensation Insurance; Employer's Liability Insurance. The Contractor shall purchase and maintain Workers' Compensation Insurance as will protect the Contractor from claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Contractor shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Contractor. The Employer's Liability Insurance required of Contractor hereunder may be obtained by Contractor as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by Contractor hereunder. The limits of liability for the Employer's Liability Insurance required hereunder shall be as set forth in the Special Conditions.

62 Commercial General Liability and Property Insurance. The Contractor shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from Contractor's operations under the Contract Documents and for which the Contractor may be legally responsible: (i) claims for damages because of bodily injury, occupational sickness or disease or death of the Contractor's employees; (ii) claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees; (iii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (b) by another person; (iv) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (v) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (vi) contractual liability insurance applicable to the Contractor's obligations under the Contract Documents. Contractor shall also provide excess or umbrella liability limits for Products and Completed Operations Aggregate for this Project as a Designated Project as set forth in the Special Conditions.

63 Builder's Risk "All-Risk" Insurance. The District will maintain and cause to be maintained fire insurance for direct physical loss or damage excluding earthquake, flood and other perils (a copy of the District's policy is available upon request) on all Work to which this Contract applies for the insurable value thereof with a deductible clause not to exceed the first \$10,000 of

each loss, including items of labor and materials connected therewith, whether in or adjacent to the structure insured; materials in place or to be used as part of the permanent construction; temporary structures, miscellaneous materials and supplies incidental to the Work. The District's property insurance does not cover anything not specifically named above and does not include Contractor's tools, tools owned by mechanics, equipment, scaffolding, staging, towers and forms owned or rented by Contractor or Subcontractors, the capital value of which is not included in the Work. Contractor and Subcontractors are required to insure all materials, supplies, and property until they are delivered to the Site. Contractor shall be responsible for any damages and shall insure Contractor's payment of damages to the Work caused by perils insured by the District up to the \$10,000 deductible, and shall be additionally responsible for any damage to the structure or stored materials if caused by improperly installed or unprotected Work of this Contract and any damages to the Project, the Work, the materials or Contractor's tools, equipment, scaffolding, staging, towers and forms not covered by the District's insurance; provided that if such damage is caused by earthquake or tidal waves, and Contractor has installed the damaged Work in strict accordance with applicable building standards and the Contract Documents, then Contractor's liability shall be limited to five percent (5%) of the Contract Price, in accordance with Public Contract Code §7105. No claims for any loss or damage covered by the District's insurance shall be recognized by the District, nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

64 Coverage Amounts. The insurance required of the Contractor hereunder shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater. In the event of any loss or damage covered by a policy of insurance required to be obtained and maintained by the Contractor hereunder, the Contractor shall be solely and exclusively responsible for the payment of the deductible, if any, under such policy of insurance, without adjustment to the Contract Price on account thereof.

65 Evidence of Insurance; Subcontractor's Insurance.

651 Certificates of Insurance. With the execution of the Contract, Contractor shall deliver to the District Certificates of Insurance evidencing the insurance coverages required by the Contract Documents. Failure or refusal of the Contractor to so deliver Certificates of Insurance may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents. The Certificates of Insurance and the insurance policies required by the Contract Documents shall contain a provision that coverages afforded under such policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the District. The insurance policies required of Contractor hereunder shall also name the District as an additional insured as its interests may appear. Should any policy of insurance be canceled before Final Acceptance of the Work by the District and the Contractor fails to immediately procure replacement insurance as required, the District reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the District in connection therewith from any sum then or thereafter due the Contractor under the Contract Documents. The Contractor shall, from time to time, furnish the District, when requested, with satisfactory proof of coverage of

each type of insurance required by the Contract Documents; failure of the Contractor to comply with the District's request may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents.

652 Subcontractors' Insurance. Contractor shall require that every Subcontractor, of any tier, performing or providing any portion of the Work obtain and maintain the policies of insurance set forth in Articles 6.1 and 6.2 of these General Conditions; the coverages and limits of liability of such policies of insurance to be obtained and maintained by Subcontractors shall be as set forth in the Special Conditions. The policies of insurance to be obtained and maintained by Subcontractors hereunder are in addition to, and not in lieu of, Contractor obtaining and maintaining such policies of insurance. Each of the policies of insurance obtained and maintained by a Subcontractor hereunder shall conform with the requirements of this Article 6. Upon request of the District, Contractor shall promptly deliver to the District Certificates of Insurance evidencing that the Subcontractors have obtained and maintained policies of insurance in conformity with the requirements of this Article 6. Failure or refusal of the Contractor to provide the District with Subcontractors' Certificates of Insurance evidencing the insurance coverages required hereunder is a material default of Contractor hereunder.

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

67 Contractor's Insurance Primary. All insurance and the coverages thereunder required to be obtained and maintained by Contractor hereunder, if overlapping with any policy of insurance maintained by the District, shall be deemed to be primary and non-contributing with any policy maintained by the District and any policy or coverage thereunder maintained by District shall be deemed excess insurance. To the extent that the District maintains a policy of insurance covering property damage arising out of the perils of fire or other casualty covered by the Contractor's Builder's Risk Insurance or the Commercial General Liability Insurance of the Contractor or any Subcontractor, the District, Contractor and all Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurance coverages required herein shall be

included in the Contract Price. The District, its Project Manager and Bond Consultant shall be endorsed on all policies provided by Contractor, as appropriate, as additional insureds as respects liability arising out of Contractor's or Subcontractors' performance of the terms and conditions of these Contract Documents.

68 Indemnity. Unless arising solely out of the active negligence, gross negligence or willful misconduct of the District, the Architect or the Project Manager, the Contractor shall indemnify, defend and hold harmless: (i) the District and its Board of Trustees, officers, employees, agents and representatives (including the District's Inspector); (ii) the Architect and its consultants for the Work and their respective agents and employees; and (iii) the Project Manager and its agents and employees from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorneys fees and costs which arise, in whole or in part, from the Work, the Contract Documents or the acts, omissions or other conduct of the Contractor or any Subcontractor or any person or entity engaged by them for the Work. The Contractor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; and (iv) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of Contractor, any of Contractor's Subcontractors, of any tier, or any other person or entity employed directly or indirectly by Contractor in connection with the Work and their respective agents, officers or employees. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability subject to Contractor's obligations hereunder, and such action or proceeding names the District as a party thereto, the Contractor shall, at its sole cost and expense, defend the District in such action or proceeding with counsel reasonably satisfactory to District. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which the District is bound by, Contractor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Contractor shall indemnify and hold harmless the District from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Contractor's obligations hereunder are binding upon Contractor's Performance Bond Surety and these obligations shall survive notwithstanding Contractor's completion of the Work or the termination of the Contract.

69 Payment Bond; Performance Bond. Prior to commencement of the Work, the Contractor shall furnish a Performance Bond as security for Contractor's faithful performance of the Contract and a Labor and Material Payment Bond as security for payment of persons or entities performing work, labor or furnishing materials in connection with Contractor's performance of the Work under the Contract Documents. The amounts of the Performance Bond and the Payment Bond required hereunder shall be one hundred percent (100%) of the Contract Price. Said Labor and Material Payment Bond and Performance Bond shall be in the form and content set forth in the Contract Documents. The failure or refusal of the Contractor to furnish either the Performance Bond or the Labor and Material Payment Bond in strict conformity with this Article 6.9 may be deemed by the District as a default by the Contractor of a material obligation hereunder. Upon request of the Contractor, the District may consider and accept, but is not obligated to do so, multiple sureties on such bonds. The Surety on any bond required under the Contract Documents shall be an Admitted

Surety Insurer as that term is defined in California Code of Civil Procedure §995.120.

ARTICLE 7: CONTRACT TIME

71 Final Completion of the Work Within Contract Time. Unless otherwise expressly provided in the Contract Documents, the Contract Time is the period of time, including authorized adjustments thereto, allotted in the Contract Documents for achieving Final Completion of the Work. The date for commencement of the Work is the date established by the Notice to Proceed issued by the District, which shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible. The date of Final Completion is the date certified by the Architect, the Project Manager and the District's Inspector as such in accordance with the Contract Documents. The Contract Time is as indicated in the Special Conditions.

72 Progress and Completion of the Work.

72.1 Time of Essence. Time limits stated in the Contract Documents are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing and achieving Final Completion of the Work. The Contractor shall employ and supply a sufficient force of workers, material and equipment, and prosecute the Work with diligence so as to maintain progress, to prevent Work stoppage and to achieve Final Completion of the Work within the Contract Time.

72.2 Substantial Completion. Substantial Completion is that stage in the progress of the Work when the Work is complete in accordance with the Contract Documents, including but not limited to start-up and testing, so the District can occupy or use the Work and Project for its intended purpose; provided that, as a condition precedent to Substantial Completion, the Architect and District's 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. Substantial Completion shall be determined by the Architect and the District's Inspector upon request by the Contractor in accordance with the Contract Documents. The good faith and reasonable determination of Substantial Completion by the District's Inspector and the Architect shall be controlling and final.

72.3 Correction or Completion of the Work After Substantial Completion. Upon achieving Substantial Completion of the Work, the District, the District's Inspector, the Project Manager, the Architect and the Contractor shall jointly inspect the Work and prepare a comprehensive list of items of the Work (punch list) to be corrected or completed by the Contractor. The exclusion of, or failure to include, any item on such list shall not alter or limit the obligation of the Contractor to complete or correct any portion of the Work in accordance with the Contract Documents. In the event that the Contractor shall fail or refuse, for any reason, to complete all punch list items within the Contract Time, Contractor shall be subject to assessment of Liquidated Damages in accordance with Article 7.4 hereof. If the Contractor fails or refuses to complete all items of the Work within the Contract Time, the

District may, in its sole and exclusive discretion and without further notice to Contractor, elect to cause the completion of such items of the Work, provided, however, that such election by the District is in addition to, and not in lieu of, any other right or remedy of the District under the Contract Documents or at law. If the District elects to complete items of the Work, Contractor shall be responsible for all costs incurred by the District in connection therewith and the District may deduct such costs from the Contract Price then or thereafter due the Contractor; if these costs exceed the remaining Contract Price due to the Contractor, the Contractor and the Performance Bond Surety are liable to District for any such excess costs.

7.2.4 Final Completion. Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all punch list items noted upon Substantial Completion, and the Contract has been otherwise fully performed by the Contractor. Final Completion shall be determined by the Architect and the District's Inspector upon request of the Contractor. The good faith and reasonable determination of Final Completion by the District's Inspector and the Architect shall be controlling and final.

7.2.5 Contractor Responsibility for Multiple Inspections. In the event the Contractor shall request determination of Substantial or Final Completion and it is determined by the District that the Work does not then justify certification of Substantial or Final Completion, as applicable, and re-inspection is required at a subsequent time to make such determination, the Contractor shall be responsible for all costs of such re-inspection, including without limitation, the fees of the Architect and the salary of the District's Inspector. The District may deduct such costs from the Contract Price then due or thereafter due to the Contractor.

7.2.6 Final Acceptance. Final Acceptance of the Work shall occur upon approval of the Work by the District's Board of Trustees. Such approval shall be submitted for adoption at the next regularly scheduled meeting of the District's Board of Trustees after the determination of Final Completion. The commencement of any warranty or guarantee period under the Contract Documents shall be deemed to be the date upon the District's Board of Trustees approves of the Final Acceptance of the Work.

7.3 Progress Schedule.

7.3.1 Submittal of Preliminary Construction Schedule. Within ten (10) days following execution of the Agreement, the Contractor shall prepare and submit to the District, the Project Manager and the Architect a Preliminary Construction Schedule, in both written and electronic format, indicating, in graphic and tabular form, the estimated rate of progress and sequence of all Work required under the Contract Documents. The purpose of the Preliminary Construction Schedule is to assure adequate planning and execution of the Work so that it is completed within the Contract Time and to permit evaluation of the progress of the Work. The Preliminary Construction Schedule shall indicate the dates for commencement and completion of various portions of the Work, including, without limitation, the procurement and fabrication of major items, material and equipment forming a part of, or to be incorporated into, the Work as well as Site construction activities and the

date Contractor will achieve Substantial Completion and Final Completion of the Project. The Preliminary Construction Schedule shall identify all major (critical) Submittals required, the portion(s) of the Work for which the identified Submittals relate to and the date upon which each Submittal required will be transmitted to the Architect for review (the "Submittal Schedule"). The Contractor shall prepare the Preliminary Construction Schedule using Primavera or comparable software in Critical Path Method format. If Contractor elects to use software other than Primavera, Contractor shall provide such software to the District at Contractor's expense. These requirements shall not be deemed control over or assumption of construction means, methods or sequences, all of which remain the Contractor's responsibility. Further, these requirements shall not give rise to an increase in the Contract Time or the Contract Price. The Contractor may submit a Preliminary Construction Schedule depicting completion of the Work in a duration shorter than the Contract Time; provided that such Preliminary Construction Schedule shall not be a basis for adjustment to the Contract Price in the event that completion of the Work shall occur after the time depicted therein, nor shall such Preliminary Construction Schedule be the basis for any extension of the Contract Time, the Contractor's entitlement to any extension of the Contract Time shall be based upon the Contract Time and not on any shorter duration which may be depicted in the Contractor's Preliminary Construction Schedule. In the event any of the Construction Schedules required under this Article 7.3 incorporate therein "float" time, such float shall be deemed to belong to and owned by the District. As used herein, "float time" shall be deemed to refer to the time between the earliest start date and the latest start date, or between the earliest finish date and the latest finish date of each activity shown on the Construction Schedule.

7.3.2 Review of Preliminary Construction Schedule. The District, the Project Manager and the Architect shall review the Preliminary Construction Schedule submitted by the Contractor pursuant to Article 7.3.1 above for conformity with the requirements of the Contract Documents. Within fifteen (15) days of the date of receipt of the Preliminary Construction Schedule, such Schedule will be returned to the Contractor with comments to the form or content thereof. Review of the Preliminary Progress Schedule and any comments thereto by the District, the Project Manager and/or the Architect shall not be deemed to be the assumption of construction means, methods or sequences by the District, the Project Manager or the Architect, all of which remain the Contractor's obligations under the Contract Documents.

7.3.3 Preparation and Submittal of Contract Construction Schedule. Within ten (10) days of the District's return of the Preliminary Construction Schedule to the Contractor pursuant to Article 7.3.2 above, the Contractor shall prepare and submit the Cost Loaded Construction Schedule which incorporates therein the comments to the Preliminary Construction Schedule. Upon the Contractor's submittal of such Construction Schedule, the District shall review the same for purposes of determining conformity with the requirements of the Contract Documents. Within fifteen (15) days of the receipt of the Construction Schedule, the District will approve such Construction Schedule or will return the same to the Contractor with comments to the form or content. In the event there are comments to the form or content thereof, the Contractor, shall within seven (7) days of receipt of such

comments, revise and resubmit the Construction Schedule incorporating therein such comments. Upon the District's approval of the form and content of a Construction Schedule, the same shall be deemed the "Approved Construction Schedule." The District's approval of a Construction Schedule shall be for the sole and limited purpose of determining conformity with the requirements of the Contract Documents. By the Approved Construction Schedule, the District shall not be deemed to have exercised control over, or approval of, construction means, methods or sequences, all of which remain the responsibility and obligation of the Contractor in accordance with the terms of the Contract Documents. Further, the Approved Construction Schedule shall not operate to limit or restrict any of Contractor's obligations under the Contract Documents nor relieve the Contractor from the full, faithful and timely performance of such obligations in accordance with the terms of the Contract Documents. The activities, commencement and completion dates of activities, and the sequencing of activities depicted on the Approved Construction Schedule shall not be modified or revised by the Contractor without the prior consent, or direction, of the District. Updates to the Approved Construction Schedule pursuant to Article 7.3.5 below shall not be deemed revisions to the Approved Construction Schedule. In the event that the Approved Construction Schedule shall depict completion of the Work in a duration shorter than the Contract Time, the same shall not be a basis for an adjustment of the Contract Time or the Contract Price in the event that actual completion of the Work shall occur after such the time depicted in such Approved Construction Schedule. In such event, the Contract Price shall not be subject to adjustment on account of any additional costs incurred by the Contractor to complete the Work prior to the Contract Time, as adjusted in accordance with the terms of the Contract Documents. Any adjustment of the Contract Time or the Contract Price shall be based upon the Contract Time set forth in the Contract Documents and not any shorter duration which may depicted in the Approved Construction Schedule.

7.3.4 Revisions to Approved Construction Schedule. In the event that the progress of the Work or the sequencing of the activities of the Work shall materially differ from that indicated in the Approved Construction Schedule, as determined by the District in its reasonable discretion and judgment, the District may direct the Contractor to revise the Approved Construction Schedule; within fifteen (15) days of the District's direction, the Contractor shall prepare and submit a revised Approved Construction Schedule, for review and approval by the District. The Contractor may request consent of the District to revise the Approved Construction Schedule. Any such request shall be considered by the District only if in writing setting forth the Contractor's proposed revision(s) to the Approved Construction Schedule and the reason(s) therefor. The District may consent to, or deny, any such request of the Contractor to revise the Approved Construction Schedule in its reasonable discretion.

7.3.5 Updates to Approved Construction Schedule. The Contractor shall monitor and update the Approved Construction Schedule on a monthly basis, or more frequently as required by the conditions or progress of the Work, or as may be requested by the District. Proper and complete updating of the Approved Construction Schedule shall be a condition precedent to the issuance of progress payments described in Article 8 of these General Conditions. The Contractor shall provide the District with updated Approved Construction

Schedules indicating progress achieved and activities commenced or completed within the prior updated Approved Construction Schedule. Updates to the Approved Construction Schedule shall not include any revisions to the activities, commencement and completion dates of activities or the sequencing of activities depicted on the Approved Construction Schedule without the District's consent. Any revisions to the Approved Construction Schedule made without the District's consent shall result in the District's rejection of such update and Contractor shall, within seven (7) days of the District's rejection of such update, submit to the Architect and the Project Manager an Updated Approved Construction Schedule which does not incorporate any such revisions. The Contractor shall also submit, with its updates to the Approved Construction Schedule, a narrative statement including a description of current and anticipated problem areas of the Work, logic and resource changes, delaying factors and their impact, and an explanation of corrective action taken or proposed by the Contractor. If the progress of the Work is behind the Approved Construction Schedule, the Contractor shall indicate what measures will be taken to place the Work back on schedule. The District may, from time to time, and in the District's sole and exclusive discretion, transmit to the Contractor's Performance Bond Surety the Approved Construction Schedule, any updates thereof and the narrative statement described hereinabove. The District's election to transmit, or not to transmit such information, to the Contractor's Performance Bond Surety shall not limit the Contractor's obligations under the Contract Documents.

73.6 Contractor Responsibility for Construction Schedule. The Contractor shall be responsible for the preparation, submittal and maintenance of the Construction Schedules required by the Contract Documents, and any failure of the Contractor to do so may be deemed by the District as the Contractor's default in the performance of a material obligation under Contract Documents. Any and all costs or expenses required or incurred to prepare, submit, maintain, and update the Construction Schedules shall be solely that of the Contractor and no such cost or expense shall be charged to the District. The Contract Price shall not be subject to adjustment on account of costs, fees or expenses incurred or associated with the Contractor's preparation, submittal, maintenance or updating of the Construction Schedules. All schedule submittals shall include electronic diskettes for use by the District in its analysis and approval of the schedule submittal.

74 Adjustment of Contract Time. If Final Completion or completion of an Interim Milestone is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with this Article 7.4 and will be made, if at all, by written Change Order made in accordance with Article 9.

7.41 Excusable Delays. If Final Completion of the Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined by the District. Excusable Delays shall not result in any increase in the Contract Price. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of the Contractor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by the

Contractor in performance of any portion of the Work. Excusable Delays include unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment, materials or Construction Equipment reasonably necessary for completion and proper execution of the Work, and unanticipated unusually severe weather conditions. Neither the financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted the progress of the Work as indicated in the most recent updated Approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay. The foregoing provisions notwithstanding, if the Special Conditions set forth a number of "Rain Days" to be anticipated during performance of the Work, the Contract Time shall not be adjusted for rain related unusually severe weather conditions until and unless the actual number of Rain Days during performance of the Work shall exceed those noted in the Special Conditions and such additional Rain Days shall have directly and adversely impacted the progress of the Work as depicted in the Approved Construction Schedule or the most recent updated Approved Construction Schedule relative to the date(s) of such additional Rain Days.

7.42 Compensable Delays. If Final Completion of the Work is delayed and such delay is caused by the acts or omissions of the District, the Architect, the Project Manager or separate contractor employed by the District (collectively "Compensable Delays"), upon Contractor's request and notice, in strict conformity with Articles 7 and 9 of these General Conditions, the Contract Time will be adjusted by Change Order for such reasonable period of time as determined by the Architect, Project Manager and the District. In accordance with California Public Contract Code § 7102, if the Contractor's progress is delayed by any of the events described in the preceding sentence, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom, provided that the District is liable for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the reasonable contemplation of the District and the Contractor at the time of execution of the Agreement. In such event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or Construction Equipment directly resulting from such delay, and shall exclude indirect or other consequential damages. In no event shall Contractor's damages exceed the mark-up amount(s) set forth in the Special Conditions and in accordance with Article 9.4.1.3.4. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the

Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, Articles 9 and 14 of these General Conditions.

7.43 Unexcusable Delays. Unexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Articles 7.4.1 and 7.4.2 above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcusable Delays.

7.4.4 Adjustment of Contract Time.

7.4.4.1 Procedure for Adjustment of Contract Time. The Contract Time shall be subject to adjustment only in strict conformity with applicable provisions of the Contract Documents. Failure of Contractor to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of the same.

7.4.4.2 Limitations Upon Adjustment of Contract Time on Account of Delays. Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. No adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless such delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule as of the date on which such delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny a request by the Contractor for an adjustment of the Contract Time for any delay which does not actually and directly impact Work on the then current and updated Approved Construction Schedule. In submitting a request for an adjustment of Contract Time, and as a condition precedent to the District's review of such request, Contractor shall insert into the then current and updated Approved Construction Schedule a "fragnet" analysis representing the event which Contractor claims to result in delay to the critical path as depicted in such updated Approved Construction Schedule. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last. If an Unexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcusable Delay.

7.5 Liquidated Damages; Contractor Delays. Pursuant to Government Code §53069.85, should the Contractor not achieve Final Completion of the Work within the Contract Time, as adjusted, or to complete an Interim Milestone in accordance with the times specified or provided for in the Contract Documents, the Contractor shall forfeit and pay to the District the amount of per diem Liquidated Damages set forth in the Special Conditions, for every day beyond the Contract Time, as adjusted, or Interim Milestone, the Work is achieved. Any such Liquidated Damages are

automatically and without notice of any kind forfeited by Contractor upon the accrual of each day of delay. The District may at any time deduct Liquidated Damages from any payments due or to become due to the Contractor. Neither the District's failure or delay in deducting Liquidated Damages from payments otherwise due the Contractor, nor the District's failure or delay in notifying Contractor of the forfeiture of Liquidated Damages, shall be deemed a waiver of the District's right to Liquidated Damages. The Contractor and the Surety shall be liable for and pay to the District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by the District. The Contractor and District acknowledge and agree that the Liquidated Damages and the provisions of this Article 7.5 are reasonable and necessary under the circumstances existing at the time this Contract is made because of the difficulty of fixing the District's actual damages in the event of delayed completion of the Work. The Contractor and the District agree that the Liquidated Damages do not constitute a penalty.

7.6 District Right to Take-Over Work. Unless caused by the District, Architect, Project Manager or the Inspector, if the Contractor fails or refuses, for any reason and at any time, to furnish adequate materials, labor, equipment or services to maintain progress of the Work in accordance with the then current Construction Schedule after twenty-four (24) hour advance written notice from the District to the Contractor of its failure or refusal, the District may thereafter furnish or cause to be furnished such materials, labor, equipment or services necessary to maintain progress of the Work in accordance with the then current Construction Schedule. All costs, expenses or other charges (whether direct, indirect or administrative) incurred by the District in furnishing such materials, labor, equipment or services shall be at the sole cost of the Contractor and the District may deduct the same from the Contract Price then or thereafter due the Contractor. The District's exercise of rights pursuant to the foregoing shall not be deemed a waiver or limitation of any other right or remedy of the District under the Contract Documents.

ARTICLE 8: CONTRACT PRICE

81 Contract Price. The Contract Price is the amount stated in the Agreement as such, and subject to any authorized adjustments thereto in accordance with the Contract Documents, is the total amount payable by the District to the Contractor for performance of the Work under the Contract Documents. The District's payment of the Contract Price to the Contractor shall be in accordance with the Contract Documents.

82 Cost Breakdown (Schedule of Values). Within ten (10) days of the Cost Loaded Contract Construction Schedule (Article 7.3.3), the Contractor shall furnish a detailed tabular Cost Breakdown (Schedule of Values) of the Contract Price consistent with the cost-loaded work activities included in the Approved Construction Schedule. In preparing the Cost Breakdown, 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 Cost Breakdown with false dollar amounts for activities to be performed in the early stages of the Project. The District may, in its sole discretion, utilize the costs listed in the Cost Breakdown (Schedule of Values) as the true cost of items to be deducted from the Contract Price through credit or deductive Change Order. The values for each line item shall include the amount of

overhead and profit applicable to each item of work and shall include, at a minimum, a breakdown between rough and finish Work for the basic trades as well as individual dollars figures for large dollar equipment and materials to be installed or furnished for the Project. No individual line item or scope of work in the Cost Breakdown shall exceed \$50,000, except with the express, written consent of the District. Exceptions will be given by the District for a single item of Equipment for which the true cost exceeds \$50,000. The Cost Breakdown shall be subject to the District's review and approval of the form and content thereof. Upon request, Contractor shall provide District with data and documentation substantiating the accuracy of the proposed line items. In the event that the District shall reasonably object to any portion of the Cost Breakdown, within ten (10) days of the District's receipt of the Cost Breakdown, the District shall notify the Contractor, in writing of the District's objection(s) to the Cost Breakdown together with any request for substantiating data or documentation. Within five (5) days of the date of the District's written objection(s) and request for substantiating data and documentation, Contractor shall submit a revised Cost Breakdown to the District for review and approval together with the requested data and documentation. The foregoing procedure for the preparation, review and approval of the Cost Breakdown shall continue until the District has approved of the entirety of the Cost Breakdown. Once the Cost Breakdown is approved by the District, the Cost Breakdown shall not be thereafter modified or amended by the Contractor without the prior consent and approval of the District, which may be granted or withheld in the sole reasonable discretion of the District. Notwithstanding any provision of the Contract Documents to the contrary, payment of the Contractor's overhead, supervision and general conditions costs and profit, as such items are reflected in the Cost Breakdown, shall be made incrementally as included in the activities included in the Approved Construction Schedule.

83 Progress Payments.

831 Applications for Progress Payments. During the Contractor's performance of the Work, the Contractor shall submit monthly, on the first working day of each month, to the Project Manager, Applications for Progress Payments, on forms approved by the District, setting forth an itemized estimate of Work completed in the preceding month. Values utilized in the Applications for Progress Payments shall be based upon the proper updating of the Approved Construction Schedule. The Cost Breakdown and/or Approved Cost Loaded Construction Schedule, pursuant to Article 8.2 above, and such values shall be only for determining the basis of Progress payments to the Contractor, and shall not be considered as fixing a basis for adjustments, whether additive or deductive, to the Contract Price.

832 District's Review of Applications for Progress Payments. In accordance with Public Contract Code §20104.50, upon receipt of an Application for Progress Payment, the Project Manager, the District's Inspector, and the Architect shall review the Application. Such review shall be for the purpose of determining that the Application for Progress Payment is a proper Progress Payment request. For purposes of this Article 8.3.2, an Application for Progress Payment shall be deemed "proper" only if it is submitted on the properly completed form approved by the District, and accompanied by:

- (i) the Application submitted by the Contractor shall be consistent with and accompanied by the updated Approved Construction Schedule;

- (ii) weekly Certified Payroll Records (“CPRs”) of the Contractor and all Subcontractors, of any tier, for laborers performing any portion of the Work for which a Progress Payment is included. The District shall not make any payment to Contractor until (a) Contractor and/or its Subcontractor(s) provide CPRs acceptable to the District, and (b) the District is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Contractor and/or its Subcontractor(s) providing CPRs to the District in a timely manner will delay the District’s review and/or audit of the CPRs and Contractor’s payment;
- (iii) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §3262 of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment requested;
- (iv) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §3262 of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment received by the Contractor under the prior Application for Progress Payment;
- (v) all documents required pursuant to the District’s Labor Compliance Program; and
- (vi) updated Record Documents reflecting the actual as-built conditions of the Work performed, as reviewed by the Architect.

In accordance with Public Contract Code §20104.50, an Application for Progress Payment determined by the District not to be a proper Application for Progress Payment shall be returned by the District to the Contractor as soon as is practicable after receipt of the same from the Contractor, but in no event not more than seven (7) days after the District's receipt thereof. The District's return of any Application for Progress Payment pursuant to the preceding sentence shall be accompanied by a written document setting forth the reason(s) why the Application for Progress Payment is not proper.

833 Architect and District's Inspector Review of Applications for Progress Payments. Upon receipt of an Application for Progress Payment, the Architect and the District's Inspector shall meet with the Contractor to inspect the completed work and verify the portion of the work completed during the month using the approved Construction Schedule update and the Cost Breakdown. The Application for Progress Payment shall reflect the agreed percentages of work complete that is properly due to the Contractor under the terms of the Contract Documents. The Application submitted by the Contractor shall be consistent with and accompanied by the updated Approved Construction Schedule.

834 District's Disbursement of Progress Payments.

8.3.4.1 Timely Disbursement of Progress Payments. In accordance with Public Contract Code § 20104.50, within thirty (30) days after the District's receipt of a proper Application for Progress Payment, there shall be paid, by District, to Contractor a sum

equal to ninety-five percent (95%) of the value of the Work indicated in the Application for Progress Payment as verified and approved by the District's Inspector and the Architect. If an Application for Progress payment is determined not to be proper due to the failure or refusal of the contractor to submit the required documents with the Application for progress payment, or if it is reasonably determined that the Record Documents have not been continuously maintained to reflect the actual as-built conditions of the Work completed in the period for which the Progress Payment is requested, the thirty (30) day period hereunder for the District's timely disbursement of a Progress payment shall be deemed to commence on the date that the District is actually in receipt of a complete and proper Application for Progress payment or verifies the proper updating of the as-built conditions.

8.3.4.2 Untimely Disbursement of Progress Payments. In accordance with Public Contract Code §20104.50, in the event that the District shall fail to make any Progress Payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Progress Payment, the District shall pay the Contractor interest on the undisputed amount of such Application for Progress Payment equal to the legal rate of interest set forth in California Code of Civil Procedure § 685.010(a).

8.3.4.3 District's Right to Disburse Progress or Final Payments by Joint Checks. The District may, in its sole discretion, issue joint checks to the Contractor and any Subcontractor or Material Supplier providing work, labor, materials, equipment or services for the Project in satisfaction of its obligation to make Progress Payments or the Final Payment due hereunder. District may require Contractor to provide copies of applicable Subcontracts, purchase orders, rental invoices or materials invoices.

8.3.4.4 No Waiver of Defective or Non-Conforming Work. The approval of any Application for Progress Payment or the disbursement of any Progress Payment to the Contractor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents.

835 Progress Payments for Changed Work. The Contractor's Applications for Progress Payment may include requests for payment on account of Changes in the Work which have been properly authorized and approved by the District's Inspector, the Architect and the Board. Except as provided for herein, no other payment shall be made by the District for Changes in the Work.

836 Materials or Equipment Not Incorporated Into the Work.

8.3.6.1 Limitations Upon Payment. Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment which has/have not been incorporated into and made a part of the Work.

8.3.6.2 Materials or Equipment Delivered and Stored at the Site. The District may, in its sole and exclusive discretion, make payment for materials or equipment not yet incorporated into the Work if, a request for payment of such materials or equipment is

made and if all of the following are complied with: (a) the materials or equipment have been delivered to the Site; (b) adequate arrangements, reasonably satisfactory to the District, have been made by the Contractor to store and protect such materials or equipment at the Site including without limitation, insurance reasonably satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage; and (c) the establishment of procedures reasonably satisfactory to the District by which title to such materials or equipment will be vested in the District upon the District's payment therefor. The Contractor acknowledges that the discretion to make, or not to make, payment for materials or equipment delivered or stored at the site of the Work pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment for materials or equipment delivered or stored at the Site, but not yet incorporated into the Work shall not be deemed the District's default hereunder. In the event that the District shall elect to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (b) and (c) of this Article 8.3.6.2 shall be borne solely and exclusively by the Contractor and no payment shall be made by the District on account of such costs and expenses.

837 Exclusions From Progress Payments. No payments shall be made by the District for materials or equipment to be incorporated into the Work where such materials or equipment have not been delivered or stored at the Site. The District shall not make any payment on account of any materials or equipment which are in the process of being fabricated or which are in transit to the Site or other storage location. In addition to the District's right to withhold disbursement of any Progress Payment provided for in the Contract Documents, neither the Contractor's Application for Progress Payment shall include, nor shall the District be obligated to disburse any portion of the Contract Price for amounts which the Contractor does not intend to pay any Subcontractor, of any tier, or Material Supplier because of a dispute or any other reason.

838 Title to Work. The Contractor warrants that title to all Work covered by an Application for Progress Payment will pass to the District no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Progress Payment, all Work for which a Progress Payment has been previously issued and the Contractor has received payment from the District therefor shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, stop notices, security interests or encumbrances in favor of the Contractor, Subcontractors, Material Suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

84 Final Payment.

841 Application for Final Payment. When the Contractor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, the Contractor shall submit an Application for Final Payment on such form as

approved by the District. Thereupon, the Architect and the District's Inspector will promptly make a final inspection of the Work and when the Architect and the District's Inspector find the Work acceptable under the Contract Documents and that the Contract has been fully performed by the Contractor, the Architect and the District's Inspector will thereupon promptly approve the Application for Final Payment, stating that to the best their knowledge, information and belief, the Work has been completed in accordance with the terms of the Contract Documents. The Final Payment shall include the remaining balance of the Contract Price and any retention from Progress Payments previously withheld by the District.

842 Conditions Precedent to Disbursement of Final Payment. Neither Final Payment nor any remaining Contract Price shall become due until the Contractor submits to the District each and all of the following, the submittal of which are conditions precedent to the District's obligation to disburse the Final Payment: (i) an affidavit or certification by the Contractor that payrolls, bills for materials and other indebtedness incurred in connection with the Work for which the District or the District's property may or might be responsible or encumbered have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after the Contractor's receipt of Final Payment is currently in effect; (iii) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover any period following Final Payment as required by the Contract Documents; if required (iv) consent of the Surety on the Labor and Material Payment Bond and Performance Bond, to Final Payments if required; (v) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of the Contractor, Subcontractors of any tier and Material Suppliers in accordance with California Civil Code §3262, with each of the same stating that there are, or will be, no claims for additional compensation after disbursement of the Final Payment; (vi) Operations and Maintenance manuals and separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work; (vii) the Record Drawings; (viii) the form of Guarantee included in the Contract Documents duly executed by an authorized representative of the Contractor; (ix) any and all other items or documents required by the Contract Documents to be delivered to the District upon completion of the Work; and (x) if required by the District, such other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, stop notices, claims, security interest or encumbrances arising out of the Contract to the extent and in such form as may be required by the District.

843 Disbursement of Final Payment. Provided that the District is then in receipt of all documents and other items in Article 8.4.2 above as conditions precedent to the District's obligation to disburse Final Payment, not later than sixty (60) days following Final Acceptance the District shall disburse the Final Payment to the Contractor. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and the Contractor at the time that disbursement of the Final Payment is due, the District may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute.

844 Waiver of Claims. The Contractor's acceptance of the Final Payment is a waiver and release by the Contractor of any and all claims against the District for compensation or otherwise in connection with the Contractor's performance of the Contract.

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

85 Withholding of Payments. The District may decline to pay the Contractor, or reduce or withhold any portion of a payment otherwise due the Contractor for any Progress Payment or the Final Payment on account of:

- (i) In the District's opinion, the Work cannot be completed for the unpaid balance of the Contract Price;
- (ii) 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;
- (iii) Any damage has occurred to the District or any Subcontractor, Material Supplier or another contractor, and the Contractor may be liable for such damage;
- (iv) 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 thereunder;
- (v) Any claims, liens, labor compliance withholds, or stop notices are filed in connection with the Work or asserted against the District, the Project or the Site;
- (vi) 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;
- (vii) 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, tax laws, labor laws and/or fair employment laws;
- (viii) Any current and non-resolved non-compliance notices issued by any public agency;
 - (ix) Failure to satisfy any of the requirements of the Labor Compliance Program;
 - (x) Defective Work or Work not in conformity with the Contract Documents which is not remedied as required in Article 12 herein;
 - (xi) Stop Notices or other liens or third party claims served upon the District as a result of the Contract;
 - (xii) Liquidated damages incurred by the District for delays to the Project;
 - (xiii) Unsatisfactory prosecution of the Work by the Contractor;
 - (xiv) Failure to store and properly secure materials;
 - (xv) Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, monthly progress schedules, Shop Drawings, Product Data and samples, proposed product lists, executed Change Orders, and/or verified reports;
 - (xvi) Failure of the Contractor to maintain Record Drawings;
 - (xvii) Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
 - (xviii) Unauthorized deviations from the Contract Documents;
 - (xix) Failure of the Contractor to prosecute the Work in a timely manner in compliance with the Construction Schedule, established progress schedules, and/or completion dates;
 - (xx) If the District has an LCP in force on this Project, the failure to provide certified payroll records acceptable to the District for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment;
 - (xxi) Failure to properly pay prevailing wages as defined in Labor Code §§1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with the District's LCP, if one is in force on this Project;

- (xxii) Failure to properly maintain or clean up the Site;
- (xxiii) Failure to indemnify, defend, or hold harmless the District;
- (xxiv) Failure to make payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;
- (xxv) Failure of the Contractor to make payments when due Subcontractors or Material Suppliers for materials or labor;
- (xxvi) Contractor is otherwise in breach, default, or in substantial violation of any provision of this Contract.

In addition to the foregoing, the District shall not be obligated to process any Application for Progress Payment or Final Payment, nor shall Contractor be entitled to any Progress Payment or Final Payment so long as any lawful or proper direction concerning the Work or the performance thereof or any portion thereof, given by the District, the District's Inspector, the Architect or any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by the Contractor. When the District is reasonably satisfied that the Contractor has remedied any such deficiency, payment shall be made of the amount withheld. If the District elects to withhold payment from the Contractor pursuant to this Article 8.5, 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 Suppliers 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 otherwise 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.

8.6 Payments to Subcontractors. The Contractor shall pay all Subcontractors for and on account of Work of the Contract performed by such Subcontractors in accordance with the terms of their respective subcontracts and as provided for pursuant to California Public Contract Code

§10262, the provisions of which are deemed incorporated herein by this reference. In the event of the Contractor's failure to make payment to Subcontractors in conformity with California Public Contract Code §10262, the provisions of California Public Contract Code §10253 shall apply; by this reference, the provisions of California Public Contract Code §10253 are incorporated herein in its entirety, except that the references in said Section 10253 to "the director" shall be deemed to refer to the District.

ARTICLE 9: CHANGES

91 Changes in the Work. The District, at any time, by written order, may make Changes within the general scope of the Work under the Contract Documents or issue additional instructions, require additional Work or direct deletion of Work. The Contractor shall not proceed with any Change involving an increase or decrease in the Contract Price or the Contract Time without prior written authorization from the District. The foregoing notwithstanding, the Contractor shall promptly commence and diligently complete any Change to the Work subject to the District's written authorized issued pursuant to the preceding sentence; the Contractor shall not be relieved or excused from its prompt commencement and diligent completion of any Change subject to the District's written authorization by virtue of the absence or inability of the Contractor and the District to agree upon the extent of any adjustment to the Contract Time or the Contract Price on account of such Change. The issuance of a Change Order pursuant to this Article 9 in connection with any Change authorized by the District under this Article 9.1 shall not be deemed a condition precedent to Contractor's obligation to promptly commence and diligently complete any such Change authorized by the District hereunder. The District's right to make Changes shall not invalidate the Contract nor relieve the Contractor of any liability or other obligations under the Contract Documents. Any requirement of notice of Changes in the scope of Work to the Surety shall be the responsibility of the Contractor. Changes to the Work depicted or described in the Drawings or the Specifications shall be subject to approval by the DSA. The District may make Changes to bring the Work or the Project into compliance with environmental requirements or standards established by state or federal statutes and regulations enacted after award of the Contract.

92 Oral Order of Change in the Work. Any oral order, direction, instruction, interpretation, or determination from the District, the District's Inspector or the Architect which in the opinion of the Contractor causes any change to the scope of the Work, or otherwise requires an adjustment to the Contract Price or the Contract Time, shall be treated as a Change only if the Contractor gives the Architect and the District's Inspector written notice within ten (10) days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the order, direction, instruction, interpretation or determination giving rise to Contractor's notice. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice within ten (10) days of such order, direction, instruction, interpretation or determination shall be deemed Contractor's waiver of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of such order, direction, instruction, interpretation or determination. The written

notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested, and the source of the order, directions, instructions, interpretation or determination that the Contractor regards as a Change. Unless the Contractor acts in strict accordance with this procedure, any such order, direction, instruction, interpretation or determination shall not be treated as a Change and the Contractor hereby waives any claim for any adjustment to the Contract Price or the Contract Time on account thereof.

93 Contractor Submittal of Data. Within five (5) days after receipt of a written order directing a Change in the Work or furnishing the written notice regarding any oral order directing a Change in the Work, the Contractor shall submit to the District a detailed written statement setting forth the amount of any adjustment to the Contract Price on account thereof, properly itemized and supported by sufficient substantiating data to permit evaluation of the same, and the extent of adjustment of the Contract Time, if any, required by such Change. No claim or adjustment to the Contract Price or the Contract Time shall be allowed if not asserted by the Contractor in strict conformity herewith or if asserted after Final Payment is made under the Contract Documents.

94 Adjustment to Contract Price and Contract Time on Account of Changes to the Work.

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

9.4.1.1 Mutual Agreement. By negotiation and mutual agreement, on a lump sum basis, between the District and the Contractor on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change. Upon request of the District, the Contractor shall provide a detailed estimate of increase or decrease in costs directly associated with performance of the Change along with cost breakdowns of the components of the Change and supporting data and documentation. The Contractor shall be solely responsible for any additional costs or additional time arising out of, or related in any manner to, its failure to provide the estimate of costs within five (5) days after the receipt of the written request of the District for such estimate.

9.4.1.2 Determination by the District. By the District, whether or not negotiations are initiated pursuant to Article 9.4.1.1 above, based upon actual and necessary costs incurred by the Contractor as determined by the District on the basis of the Contractor's records. In the event that the procedure set forth in this Article 9.4.1.2 is utilized to determine the extent of adjustment to the Contract Price on account of Changes to the Work, promptly upon determining the extent of adjustment to the Contract Price, the District shall notify the Contractor in writing of the same; the Contractor shall be deemed to have accepted the District's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor shall notify the District, the Architect and the District's Inspector, in writing, not more than five (5) days from the date of the District's written notice, of any objection to the District's determination. Failure of the Contractor to timely notify the District, the Architect and the District's Inspector of Contractor's objections to the District's determination of the extent of adjustment to the Contract Price shall be deemed Contractor's acceptance of the District's

determination and a waiver of any right or basis of the Contractor to thereafter protest or otherwise object to the District's determination. Notwithstanding any objection of the Contractor to the District's determination of the extent of any adjustment to the Contract Price pursuant to this Article 9.4.1.2, Contractor shall, pursuant to Article 9.7 below, diligently proceed to perform and complete any such Change.

94.13 Basis for Adjustment of Contract Price. If Changes in the Work require an adjustment of the Contract Price pursuant to Articles 9.4.1.1 or 9.4.1.2 above, the basis for adjustment of the Contract Price shall be as follows:

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

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

94.13.3 Construction Equipment. Contractor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the

performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of hourly, weekly or monthly rates, whichever shall be the most economical to the District when applied to the scope of the specific change. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by the Contractor from the Architect, the District's Inspector and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. The Contractor shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of \$1,000.00 or less. Construction Equipment costs claimed by the Contractor in connection with the performance of any Change to the Work shall not exceed rental rates (Blue Book) established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, the District's Inspector and the District, the allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by the Contractor incidental to the use of such Construction Equipment.

94134 Mark-up on Costs of Changes to the Work. In the event a Change adding to the Work is authorized by the District, Contractor shall be paid a mark-up on the direct costs of the Change for general conditions and administration costs, all overhead (including home office and field overhead) and profit, which mark-up shall not exceed the percentage set forth in the Special Conditions, regardless of the number of Subcontractors, of any tier, performing any portion of any Change to the Work. If a Change to the Work reduces the Contract Price, the maximum adjustment to the Contract Price shall be the actual cost reduction realized by the reduced or deleted Work multiplied by the percentage set forth in the Special Conditions.

9414 Contractor Maintenance of Records. In the event that Contractor shall be directed to perform any Changes to the Work pursuant to Article 9.1 or 9.2, or should the Contractor encounter conditions which the Contractor, pursuant to Article 9.6, believes would obligate the District to adjust the Contract Price and/or the Contract Time,

Contractor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that more than one Change to the Work is performed by the Contractor in a calendar day, Contractor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. In the event that any Subcontractor, of any tier, shall provide or perform any portion of any Change to the Work, Contractor shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Contractor's Superintendent or Contractor's authorized representative; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, complete and relate only to the Change referenced therein. All records maintained by a Subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such Subcontractor's authorized representative or Superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District, the Architect or the District's Inspector upon request. In the event that Contractor shall fail or refuse, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Contract Price on account of any Change to the Work is determined pursuant to this Article, the District's reasonable good faith determination of the extent of adjustment to the Contract Price on account of such Change shall be final, conclusive, dispositive and binding upon Contractor. Contractor's obligation to maintain records hereunder is in addition to, and not in lieu of, any other Contractor obligation under the Contract Documents with respect to Changes to the Work.

942 Adjustment to Contract Time. In the event of any Change(s) to the Work pursuant to this Article 9, the Contract Time shall be extended or reduced by Change Order for a period of time commensurate with the time reasonably necessary to perform such Change. Such time shall be requested in writing by the Contractor with the Contract price Adjustment Proposal. The time extension request shall be justified by the Contractor by submittal of a CPM analysis accurately portraying the impact of the change on the critical path of the project schedule. Changes performed within available float as indicated in the updated Approved Construction Schedule shall not justify a time extension to the Contract. When agreement is reached between the District and Contractor that a Change shall require an extension of the contract time, the Contractor shall not be subject to Liquidated Damages for such period of time. If completion of the Work is delayed by causes for which the District is responsible and the delay is unreasonable under the circumstances involved, and not within the contemplation of the Contractor and the District at the time of execution of the Agreement, the Contractor shall not be precluded from the recovery of damages arising therefrom.

943 Addition or Deletion of Alternate Bid Item(s). If the Bid for the Work includes proposal(s) for Alternate Bid Item(s), during Contractor's performance of the Work, the District may elect, pursuant to this Article to add any such Alternate Bid Item(s) if the same

did not form a basis for award of the Contract or delete any such Alternate Bid Item(s) if the same formed a basis for award of the Contract. If the District elects to add or delete any such Alternate Bid Item(s) pursuant to the foregoing, the cost or credit for such Alternate Bid Item(s) shall be as set forth in the Contractor's Bid.

95 Change Orders. If the District approves of a Change, a written Change Order prepared on behalf of the District shall be forwarded to the Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of such Change. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any claim or item relating to any Change incorporated into a Change Order not presented by the Contractor for inclusion in the Change Order shall be deemed waived. The Contractor shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to the Contractor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, the Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof. The Contractor's attempted or purported modification or amendment of any such Change Order, without the prior approval of the District, shall not be binding upon the District; any such unapproved modification or amendment to such Change Order shall be null, void and unenforceable. Unless otherwise expressly provided for in the Contract Documents or in the Change Order, any Change Order issued hereunder shall be binding upon the District only upon action of the District's Board of Trustees approving and ratifying such Change Order. In the event of any amendment or modification made by the Contractor to a Change Order for which there is no prior approval by the District, in accordance with the provisions of this Article 9.5, unless otherwise expressly stated in its approval and ratification of such Change Order, any action of the Board of Trustees to approve and ratify such Change Order shall be deemed to be limited to the Change Order as prepared by the Architect; such approval and ratification of such Change Order shall not be deemed the District's approval and ratification of any unapproved amendment or modification by the Contractor to such Change Order.

96 Contractor Notice of Changes. If the Contractor should claim that any instruction, request, the Drawings, the Specifications, action, condition, omission, default, or other situation obligates the District to increase the Contract Price or to extend the Contract Time, the Contractor shall notify the District's Project Manager and the Architect, in writing, of such claim within ten (10) days from the date of its actual or constructive notice of the factual basis supporting the same. The District shall consider any such claim of the Contractor only if sufficient supporting documentation is submitted with the Contractor's notice to the District's Project Manager and the Architect. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to the address such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District's review and evaluation) within ten (10) days of its actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which the Contractor believes there should an

adjustment of the Contract Time or the Contract Price shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of any such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. In the event that the District determines that the Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with the Contractor's written notice under this Article 9.6, any such adjustment shall be determined in accordance with the provisions of Articles 9.4.1 and 9.4.2.

97 Disputed Changes. In the event of any dispute or disagreement between the Contractor and the District or the Architect regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, the Contractor shall promptly proceed with the performance of such item of the Work, subject to a subsequent resolution of such dispute or disagreement in accordance with the terms of the Contract Documents. The Contractor's failure or refusal to so proceed with such Work may be deemed to be Contractor's default of a material obligation of the Contractor under the Contract Documents.

98 Emergencies. In an emergency affecting the safety of life, or of the Work, or of property, the Contractor, without special instruction or prior authorization from the District or the Architect, is permitted to act at its discretion to prevent such threatened loss or injury. Any compensation claimed by the Contractor on account of such emergency work shall be submitted and determined in accordance with this Article 9.

99 Minor Changes in the Work. The Architect may order minor Changes in the Work not involving an adjustment in the Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order and shall be binding on the District and the Contractor. The Project Manager or the District's Inspector may direct the Contractor to perform Changes provided that each such Change does not result in an increase of more than \$500.00 to the Contract Price and no adjustment of the Contract Time. The Contractor shall carry out such orders promptly.

9.10 Unauthorized Changes. Any Work beyond the lines and grades shown on the Contract Documents, or any extra Work performed or provided by the Contractor without notice to the Architect and the District's Inspector in the manner and within the time set forth in Articles 9.2 or 9.6 shall be considered unauthorized and at the sole expense of the Contractor. Work so done will not be measured or paid for, no extension to the Contract Time will be granted on account thereof and any such Work may be ordered removed at the Contractor's sole cost and expense. The failure of the District to direct or order removal of such Work shall not constitute acceptance or approval of such Work nor relieve the Contractor from any liability on account thereof.

ARTICLE 10: SEPARATE CONTRACTORS

10.1 District's Right to Award Separate Contracts. The District reserves the right to perform construction or operations related to the Project with the District's own forces or to award separate contracts in connection with other portions of the Project or other construction or operations at or

about the Site. If the Contractor claims that delay or additional cost is involved because of such action by the District, the Contractor shall seek an adjustment to the Contract Price or the Contract Time as provided for in the Contract Documents. Failure of the Contractor to request such an adjustment of the Contract Time or the Contract Price in strict conformity with the provisions of the Contract Documents applicable thereto shall be deemed a waiver of the same.

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

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

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

ARTICLE 11: TESTS AND INSPECTIONS

11.1 Tests; Inspections; Observations.

11.1.1 Contractor's Notice. If the Contract Documents, laws, ordinances or any public authority with jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, the Contractor shall give the Project Manger written notice of the readiness of such Work for observation, testing or inspection at least two (2) working days prior to the time for the conducting of such test, inspection or observation. If inspection, testing or observation is by authority other than the District, the Contractor shall inform the District's Inspector and the Project Manager not less than two (2) working days prior to the date fixed for such inspection, test or observation. The Contractor shall not cover up any portion of the Work subject to tests, inspections or observations prior to the completion and satisfaction of the requirements of such test, inspection or observation. In the event that any portion of the Work subject to tests, inspection or approval shall be covered up by Contractor prior to completion and satisfaction of the requirements of such

tests, inspection or approval, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time on account thereof.

11.12 Cost of Tests and Inspections. Costs for tests and inspection of materials shall be paid by the District as provided for herein. Within twenty (20) days after the establishment of the Approved Construction Schedule pursuant to Article 7.3 hereof, the District shall submit to the Contractor a written list of the portions of the Work subject to special tests or inspections to be paid for by the District along with the number of hours or costs of testing or inspection allocated for each such portion of the Work. Should any act, omission or other conduct of the Contractor, any of its Subcontractors, of any tier, or Material Suppliers cause the number of hours or the costs of such tests or inspections to exceed that set forth in the District's list submitted pursuant to the foregoing, the Contractor shall be solely responsible for all such excess costs and the District may deduct such amount from any portion of the Contract Price then or thereafter due the Contractor. The District will pay for all tests and inspections provided that, in addition to the cost to be paid by the Contractor previously set forth in this Article, 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 or approved.

11.13 Testing/Inspection Laboratory. The District shall select duly qualified person(s) or testing laboratory(ies) to conduct the tests and inspections to be paid for by the District and required by the Contract Documents. All such tests and inspections shall be in conformity with the latest adopted Title 24 of the California Code of Regulations. Where inspection or testing is to be conducted by an independent laboratory or testing agency, materials or samples thereof shall be selected by the laboratory, testing agency, the District's Inspector, the Project Manager or the Architect and not by the Contractor.

11.14 Additional Tests, Inspections and Approvals. If the Architect, the Project Manager, the District's Inspector or public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval, the Project Manager shall instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the District, and the Contractor shall give timely notice to the Project Manager of when and where tests and inspections are to be made so the District's Inspector and the Architect may observe such procedures. The District shall bear the costs of such additional tests, inspections or approvals, except to the extent that such additional tests, inspections or approvals reveal any failure of the Work to comply with the requirements of the Contract Documents, in which case the Contractor shall bear all costs made necessary by such failures, including without limitation, the costs of corrections, repeat tests, inspections or approvals and the costs of the Architect's services or its consultants in connection therewith. Where required DSA testing of the work identifies a failure rate of ten percent (10%) or greater for any system, scope of work, installation or subtrade that has been

specifically targeted, District may, at its sole discretion, order that all such similar systems, installations, scopes of work or subtrade work used in connection with the Project be tested, and the cost to test all such work shall be paid by the Contractor.

11.2 Delivery of Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect. If a material is not required to be tested, the Architect, Inspector or the District may require 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.

11.3 Timeliness of Tests, Inspections and Approvals. Tests or inspections required and conducted pursuant to the Contract Documents shall be made or arranged by Contractor to avoid delay in the progress of the Work.

ARTICLE 12: UNCOVERING AND CORRECTION OF WORK

12.1 Inspection of the Work.

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

12.1.2 Limitations Upon Inspections. Inspections, tests, measurements, or other acts of the Architect and the District's Inspector hereunder are for the sole purpose of assisting them in determining that the Work, materials, equipment, progress of the Work, and quantities generally comply and conform with the requirements of the Contract Documents. These acts or functions shall not relieve the Contractor from performing the Work in full compliance with the Contract Documents. No inspection by the Architect or the District's Inspector shall constitute or imply acceptance of Work inspected. Inspection of the Work hereunder is in addition to, and not in lieu of, any other testing, inspections or approvals of the Work required under the Contract Documents.

12.2 Uncovering of Work. If any portion of the Work is covered contrary to the request of the Architect, the District's Inspector, the Project Manager or the requirements of the Contract Documents, it must be uncovered by the Contractor for observation by such District representative and be replaced by the Contractor without adjustment of the Contract Time or the Contract Price.

12.3 Rejection of Work. Prior to the District's Final Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work which is defective or not in conformity with the Contract Documents may be rejected by the District, the Project

Manager, the Architect or the District's Inspector and the Contractor shall correct such rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the District's Inspector or even if they failed to observe the defective or non-conforming Work, materials or equipment.

12.4 Correction of Work. The Contractor shall promptly correct any portion of the Work rejected by the District, the Project Manager, the Architect or the District's Inspector for failing to conform to the requirements of the Contract Documents, or which is determined by them to be defective, whether observed before or after Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's or Inspector's services and expenses made necessary thereby. The Contractor shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the District or separate contractors, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective.

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

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

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

ARTICLE 13: WARRANTIES

13.1 Workmanship and Materials. The Contractor warrants to the District that all materials and equipment furnished under the Contract Documents shall be new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract

Documents. All Work shall be of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If required by the District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Any Work, or portion thereof not conforming to these requirements, including substitutions or alternatives not properly approved in accordance with the Contract Documents may be deemed defective. Where there is an approved substitution of, or alternative to, material or equipment specified in the Contract Documents, the Contractor warrants to the District that such installation, construction, material, or equipment will equally perform the function and have the quality of the originally specified material or equipment. The Contractor expressly warrants the merchantability, the fitness for use, and quality of all substitute or alternative items in addition to any warranty given by the manufacturer or supplier of such item.

132 Warranty Work. If, within one year after the date of Final Acceptance, or such other time frame set forth elsewhere in the Contract Documents, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, or otherwise contrary to the warranties contained in the Contract Documents, the Contractor shall commence all necessary corrective action not more than seven (7) days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. In the event that Contractor shall fail or refuse to commence correction of any such item within said seven (7) day period or to diligently prosecute such corrective actions to completion, the District may, without further notice to Contractor, cause such corrective Work to be performed and completed. In such event, Contractor and Contractor's Performance Bond Surety shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of the District in securing and overseeing such corrective Work. Nothing contained herein shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract Documents. The obligations of the Contractor hereunder shall be in addition to, and not in lieu of, any other obligations imposed by any special guarantee or warranty required by the Contract Documents, guarantees or warranties provided by any manufacturer of any item or equipment forming a part of, or incorporated into the Work, or otherwise recognized, prescribed or imposed by law. Neither the District's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.

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

134 Survival of Warranties. The provisions of this Article 13 shall survive the Contractor's completion of Work under the Contract Documents, the District's Final Acceptance or the termination of the Contract.

ARTICLE 14 : SUSPENSION OF WORK

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

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

ARTICLE 15: TERMINATION

15.1 Termination for Cause.

15.1.1 District's Right to Terminate. The District may terminate the Contract and/or the Contractor's performance of the Contract, in whole or in part, upon the occurrence of any one or more of the following events of the Contractor's default: (i) if the Contractor refuses or fails to prosecute the Work with diligence as will ensure Final Completion of the Work within the Contract Time, or if the Contractor fails to substantially Complete the Work within the Contract Time; (ii) if the Contractor becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to reorganize or for protection under any bankruptcy or similar laws, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract Documents within 10 days of receipt of a request for such assurance from the District; (iii) if the Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment; (iv) if the Contractor repeatedly fails to make prompt payments to any Subcontractor, of any tier, or Material Suppliers or others for labor, materials or equipment; (v) if the Contractor disregards laws, ordinances, rules, codes, regulations, orders applicable to the Work or similar requirements of any public entity having jurisdiction over the Work; (iv) if the Contractor disregards proper directives of the Architect, the District's Inspector or District under the Contract Documents; (vii) if the Contractor performs Work which deviates from

the Contract Documents and neglects or refuses to correct such Work; or (viii) if the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents. Once the District determines that sufficient cause exists to justify the action, the District may terminate the Contract without prejudice to any other right or remedy the District may have, after giving the Contractor and the Surety at least seven (7) days advance written notice of the effective date of termination. The District shall have the sole discretion to permit the Contractor to remedy each cause for the termination without waiving the District's right to terminate the Contract, or otherwise waiving, restricting or limiting any other right or remedy of the District under the Contract Documents or at law.

15.12 District's Rights Upon Termination. In the event that the Contract or the Contractor's performance of the Contract is terminated pursuant to this Article 15.1, the District may take over the Work and prosecute it to completion, pursuant to the Contract or otherwise, and may exclude the Contractor from the site. The District may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor without liability to the Contractor. In exercising the District's right to prosecute the completion of the Work, the District may also take possession of all materials and equipment stored at the site of the Work or for which the District has paid the Contractor but which are stored elsewhere, and finish the Work as the District deems expedient. In exercising the District's right to prosecute the completion of the Work, the District shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and the District shall not be required to obtain the lowest figure for completion of the Work. In the event that the District takes bids for remedial Work or completion of the Work, the Contractor shall not be eligible for the award of such contract(s).

15.13 Completion by the Surety. In the event that the Contract or the Contractor's performance of the Contract is terminated pursuant to this Article 15.1, the District may demand that the Surety take over and complete the Work. The District may require that in so doing, the Surety not utilize the Contractor in performing and completing the Work. Upon the failure or refusal of the Surety to take over and begin completion of the Work within fifteen (15) days after demand therefor, the District may take over the Work and prosecute it to completion as provided for above. Such remedy is in addition to, and not lieu of, other remedies available to District as provided by law or in equity.

15.14 Assignment and Assumption of Subcontracts. The District shall, in its sole and exclusive discretion, have the option of requiring any Subcontractor or Material Supplier to perform in accordance with its Subcontract or Purchase Order with the Contractor and assign the Subcontract or Purchase Order to the District or such other person or entity selected by the District to complete the Work.

15.15 Costs of Completion. In the event of termination under this Article 15.1, the Contractor shall not be entitled to receive any further payment of the Contract Price until the Work is completed. If the unpaid balance of the Contract Price as of the date of termination

exceeds the District's direct and indirect costs and expenses for completing the Work, including without limitation, attorneys' fees and compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work performed prior to the effective date of termination with a reasonable allowance for overhead and profit. If the District's costs and expenses to complete the Work exceed the unpaid Contract Price, the Contractor and/or the Surety shall pay the difference to the District.

15.16 Contractor Responsibility for Damages. The Contractor and the Surety shall be liable for all damages sustained by the District resulting from, in any manner, the termination of Contract under this Article 15.1, including without limitation, attorneys' fees, and for all costs necessary for repair and completion of the Work over and beyond the Contract Price.

15.17 Conversion to Termination for Convenience. In the event the Contract is terminated under this Article 15.1, and it is finally determined by an arbitrator, court, jury or other tribunal having jurisdiction, for any reason, that the Contractor was not in default under the provisions hereof or that the District's exercise of its rights under Article 15.1 was defective, deficient, ineffective, invalid or improper for any reason, , the termination shall be deemed a Termination for Convenience of the District and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with Article 15.2 hereof.

15.1.8 District's Rights Cumulative. In the event the Contract is terminated pursuant to this Article 15.1, the termination shall not affect or limit any rights or remedies of the District against the Contractor or the Surety. The rights and remedies of the District under this Article 15.1 are in addition to, and not in lieu of, any other rights and remedies provided by law or otherwise under the Contract Documents. Any retention or payment of monies to the Contractor by the District shall not be deemed to release the Contractor or the Surety from any liability hereunder.

15.2 Termination for Convenience of the District. The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate the Contract or the Contractor's performance of the Contract, in whole or in part, when it is in the interest of, or for the convenience of, the District. In such case, the Contractor shall be entitled to payment for: (i) Work actually performed and in place as of the effective date of such termination for convenience of the District, with a reasonable allowance for profit and overhead on such Work, and (ii) reasonable termination expenses for reasonable protection of Work in place and suitable storage and protection of materials and equipment delivered to the site of the Work but not yet incorporated into the Work, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by payments previously made to the Contractor and as further reduced by the value of the Work as not yet completed. The Contractor shall not be entitled to profit and overhead on Work which was not performed as of the effective date of the termination for convenience of the District or for any other damages, direct or indirect, which Contractor or anyone claiming through Contractor alleges resulted from the District's election to terminate under Article 15.2 or where a termination under Article 15.1 has been converted to a termination for convenience under Article 15.1.7. The District may, in its sole discretion, elect to have subcontracts assigned pursuant to Article 15.1.4 above after

exercising the right hereunder to terminate for the District's convenience.

ARTICLE 16: MISCELLANEOUS

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

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

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

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

165 No Assignment by Contractor. The Contractor shall not sublet or assign the Contract, or any portion thereof, or any monies due thereunder, without the express prior written consent and approval of the District, which approval may be withheld in the sole and exclusive discretion of the District. The District's approval to such assignment shall be upon such terms and conditions as determined by the District in its sole and exclusive discretion.

166 Independent Contractor Status. In performing its obligations under the Contract Documents, the Contractor is an independent contractor to the District and not an agent or employee of the District.

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

168 Disputes; Continuation of Work. Notwithstanding any claim, dispute or other disagreement between the District and the Contractor regarding performance under the Contract

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

169 Dispute Resolution; Claims Under \$375,000.00. Claims between the District and the Contractor of \$375,000.00 or less shall be resolved in accordance with the procedures established in Part 3, Chapter 1, Article 1.5 of the California Public Contract Code, §§20104 et seq.; provided however that California Public Contract Code §20104.2(a) shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such claim or extend the time for the giving of such notice as provided in the Contract Documents. The term "claims" as used herein shall be as defined in California Public Contract Code §20104(b)(2).

16.10 Attorneys Fees. Except as expressly provided for in the Contract Documents, or authorized by law, neither the District nor the Contractor shall recover from the other any attorneys fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder.

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

16.12 Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in the Contract Documents is deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

16.13 Entire Agreement. The Contract Documents contain the entire agreement and understanding between the District and the Contractor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements or amendments, whether written or oral. No amendment or modification to any provision of the Contract Documents shall be effective or enforceable except by an agreement in writing executed by the District and the Contractor.

END OF SECTION

SECTION 00800

SPECIAL CONDITIONS

PROJECT: AVENAL E.S KINDERGARTEN PROJECT

OWNER: Reef Sunset Unified School District ("District")

JOB NUMBER: Bid ##

SITE LOCATIONS: Avenal Elementary School – 500 South First Avenue, Avenal, CA 93204

1.01 DIVISION OF THE STATE ARCHITECT

The work specified herein **is** subject to the regulation of the Division of the State Architect (DSA).

1.02 Contract Time

- A. Final Completion of the Work.** Final completion of the work shall be achieved within **One hundred Eighty (180) CONSECUTIVE CALENDAR DAYS beginning Monday, January 18, 2020 and ending friday, June 18, 2020.** Failure to achieve Final Completion within the Contract Time will result in the assessment of Liquidated Damages.

1.03 Liquidated Damages.

- A. Delayed Final Completion of the Work.** Pursuant to Article 7 of the General Conditions, the Contractor shall be liable to the District for Liquidated Damages for failure to achieve Final Completion of the Work within the Contract Time as indicated in item 1.02.A, above. **Liquidated Damages shall be at the rate of Five Hundred Dollars (\$500.00) per day until Final Completion of the Work is achieved.**

1.04 Insurance

- A. Insurance Provided by Contractor.** Pursuant to Article 6 of the General Conditions, the Contractor shall provide and maintain the following insurance coverage amounts as set forth below:

- 1. Workers Compensation Insurance**
In accordance with limits established by law.
- 2. Employers Liability Insurance:** \$1,000,000
- 3. Commercial General Liability Insurance**

Per Occurrence	\$2,000,000
Aggregate	\$5,000,000

- 4. **Automobile Liability**
Bodily Injury/Property Damage Per Occurrence \$1,000,000
- 5. **Excess Products and Completed Operations** \$2,000,000

B. Insurance Provided by Subcontractors.

Pursuant to Article 6 of the General Conditions, all Subcontractors and Sub-Subcontractors shall provide and maintain the following insurance coverages, with minimum coverage amounts as set forth below:

- 1. **Workers Compensation Insurance**
In accordance with limits established by law.
- 2. **Employers Liability Insurance** \$1,000,000
- 3. **Commercial General Liability Insurance**
Per Occurrence \$1,000,000
Aggregate \$2,000,000
- 4. **Automobile Liability**
Bodily Injury/Property Damage Per Occurrence \$1,000,000

1.05 Number of Contract Documents.

The number of executed copies of the Agreement is Three (3). The number of Performance Bonds and Payment Bonds required is Three (3).

1.06 Security

A. In addition to the security requirements set forth elsewhere in the Contract Documents, the Contractor must adhere to the following:

- 1. **Keys:** Keys to existing buildings where access is required related to the project may be signed out through the Operations Service Center of the Oxnard School District located at 1055 South C Street in Oxnard between the hours of 7:30AM-4:00PM, Monday through Friday. All keys must be returned and accounted for before final payments will be paid. Contractor will be held responsible for any keys lost, stolen, not returned or signed off. Contractor will bear all costs for re-keying all locks due to keys not returned.
- 2. **Locked Door Policy:** No building, room or site gate shall be left unsecured for any period of time.

1.07 Working Days and Hours

- A. The workdays** for this contract shall be Monday through Sunday of each week.
- B. The working hours** for this Contract shall be 7:00 a.m. to 8:00 p.m. with a lunch period within midday as required per labor code. These hours are subject to change according to jobsite constraints and restrictions or as deemed necessary by the District. Contractor is expected to work weekends and holidays, as necessary, to complete the work within the specified time of completion without any additional cost to the District. At the District's request, Contractor shall modify the working hours for the Contract without adjustment of the Contract Time or Contract Price. (Reference General Conditions Article 7.2.1). If any work performed during school hours (8:00 a.m. to 3:00 p.m.) is found to be disruptive to the educational process (as determined by the District), the contractor will be required to re-schedule subject work to occur during non-school hours without any additional cost to the District.

1.08 Construction Start Date

- A.** Absolutely no work on this project may commence until all of the following conditions have been met:
 - 1. The Contractor receives the District's written Notice to Proceed.

1.09 Construction Completion Date

Refer to Item No. 1.02.A and Notice to Proceed

1.10 Utilities

Temporary utility connection points for water, sewage, communication/data and electricity shall be provided for and paid for by the Contractor. The Contractor shall furnish all necessary temporary piping and wiring from the connection points to the points on the site where said utilities are necessary to carry on the work and upon completion of the work shall remove such temporary services.

All utilities, including, but not limited to, electricity, water, gas and telephone, used on the work shall be furnished and paid for by Contractor.

If contract is for addition to existing facility, Contractor may, with written permission of the District, use the District's existing utilities by making prearranged payments to the District for utilities used by Contractor for construction.

1.11 Sanitary Facilities and Drinking Water

- A. The Contractor shall furnish, install, and maintain hand wash and toilet facilities at the site for the workers on this project per OSHA requirements if applicable.
- B. Drinking water shall be provided at the site by the Contractor for his/her workers.

1.12 Shop Drawings and Field Measurements

Article 4.8 of the General Conditions.

1.13 Submittal Review

Article 4.8 of the General Conditions. The Contractor shall submit Six (6) copies of data for the equipment, materials and supplies required for the work of this contract.

1.14 Wage Rates

- A. *California State Labor Code*. Reference Article 4.21 of the General Conditions. The Contractor shall comply with all regulations of the California State Labor Code governing work of the nature to be performed under this contract, including but not limited to prevailing wages, working hours, overtime, worker's compensation, travel and subsistence, records, apprenticeship, etc. Prime contractors are responsible for the compliance of this section for all work of their contract. Refer to the Code for full information. Nothing in this contract shall prevent the employment of properly registered apprentices.
- B. Public works contracts entered into by the Reef Sunset Unified School District may be reviewed by authorized non-profit organizations for prevailing wage compliance at the request of the District or the organization.

1.16 Mark-ups on Changes to the Work.

- A. In the event of Changes to the Work, the mark-up for all general conditions, costs, overhead (including home and field office overhead) and profit, shall not exceed **Fifteen Percent (15%)** of the direct actual costs of the performance of an additive Change, as determined in accordance with the provisions of Article 9.4 of the General Conditions. In addition, the mark-up shall include the actual, direct cost of the bond for such Change, not to exceed **Two Percent (2%)** of the direct, actual costs of the performance of the Change.

The foregoing limitation or mark-up shall apply regardless of the number of

subcontractors, of any tier, performing any portion of such additive Change to the Work. In the event that the Work of such additive Change is performed in part by a subcontractor, Contractor agrees to allocate at least Ten Percent (10%) to such subcontractor, with no more than Five Percent (5%) to be allocated to the Contractor. In the event the Change is deductive, the District shall receive a credit equal to the value of the direct actual costs of the Work of the deductive Change plus **Ten Percent (10%)** of such direct actual costs for all general conditions, overhead (including home and field office overhead), profit and bond.

1.17 Inclement Weather Days.

Pursuant to Article 7.4.1 of the General Conditions.

1.18 District's Project Manager.

The District's Project Manager is: Scott Burkett, Sr. Vice President, CFW. His office is located at 805 Colorado Blvd., Pasadena CA. Mr. Burkett's phone number is 510-596-8170.

1.19 Asbestos Management

- A.** The District has surveyed its facilities for asbestos and the results have been placed in the "Asbestos Management Plan" for each facility. Each plan includes an operations and maintenance program. Management plans are available for Contractor's review at the District's Facilities Department during normal business hours. It is the Contractor's responsibility to become familiar with the type and location of asbestos containing building materials in the facility by consulting the aforementioned Asbestos Management Plan and to survey the work area for potential asbestos containing materials before starting work. In performing the work, the Contractor will comply with procedures established in the operations and maintenance program and with Federal, State, and Local health and Safety Regulations.

- B.** When the Contractor encounters, damages or disturbs asbestos containing building materials, or materials suspected of containing asbestos, Contractor will avoid taking any action which could cause release or spread of asbestos fibers. The Contractor will immediately stop work and notify the District's project coordinator through the office of the District Director of Facilities, or the District Risk Manager. Work will not be resumed without the consent of the District.

1.20 Hazardous Materials

The terms of this Hazardous Material provision shall survive the completion of the Work and/or any termination of this Contract.

1.21 Hazardous Communication Standard and Material Safety Sheets

A. The Hazard Communication Standard (OSHA 29CFR1910.1200) shall be applicable in this agreement. It designates and requires labeling, Material Safety Data Sheets (MSDS), and employee training for all hazardous materials. The Contractor shall submit, along with other required submittals to the District, Material Safety Data Sheets (MSDS) for all hazardous material to be used or installed by the Contractor, prior to such use or installation. The Contractor shall submit Material Safety Data Sheets (MSDS) on materials and components that are defined or become identified in the specifications for project construction. The Contractor shall make Material Safety Data Sheets available at the site for review by employees and other contractors. Materials commonly used in the construction of school facilities which could require a Material Safety Data Sheet include, but are not limited to, the following:

1. Paints and other coatings
2. Adhesives – floor, wall, furniture, etc.
3. Equipment lubricants – oil, grease, etc.
4. Synthetics of any kind
5. TES coolants
6. Refrigerants
7. Fertilizers
8. Concrete Additives
9. Asphalt paving petroleum additive
10. Transformer coolants
11. Pipe dope
12. PVC/ABS/CPVC solvent
13. No hazardous material shall be used which is harmful in the use of school facilities after construction and occupancy.

1.22 General Notes

A. Site Access: All access to the site shall be approved by the School District before any work begins. Contractor shall be responsible for obtaining all parking and encroachment permits and paying all fees. Contractor shall be responsible to patch and repair all damage to existing City curbs, sidewalks, trees, etc., at no additional cost to the School District.

- B. **Student/Bus Drop off Schedule:** Contractor to coordinate all construction traffic with bus schedules including delivery of school supplies and equipment with the School District. The Contractor shall not block driveways or bus areas.
- C. **Delivery of construction equipment** and/or materials shall be scheduled so as not to conflict with the school's operation.
- D. **Dress Code/Language:** Contractors and Subcontractors work crews – Appropriate attire as defined by OSHA and School District standards shall be worn by all work crews at all hours. Clothing with insignias depicting gangs, drugs, sex, profanity, alcohol and/or as deemed offensive to the District are strictly prohibited. NO SHORTS WILL BE ALLOWED. No loud radios or inappropriate language will be tolerated on the site during construction hours. The Contractor must be considerate of the staff and adjoining residences and the adverse impact the aforementioned may cause.
- E. **No Smoking** shall be allowed on School District property.
- F. **On-Site Parking:** No Contractor employee parking will be allowed on site except in designated areas authorized by the School District. District shall not be responsible for any vandalism, damage or theft to employee vehicles.
- G. **Street Parking:** Contractor shall obtain permits for temporary on street parking where required for work force/employee parking.
- H. **Mandatory Pre-Bid Conference:** A mandatory pre-bid conference and job walk will be held as noted in the Notice Inviting Bid and Instruction to Bidders. Bids will not be accepted from Contractors who have not attended the mandatory pre-bid conference and job walk.
- I. **Non-Interference with Other Contractors:** Other Contractors may be working on the project site(s) during time of construction. Contractor must coordinate work with the District and other Contractors.
- J. Contractor will remove all debris from the school sites daily.
- K. District refuse containers **are not** to be utilized by contractor.
- L. The work area is to be maintained in a clean and safe manner at all times.

END OF SECTION