

DOCUMENT 00700

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. GENERAL

1.1 Documents

Contract Documents are complementary; what is called for by one is as binding as if called for by all. Contract Documents shall not be construed to create a contractual relationship of any kind between (1) District and/or its representatives and (except as provided in paragraph 13.9 below) a Subcontractor of any tier, Subconsultant of any tier, or supplier of any Project labor, materials, or equipment; or (2) between any persons or entities other than District and Contractor. District shall be deemed to be an intended third-party beneficiary of each agreement referenced in clause (1) above, and each such agreement shall so provide. Contractor is fully responsible for Contractor's own acts and omissions. Contractor is responsible for all acts and omissions of its Architect, Subconsultants of any tier, Subcontractors of any tier, suppliers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Contractor.

1.2 Exercise of Contract Responsibilities

In exercising its responsibilities and authorities under the Contract Documents, District does not assume any duties or responsibilities to any Subcontractor or supplier and does not assume any duty of care to Contractor, Contractor's Subcontractors or suppliers. Except as expressly set forth in the Contract Documents, in exercising their respective responsibilities and authorities under the Contract Documents, District's Representatives do not assume any duties or responsibilities to any Subcontractor, sub-Subcontractor or supplier nor assume any duty of care to Contractor or any Subcontractor, sub-Subcontractor or suppliers.

1.3 Defined Terms

Administration of construction shall include the following delineations of responsibilities pursuant to Part 1, Title 24, California Code of Regulations. Contractor shall perform as required under Section 4-343, including, but not limited to verified reports per sections 4-336 and 4-343. All abbreviations and definitions of terms used and not otherwise defined in this Document 00700 are set forth in Section 01420 (References and Definitions). This Document 00700 subdivides at first level into Articles, and then into paragraphs.

2. BIDDING

2.1 Investigation Prior To Bidding

- 2.1.A. Prior to bidding, Bidders shall perform the review and analysis required by Article 5 of Document 00520 (Agreement). Under the Contract Documents, Contractor is charged with all information and knowledge that a reasonable Bidder would ascertain from having performed the required review and analysis. Bid prices shall include entire cost of all "incidental work" to complete of the Work, as that term is defined in Article 5.1.C. of this Document 00700.
- 2.1.B. Conditions Shown on Contract Documents: Information as to underground conditions, as-built conditions, or other conditions or obstructions indicated in the Contract Documents, *e.g.*, on Drawings or in Specifications, has been obtained with reasonable care, and has been recorded in good faith. District warrants, and Contractor may rely on, the accuracy of only limited types of information as discussed below.
 1. Aboveground and as-built conditions: There is no express or implied warranty and no express or implied representation that any information as to aboveground conditions or as-built conditions indicated in the Contract Documents is correctly shown, or indicated, or complete.
 2. Subsurface conditions: 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 in the Contract Documents. District is not responsible for (1) the completeness of any subsurface condition information for bidding or construction, (2) Contractor's conclusions or opinions drawn from any subsurface condition information, or (3) 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.)
 3. Conditions Shown in Reports and Drawings Supplied for Informational Purposes: Reference is made to Document 00320 (Existing Conditions and Geotechnical Data) for identification of geotechnical

reports, "as built" information, and other drawings or other documents describing physical conditions in or relating to existing surface or subsurface conditions or structures at or contiguous to the Sites. These materials are not Contract Documents and, except for any "technical data" regarding subsurface conditions specifically identified in Document 00320 (Existing Conditions and Geotechnical Data), and "Underground Facilities" data, as limited in Document 00320 (Existing Conditions and Geotechnical Data), Contractor shall not in any manner rely on the information in these materials.

2.2 Subcontractors

- 2.2.A. Consistent with Public Contract Code Sections 4101 *et seq.*, Contractor shall not substitute any other person or firm in place of any Subcontractor listed in the Bid. Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other contractor without District's written approval. At District's request, Contractor shall provide District with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.
- 2.2.B. Subcontract agreements shall preserve and protect the rights of District under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Contractor shall require the Subcontractor's written agreement (1) to be bound to the terms of Contract Documents and (2) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward District under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract Documents.)
- 2.2.C. Contractor shall provide for the assignment to District of all rights any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents.

3. CONTRACT AWARD AND COMMENCEMENT OF THE WORK

3.1 Award Of Contract

District will make the Award of Contract by issuing a Notice of Award. As a condition to District signing Document 00520 (Agreement), however, Contractor shall deliver to District the executed agreements, forms, bonds and insurance documents required by Document 00200 (Instructions to Bidders) in the required quantities and within the required times.

3.2 Commencement Of Work

The Contract Time will commence to run upon issuance of a Notice to Proceed, on the date indicated in the Notice to Proceed. See also paragraph 15.1.B of this Document 00700. District may give a Notice to Proceed at any time within 30 Days after the Notice of Award. Contractor shall not do any Work at the Sites prior to the date on which the Contract Time commences to run.

4. BONDS AND INSURANCE

4.1 Bonds

- 4.1.A. At or before the date indicated in Document 00200 (Instructions to Bidders), Contractor shall file with District the following bonds:
 - 1. Corporate surety bond, in the form of Document 00610 (Construction Performance Bond), in the penal sum of 100% of the Contractor's Bid as accepted, to guarantee faithful performance of the Work; and
 - 2. Corporate surety bond, in the form of Document 00620 (Construction Labor and Material Payment Bond), in the penal sum of 100% of the Contractor's Bid as accepted, to guarantee payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in performance of Contract Documents.
- 4.1.B. Sureties shall be satisfactory to District. Corporate sureties on these bonds and on bonds accompanying Bids shall be duly licensed to do business in the State of California and shall have an A.M. Best Company financial rating of **A** or better.

4.2 Insurance

See Document 00810 (Insurance), incorporated herein by this reference.

5. CONTRACT DOCUMENTS

5.1 Intent

- 5.1.A. Contract Documents are intended to describe a functionally complete and operable Project (and all parts thereof) to be designed and constructed in accordance with the requirements of Contract Documents. Contractor shall perform any work, provide services and furnish any materials or equipment that may reasonably be inferred from the requirements of Contract Documents or from prevailing custom or trade usage as being required to produce this intended result. Contractor shall interpret words or phrases used to describe work (including services), materials or equipment, that have well-known technical or construction industry or trade meaning in accordance with that meaning. Drawings' intent specifically includes the intent to depict construction that complies with all applicable laws, codes and standards, including without limitation Title 24 of the California Code of Regulations. The Division and Sections of the Specifications and the identification on any Drawings shall not control the Contractor in dividing the Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.
- 5.1.B. As part of the "Work," Contractor shall provide all design services by licensed professionals, labor, materials, equipment, machinery, tools, facilities, services, employee training and testing, hoisting facilities, shop drawings, storage, testing, security, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, permits, documents, reports, agreements and any other items required or necessary to timely and fully complete Work described and the results intended by Contract Documents. Divisions and Specification Sections and the identification on any Drawings shall not control Contractor in dividing Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.
- 5.1.C. Contractor shall perform reasonably implied parts of Work as "incidental work" although absent from Contract Documents. Incidental work includes any work not indicated in the Contract Documents that is necessary or normally or customarily required as a part of the design and construction of the Work. Incidental work includes any Work necessary or required to make each installation satisfactory, legally operable, functional, and consistent with the intent of or the requirements of Contract Documents including required tasks to be performed under Division 1 of Specifications. Contractor shall perform incidental work without extra cost to District. Incidental work shall be treated as if fully described in the Contract Documents and the expense of incidental work shall be included in price Bid and Contract Sum.

5.2 Drawing Details in the Construction Drawings

A typical or representative detail on Drawings shall constitute the standard for workmanship and material throughout corresponding parts of Work. Where necessary, and where reasonably inferable from Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of Work. The details of such adaptation shall be subject to prior approval by District. Repetitive features shown in outline on Drawings shall be in exact accordance with corresponding features completely shown.

5.3 Interpretation Of Contract Documents

The Drawings and Specifications prepared by the Design-Build Entity's Architect/Engineer shall comply with the Contract Documents. It is the responsibility of the DBE to comply with all requirements of the Contract Documents. Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in the Drawings and Specifications prepared by the DBE's Architect/Engineer, the matter shall be referred to the Inspector in writing, with a copy to the Architect/Engineer and Project Manager. Architect/Engineer shall issue with reasonable promptness such written clarifications or interpretations of the requirements of the Drawings and Specifications as Architect/Engineer may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding upon the Contractor, unless District in its discretion directs otherwise. The District's representative shall review clarifications and interpretations for consistency with the Contract Documents. The Contractor shall not carry on

Work except with the knowledge of Inspector. No adjustment in the Contract Sum or Contract Times shall be considered based on written clarification or interpretation by the DBE's Architect/Engineer and based on any adjustments identified by the District to comply with the Contract Documents. If the DBE believes that the District interpretation is not supported by the Contract Documents, then Contractor shall give District prompt written notice as provided in Section 01250 (Modification Procedures). If the parties are unable to agree to the amount or extent of the adjustment, if any, then Contractor shall perform the Work in conformance with District's response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article 12 of this Document 00700.

5.4 Checking Of Drawings

Before undertaking each part of the Work, Contractor shall carefully study and compare the Drawings and Specifications with the Contract Documents. The Contractor shall check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall be responsible for any errors that might have been avoided by such comparison. Figures shown on Drawings shall be followed; Contractor shall not scale measurements. Contractor shall promptly report in writing to the Project Manager, with copies to the Architect/Engineer and IOR, any conflict, error, ambiguity or discrepancy which the Contractor may discover. Architect/Engineer shall provide a written interpretation or clarification to the Contractor, Project Manager and IOR. The District's Project Manager shall review written interpretation or clarification for compliance with the Contract Documents. The Contractor shall replace any Work not in compliance with the Contract Documents.

5.5 Standards To Apply Where Specifications Are Not Furnished

The following general specifications shall apply wherever in the Specifications, or in any orders given by District or Architect/Engineer pursuant to or supplementing the Specifications, it is provided that the Contractor shall furnish materials or manufactured articles or shall do Work for which no detailed specifications are set forth. Materials or manufactured articles shall be of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation. If not ordinarily carried in stock, the materials or manufactured articles shall conform to industry standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work shall conform to the usual standards or codes, such as those cited in Section 01420 (References and Definitions), for first-class work of the kind required. The Contractor shall specify in writing to District the materials to be used or Work to be performed under this paragraph 5.5 no later than ten (10) business days prior to placing orders for such materials or performance of such Work.

5.6 Deviation from Specifications and Drawings

- 5.6.A. As set forth in Part 1, Title 24, California Code of Regulations, no modification or deviation from the Contract Documents will be permitted. Contractor must perform design and construction Work in strict accordance with Contract Documents. Contractor shall review Drawings and Specifications developed by the DBE's subconsultants and design-build subcontractors under this Contract for compliance with the Contract Documents prior to submission to and approval of Drawings and Specifications by the Division of the State Architect. No order for any alteration, modification or extra which shall increase or decrease the cost of Work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing, and the order signed by the Contractor, and certified by the authorized officer representing District. As appropriate, Change Orders changing the approved Drawings and technical specifications are subject to approval by the Division of the State Architect under the procedures prescribed in Section 4-338, Part 1, Title 24, California Code of Regulations. Deviations from Drawings and from the dimensions therein given, or from the Specifications, whether or not error is believed to exist, shall be made only when approved in writing by Project Manager.
- 5.6.B. Project Manager may order that locations, lines and grades for Work vary from those shown on Drawings. Changes may be made in location, lines or grades for Work under any item of Contract. No extra payment in addition to unit price fixed in Contract for Work under respective items will be allowed on account of variations from Drawings in unit price items. In lump sum contracts, or where there are no unit price items covering Work affected by variations of locations, lines or grades, all changes in the Contract Documents will be made in accordance with Article 14 of this Document 00700.

5.7 Precedence Of Documents

- 5.7.A. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
1. Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
 2. Document 00520 (Agreement), and terms and conditions referenced therein;
 3. Document 00800 (Supplementary Conditions);
 4. Document 00700 (General Conditions);
 5. Division 1 Specifications including Project Description;
 6. Technical Specifications;
 7. Written numbers over figures, unless obviously incorrect;
 8. Figured dimensions over scaled dimensions;
 9. Large-scale drawings over small-scale drawings.
- 5.7.B. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.
- 5.7.C. In the event the Specifications include divisions above Division 16 (e.g., Division 17 and above), then such divisions shall be included within the Contract Documents unless identified otherwise.

5.8 Ownership And Use Of Drawings, Specifications And Contract Documents

Drawings and Specifications prepared under this Contract and -Contract Documents were prepared for use for Work of Contract Documents only. No part of the DBE's Drawings and Specifications or of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of District. Any unauthorized use of said documents is prohibited.

6. CONSTRUCTION BY DISTRICT OR BY SEPARATE CONTRACTORS

6.1 District's Right To Perform Construction And To Award Separate Contracts

District may perform with its own forces, construction or operations related to the Project. District may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Sites or areas contiguous to the Sites, under conditions similar to these Contract Documents, or may have utility owners perform other work. When separate contracts are awarded for different portions of the Project or other construction or operations on the Sites, the term "Contractor" in these Contract Documents shall mean the Contractor herein.

6.2 Mutual Responsibility

- 6.2.A. Contractor shall afford all other contractors, utility owners and District (if District is performing work with its own forces), proper and safe access to the Sites, and reasonable opportunity for the installation and storage of their materials. Contractor shall ensure that the execution of its Work as described in section 01010 properly connects and coordinates with others' work, and shall cooperate with them to facilitate the progress of the Work.
- 6.2.B. Contractor shall coordinate its Work with the work of other separate contractors, District, and utility owners. Contractor shall attend coordination meetings with other contractors, District and its representatives, and utility owners as required by Section 01315 (Project Meetings).
- 6.2.C. Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of other separate contractors, District or utility owners by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of District and the others whose work will be affected.
- 6.2.D. Contractor's duties and responsibilities under paragraph of this Document 00700 are for the benefit of District and also for the benefit of such other contractors and utility owners working at the Sites to the extent that there are comparable provisions for the benefit of Contractor in the direct contracts between District and such other contractors and utility owners.

- 6.2.E. To the extent that any part of Contractor's Work is to interface with work performed or installed by other contractors or utility owners, Contractor shall inspect and measure the in-place work. Contractor shall promptly report to District in writing any defect in in-place work that will impede or increase the cost of Contractor's interface unless corrected. District will require the Contractor responsible for the Defective Work to make corrections so as to conform to its contract requirements, or, if the defect is the result of an error or omission in the Contract Documents, issue a Change Order. If Contractor fails to measure, inspect and/or report to District in writing defects that are reasonably discoverable, Contractor shall bear all costs of accomplishing the interface acceptable to District. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.

6.3 District Authority Over Coordination

- 6.3.A. District will have authority over coordination of the activities of multiple contractors in cases where District performs work with its own forces or contracts with others for the performance of other work on the Project, or utilities work on the Sites. District may at any time and in its sole discretion, designate a person or entity other than District to have authority over the coordination of the activities among the various contractors. District's authority with respect to coordination of the activities of multiple contractors and utility owners shall not relieve Contractor of its obligation to other contractors and utility owners to coordinate its Work with other contractors and utility owners as specified in paragraph 6.2 of this Document 00700. Contractor shall promptly notify District in writing when another contractor on the Project fails to coordinate its work with the Work of Contract Documents.
- 6.3.B. Contractor shall suspend any part of the Work or carry on the same in such manner as directed by District when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or claims by Contractor will be allowed if the suspension or Work change is due in whole or in part to Contractor's failure to perform its obligation with other contractors and utility owners. Damages or claims will be allowed only to the extent of fault by District if the suspension or Work change is due in whole or in part to another contractor's failure to coordinate its work with Contractor, other contractors, and utility owners. District reserves the right to back charge Contractor for any damages or claims incurred by other contractors as a result of Contractor's failure to perform its obligations to coordinate with other contractors and utility owners. District may deposit the funds retained with a Court of competent jurisdiction pursuant to applicable interpleader procedures and Contractor releases District of further liability regarding such funds.

7. DISTRICT AND PAYMENT

7.1 District's Representative(s)

District's Representative(s) will have limited authority to act on behalf of District as set forth in the Contract Documents. Except as otherwise provided in these Contract Documents or subsequently identified in writing by District, District will issue all communications to Contractor through District's Representative, and Contractor shall issue all communications to District through District's Representative in a written document delivered to District. Should any direct communications between Contractor and District's consultants, architects or engineers not identified in Article 2 of Document 00520 (Agreement) occur during field visits or by telephone, Contractor shall immediately confirm them in a written document copied to District.

7.2 Means And Methods Of Construction

Subject to those rights specifically reserved in the Contract Documents, District will not supervise, or direct, or have control over, or be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Contractor's failure to comply with laws and regulations applicable to the furnishing or performance of Work. District will not be responsible for Contractor's failure to perform or furnish the Work in accordance with Contract Documents.

7.3 Receipt And Processing Of Applications For Payment

As required by Section 01200 (Measurement and Payment), Contractor shall prepare the schedules, submit Applications for Payment and warrant title to all Work covered by each Application for Payment. District will

review Contractor's Applications for Payment and make payment thereon, and Contractor shall make payments to Subcontractors, suppliers and others, as required by Section 01200 (Measurement and Payment).

8. CONTROL OF THE WORK

8.1 Supervision Of Work By Contractor

- 8.1.A. During construction, reconstruction, repair, alteration of or addition to any school building, the Division of the State Architect, as provided by the Field Act, sections 39140 -39159 and sections 81130 - 81147 of the Education Code, shall make such inspection as in its judgment is necessary or proper for enforcement of the Act, and the protection of the safety of pupils, teachers and the public. If at any time as the Work progresses, prior to the issuance of the final approval, it shall be found that modifications or changes are necessary to secure safety, orders shall be by the Division of the State Architect for such modifications or changes. Refer to section 4-334, Part 1, Title 24, California Code of Regulations.
- 8.1.B. Contractor shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents. Contractor shall be responsible to see that the completed Work complies accurately with Contract Documents.
- 8.1.C. Contractor shall keep on the Sites at all times during Work progress a competent resident Superintendent, who shall not be replaced without District's express written consent. The Superintendent shall be Contractor's representative at the Sites and shall have complete authority to act on behalf of Contractor. All communications to and from the Superintendent shall be as binding as if given to or by Contractor.

8.2 Observation Of Work By Project Manager and Architect/Engineer

- 8.2.A. Work shall be performed under Project Manager's general observation and administration. Contractor shall comply with Project Manager's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Contractor of any obligations or liabilities under the Contract Documents. Project Manager's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.
- 8.2.B. Project Manager will provide administration of Contract and observation of the Work as hereinafter described.
- 8.2.C. Project Manager will advise and consult with Architect/Engineer and consult with District. Project Manager will have authority to act on behalf of District only to extent provided in the Contract Documents or as set forth in writing by District.
- 8.2.D. Project Manager will visit the Sites at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with Contract Documents. However, neither the Project Manager nor Architect/Engineer will be required to make exhaustive or continuous on-site inspections to check quality or quantity of Work. On the basis of on-site observations, the Project Manager and the Architect/Engineer will be informed of progress of Work, and will keep District informed of the Work's progress.
- 8.2.E. Neither the Project Manager or Architect/Engineer will be responsible for nor will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.
- 8.2.F. Neither the Project Manager nor Architect/Engineer will be responsible for or have control over the acts or omissions of Contractor, Subcontractors or their agents or employees, or any other persons performing Work.
- 8.2.G. Architect/Engineer will review Contractor's submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with the Contract Documents as set forth in this Document 00700. Such action will be taken with reasonable promptness so as not to cause delay.
- 8.2.H. The Project Manager, the IOR and the Architect/Engineer will conduct inspections to recommend to District the dates that Contractor has achieved Substantial Completion and Final Acceptance, and

will receive and forward to District for review written warranties and related documents required by Contract Documents and assembled by Contractor.

- 8.2.I. Architect/Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings and Specifications or otherwise) as Architect/Engineer may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. The Contractor shall review and be responsible for the compliance of written clarifications and interpretations with the Contract Documents. Such written clarifications and interpretations will be binding on the Contractor, unless District in its discretion directs otherwise.
- 8.2.J. Based on its observations, Project Manager may recommend to District that it disapprove or reject Work that Project Manager believes to be defective or will not produce a complete Project that conforms to Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. District will also have authority to require special inspection or testing of Work, whether or not the Work is fabricated, installed or completed.

8.3 Access To Work

During performance of Work, District and its agents, consultants, and employees may at any time enter upon Work, shops or studios where any part of the Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Contractor shall provide proper and safe facilities for this purpose, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as District's interests may require. Other contractors performing work for District may also enter upon Work for all purposes required by their respective contracts. Subject to the rights reserved in the Contract Documents, Contractor shall have sole care, custody, and control of the Sites and Work areas.

8.4 Existing Utilities

Drawings may indicate above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities, and additional information may be on file at the regional notification center, "Underground Service Alert" ("USA"). Contractor shall locate these known existing installations before proceeding with trenching or other operations that may cause damage, shall maintain them in service where appropriate, and shall repair any damage to them caused by the Work, at no increase in Contract Sum. Additional utilities whose locations are unknown to District are suspected to exist. Contractor shall be alert to their existence; if they are encountered, Contractor shall immediately report to District for disposition of the same. In addition to reporting if any utility is damaged, Contractor shall take appropriate action as provided in this Document 00700. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Contractor's attention, including reasonable action taken to protect or repair damage, shall be determined as provided in this Document 00700.

- 8.4.A. At no additional cost to District, Contractor shall incorporate into the Work main or trunk line utilities identified in the Contract Documents or identified in Document 00320 (Existing Conditions and Geotechnical Data) and other utilities or underground structures known or reasonably discernible and that will remain in service, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Contractor shall take immediate action to restore any in service installations damaged by Contractor's operations. Should District determine that Contractor has not responded in a timely manner or not diligently pursued completion of the Work, District may restore service and deduct the costs of such action by District from the amounts due under the Contract.
- 8.4.B. Consistent with Government Code Section 4215, as between District and Contractor, District will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Sites only if such utilities are not identified in the Contract Documents or Document 00320 (Existing Conditions and Geotechnical Data). District will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or Document 00320 (Existing Conditions) with reasonable accuracy, and equipment on the Project necessarily idled during such work.

- 8.4.C. Prior to performing Work at the Sites, Contractor shall lay out the locations of known underground utilities that are to remain in service and other significant known underground installations. At no additional cost to District, prior to commencing other Work in proximity to such known underground utilities or installations that can be readily inferred from adjacent surface improvements, Contractor shall further locate, by carefully excavating with small equipment, potholing and principally by hand, such utilities or installations that are to remain and that are subject to damage. This obligation applies to all utilities (including, but not limited to, those referenced in paragraph 8.4.C of this Document 00700).
- 8.4.D. Nothing in this Document 00700 shall be deemed to require District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Sites can be inferred by Contractor from the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters, vaults and junction boxes, on or adjacent to the Sites. Contractor shall immediately secure all available information and notify District and utility, in writing, of its discovery, while performing Work under the Contract Documents, of any utility facilities not identified in the Contract Documents or identified in Documents 00320.

8.5 Underground Facilities

- 8.5.A. Before commencing work of digging trenches or excavation, Contractor shall review all information available regarding subsurface conditions, including but not limited to information supplied in Document 00320 (Existing Conditions and Geotechnical Data), and subject to the terms and conditions of these documents, Contractor shall also comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part:
- “Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two working days, but no more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation.”
- 8.5.B. Contractor shall contact USA, and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Contractor is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, Contractor shall provide District with copies of all USA records secured by Contractor. Contractor shall advise District of any conflict between information provided in Document 00320 (Existing Conditions and Geotechnical Data), the Drawings and that provided by USA records. Contractor’s excavation shall be subject to and comply with the Contract Documents, including without limitation Paragraphs 2.1 and 8.4 of this Document 00700.
- 8.5.C. The cost of all of the following will be included in the Contract Sum and Contractor shall have full responsibility for (a) reviewing and checking all available information and data including, but not limited to, Document 00320 (Existing Conditions and Geotechnical Data) and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation including, but not limited to, and by way of example only, engaging qualified locating services and all necessary backhoeing and potholing; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- 8.5.D. If an Underground Facility is uncovered or revealed at or contiguous to a Site which was not shown or indicated in the materials supplied by District or in information on file at USA or is otherwise reasonably available to Contractor, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven Days), and prior to performing any Work in connection therewith (except in an emergency as required by Article 16 of this Document 00700), identify the owner of such Underground Facility and give written notice

to that owner and to District. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- 8.5.E. Contractor may be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that is owned and was built by District only where the Underground Facility:
1. Was not shown or indicated in the Contract Documents or in the information supplied pursuant to Document 00320 (Existing Conditions and Geotechnical Data) or in information on file at USA; and
 2. Contractor did not know of it; and
 3. Contractor could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Price or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to Contractor pursuant to Document 00320 [Existing Conditions and Geotechnical Data], in information on file at USA, or otherwise reasonably available to Contractor.); and
 4. Contractor can demonstrate, for extension of Contract Time, that said additional work delayed critical path activities.
- 8.5.F. Contractor shall bear the risk that Underground Facilities not owned or built by District may differ in nature or locations shown in information made available by District pursuant to Document 00320 (Existing Conditions and Geotechnical Data), in information on file at USA, or otherwise reasonably available to Contractor. Underground Facilities are inherent in construction involving digging of trenches or other excavations and Contractor is to apply its skill and industry to verify the information available.

9. WARRANTY, GUARANTY, AND INSPECTION OF WORK

9.1 Warranty And Guaranty

- 9.1.A. General Representations and Warranties: Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with the terms of Contract Documents. Contractor warrants that all design and construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of Contract Documents. Contractor warrants that Work, including but not limited to each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, engineering, materials, construction and workmanship. Contractor warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses, and permits, Contract Documents and all descriptions set forth therein, and all other requirements of Contract Documents. Contractor shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.
- 9.1.B. Extended Guarantees: Any guarantee exceeding one year provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials and shall supply District with all warranty and guarantee documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- 9.1.C. Environmental and Toxics Warranty: The covenants, warranties and representations contained in this paragraph 9.1.C are effective continuously during Contractor's Work on the Project and following cessation of labor for any reason including, but not limited to, Project completion. Contractor covenants, warrants and represents to District that:
1. To Contractor's knowledge after due inquiry, no lead or asbestos-containing materials were installed or discovered in the Project at any time during Contractor's construction thereof. If any lead or asbestos-containing materials were discovered, Contractor made immediate written disclosure to District.

2. To Contractor's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Contractor's construction thereof.
3. To Contractor's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Contractor's construction thereof. If any such materials were discovered, Contractor made immediate written disclosure to District.
4. Contractor's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Contractor claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such laws, ordinances, codes, or regulations, with which Contractor has not complied. If there are any such notices with which Contractor has complied, Contractor shall provide District with copies thereof.

9.2 Inspection Of Work

- 9.2.A. All materials, equipment, and workmanship used in Work shall be subject to inspection and testing at all times during construction and/or manufacture in accordance with section 4-335 and section 4-333 of Part 1, Title 24, California Code of Regulations and the terms of Contract Documents. Work and materials, and manufacture and preparation of materials, from beginning of construction until final completion and acceptance of Work, shall be subject to inspection and rejection by District, its agents, representatives or independent contractors retained by District to perform inspection services, or governmental agencies with jurisdictional interests. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, District shall be afforded access for inspection at the source of supply, manufacture or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- 9.2.B. Contractor shall give District minimum 3 business days notice of readiness of Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- 9.2.C. If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for timely notice in arranging such inspections, tests or approvals. District shall obtain and pay for required on-site inspection. District will pay the cost of initial testing for Work in place and Contractor shall pay all costs in connection with any follow-up or additional testing required as a result of failure of the Work to comply with Contract requirements. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
- 9.2.D. If Contractor covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of District, Contractor shall uncover the Work at District's request. Contractor shall bear the expense of uncovering Work and replacing Work.
- 9.2.E. In any case where Contractor covers Work contrary to District's request, Contractor shall uncover Work for District's observation or inspection at District's request. Contractor shall bear the cost of uncovering Work.
- 9.2.F. Whenever required by District, Contractor shall furnish tools, labor and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Contractor. If Work is found to be satisfactory, District, in manner herein prescribed for paying for alterations, modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- 9.2.G. District shall select testing agencies approved by the Division of the State Architect to conduct required tests and inspections for the project. A list of required structural tests and inspections

prepared by the Architect/Engineer and approved by the Division of the State Architect shall be provided to the designated testing agency and Project Inspector prior to the start of construction. Refer to section 4-335(a), Part 1, Title 24, California Code of Regulations.

- 9.2.H. The testing agency shall forward the test results to the Division of the State Architect, the Architect/Engineer, the Contractor, District and the Project Inspector within 14 days of the date of the test. The testing agency shall forward to the Division of the State Architect a verified report covering all the tests required to be made by that agency during the progress of the Project.
- 9.2.I. Inspection of the Work by or on behalf of District, or District's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Contractor shall have an absolute duty, in the absence of a written Change Order signed by District, to perform Work in conformance with the Contract Documents and correct defective work promptly upon knowledge thereof.
- 9.2.J. Any inspection, evaluation, or test performed by or on behalf of District relating to the Work is solely for the benefit of District, and shall not be relied upon by Contractor. Contractor shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by District, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

9.3 Correction Of Defective Work

- 9.3.A. Contractor shall correct defective Work promptly upon knowledge of it. If Contractor fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, District may order Contractor to replace any Defective Work, or stop any portion of Work to permit District (at Contractor's expense) to replace such Defective Work. These District rights are entirely discretionary on the part of the District, and shall not give rise to any duty on the part of District to exercise the rights for the benefit of Contractor or any other party.
- 9.3.B. District may direct Contractor to correct any Defective Work or remove it from a Site and replace it with Work that is not defective and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting from the correction or removal. Contractor shall be responsible for any and all claims, costs, losses and damages caused by or resulting from such correction or removal. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, District may decide the proper amount or, in its discretion may elect to leave the Contract Sum unchanged and deduct from moneys due Contractor, all such claims, costs, losses and damaged caused by or resulting from the correction or removal. If Contractor disagrees with District's calculations, it may make a claim as provided in Article 12 of this Document 00700. District's rights under this paragraph 9.3.B shall be in addition to any other rights it may have under the Contract Documents or by law.
- 9.3.C. Correction Period: If within one year after the date of Final Acceptance, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to District and in accordance with District's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by District and replace it with Work that is not defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, District may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, District shall have all rights and remedies granted by law.

- 9.3.D. In special circumstances where a part of the Work is occupied or a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that part of Work or that item may start to run from an earlier date if so provided by Change Order.
- 9.3.E. Where Defective Work or rejected Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this provision after the commencement of the correction period, the correction period hereunder with respect to such Work shall be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

9.4 Acceptance And Correction Of Defective Work By District

- 9.4.A. District may accept Defective Work. Contractor shall pay all claims, costs, losses and damages attributable to District's evaluation of and determination to accept such Defective Work. If District accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, District may deduct from moneys due Contractor, all claims, costs, losses, damages, expenses and liabilities attributable to the Defective Work. If Contractor disagrees with District's calculations, Contractor may make a claim as provided in Article 12 of this Document 00700. If District accepts any Defective Work after final payment, Contractor shall pay to District, an appropriate amount as determined by District.
- 9.4.B. District may correct and remedy deficiency if, after five Days' written notice to Contractor, Contractor fails to correct Defective Work or to remove and replace rejected Work in accordance with paragraph 9.3.B of this Document 00700; or provide a plan for correction of Defective Work acceptable to District; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, District may exclude Contractor from all or part of a Site; take possession of all or part of Work and suspend Contractor's Work related thereto; take possession of all or part of Contractor's tools, appliances, construction equipment and machinery at the Site; and incorporate in Work any materials and equipment stored at the Site or for which District has paid Contractor but which are stored elsewhere. Contractor shall allow District, its representatives, agents, employees, and other contractors and Architect/Engineer's consultants access to the Sites to enable District to exercise the rights and remedies under this paragraph 9.4.B. Contractor shall be responsible for all claims, costs, losses, damages, expenses and liabilities incurred or sustained by District in exercising such rights and remedies. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, District may deduct from moneys due Contractor, all claims, costs, losses and damages caused by or resulting from the correction or removal. If Contractor disagrees with District's calculations, Contractor may make a claim as provided in Article 12 of this Document 00700.
- 9.4.C. District's decisions to accept defective Work or correct defective Work are subject to approval of the Division of State Architect, and all other requirements of Title 24, California Code of Regulations.

9.5 Rights Upon Inspection Or Correction

- 9.5.A. Contractor shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by District of its rights and remedies under this Article 9. Where District exercises its rights under this Article 9, it retains all other rights it has by law or under the Contract Documents including, but not limited to, the right to terminate Contractor's right to proceed with the Work for cause under the Contract Documents and/or make a claim or back charge where a Change Order cannot be agreed upon.
- 9.5.B. Inspection by District shall not relieve Contractor of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments or otherwise shall not operate to waive District's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of the Work paid therefor. Contractor's obligation to complete the Work in accordance with Contract Documents shall be absolute, unless District agrees otherwise in writing.

9.6 Samples And Tests Of Materials And Work

- 9.6.A. Contractor shall furnish, in such quantities and sizes as may be required for proper examination and tests, samples or test specimens of all materials to be used or offered for use in connection with Work. Contractor shall prepare samples or test specimens at its expense and furnish them to District. Contractor shall submit all samples in ample time to enable District to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.
- 9.6.B. Test samples or specimens of material for testing shall be taken by the Architect/Engineer, his or her representative, Project inspector or representative of the testing agency. In no case shall the Contractor or vendor select the sample. Refer to section 4-335, Part 1, Title 24, California Code of Regulations.

9.7 Proof Of Compliance Of Contract Provisions

In order that District may determine whether Contractor has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of Work and materials, Contractor shall at any time, when requested, submit to District properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

9.8 Acceptance

Inspection by District or its authorized agents or representatives, any order or certificate for the payment of money, any payment, acceptance of the whole or any part of Work by District, any extension of time, any verbal statements on behalf of District or its authorized agents or representatives shall not operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to District herein or therein or any right to damages provided in the Contract Documents. Any waiver of any breach of the Contract Documents shall not be held to be a waiver of any other subsequent breach.

10. CONTRACTOR'S ORGANIZATION AND EQUIPMENT

10.1 Contractor's Legal Address

Address and facsimile number given in Contractor's Bid are hereby designated as Contractor's legal address and facsimile number. Contractor may change its legal address and facsimile number by notice in writing, delivered to District, which in conspicuous language advises District of a change in legal address or facsimile number, and which District accepts in writing. Delivery to Contractor's legal address or depositing in any post office or post office box regularly maintained by the United States Postal Service, in a wrapper with postage affixed, directed to Contractor at legal address, or of any drawings, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon Contractor. Facsimile to Contractor's designated facsimile number of any letter, memorandum, or other communication on standard or legal sized paper, with proof of facsimile transmission, shall be deemed legal and sufficient service thereof upon Contractor.

10.2 Contractor's Office At The Work Sites

Contractor shall maintain an office at the Sites, which office shall be headquarters of a Contractor representative authorized to transmit to and receive from District, communications, instructions or Drawings. Communications, instructions, or Drawings given to Contractor's representative or delivered at the Site offices in representative's absence shall be deemed to have been given to Contractor.

10.3 Contractor's Superintendents Or Forepersons

Contractor shall at all times be represented on each Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that District may give, and shall be liable for faithful observance of instructions delivered to Contractor or to authorized representative or representatives on Site.

10.4 Proficiency In English

Supervisors, security guards, safety personnel and employees who have unescorted access to the Sites shall possess proficiency in the English language in order to understand, receive and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.

10.5 Contractor's And Subcontractors' Employees

Contractor shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If District notifies Contractor that any of its employees, or any of its Subcontractors' employees on Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses threatening or abusive language to any person on Work representing District, or violates sanitary rules, or is otherwise unsatisfactory, and if District requests that such person be discharged from Work, then Contractor or its Subcontractor shall immediately discharge such person from Work and the discharged person shall not be re-employed on the Work except with consent of District.

10.6 Contractor To Supply Sufficient Workers And Materials

- 10.6.A. Unless otherwise required by District under the terms of Contract Documents, Contractor shall at all times keep on the Sites materials and employ qualified workers sufficient to prosecute Work at a rate and in a sequence and manner necessary to complete Work within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.
- 10.6.B. At any time during progress of Work should Contractor directly or indirectly (through Subcontractors) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then District may require Contractor to accelerate the Work and/or furnish additional qualified workers or materials as District may consider necessary, at no cost to District. If Contractor does not comply with the notice within three Business Days of date of service thereof, District shall have the right (but not a duty) to provide materials and qualified workers to finish the Work or any affected portion of Work, as District may elect. District may, at its discretion, exclude Contractor from the Sites, or portions of the Sites or separate work elements during the time period that District exercises this right. District will deduct from moneys due or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing Work. District will deduct from funds or appropriations set aside for purposes of Contract Documents the amount of such payments and charge them to Contractor as if paid to Contractor. Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of District from claims of others.
- 10.6.C. Exercise by District of the rights conferred upon District in paragraph 10.6.B of this Document 00700, is entirely discretionary on the part of District. District shall have no duty or obligation to exercise the rights referred to in paragraph 10.6.B of this Document 00700 and its failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of District's right to exercise such rights in other concurrent or future similar circumstances. The rights conferred upon District under paragraph 10.6.B of this Document 00700 are cumulative to District's other rights under any provision of the Contract Documents.

10.7 Contractor To List Trades Working

Contractor shall list the trades working on the Sites and their scheduled activities on a daily basis, and provide a copy of that list to District as requested.

10.8 Contractor's Use Of The Sites

Contractor shall not make any arrangements with any person to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between District and any owner, former owner or tenant of such land, structure or buildings. Contractor may not occupy District-owned property outside the limit of the Work as indicated on the Drawings unless it obtains prior approval from District.

11. PROSECUTION AND PROGRESS OF THE WORK

11.1 Schedules And Examinations Of Contract Documents

- 11.1.A. Contractor shall submit schedules and reports, Shop Drawings and Submittals in the appropriate quantity and within the required time, arrange conferences and meetings and proceed with the Work

in accordance with Contract Documents, including Sections 01315 (Project Meetings), 01320 (Progress Schedules and Reports), and 01330 (Submittal Procedures).

- 11.1.B. Contractor shall submit to District for review and discussion at the Preconstruction Conference described in Section 01315 (Project Meetings):
1. Progress schedules and reports as required by Sections 01320 (Progress Schedules and Reports) and 01330 (Submittal Procedures). Contractor shall utilize Progress Schedules in planning, scheduling, coordinating, performing and controlling Work (including all activities of Subcontractors, assigned contractors, equipment vendors and suppliers). Contractor shall update Progress Schedules (separate Progress Schedules for each campus site) on a monthly basis to depict accurately the actual progress of Work and for evaluating and preparing Contractor's monthly progress payments. Contractor's failure to submit and maintain acceptable progress schedules may, in District's discretion, and without limiting the materiality of Contractor's other obligations under the Contract Documents, constitute grounds to declare Contractor in material breach of the Contract Documents
 2. Within 30 Days after the Notice of Award, a preliminary schedule of Shop Drawing and Sample submittals that shall list each required submittal and the times for submitting, reviewing and processing such submittal, as required by Section 01330 (Submittal Procedures). If no such schedule is agreed upon, then all Shop Drawings, Samples and product data submittals shall be completed and submitted within 21 Days after receipt of Notice of Award from District.
 3. Within 30 Days after the Notice of Award, preliminary Schedules of Values for all the Work (a separate Schedule of Values for each of the three campus sites) which shall include quantities and prices of items aggregating the Contract Sum and shall subdivide each Schedule of Values into component activities in sufficient detail to serve as the basis for progress payments during construction. Such Schedules of Values shall include an appropriate amount of overhead and profit applicable to each item of Work, a line item for Project Record Documents, and a line item for Project scheduling, and shall conform to Section 01200 (Measurement and Payment).
- 11.1.C. Unless otherwise provided in the Contract Documents, at least 15 Days before submission of the first application for payment, a conference attended by Contractor, District, and others as appropriate, will be held to review for acceptability the schedules submitted in accordance with paragraph 11.1.B of this Document 00700 and first reviewed at the Preconstruction Conference. Contractor shall have an additional seven Days to make corrections and adjustments and to complete and resubmit the schedules. Schedules shall be updated and completed as required by Sections 01200 (Measurement and Payment), 01320 (Progress Schedules and Reports) and 01330 (Submittal Procedures). No progress payment shall be due or owing to Contractor until the schedules are submitted to and acceptable to District and/or Architect/Engineer as meeting the requirements of the Contract Documents, including Sections 01200 (Measurement and Payment), 01320 (Progress Schedules and Reports) and 01330 (Submittal Procedures). District's acceptance of Contractor's schedules will not create any duty of care or impose on District any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve Contractor from Contractor's full responsibility therefor.
- 11.1.D. Before commencing any portion of Work, Contractor shall inform District in writing as to time and place at which Contractor wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to District a reasonable time in advance of time at which Contractor proposes to begin Work, so that District may complete necessary preliminary work without inconvenience or delay to Contractor.
- 11.1.E. Contractor shall submit submittals and Shop Drawings to District (or Architect/Engineer if District so designates) for review in strict accordance with Section 01330 (Submittal Procedures). Submission of a Shop Drawing shall constitute Contractor's representation that all requirements of Section 01330 (Submittal Procedures) have been complied with. All submittals will be identified as District may require and in the number of copies specified in Section 01330 (Submittal Procedures).
- 11.1.F. Contractor shall not perform Work that requires submission of a Shop Drawing or Sample or other submittal prior to submission and favorable review of the Shop Drawing or Sample or submittal. Where a Shop Drawing or Sample or other submittal is required by Contract Documents or the final Schedule of Shop Drawing and Sample Submittals accepted by District, any related Work performed

prior to District's approval of the pertinent submittal shall be at the sole expense, responsibility and risk of Contractor.

11.2 Cost Data

- 11.2.A. Contractor shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Contractor of each class of materials, tools and appliances used by Contractor in Work, and the amount of each class of materials used in each subdivision of Work. Contractor shall provide District with monthly summaries of this information. If Contractor maintains or is capable of generating summaries or reports comparing actual Project costs with Bid estimates or budgets, Contractor shall provide District with a copy of such report upon District's request and whenever it is generated.
- 11.2.B. Contractor shall maintain daily job reports recording all significant activity on the job, including the number of workers on Sites, Work activities, problems encountered and delays. Contractor shall provide District with copies for each Day Contractor works on the Project, to be delivered to District either the same Day or the following morning before starting work at the Sites. Contractor shall take monthly progress photographs of all areas of the Work. Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- 11.2.C. District shall have the right to audit and copy Contractor's books and records of any type, nature or description relating to the Project (including but not limited to financial records reflecting in any way costs claimed on the Project), and to inspect the Sites, including Contractor's trailer, or other job Site offices, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, District shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Bid proposal and negotiation documents (subject to Document 00680 [Escrow Bid Documents]), cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by Contractor. District and any other applicable governmental entity shall have the right to inspect all information and documents maintained under this paragraph 11.2 at any time during the Project and for a period of five years following Substantial Completion. This right of inspection shall not relieve Contractor of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.
- 11.2.D. Contractor shall maintain in a safe place at the Sites one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained and available to District for reference. Upon completion of the Work, Contractor shall deliver to District, the Project Record Documents, Samples and Shop Drawings and as-built drawings.

12. CLAIMS BY CONTRACTOR DURING CONSTRUCTION

12.1 General

- 12.1.A. Contract Interpretation Disputes: Should it appear to Contractor that Work to be performed under the Contract Documents during the course of construction -is not satisfactorily -explained therein, or should any questions arise as to the meaning or intent of Contract Documents, Contractor shall give written notice to District. Contractor shall bear all costs incurred in giving notice. District will render a determination regarding the issue, which shall be final. If Contractor disagrees with District's decision, or if Contractor contends that District failed to provide a decision, Contractor's sole and exclusive remedy is to file a claim in accordance with this Article 12. Contractor shall diligently prosecute the Disputed Work (as defined below) to Final Completion pending resolution of any claim.
- 12.1.B. Work Disputes: Contractor shall give written notice to District of any dispute arising under the Contract Documents respecting the true value of any Work performed, the implementation of Work

required by Contract Documents, any Work omitted, any extra Work that Contractor may be required to perform or time extensions, respecting the size of any payment to Contractor during the performance of Contract Documents, or of compliance with Contract Documents procedures. District will render a determination regarding the issue, which shall be final. If Contractor disagrees with District's decision, or if Contractor contends that District failed to provide a decision, Contractor's sole and exclusive remedy is to file a claim in accordance with this Article 12. Pending the resolution of any claim, Contractor shall diligently prosecute the Disputed Work to Final Completion.

- 12.1.C. The claim notice and documentation procedure described in this Article 12 applies to all claims and disputes arising under the Contract Documents, including without limitation any claim or dispute by any Subcontractor or material supplier. All Subcontractor and supplier claims of any type shall be brought only through Contractor as provided in this Article 12. Under no circumstances shall any Subcontractor or supplier make any direct claim against District.
- 12.1.D. "Claim" means a written demand or written assertion by Contractor seeking, as a matter of right, the payment of money, the adjustment or interpretation of Contract Documents terms, or other relief arising under or relating to Contract Documents. In order to qualify as a "claim," the written demand must state that it is a claim submitted under this Article 12.
- 12.1.E. A voucher, invoice, proposed change, Application for Payment, cost proposal, RFI, change order request, or other routine or authorized form of request for payment is not a claim under the Contract Documents. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a claim under the Contract Documents by submitting a separate claim in compliance with claim submission requirements.
- 12.1.F. The provisions of this Article 12 constitute a claim procedure by agreement under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5, and survive termination, breach or completion of the Contract Documents. Contractor shall bear all costs incurred in the preparation and submission of a claim.
- 12.1.G. No claim shall be considered for cost or time related to the DBE's responsibility to design and complete design documentation required to achieve permits required by federal, state or local authorities having jurisdiction or necessary to demonstrate to the District compliance with the Contract Documents.

12.2 Procedure

- 12.2.A. Should any clarification, determination, action or inaction by District or Architect/Engineer, Work, or any other event, in the opinion of Contractor, exceed the requirements of or not comply with Contract Documents, or otherwise result in Contractor seeking additional compensation in time or money or damages for any reason (collectively "Disputed Work"), then Contractor and District will make good faith attempts to resolve informally any and all such issues, claims and/or disputes. Before commencing the Disputed Work, or within seven Days after Contractor's first knowledge of the Disputed Work, whichever is earlier, Contractor shall file a written notice and cost proposal for the Disputed Work with District stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of Contract Documents. If a written notice and cost proposal for Disputed Work is not issued within this time period, or if Contractor proceeds with the Disputed Work without first having given the notice required by this paragraph 12.2.A, Contractor shall waive its rights to further claim on the specific issue.
- 12.2.B. District will review Contractor's timely notice and cost proposal for Disputed Work and provide a decision. If, after receiving the decision, Contractor disagrees with it or still considers the Work required of it to be outside of the requirements of Contract Documents, it shall so notify District, in writing, within seven Days after receiving the decision, by submitting a notice of potential claim, stating that a formal claim will be issued. Within 30 Days of receiving the decision, Contractor shall submit its claim in the form specified herein and all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting its position. Contractor's failure to furnish notification within seven Days and all justifying documentation within 30 Days will result in Contractor waiving its right to the subject claim. If Disputed Work persists longer than 30 Days, then Contractor shall, every 30 Days until the Disputed Work ceases, submit to District a document

titled "Claim Update" that shall update and quantify all elements of the claim as completely as possible. Contractor's failure to submit a Claim Update or to quantify costs every 30 Days shall result in waiver of the claim for that 30-Day period. Claims or Claim Updates stating that damages, total damages (direct and indirect), schedule input and/or any time extension will be determined at a later date shall not comply with this paragraph 12.2.C and shall result in Contractor waiving its claim(s).

12.2.C. Upon receipt of Contractor's formal claim including all arguments, justifications, cost or estimates, schedule analysis, and documentation supporting its position as previously stipulated, District or its designee will review the issue and render a final determination. If the aggregate of Contractor's claims submitted in accordance with this Article 12 at Project completion exceed **\$400,000**, then District may elect claims resolution in the manner prescribed by Article 1.5, Chapter 1, Part 3 of Division 2 of the California Public Contract Code.

12.2.D. Claims shall be calculated in the same manner as Change Orders per Section 01250 (Modification Procedures). Except where provided by law, or elsewhere in these contract documents (if applicable), District shall not be liable for special or consequential damages, and contractor shall not include them in its claims. Contractor shall be limited in its recovery on claims to the change order calculations set forth in Section 01250 (Modification Procedures).

12.3 Claim Format

12.3.A. Contractor shall submit the claim justification in the following format:

1. Cover letter and certification under penalty of perjury regarding the amount of the claim;
2. Summary of claim, including underlying facts, entitlement, schedule analysis, quantum calculations, contract provisions supporting relief;
3. List of documents relating to claim including Specifications, Drawings, clarifications/requests for information, schedules, notices of delay, cost records and proof, and any other necessary documents;
4. Chronology of events and correspondence;
5. Analysis of claim merit;
6. Analysis of claim cost; and
7. Attach supporting documents referenced in paragraph 12.3.A.3.

12.4 Exclusive Remedy

Contractor's performance of its duties and obligations specified in this Article 12 and submission of a claim as provided in this Article 12 is Contractor's sole and exclusive remedy for disputes of all types pertaining to the payment of money, extension of time, the adjustment or interpretation of Contract Documents terms or other contractual or tort relief arising from Contract Documents. This exclusive remedy and the limitation of liability (expressed herein and elsewhere throughout Contract Documents) apply notwithstanding the completion, termination, suspension, cancellation, breach or rescission of the Work or Contract Documents, negligence or strict liability by District, its representatives, consultants or agents, or the transfer of Work or the Project to District for any reason whatsoever. Contractor waives all claims of waiver, estoppel, release, bar, or any other type of excuse for non-compliance with the claim submission requirements. Compliance with the notice and claim submission procedures described in Article 12 is a condition precedent to the right to commence litigation, file a Government Code Claim, or commence any other legal action. If Contractor fails to raise any claim(s) or issue(s) in a timely protest and timely claim submitted under this Article 12, then Contractor may not thereafter assert such claim(s) or issue(s) in any Government Code Claim, subsequent litigation, or legal action. District shall not have deemed to waive any provision under this Article 12, if at District's sole discretion, a claim is accepted in a manner not in accord with this Article 12.

12.5 Mediation

All Contractor claims not subject to the claim resolution procedures set forth in Section 01410 (Regulatory Requirements) shall, as a condition precedent to litigation (or if otherwise permitted by the Contract Documents, arbitration) thereon, first be mediated. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties and, if the parties cannot agree, a mediator selected by the American Arbitration Association from its panel of approved mediators trained in construction industry mediation. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's

conclusion. All unresolved Contractor claims shall be submitted to the same mediator. The cost of mediation shall be equally shared.

12.6 Subcontractor Claims

Contractor shall present as its claims all Subcontractor, sub-Subcontractor and supplier claims of any type, and prove them under the terms of the Contract Documents. District shall not be directly liable to any Subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages or extra costs of any type arising out of or resulting from the Project.

13. LEGAL AND MISCELLANEOUS

13.1 Laws And Regulations

- 13.1.A. Contractor shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall protect and indemnify District and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by Contractor or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of Work to ascertain compliance of all applicable laws, ordinances, regulations and orders.
- 13.1.B. Contractor shall comply with applicable portions of Title 19 and Title 24, California Code of Regulations (Uniform Building Code) (most recent edition), Public Contract Code. Whenever Contract Documents require larger sizes or higher standards than are required by any applicable law, ordinance, regulation or order, Contract Documents shall govern. Whenever Contract Documents require something that will violate such laws, ordinances, regulations or orders, then such laws, ordinances, regulations or orders shall govern.
- 13.1.C. Contractor shall maintain in the Project Office a current copy of Title 19 and 24 of the California Code of Regulations at all times during construction.

13.2 Permits And Taxes

Contractor shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable), pay all charges and fees, including fees for street opening permits, comply with, implement and acknowledge effectiveness of all permits, initiate and cooperate in securing all required notifications or approvals therefore, and give all notices necessary and incident to due and lawful prosecution of Work, unless otherwise provided herein. District will pay applicable building permits, school, sanitation and water fees, except as otherwise provided in the Contract Documents. If, under federal excise tax law, any transaction hereunder constitutes a sale on which a federal excise tax is imposed, and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purpose of such exemption, and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in any bid price. Contractor shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into Work, and all other taxes properly assessed against equipment or other property used in connection with Work, without any increase in the Contract Sum. Contractor shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where District may have already obtained permits for the Work.

13.3 Responsibility Of Contractor And Indemnification

- 13.3.A. District and each of its officers, employees, consultants and agents including, but not limited to the Board, Project Manager and each District's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.

- 13.3.B. To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Contractor shall assume defense of, and indemnify and hold harmless, District and each of its officers, employees, consultants (including without limitation Consulting Project Manager) and agents, including but not limited to the Board, - and each District's Representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether it is caused in part by the negligence of District or by any person or entity required to be indemnified hereunder.
- 13.3.C. With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against District and each of its officers, employees, consultants and agents including, but not limited to District, the Board, District's Consultants and each District's Representative.
- 13.3.D. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- 13.3.E. To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, District may in its discretion back charge Contractor for District's costs and damages resulting there from and withhold such sums from progress payments or other contract moneys which may become due.
- 13.3.F. The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to District or other indemnified party to the extent of its active negligence.

13.4 Concealed Or Unknown Conditions

- 13.4.A. If either of the following conditions is encountered at a Site when digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall give a written Notice of Differing Site Conditions to District promptly before conditions are disturbed, except in an emergency as required by paragraph 16.4 of this Document 00700, and in no event later than seven Days after first observance of:
 - 1. Subsurface or Latent physical conditions which differ materially from those indicated in the Contract Documents; or
 - 2. Unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

In response to Contractor's Notice of Differing Site Conditions under this paragraph 13.4.A, District will investigate the identified conditions, and if they differ materially and cause increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, District will issue either a Request for Proposal or a Construction Change Directive under the procedures described in the Contract Documents, including without limitation Section 01250 (Modification Procedures). If District determines that physical conditions at the Site are not Latent or are not materially different from those indicated in Contract Documents or that no change in terms of the Contract Documents is justified, District will so notify Contractor in writing, stating reasons

- 13.4.B. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Latent or materially different Site conditions (whether above or below grade) if:
 - 1. Contractor knew of the existence of such conditions at the time Contractor submitted its Bid; or

2. Contractor should have known of the existence of such conditions as a result of having complied with the requirements of Contract Documents, including without limitation paragraphs 2.1 and 8.4 of this Document 00700; or
 3. The information or conditions claimed by Contractor to be Latent or materially different consist of information, conclusions, opinions or deductions of the kind that paragraph 2.1 of this Document 00700 precludes reliance upon; or
 4. Contractor was required to give written Notice of Differing Site Conditions and failed to do so within the time required.
- 13.4.C. If District and Contractor are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or Contract Time required under this paragraph 13.4, Contractor shall proceed with the Work as directed by District and may make a claim as provided in Article 12 of this Document 00700.

13.5 Notice Of Hazardous Waste Or Materials Conditions

- 13.5.A. Contractor shall give a written Notice of Hazardous Materials Condition to District promptly, before any of the following conditions are disturbed (except in an emergency as required by paragraph 16.4 of this Document 00700), and in no event later than 24 hours after first observance of any:
1. Material that Contractor believes may be hazardous waste or hazardous material, as defined in Section 25117 of the Health and Safety Code (including, without limitation, asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law (“hazardous material”); or
 2. Other material that may present an imminent substantial danger to persons or property exposed thereto in connection with Work at the Sites (“other materials”).
- 13.5.B. Except as otherwise provided in the Contract Documents or as provided by applicable law, Contractor shall not be required to give any notice for the disturbance or observation of any such hazardous materials or other materials where such matter is disturbed or observed as part of the scope of Work under the Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where Contractor complies with all requirements in the Contract Documents and applicable law respecting such materials.
- 13.5.C. Contractor’s Notice of Hazardous Materials Condition shall indicate whether the hazardous materials or other materials were shown or indicated in the Contract Documents to be within the scope of Work, and whether the hazardous materials or other materials were brought to a Site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible.
- 13.5.D. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials if:
1. Contractor knew of the existence of such hazardous materials or other materials at the time Contractor submitted its Bid; or
 2. Contractor should have known of the existence of such hazardous material or other materials as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies, and data concerning the conditions at or contiguous to the Sites prior to submitting its Bid; or
 3. Contractor failed to give the written notice within the time required by paragraph 13.5.A of this Document 00700; or
 4. Contractor failed to give advance written notice, at least sixty (60) days prior to date when removal was required, of hazardous materials known to exist and required to be removed prior to execution of the Work.
- 13.5.E. If District determines that conditions involve hazardous materials or other materials and that a change in Contract Document terms is justified, District will issue either a Request for Proposal or Construction Change Directive under the procedures described in the Contract Documents, including without limitation Section 01250 (Modification Procedures). If District determines that conditions do not involve hazardous materials or other materials or that no change in Contract Document terms is justified, District will notify Contractor in writing, stating the reasons for its determination.

13.5.F. If District and Contractor are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or Contract Time required under this paragraph 13.5, Contractor shall proceed with the Work as directed by District and may make a claim as provided in Article 12 of this Document 00700.

13.5.G. In addition to the parties' other rights under paragraph 13.5.E of this Document 00700, if Contractor does not agree to resume Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, District may order the disputed portion of Work deleted from the Work, or performed by others, or District may invoke its right to terminate Contractor's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant. If Contractor does not agree with District's determination of any adjustment in the Contract Sum or Contract Time as a result, Contractor may make a claim as provided in Article 12 of this Document 00700.

13.6 Suspension Of Work

13.6.A. District may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as District may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay or interruption, calculated using the measures set forth in Section 01250 (Modification Procedures). No adjustment shall be made to extent that:

1. Performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or
2. An equitable adjustment is made or denied under any other provision of Contract Documents; or
3. The suspension of Work was the direct or indirect result of Contractor's failure to perform any of its obligations hereunder. Adjustments made in cost of performance may have a mutually agreed fixed or percentage fee; if the parties cannot agree, Contractor may file a claim under Article 12 of this Document 00700.

13.7 Termination Of Contract For Cause

13.7.A. District may declare Contractor in default of Contract Documents and District may terminate Contractor's right to proceed under the Contract Documents for cause:

1. Should Contractor make an assignment for the benefit of creditors; admit in writing its inability to pay its debts as they become due; file a voluntary petition in bankruptcy; be adjudged a bankrupt or insolvent; be the subject of an involuntary petition in bankruptcy which is not dismissed within 60 Days; file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation; file any answer admitting or not contesting the material allegations of a petition filed against Contractor in any such proceeding; or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Contractor or of all or any substantial part of its properties or if Contractor, its directors or shareholders, take action to dissolve or liquidate Contractor; or
2. Should Contractor commit a material breach of the Contract Documents. If District declares Contractor in default due to material breach, however, District must allow Contractor an opportunity to cure such breach within ten Days of the date of notice from District to Contractor providing notice of the default; or, if such breach is curable but not curable within such ten-Day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Contractor to avail itself of a time period in excess of ten Days, Contractor must provide District within the ten-Day period with a written plan acceptable to District to cure said breach which includes, for example, evidence of necessary resources, Subcontractor commitments, schedules and recovery schedules meeting Contract Document requirements and showing a realistic and achievable plan to cure the breach. Contractor must then diligently commence and continue such cure according to the written plan); or
3. Should Contractor violate or allow (by a Subcontractor or other person or entity for which Contractor is responsible) a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Project or Work and does not cure (or cause to be cured) such violation within ten Days of the date of the notice from District to Contractor demanding

such cure; or, if such violation is curable but not curable within such ten-Day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Contractor to avail itself of a time period in excess of ten Days, Contractor shall provide District within the ten-Day period with a written plan to cure said violation acceptable to District, and then diligently commence and continue performance of such cure according to the written plan.)

- 13.7.B. If District at any time reasonably believes that Contractor is or may be in default under the Contract Documents as provided in paragraph 13.7.A of this Document 00700, District may in its sole discretion notify Contractor of this fact and request written assurances from Contractor of performance of Contract Documents and a written plan from Contractor to remedy any default under the terms of Contract Documents which District may advise Contractor of in writing. Contractor shall, within 10 Days of District's request, deliver a written cure plan which meets the requirements of the written plan deliverable under paragraph 13.7.A.2 of this Document 00700. Failure of Contractor to provide such written assurances of performance and the required written plan, within ten Days of request, will constitute a material breach of Contract Documents sufficient to justify termination for cause.
- 13.7.C. In event of termination for cause, District will immediately serve written notice thereof upon Surety and Contractor. Surety shall have the rights and obligations set forth in Document 00610 (Construction Performance Bond). Subject to the Surety's rights under the Performance Bond (which rights are waived upon a default thereunder), District may take over the Work and prosecute it to completion by contract or by any other methods it may deem advisable.
- 13.7.D. In the event of termination by District as provided in paragraph 13.7.A of this Document 00700 for cause:
1. District will compensate Contractor for the value of the Work delivered to District upon termination as determined in accordance with the Contract Documents, subject to all rights of offset and back charges, and provided that Contractor provides District with updated as-builts and Project Record Documents showing the Work performed up to the date of termination. However, District will not compensate Contractor for its costs in terminating the Work or any cancellation charges owed to third parties.
 2. Contractor shall deliver to District possession of the Work in its then condition including, but not limited to, all designs, engineering, Project records, Project Record Documents, cost data of all types, Drawings and Specifications and contracts with vendors and Subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this paragraph 13.7.D shall not be interpreted to diminish any right which District may have to claim and recover damages for any breach of Contract Documents or otherwise, but rather, Contractor shall compensate District for all loss, cost, damage, expense, and/or liability suffered by District as a result of such termination and failure to comply with Contract Documents.
 3. District's rights under paragraph 13.7.D.2 shall be specifically enforceable to the greatest extent permitted by law. District shall, to the extent applicable, have all other rights and remedies set forth in any Bidding Document.
- 13.7.E. District may terminate portions or parts of the Work for cause, provided these portions or parts (1) have separate geographic areas from parts or portions of the Work not terminated or (2) are limited to the work of one or more specific trades or Subcontractors. In such case, Contractor shall cooperate with a completing contractor as required under Article 6 of this Document 00700.
- 13.7.F. In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Contractor shall have the recovery rights specified in paragraph 13.8. Any Contractor claim arising out of a termination for cause, however, shall be made in accordance with Article 12 of this Document 00700. No other loss cost, damage, expense or liability may be claimed, requested or recovered by Contractor.

13.8 Termination Of Contract For Convenience

- 13.8.A. District may terminate performance of the Work under the Contract Documents in accordance with this Article 13.8 in whole, or from time to time in part, whenever District shall determine that termination is in District's best interest. Termination shall be effected by District delivering to Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated and the effective date of the termination.
- 13.8.B. After receiving a notice of termination under paragraph 13.8.A of this Document 00700, and except as otherwise directed by District, Contractor shall:
1. Stop Work under the Contract Documents on date and to extent specified in notice of termination;
 2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete portion of Work under the Contract Documents which is not terminated;
 3. Terminate all orders and subcontracts to extent that they relate to performance of Work terminated by the notice of termination;
 4. Assign to District in manner, at times, and to extent directed by District, all right, title, and interest of Contractor under orders and subcontracts so terminated. District shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of District to extent District may require. District's approval or ratification shall be final for purposes of this paragraph 13.8;
 6. Transfer title to District, and deliver in the manner, at the times, and to the extent, if any, directed by District, all fabricated or unfabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of, Work terminated by the notice of termination, and completed or partially completed drawings, drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to District;
 7. Use its best efforts to sell, in manner, at times, to extent, and at price or prices that District directs or authorizes, any property of types referred to in paragraph 13.8.B.6 of this Document 00700, but Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at price or prices approved by District. Proceeds of transfer or disposition shall be applied to reduce payments to be made by District to Contractor under the Contract Documents or shall otherwise be credited to the price or cost of Work covered by Contract Documents or paid in such other manner as District may direct;
 8. Complete performance of the part of the Work which was not terminated by the notice of termination; and
 9. Take such action as may be necessary, or as District may direct, to protect and preserve all property related to Contract Documents which is in Contractor's possession and in which District has or may acquire interest.
- 13.8.C. After receipt of a notice of termination under paragraph 13.8A of this Document 00700, Contractor shall submit to District its termination claim, in form and with all certifications required by Article 12 of this Document 00700. Contractor's termination claim shall be submitted promptly, but in no event later than 1 month from effective date of the termination. Contractor and District may agree upon the whole or part of the amount or amounts to be paid to Contractor because of a total or partial termination of Work under this paragraph 13.8. If Contractor and District fail to agree on the whole amount to be paid to Contractor because of the termination of the Work under this paragraph 13.8, District's total liability to Contractor by reason of the termination shall not exceed the total (without duplication of any items) of:
1. The reasonable cost to Contractor, without profit, for all Work performed prior to the effective date of the termination, including Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values of the contract sum as derived from the progress schedules and the schedules of values. Deductions shall be made for cost of materials to be retained by Contractor, cost of Work defectively performed, amounts realized by sale of materials, payments made, and for other appropriate credits against cost of Work. Reasonable cost will include reasonable allowance for Project overhead and general administrative overhead not to exceed a total of ten percent of direct costs of such Work. When, in District's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work,

- reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of Contract Documents and excessive actual cost shall be disallowed.
2. A reasonable allowance for profit on cost of Work performed as determined under paragraph 13.8.C.1 of this Document 00700, provided that Contractor establishes to District's satisfaction that Contractor would have made a profit had the Project been completed, and provided further that the profit allowed shall not exceed 5 percent of cost.
 3. Reasonable costs to Contractor of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.
 4. Except as provided in this paragraph 13.8.C of this Document 00700, District shall not be liable for costs incurred by Contractor or Subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, post-termination general administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting Contractor's Bid, attorney's fees of any type, and all costs relating to prosecution of claim or lawsuit.
 5. District shall have no obligation to pay Contractor under this paragraph 13.8 unless and until Contractor provides District with updated and acceptable as-builts and Project Record Documents for Work completed prior to termination.
- 13.8.D. In arriving at the amount due Contractor under this clause, there shall be deducted in whole (or in the appropriate part(s) if the termination is partial):
1. All unliquidated advances or other payments on account previously made to Contractor, including without limitation all payments applicable to the terminated portion of Contract Documents;
 2. Any claim which District may have against Contractor in connection with Contract Documents; and
 3. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Contractor or sold under provisions of this paragraph 13.8, and not otherwise recovered by or credited to District.

13.9 Contingent Assignment Of Subcontracts

- 13.9.A. Contractor hereby assigns to District each Subcontract for a portion of the Work, provided that:
1. The assignment is effective only after District's termination of Contractor's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) pursuant to paragraphs 13.7 or 13.8 of this Document 00700.
 2. The Assignment is effective only for the Subcontracts which District expressly accepts by notifying the Subcontractor in writing;
 3. The assignment is subject to the prior rights, if any, of the Surety, obligated by Document 00610 (Construction Performance Bond) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
 4. After the effectiveness of an assignment, Contractor shall, at its sole cost and expense (except as otherwise provided in paragraphs 13.7 or 13.8 of this Document 00700), sign all instruments and take all actions reasonably requested by District to evidence and confirm the effectiveness of the assignment in District; and
 5. Nothing in this paragraph 13.9 shall modify or limit any of Contractor's obligations to District arising from acts or omissions occurring before the effectiveness of any Subcontract assignment, including but not limited to all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract.

13.10 Remedies and Contract Integration

- 13.10.A. Subject to Contract Documents provisions regarding Contractor claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter-claims, disputes and other matters in question between District and Contractor arising out of or relating to Contract Documents, any breach thereof or the Project shall be the applicable court of competent jurisdiction located in the State of California, County of San Mateo. All District remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances District shall have any and all other equitable and legal rights and remedies which it would have according to law.

- 13.10.B. The Contract Documents, any Contract Modifications and Change Orders shall represent the entire and integrated agreement between District and Contractor regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written modifications. District and Contractor represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications and the parties are not and will not rely on any other information.
- 13.10.C. In any proceeding to enforce the Contract Documents, Contractor and District agree that the finder of fact shall receive detailed instructions on the meaning and operation of the Contract Documents, including their conditions, limitations of liability and remedies clauses, claims procedures and any other provisions impacting major defenses and theories of liability of the parties. Detailed findings of fact shall be requested, to verify Contract enforcement.
- 13.10.D. Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

13.11 Patents

Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Bid price for doing the Work. Contractor shall defend, indemnify and hold harmless District and each of its officers, employees, consultants (including without limitation Consulting Architect/Engineer) and agents, including, but not limited to, the Board and each District's Representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Contractor agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

13.12 Substitution For Patented And Specified Articles

Except as noted specifically in Specifications, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or equal" and Contractor may offer any substitute material or process that Contractor considers equal in every respect to that so designated and if material or process offered by Contractor is, in opinion of District, equal in every respect to that so designated, its use will be approved. However, Contractor may utilize this right only by timely submitting **Document 00660 (Substitution Request Form)** as provided in Document 00200 (Request for Proposal). A substitution will be approved only if it is a true "equal" item in every aspect of its design and quality, including but not limited to its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedules and design.

13.13 Interest Of Public Officers

No representative, officer, or employee of District, no member of the governing body of the locality in which the Project is situated, no member of the locality in which District was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

13.14 Limit Of Liability

District, and each of its officers, board members, employees, consultants (including without limitation consulting architect/engineer) and agents including, but not limited to, architect/engineer each other district representative shall have no liability to contractor for special, consequential, or incidental damages, except to the limited extent that these Contract Documents or applicable public contracting statutes may specify their recovery.

13.15 Severability

Any provisions or portions thereof of Contract Documents that are prohibited by, unlawful, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof in the Contract Documents.

14. MODIFICATIONS OF CONTRACT DOCUMENTS

14.1 Alterations, Modifications And Force Account Work

- 14.1.A. As provided in the latest edition of Part 1 of Title 24, California Code of Regulations, no modification or deviation from the Drawings and Specifications will be permitted except by written addenda, written Change Order or written Supplemental Instruction. As appropriate, Change Orders are subject to approval by the Division of State Architect. Refer to section 4-338, Part 1, Title 24, California Code of Regulations.
- 14.1.B. District may, without notice to the sureties, make alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, contract or otherwise change the Contract Time; delete any item or portion of the Work; and require extra Work. Contractor shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. As appropriate, such Change Orders are subject to approval by the Division of State Architect. Refer to Section 4-338, Part 1, Title 24, California Code of Regulations. In the case of any ordered extra Work, Owner reserves the right to furnish all or portions of associated labor, material, and equipment, which Contractor shall accept and use without payment for costs, markup, profit, or otherwise for such District-furnished labor, materials, and equipment.
- 14.1.C. Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order that shall specify:
 - 1. The Work performed in connection with the change to be made;
 - 2. The amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the Work ordered; and
 - 3. The extent of the adjustment in the Contract Time, if any.
- 14.1.D. A Change Order will become effective when signed by District. If District exercises its right to decide disputed issues pertaining to changed Work as set forth in Articles 12 and 14 of this Document 00700, then the resulting Change Order shall be effective when signed by District, notwithstanding that Contractor has not signed it.
- 14.1.E. Changes not affecting the Contract Time or Contract Sum of the Work, in District's discretion, may be set forth in a written RFI-Reply executed by District. Execution of such an RFI-Reply constitutes Contractor's agreement to make the specified change without change to the Contract Sum or the Contract Time.
- 14.1.F. Changes or deviations from Contract Documents affecting the Contract Time or Contract Sum of the Work shall not be made without the authority of an effective Change Order or Construction Change Directive as provided in Section 01250 (Modification Procedures), except in cases of emergency discussed in Article 16 of this Document 00700.
- 14.1.G. If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the Contract Documents shall be increased or decreased by the amount that Contractor and District may agree upon as a reasonable and proper allowance for the cost increase or decrease. If an agreement cannot be reached, then District will reach a determination, which shall be final, subject to Contractor's rights under Article 12 of this Document 00700. In all cases Contractor shall perform the changed Work as directed by District subject to Contractor's rights under Article 12 of this Document 00700.

- 14.1.H. Contractor shall, upon District's request, permit inspection of the original unaltered Bid estimate, subcontract agreements, purchase orders relating to the change, and documents substantiating all costs associated with its cost proposal or claims arising from changes in the Work.
- 14.1.I. Changes in the Work made pursuant to this Article 14 and extensions of Contract Time necessary by reason thereof shall not in any way release the guarantees and warranties given by Contractor pursuant to provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties of bonds executed pursuant to said provisions. The Sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of time made by reason thereof.
- 14.1.J. Procedures for Modifications of Contract Documents and for calculating the cost of extra Work are given in Section 01250 (Modification Procedures). Regarding delay and impact costs of any nature, Contractor may not seek delay compensation for on-Site or off-Site costs based on formulas, e.g., "Eichlay" or other formula. Rather, Contractor shall prove actual costs resulting from such delays. If Contractor requests compensation for delay to the construction, then Contractor shall prove and document actual costs plus markup per the cost categories and procedures in Section 01250 (Modification Procedures) in order to request, claim or prove compensation for delay.
- 14.1.K. Change Orders in excess of District's approved limit must be approved by the District's Board of Directors and a performance bond rider covering the changed Work executed before proceeding with the changed Work. Contractor is charged with knowledge of District's approved Change Order limits and procedures in effect at the applicable time.

15. TIME ALLOWANCES

15.1 Time Allowances For Performance Of Contract Documents

- 15.1.A. When Contractor and District have signed the Contract Documents, District will serve a Notice to Proceed upon Contractor to that effect, either by depositing notice in a post office or post office box regularly maintained by United States Postal Service in a pre-paid wrapper directed to Contractor at legal address or (at District's option) by delivery by other means at legal address
- 15.1.B. The start date for Contract Time shall be on the date indicated in the applicable Notice to Proceed. The total number of Calendar Days for completion of the Work under the Contract Documents shall be as provided in Document 00520 (Agreement).

15.2 Entitlement to Change Of Contract Time

- 15.2.A. The Contract Time may only be changed by Change Order or by Contract Modification, and all time limits stated in the Contract Documents are of the essence of Contract Documents.
- 15.2.B. The Contract Time will be adjusted in an amount equal to the time lost due to:
 - 1. Changes in the Work ordered by District;
 - 2. Acts or neglect by District, any District's Representative, utility owners or other contractors performing other work, provided that Contractor has fully and completely performed its responsibilities under the Contract Documents; or
 - 3. Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise set forth in this paragraph 15.2, earthquakes, civil or labor disturbances or acts of God, provided damages resulting there from are not the result of Contractor's failure to protect the Work as required by Contract Documents.
- 15.2.C. The Contract Time shall not be extended for any cause identified in paragraph 15.2.B above, however, unless:
 - 1. Contractor actually has been prevented from completing any part of the Work within the Contract Time due to delay that is beyond Contractor's control and due to reasons for which Contractor is not responsible (delays attributable to and within the control of a Subcontractor, or its subcontractors, or supplier shall be deemed to be delays within the control of Contractor);
 - 2. A claim for delay is made as provided herein; and
 - 3. Contractor submits a Time Impact Evaluation as required under Section 01320 (Progress Schedules and Reports) that demonstrates actual delay to critical Work activities that actually delay the progress of the Work in the amount of time requested.

- 15.2.D. Where Contractor is prevented from completing any part of the Work within the Contract Time due to delay beyond the control of both District and Contractor (including, but not limited to, adverse weather of all types and acts of other contractors or utilities), an extension of Contract Time, in an amount equal to the time lost due to such delay (without compensation), shall be Contractor's sole and exclusive remedy for such delay.
- 15.2.E. Delays due to abnormal or adverse weather conditions will not be allowed for weather conditions that fall within the parameters listed in this paragraph 15.2.E. Adverse weather delays may be allowed only if the number of workdays of adverse weather exceeds these parameters first on a monthly basis and second on a cumulative annual basis Contractor proves that adverse weather actually caused delays to work that is on the critical path. Contractor shall give written notice of intent to claim an adverse weather day within one Day of the adverse weather day occurring. Rain parameters are as follows, pro-rated in the individual month Contractor starts and finishes Work:
January, [8]; February, [5]; March, [6]; April, [3]; May, [1]; June, [0]; July, [0]; August, [0]; September, [0]; November, [2]; November, [5]; and December, [6].
- In order to qualify as an adverse weather delay with respect to the foregoing parameters, daily rainfall must exceed .1 of an inch or more at the San Mateo, California station, as measured by the National Oceanic & Atmospheric Administration, and Contractor shall prove that the rain actually caused delay as set forth in paragraph 15.2.G of this Document 00700.
- 15.2.F. Contractor shall include the foregoing rain parameters as a monthly activity in its progress schedules. As Work on the critical path is affected by rain, Contractor shall notify District and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float.
- 15.2.G. Adverse weather delay for rain shall be recognized for the actual period of time Contractor proves it was delayed by rain exceeding the specified parameters. For example, and not by way of limitation, if rain exceeding the specified parameters does not in fact delay Contractor's progress on the critical path, then no time extension shall be recognized; and conversely, if Contractor proves that rain exceeding the specified parameters causes delay to Contractor for a period longer than the number of rain days incurred (e.g., if it rains during grading work), then Contractor shall be entitled to a time extension equal to the actual period of such delay.
- 15.2.H. Contractor shall take reasonable steps to mitigate potential weather delays, such as dewatering the Sites, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for District to not grant a time extension due to adverse weather, where Contractor could have avoided or mitigated the potential delay by exercising reasonable care.
- 15.2.I. Academic Calendar/Events: The -academic dates/events are furnished for the Contractor's information. Construction activities which may be disrupted due to these events are to be accounted for in the schedules. The Contractor is advised to consult the District's website for any updates to the academic calendar. Refer to Section 01010 Summary of Work for Additional Information.

15.3 Notice Of Delay

Within seven Days of the beginning of any delay, Contractor shall notify District in writing, by submitting a notice of potential claim, of all anticipated delays resulting from the delay event in question. Any request for extension of time shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the claimant is entitled as a result of the occurrence of said event, and shall include a written schedule document that demonstrates delay to the critical path using a Time Impact Evaluation as specified in Section 01320 (Progress Schedules). District will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this paragraph 15.3.

15.4 Time Extensions and/or Damages Entitlements For Delays

- 15.4.A. Contractor may receive a time extension and be compensated for delays caused directly and solely by District.
- 15.4.B. Contractor may receive a time extension without compensation for delays resulting in whole or in part from causes beyond the reasonable control of Contractor and District, e.g. adverse weather

conditions exceeding Contract Documents parameters, earthquakes, Acts of God and epidemics. In such cases, a time extension without compensation shall constitute Contractor's sole and exclusive remedy for such delays.

- 15.4.C. Contractor shall not be entitled to any time extension or compensation including, but not limited to, extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays caused in whole or in part by Contractor's failure to perform its obligations under the Contract Documents, or during periods of delay concurrently caused by Contractor and either District or others.
- 15.4.D. Contractor shall not be entitled to damages for delay to the Work caused by the following reasons:
1. District's right to sequence the Work in a manner which would avoid disruption to District's tenants and their contractors or other prime contractors and their respective subcontractors, exercised as a result of Contractor's failure to perform its cooperation and coordination responsibilities required by Contract Documents; District's enforcement of any government act or regulation; or the provisions of the Contract Documents;
 2. For changed Site conditions that are beyond the parties' contemplation, except that District may approve direct costs associated with unknown conditions (but not costs or damages which result from such delays); and
 3. Extensive requests for clarifications to Contract Documents or Contract Modifications thereto, provided such clarifications or Contract Modifications are processed by District or its consultants in a reasonable time commensurate with Contract Documents requirements.

15.5 Liquidated Damages

- 15.5.A. Time is of the essence. Execution of Contract Documents by Contractor shall constitute acknowledgement by Contractor that Contractor understands, has ascertained and agrees that District will actually sustain damages in the amount fixed in the Contract Documents for each and every Day during which completion of Work required is delayed beyond expiration of time fixed for completion or extensions of time allowed pursuant to provisions hereof. Contractor and District agree that specified measures of liquidated damages shall be presumed to be the damages actually sustained by District as defined below, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.
- 15.5.B. Liquidated damages shall be considered not as a penalty but as monetary damage sustained by District for increased Project administration expenses, including extra inspection, construction management and architectural and engineering expenses related to the Project and Contract Documents because Contractor failed to perform and complete Work within time fixed for completion or extensions of time allowed pursuant to provisions hereof. Liquidated damages shall not be deemed to include within their scope additional damages or administrative costs arising from Defective Work, , interest expenses, cost of completion of the Work, claims and fines of regulatory agencies, damages suffered by others or other forms of liability claimed against District as a result of delay (e.g., delay or delay related claims of other contractors, subcontractors or tenants), and defense costs thereof. Contractor shall be fully responsible for the actual amount of any such damages it causes, in addition to the liquidated damages otherwise due District.
- 15.5.C. District may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages. Should Contractor fall behind the approved Progress Schedules, District may deduct liquidated damages based on its estimated period of late completion. District need not wait until Final Completion to withhold liquidated damages from Contractor's progress payments. Should money due or to become due to Contractor be insufficient to cover aggregate liquidated damages due, then Contractor forthwith shall pay the remainder of the assessed liquidated damages to District.

16. WORKING CONDITIONS AND PREVAILING WAGES

16.1 Use Of Site/Sanitary Rules

- 16.1.A. All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. Contractor shall furnish toilets for use of Contractor's and Subcontractors' employees on the Sites -

inside the construction fence, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed and maintained subject to District's approval.

- 16.1.B. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Sites and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by District, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to the owner or occupant thereof resulting from the performance of Work.
- 16.1.C. During the progress of the Work, Contractor shall keep the Sites and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the Sites as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the premises clean and ready for occupancy by District at Substantial Completion of Work. Contractor shall restore all property not designated for alteration by Contract Documents to a condition equal to or better than original condition.
- 16.1.D. Contractor shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Contractor subject any part of Work or adjacent property to stresses or pressures that will endanger it. Contractor shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment or structures to accommodate performing the Work.

16.2 Protection Of Work, Persons, Property And Operations

- 16.2.A. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with Work. Contractor shall comply with all safety requirements specified in any safety program established by District, or required by state, federal or local laws and ordinances. Contractor shall be responsible for all damage to Work, property or structures, all injuries to persons, and all damage and interruptions to District's operations, arising from the performance of Work of the Contract Documents. Except as otherwise expressly approved by District in writing, Contractor shall at all times perform all Work in a manner which does not interrupt, damage or otherwise adversely impact any existing District facilities or operations.
- 16.2.B. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.
- 16.2.C. Contractor shall remedy all damage, injury, loss or interruption to any property or operations referred to in paragraph 16.2.A of this Document 00700, caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Contractor's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. District and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Contractor's Work. This requirement shall include the protection of stored materials from damages caused by weather, excessive moisture, pests, insects and other detriments that may be reasonably prevented and mitigated.
- 16.2.D. Contractor shall designate a qualified and experienced safety representative at the Sites whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

- 16.2.E. District may, at its option, retain such moneys due under the Contract Documents as District deems necessary until any and all suits or claims against Contractor for injury to persons, property or operations shall be settled and District receives satisfactory evidence to that effect.

16.3 Responsibility For Safety And Health

- 16.3.A. Contractor shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Sites. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto.
- 16.3.B. Contractor shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Sites. Contractor shall notify District, in writing, of the existence of hazardous conditions, property or equipment at the Sites that are not under Contractor's control. Contractor shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Contractor, Subcontractors or persons from recognized hazards until the responsible party corrects the hazard. Contractor shall provide protective clothing and gear to all visitors to the Sites.
- 16.3.C. Contractor shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Sites where Work under the Contract Documents is to be performed: District designated routes for ingress and egress thereto and any other District designated area. Except those routes for ingress and egress over which Contractor has no right of control, within such areas, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

16.4 Emergencies

In emergencies affecting the safety or protection of persons or Work or property at the Sites or adjacent thereto, Contractor, without special instruction or authorization from District, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by District. Contractor shall give District prompt written notice if Contractor believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If District determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order or Construction Change Directive will be issued to document the consequences of such action. Emergency contact names & phone numbers, where the Superintendent and Contractor's Project Manager can be reached at any time, are to be provided to the District, within 10 days after issuance of a Notice to Proceed.

16.5 Use Of Roadways And Walkways

Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic. Before beginning any interference and only with District's prior concurrence, Contractor may provide detour or temporary bridge for traffic to pass around or over the interference, which Contractor shall maintain in satisfactory condition as long as interference continues. Unless otherwise provided in the Contract Documents, Contractor shall bear the cost of these temporary facilities.

16.6 Nondiscrimination

No person or entity shall discriminate in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in Section 12940 of the Government Code. Every contractor for public works violating the provisions of Section 1735 of the Labor Code is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the Labor Code.

16.7 Prevailing Wages

- 16.7.A. Contractor shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the Work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and District to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. Contractor

shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site.

- 16.7.B. Contractor shall forfeit, as a penalty to District, Fifty Dollars (\$50.00) for each laborer, workman, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the California Labor Code. The sums and amounts which shall be forfeited pursuant to this paragraph 16.7.B and the terms of the Labor Code shall be withheld and retained from payments due to Contractor under the Contract Documents, pursuant to this Document 00700 and the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by District. The Labor Commissioner pursuant to Labor Code Section 1775 shall determine the final amount of forfeiture.
- 16.7.C. Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code.
- 16.7.D. Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code Section 1813.

16.8 Environmental Controls

Contractor shall comply with all rules, regulations, ordinances, and statutes that apply to any work performed under the Contract Documents including, without limitation, any toxic, water and soil pollution controls and air pollution controls specified in Government Code, Section 11017 and as required by Bay Area Air Quality Management District, water quality (Best Management practices) and other applicable requirements. Contractor shall be responsible for insuring that Contractor's employees, Subcontractors and the public are protected from exposure to airborne hazards or contaminated water, soil or other toxic materials used during or generated by activities on the Sites or associated with the Project.

16.9 Shoring Safety Plan

- 16.9.A. At least five Days in advance of excavating any trench five feet or more in depth, Contractor shall submit to District a detailed plan showing the shoring, bracing and sloping design and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
- 16.9.B. During the course of construction Work, Contractor shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth. Contractor will be solely responsible for any damage or injuries that may result from excavating or trenching. District's acceptance of any drawings showing the shoring or bracing design or work schedules shall not relieve Contractor of its responsibilities under this paragraph 16.9.
- 16.9.C. The Division of the State Architect must review and approve shoring of structures prior to commencement of shoring operations. Contractor shall submit shoring design sufficiently in advance of the Work as necessary to avoid delay.

END OF DOCUMENT