

ATTACHMENT A - GENERAL CONDITIONS

**GENERAL CONDITIONS
TABLE OF CONTENTS**

ARTICLE 1: DEFINITIONS; GENERAL

- 1.1 Owner.
- 1.2 Contractor
- 1.3 Architect.
- 1.4 The Work.
- 1.5 The Project.
- 1.6 Surety.
- 1.7 Subcontractors; Sub-Subcontractors.
- 1.8 Material Supplier.
- 1.9 Drawings and Specifications.
- 1.10 Special Conditions; Supplementary Conditions.
- 1.11 Contract Documents.
- 1.12 Intent and Correlation of Contract Documents.
 - Work of the Contract Documents.
 - Technical Terms.
 - Conflict in Contract Documents.
- 1.13 Shop Drawings; Samples; Product Data ("Submittals").
- 1.14 Division of State Architect ("DSA").
- 1.15 Project Inspector.
- 1.16 Contract Document Terms.
- 1.17 Contractor's Superintendent.
- 1.18 Record Drawings.
- 1.19 Project Manager.
- 1.20 Construction Equipment.
- 1.21 Site.
- 1.22 Field Clarifications.
- 1.23 Defective or Non-Conforming Work.
- 1.24 Delivery.
- 1.25 Notice to Proceed.
- 1.26 Progress Reports; Verified Reports.

ARTICLE 2: OWNER

- 2.1 Information Required of Owner.
 - Surveys; Site Information.
 - Permits; Fees.
 - Drawings and Specifications.
 - Furnishing of Information.
- 2.2 Owner's Right to Stop the Work.
- 2.3 Partial Occupancy or Use.

- Owner's Right to Partial Occupancy.
- No Acceptance of Defective or Nonconforming Work.

2.4 The Project Inspector.

ARTICLE 3: ARCHITECT; PROJECT MANAGER

3.1 Administration of the Contract

- Architect and Project Manager Administration of Contract.
- Periodic Site Inspections.
- Contractor Responsibility for Construction Means, Methods and Sequences.
- Review of Applications for Payment.
- Rejection of Work.
- Submittals.

- Processing of Submittals Through Project Manager.

- Architect's Review.

- Time for Architect's Review.

- Changes to the Work; Change Orders. Completion.
- Interpretation of Contract Documents.
- Request for Information.

3.2 Communications.

3.3 Termination of Architect; Substitute Architect.

ARTICLE 4: THE CONTRACTOR

4.1 Contractor Review of Contract Documents.

- Examination of Contract Documents.
- Field Measurements.
- Dimensions; Layouts and Field Engineering.
- Work in Accordance With Contract Documents.

4.2 Site Investigation; Subsurface Conditions.

- Contractor Investigation.
- Subsurface Data.
- Subsurface Conditions.

4.3 Supervision and Construction Procedures.

- Supervision of the Work.

Responsibility for the Work.
Surveys.
Construction Utilities.
Existing Utilities; Removal, Relocation and Protection.
Conferences and Meetings.

Pre-Construction Conference.
Progress Meetings.
Special Meetings.
Minutes of Meetings.

Temporary Sanitary Facilities
Noise and Dust Control

Noise Control
Dust Control
Contractor Failure to Comply

4.4 Labor and Materials.

Payment for Labor, Materials and Services.
Employee Discipline.
Contractor's Superintendent.
Prohibition on Harassment.

Owner's Policy Prohibiting Harassment.
Contractor's Adoption of Anti-Harassment Policy.
Prohibition on Harassment at the Site.

4.5 Taxes.

4.6 Permits, Fees and Notices; Compliance With Laws.

Payment of Permits, Fees.
Compliance With Laws.
Notice of Variation From Laws.

4.7 Submittals.

Purpose of Submittals.
Contractor's Submittals.
Prompt Submittals.
Approval of Subcontractor Submittals.
Verification of Submittal Information.
Information Included in Submittals.
Contractor Responsibility for Deviations.
No Performance of Work Without Architect Review.

Architect Review of Submittals.
Deferred Approval Items.

4.8 Materials and Equipment.

Specified Materials, Equipment.
Approval of Substitutions or Alternatives.
Placement of Material and Equipment Orders.
Owner's Right to Place Orders for Materials and/or Equipment.

4.9 Safety.

Safety Programs.
Safety Precautions.
Safety Signs, Barricades.
Safety Notices.
Safety Coordinator.
Emergencies.
Hazardous Materials.

General
Prohibition on Use of Asbestos Construction Building Materials ("ACBMs").
Disposal of Hazardous Materials.

4.10 Maintenance of Documents.

Documents at Site.
Maintenance of Record Drawings.

4.11 Use of Site.

4.12 Clean-Up.

4.13 Access to the Work.

4.14 Facilities and Information for the Project Inspector.

Information to Project Inspector.
Facilities for Project Inspector.

4.15 Patents and Royalties.

4.16 Cutting and Patching.

4.17 Encountering of Hazardous Materials.

4.18 Wage Rates; Employment of Labor.

Labor Compliance
Determination of Prevailing Rates.
Payment of Prevailing Rates.
Prevailing Rate Penalty.
Payroll Records.
On Site Worker Interviews
Hours of Work.

Limits on Hours of Work.
Penalty for Excess Hours.
Contractor Responsibility.

Apprentices.

Employment of Apprentices.
Apprenticeship Certificate.
Ratio of Apprentices to Journeymen.
Exemption From Ratios.
Contributions to Trust Funds.
Contractor's Compliance.

Employment of Independent Contractors.

4.19 Assignment of Antitrust Claims.

4.20 Limitations Upon Site Activities.

ARTICLE 5: SUBCONTRACTORS

5.1 Subcontracts.

5.2 Substitution of Listed Subcontractor.

Substitution Process.
Responsibilities of Contractor Upon
Substitution of Subcontractor.

5.3 Subcontractors' Work.

ARTICLE 6: INSURANCE; INDEMNITY; BONDS

6.1 Workers' Compensation Insurance;
Employer's Liability Insurance.

6.2 Commercial General Liability and Property
Insurance.

6.3 Builder's Risk "All-Risk" Insurance.

6.4 Insurance Policy Requirements

Minimum Coverage Amounts
Required Qualifications of Insurers

6.5 Evidence of Insurance; Subcontractor's
Insurance.

Certificates of Insurance.
Subcontractors' Insurance.

6.6 Maintenance of Insurance.

6.7 Contractor's Insurance Primary.

6.8 Indemnity.

6.9 Payment Bond; Performance Bond.

ARTICLE 7: CONTRACT TIME

7.1 Substantial Completion of the Work Within
Contract Time.

7.2 Progress and Completion of the Work.

Time of Essence.

Substantial Completion.

Correction or Completion of the Work After
Substantial Completion.

Punchlist

Time for Completing Punchlist Items.

Final Completion.

Contractor Responsibility for Multiple
Inspections.

Final Acceptance.

7.3 Construction Schedule.

Submittal of Preliminary Construction
Schedule.

Review of Preliminary Construction
Schedule.

Preparation and Submittal of Contract
Construction Schedule.

Revisions to Approved Construction
Schedule.

Updates to Approved Construction
Schedule.

Contractor Responsibility for Construction
Schedule.

7.4 Adjustment of Contract Time.

Excusable Delays.

Compensable Delays.

Unexcusable Delays.

Adjustment of Contract Time.

Procedure for Adjustment of Contract
Time.

Limitations Upon Adjustment of
Contract Time on Account of
Delays.

7.5 Liquidated Damages.

ARTICLE 8: CONTRACT PRICE

8.1 Contract Price

8.2 Cost Breakdown.

8.3 Progress Payments.

Applications for Progress Payments.

Owner's Review of Applications for
Progress Payments.

Architect and Project Inspector Review of
Applications for Progress Payments.

Owner's Disbursement of Progress Payments.

Timely Disbursement of Progress Payments.

Untimely Disbursement of Progress Payments.

Owner's Right to Disburse Progress Payments by Joint Checks.

No Waiver of Defective or Non-Conforming Work.

Progress Payments for Changed Work. Materials or Equipment Not Incorporated Into the Work.

Limitations Upon Payment. Materials or Equipment Delivered and Stored at the Site.

Materials or Equipment Not Delivered or Stored at the Site.

Materials or Equipment in Fabrication or Transit.

Exclusions From Progress Payments. Title to Work.

Substitute Security for Retention.

8.4 Final Payment.

Application for Final Payment. Conditions Precedent to Disbursement of Final Payment.

Disbursement of Final Payment. Waiver of Claims.

Claims Asserted After Final Payment.

8.5 Withholding of Payments.

8.6 Payments to Subcontractors.

8.7 Computerized Job Cost Reporting System.

Job Cost Reporting.

Job Cost Reporting System Requirements.

Job Cost System Information.

ARTICLE 9: CHANGES

9.1 Changes in the Work.

9.2 Oral Order of Change in the Work.

9.3 Contractor Submittal of Data.

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

Adjustment to Contract Price.

Mutual Agreement.

Determination by the Owner.

Basis for Adjustment of Contract Price.

9.4.1.1.1 Labor.

9.4.1.1.2 Materials and Equipment.

9.4.1.1.3 Construction Equipment

9.4.1.1.4 Mark-up on Costs of Changes to the Work.

9.4.1.1.5 Contractor Maintenance of Records.

Adjustment to Contract Time.

Addition or Deletion of Alternate Bid Item(s).

9.5 Change Orders.

9.6 Contractor Notice of Changes.

9.7 Disputed Changes.

9.8 Emergencies.

9.9 Minor Changes in the Work.

9.10 Unauthorized Changes.

ARTICLE 10: SEPARATE CONTRACTORS

10.1 Owner's Right to Award Separate Contracts.

10.2 Owner's Coordination of Separate Contractors.

10.3 Mutual Responsibility.

10.4 Discrepancies or Defects.

ARTICLE 11: TESTS AND INSPECTIONS

11.1 Tests; Inspections; Observations.

Contractor's Notice.

Cost of Tests and Inspections.

Testing/Inspection Laboratory.

Additional Tests, Inspections and Approvals.

11.2 Delivery of Certificates.

11.3 Timeliness of Tests, Inspections and Approvals.

ARTICLE 12: UNCOVERING AND CORRECTION OF WORK

12.1 Inspection of the Work.

Access to the Work.
Limitations Upon Inspections.

- 12.2 Uncovering of Work.
- 12.3 Rejection of Work.
- 12.4 Correction of Work.
- 12.5 Removal of Non-Conforming or Defective Work.
- 12.6 Failure of Contractor to Correct Work.
- 12.7 Acceptance of Defective or Non-Conforming Work.

ARTICLE 13: WARRANTIES

- 13.1 Workmanship and Materials.
- 13.2 Warranty Work.
- 13.3 Guarantee.
- 13.4 Survival of Warranties.

ARTICLE 14: SUSPENSION OF WORK

- 14.1 Owner's Right to Suspend Work.
- 14.2 Adjustments to Contract Price and Contract Time.

ARTICLE 15: TERMINATION

- 15.1 Termination for Cause.
 - Owner's Right to Terminate.
 - Owner's Rights Upon Termination.
 - Completion by the Surety.
 - Assignment and Assumption of Subcontracts.
 - Costs of Completion.
 - Contractor Responsibility for Damages.
 - Conversion to Termination for Convenience.
 - Owner's Rights Cumulative.
- 15.2 Termination for Convenience of the Owner.

ARTICLE 16: MISCELLANEOUS

- 16.1 Governing Law.
- 16.2 Marginal Headings; Interpretation.
- 16.3 Successors and Assigns.
- 16.4 Cumulative Rights and Remedies; No Waiver.
- 16.5 Severability.
- 16.6 No Assignment by Contractor.
- 16.7 Gender and Number.
- 16.8 Independent Contractor Status.

- 16.9 Notices.
- 16.10 Disputes; Continuation of Work.
- 16.11 Dispute Resolution; Arbitration.

Claims Under \$375,000.00.
Arbitration.
Inapplicability to Bid Bond.

- 16.12 Capitalized Terms.
- 16.13 Attorneys Fees.
- 16.14 Provisions Required by Law Deemed Inserted.
- 16.15 Days.
- 16.16 Prohibited Interests
- 16.17 Entire Agreement.

GENERAL CONDITIONS

ARTICLE 1: DEFINITIONS; GENERAL

- 1.1 Owner.** The "Owner" refers to **ANTELOPE VALLEY COMMUNITY COLLEGE DISTRICT** and unless otherwise stated, includes the Owner's authorized representatives, including the Project Manager, if a Project Manager is designated, the Owner's Board of Trustees and the Owner's officers, employees, agents and representatives.
- 1.2 Contractor.** The Contractor is the person or entity identified as such in the Agreement; references to "Contractor" include the Contractor's authorized representative.
- 1.3 Architect.** The Architect is the person or entity named as the Architect for the Project; references to the "Architect" includes the Architect's authorized representative.
- 1.4 The Work.** The "Work" is the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment or services provided or to be provided by the Contractor to fulfil the Contractor's obligations under the Contract Documents. The Work may constitute the whole or a part of the Project.
- 1.5 The Project.** The Project is the total construction of which the Work performed by the Contractor under the Contract Documents which may be the whole or a part of the Project and which may include construction by the Owner or by separate contractors.
- 1.6 Surety.** The Surety is the person or entity that executes, as surety, the Contractor's Labor and Material Payment Bond and/or Performance Bond.
- 1.7 Subcontractors; Sub-Subcontractors.** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work. "Subcontractor" does not include a separate contractor to the Owner or subcontractors of any separate contractor. A Sub-Subcontractor is a person or entity of any tier, who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site.
- 1.8 Material Supplier.** A Material Supplier is any person or entity who only furnishes materials, equipment or supplies for the Work without fabricating, installing or consuming them in the Work.
- 1.9 Drawings and Specifications.** The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing generally, the design, location and dimensions of the Work and may include without limitation, plans, elevations, sections, details, schedules or diagrams. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services. The Drawings and Specifications are intended to delineate and describe the Work and its component parts so as to permit skilled and competent contractors to bid upon the Work and prosecute the same to completion. Large scale Drawings shall take precedence over smaller scale Drawings as to shape and details of construction. Figured dimensions on Drawings shall govern, but Work which is not dimensioned shall be as directed or required by field conditions. Specifications shall govern as to materials, workmanship and installation procedures.

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

1.11 Contract Documents. The Contract Documents consist of the Agreement between the Owner and the Contractor, Conditions of the Contract (whether General, Special, Supplemental or otherwise), Drawings, Specifications, including addenda thereto issued prior to execution of the Agreement, Notice to Bidders, Instructions to Bidders, Hazardous Materials Procedures and Requirements, Bid Form and Proposal, Bid Bond, Designated Subcontractors List, Site-Visit Certification, Noncollusion Declaration, Workers' Compensation Certification, Prevailing Wage and Related Labor Certification, Drug Free Workplace Certification, Tobacco Free Environment Certification, Hazardous Materials Certification, Notice of Award, Notice to Proceed, Escrow of Bid Documentation, Performance Bond, Payment Bond, and any other documents listed in the Agreement or Bid Documents. The Contract Documents shall include modifications issued after execution of the Agreement. The Contract Documents form the Contract for Construction.

1.12 Intent and Correlation of Contract Documents.

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

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

1.12.3 Conflict in Contract Documents. Conflicts, inconsistencies or ambiguities in the Contract Documents shall be resolved by the Architect in accordance with Article 3.1.9 of the General Conditions; where conflicts or inconsistencies arise between the Drawings and the Specifications, in resolving such conflicts or inconsistencies, the Architect will be governed generally by the following standards: the Drawings are intended to describe matters relating to placement, type, quantity and the like; the Specifications are intended to describe matters relating to quality, materials, compositions, manufacturers and the like. If conflicts exist between portions of the Contract Documents regarding the quality of any item, product, equipment or materials, unless otherwise directed or authorized by the Owner, the Contractor shall provide the item, product, equipment or material of the highest or more stringent quality.

1.13 Shop Drawings; Samples; Product Data ("Submittals"). Shop Drawings are diagrams, illustrations, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-Subcontractor, manufacturer, Material Supplier, or distributor to illustrate some portion of the Work. Samples are physical examples of materials, equipment or workmanship forming a part of, or to be incorporated into the Work. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate

materials or equipment for some portion of the Work. Shop Drawings, Samples and Product Data prepared or furnished by the Contractor or any of its Subcontractors or Material Suppliers are collectively referred to as "Submittals".

- 1.14 Division of State Architect ("DSA").** The DSA is the California Division of the State Architect including without limitation the DSA's Office of Construction Services, Office of Design Services and the Office of Regulatory Services; references to the DSA in the Contract Documents shall mean the DSA, its offices and its authorized employees and agents. The authority of the DSA over the Work and the performance thereof shall be as set forth in the Contract Documents and Title 24 of the California Code of Regulations.
- 1.15 Project Inspector.** The Project Inspector is the individual designated and employed by the Owner in accordance with the requirements of Title 24 of the California Code of Regulations. The Project Inspector shall be authorized to act on behalf of the Owner as provided for in the Contract Documents and in Title 24 of the California Code of Regulations, as the same may be amended from time to time.
- 1.16 Contract Document Terms.** The term "provide" means "provide complete in place" or to "furnish and install" such item. Unless otherwise provided in the Contract Documents, the terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the Architect. The term "typical" as used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as "typical" in all other areas similarly marked as "typical"; Work in such other areas shall conform to that shown as "typical" or as reasonably inferable therefrom.
- 1.17 Contractor's Superintendent.** The Contractor's Superintendent is the individual employed by the Contractor whose principal responsibility shall be the supervision and coordination of the Work; the Contractor's Superintendent shall not perform routine construction labor.
- 1.18 Record Drawings.** The Record Drawings are a set of the Drawings marked by the Contractor during the performance of the Work to indicate completely and accurately the actual as-built condition of the Work. The Record Drawings shall be sufficient for a capable and qualified draftsman to modify the Drawings to reflect and indicate the Work actually in place at Final Completion of the Work.
- 1.19 Project Manager.** The Project Manager is an independent contractor retained by the Owner and is authorized and empowered to act on behalf of the Owner as set forth in the Contract Documents. The Owner reserves the right to remove or replace the Project Manager prior to completion of the Work without adjustment of the Contract Price or the Contract Time or otherwise affect, limit or restrict Contractor's obligations hereunder. If no Project Manager is used on the Project that is the subject of this Contract, then all references to Project Manager will refer to the Owner.
- 1.20 Construction Equipment.** "Construction Equipment" is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.
- 1.21 Site.** The Site is the physical area designated in the Contract Documents for Contractor's performance, construction and installation of the Work.
- 1.22 Field Clarifications.** A written or graphic document consisting of supplementary details, instructions or information issued on behalf of the Owner which clarifies or supplements the Contract Documents and which becomes a part of the Contract Documents upon issuance. Field Clarifications do not constitute an adjustment of the Contract Time or the Contract Price, unless a Change Order relating to

a Field Clarification is authorized and issued under the Contract Documents.

- 1.23 Defective or Non-Conforming Work.** Defective or non-conforming Work is any Work which is unsatisfactory, faulty or deficient by: (a) not conforming to the requirements of the Contract Documents; (b) not conforming to the standards of workmanship of the applicable trade or industry; (c) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (d) damage occurring prior to Final Completion of all of the Work.
- 1.24 Delivery.** The term “delivery” used in conjunction with any equipment, materials or other items to be incorporated into the Work shall mean the unloading and storage in a protected condition pending incorporation into the Work.
- 1.25 Notice to Proceed.** The Notice to Proceed is the written notice issued by or on behalf of the Owner to the Contractor authorizing the Contractor to proceed with commencement of the Work and which establishes the date for commencement of the Contract Time.
- 1.26 Progress Reports; Verified Reports.** Progress Reports, if required, are written reports prepared by the Contractor and periodically submitted to the Owner in the form and content as required by the Contract Documents. Verified Reports are periodic written reports prepared by the Contractor and submitted to the DSA; Verified Reports shall be in such form and content as required by the applicable provisions of Title 24 of the California Code of Regulations. A material obligation of the Contractor is the preparation of complete and accurate Progress Reports, if required, and Verified Reports as well as the timely submission of the same.

ARTICLE 2: OWNER

2.1 Information Required of Owner.

- 2.1.1 Surveys; Site Information.** Information, if any, concerning physical characteristics of the Site, including without limitation, surveys, soils reports, and utility locations, to be provided by the Owner are set forth in the Contract Documents. Information not provided by the Owner or necessary information in addition to that provided by the Owner concerning physical characteristics of the Site which is required, shall be obtained by Contractor without adjustment to the Contract Price or the Contract Time.
- 2.1.2 Permits; Fees.** Except as otherwise provided in the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities which relate to the Work of the Contractor under the Contract Documents. If permits and fees are designated as the responsibility of the Contractor under the Contract Documents, the Contractor shall be solely responsible for obtaining the same; the cost of such permits or fees and any costs incurred by the Contractor in obtaining such permits shall be included within the Contract Price.
- 2.1.3 Drawings and Specifications.** Except as otherwise provided for in the Contract Documents, the Owner shall furnish the Contractor, free of charge, the number of copies of the Drawings and the Specifications as set forth in the Supplementary Conditions, if any. All of the Drawings and the Specifications provided by the Owner to the Contractor remain the property of the Owner;

the Contractor shall not use the Drawings or the Specifications in connection with any other work of improvement other than the Work of the Project.

2.1.4 Furnishing of Information. Information or services to be provided by the Owner under the Contract Documents shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work. Information about existing conditions furnished by the Owner under the Contract Documents is obtained from sources believed to be reliable, but the Owner neither guarantees nor warrants that such information is complete and accurate. The Contractor shall verify all information provided by the Owner. To the extent that the Contract Documents depict existing conditions on or about the Site, or the Work involves the renovation, removal or remodeling of existing improvements, or the Work involves any tie-in or other connection with any existing improvements, the conditions and/or existing improvements depicted in the Contract Documents are as they are believed to exist. Contractor shall bear the risk of any variations between conditions or existing improvements depicted in the Contract Documents and those conditions or existing improvements actually encountered in the performance of the Work. The existence of any variations between conditions or existing improvements depicted in the Contract Documents and those actually encountered in the performance of the Work shall not result in any Owner liability therefore, nor shall any such variations result in an adjustment of the Contract Time or the Contract Price.

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

2.3 Partial Occupancy or Use.

2.3.1 Owner's Right to Partial Occupancy. The Owner may occupy or use any completed or partially completed portion of the Work. This occupancy will not constitute the Owner's Final Acceptance of any part of the Work. Immediately prior to such partial occupancy or use of the Work, or portions thereof, the Owner, the Project Inspector, the Contractor and the Architect shall jointly inspect the portions of the Work to be occupied or to be used to determine and record the condition of the Work. Repairs, replacements or other corrective action noted in such inspection shall be promptly performed and completed by the Contractor so that the portion of the Work to be occupied or used by the Owner is in conformity with the requirements of the Contract Documents and the Owner's occupancy or use thereof is not impaired. The Owner's use or occupancy of the Work or portions thereof pursuant to the preceding shall not be deemed "completion" of the Work as that term is used in Public Contract Code §7107.

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

2.4 The Project Inspector. In addition to the authority and rights of the Project Inspector as provided for

elsewhere in the Contract Documents, all of the Work shall be performed under the observation of the Project Inspector. The performance of the duties of the Project Inspector under the Contract Documents shall not relieve or limit the Contractor's performance of its obligations under the Contract Documents.

2.4.1 Access to Work. The Contractor shall provide the Project Inspector with access to all parts of the Work at any time, wherever located and whether partially or completely fabricated, manufactured, furnished or installed. The Project Inspector shall have the authority to stop Work if the Work is not in conformity with the Contract Documents.

2.4.2 Limitations on Project Inspector. The Project Inspector does not have authority to interpret the Contract Documents or to modify the Work depicted in the Contract Documents. No Work inconsistent with the Contract Documents shall be performed solely on the basis of the direction of the Project Inspector, and the Contractor shall be liable to the Owner for the consequences of all Work performed on such basis.

ARTICLE 3: ARCHITECT; PROJECT MANAGER

3.1 Administration of the Contract.

3.1.1 Architect and Project Manager Administration of Contract. The Architect and the Project Manager will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representatives during construction until the time that Final Payment is due the Contractor under the Contract Documents. The Architect and Project Manager will advise and consult with the Owner and the Project Inspector with respect to the administration of the Contract and the Work. The Architect is authorized to act on behalf of the Owner to the extent provided for in the Contract Documents; and shall have the responsibilities and powers established by law, including Title 24 of the California Code of Regulations. The Architect and Project Manager are authorized to stop the Work whenever deemed necessary in the sole discretion of the Architect or the Project Manager to insure that the Work is completed in accordance with the Contract Documents.

3.1.2 Architect's Periodic Site Inspections. The Architect will visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine, in general, if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. The Architect will not be required to make exhaustive or continuous Site inspections to check quality or quantity of the Work. On the basis of Site observations as an architect, the Architect will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

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

3.1.4 Review of Applications for Payment. In accordance with Article 8 hereof, the Architect and

Project Manager will review the Contractor's Applications for Progress Payments and for Final Payment, evaluate the extent of Work performed and the amount properly due the Contractor on such Application for Payment.

3.1.5 Rejection of Work. The Architect and the Project Manager are authorized to reject Work which is defective or does not conform to the requirements of the Contract Documents. Whenever the Architect considers it necessary or advisable, for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspections or testing of the Work, whether or not such Work is fabricated, installed or completed.

3.1.6 Submittals.

3.1.6.1 Processing of Submittals Through Project Manager. Submittals required by the Contract Documents shall be prepared by or on behalf of the Contractor in accordance with the requirements of the Contract Documents. Submittals shall be transmitted by the Contractor to the Project Manager for distribution by the Project Manager to the Architect and the Owner. Upon completion of the Architect's review of a Submittal, the Project Manager shall transmit the reviewed Submittal to the Contractor for the Contractor's distribution to its Subcontractor(s) and other affected parties.

3.1.6.2 Architect's Review. The Architect will review and approve or take other appropriate action upon the Contractor's Submittals, but only for the limited purpose of checking for general conformance with information given and the design concept expressed in the Contract Documents. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's Submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect's review of Submittals shall not constitute approval of safety measures, programs or precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item in a Submittal shall not indicate approval of an assembly of which the item is a component with the Submittal(s) required and relating to such assembly have been reviewed by the Architect.

3.1.6.3 Time for Architect's Review. The Architect's review of Submittals will be conducted promptly so as not to delay or hinder the progress of the Work or the activities of the Contractor, the Owner or the Owner's separate contractors while allowing sufficient time, in the Architect's reasonable professional judgment, to permit adequate review of Submittals. The foregoing notwithstanding, the Architect's review and return of Submittals will conform with the time limits and other conditions, if any, set forth in the Specifications or the Submittal Schedule if the Submittal Schedule is required by other provisions of the Contract Documents.

3.1.7 Changes to the Work; Change Orders. The Architect and Project Manager will prepare Change Orders, and may authorize minor Changes in the Work which do not result in adjustment of the Contract Time or the Contract Price.

3.1.8 Completion. The Architect and the Project Manager will conduct observations to determine the date(s) of Substantial Completion and the date(s) of Final Completion. The Architect or Project

Manager will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and will verify that the Contractor has complied with all requirements of the Contract Documents and is entitled to receipt of Final Payment.

3.1.9 Interpretation of Contract Documents. The Architect will interpret and decide matters concerning the requirements of the Contract Documents on written request of either the Owner or the Contractor. The Architect's response to such requests will be made with reasonable promptness and within the time limits agreed upon, if any. If no agreement is reached establishing the time for the Architect's review and response to requests under this Article 3.1.9, the Architect shall be afforded a sufficient time after receipt of such request to review and respond thereto. Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both the Owner and the Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith. The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. The request for an Architect's decision pursuant to the foregoing shall be delivered to the Project Manager for transmittal to the Architect.

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

so, the amount of costs to be borne by the Contractor for the processing, review, evaluation and response to the request for information. Thereafter, the Owner is authorized to deduct such amount from any portion of the Contract Price then or thereafter due the Contractor.

3.2 Communications. All communications regarding the Work, the performance thereof or the Contract Documents shall be in writing; verbal communications shall be reduced to writing. Communications between the Contractor and the Owner or the Architect shall be through the Project Manager, unless otherwise specified by the Owner. Communications between separate contractors, if any, shall be through the Project Manager, unless otherwise specified by the Owner. All written communications between the Contractor and any Subcontractor, Material Supplier or others directly or indirectly engaged by the Contractor to perform or provide any portion of the Work shall be available to the Owner, the Project Manager and the Architect for review, inspection and reproduction as may be requested from time to time. Failure or refusal of the Contractor to permit the Owner, the Project Manager or Architect to review, inspect or reproduce such written communications may be deemed a default of Contractor hereunder.

3.3 Termination of Architect; Substitute Architect. In case of termination of employment of the Architect, the Owner shall appoint a substitute architect whose status under the Contract Documents shall be that of the Architect.

ARTICLE 4: THE CONTRACTOR

4.1 Contractor Review of Contract Documents.

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

4.1.2 Field Measurements. Prior to commencement of the Work, or portions thereof, the Contractor shall take field measurements and verify field conditions at the Site and shall carefully compare such field measurements and conditions and other information known to the Contractor with information provided in the Contract Documents. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.

4.1.3 Dimensions; Layouts and Field Engineering. Unless otherwise expressly provided, dimensions indicated in the Drawings are intended for reference only. The Drawings are intended to be diagrammatic and schematic in nature; the Contractor shall be solely responsible for dimensioning and coordinating the Work of the Contract Documents. All field engineering required for laying out the Work and establishing grades for earthwork operations shall be by the Contractor at its expense. Any field engineering or other engineering to be provided or performed by the Contractor under the Contract Documents and required or necessary for the proper execution or installation of the Work shall be provided and performed by the an engineer duly registered under the laws of the State of California in the engineering discipline for such portion of the Work. Upon commencement of any item of the Work, the Contractor is responsible for dimensions of such item of Work and related Work; without adjustment of the Contract Time or Contract Price, the Contractor is responsible for making component parts of the Work fit together

properly.

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

4.2 Site Investigation; Subsurface Conditions.

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

4.2.2 Subsurface Data. By executing the Agreement, the Contractor acknowledges that it has examined the boring data and other subsurface data available and satisfied itself as to the character, quality and quantity of surface and subsurface materials, including without limitation, obstacles which may be encountered in performance of the Work, insofar as this information is reasonably ascertainable from an inspection of the Site, review of available subsurface data and analysis of information furnished by the Owner under the Contract Documents. Subsurface data or other soils investigation report provided by the Owner hereunder are not a part of the Contract Documents. Information contained in such data or report regarding subsurface conditions, elevations of existing grades, or below grade elevations are approximate only and is neither guaranteed or warranted by the Owner to be complete and accurate. The Contractor shall examine all boring and other subsurface data to make its own independent interpretation of the subsurface conditions and acknowledges that its bid is based upon its own opinion of the conditions which may be encountered. The Owner assumes no responsibility for any conclusions or interpretations made by Contractor on the basis of available subsurface data or other information furnished by Owner under the Contract Documents.

4.2.3 Subsurface Conditions. If the Work under the Contract Documents involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly and before the following conditions are disturbed, notify the Project Inspector, in writing, of any: (i) material that the Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I or Class II or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Contract Documents. If upon notice to the Owner of the conditions described above and upon the Owner's investigation thereof, the Owner determines that the conditions so materially differ or involve such hazardous materials which require an adjustment to the Contract Price or the Contract Time, the Owner shall issue a Change Order in accordance with Article 9 hereof. In accordance with California Public Contract Code §7104, any dispute arising between the

Contractor and the Owner as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse the Contractor from the completion of the Work within the Contract Time and the Contractor shall proceed with all Work to be performed under the Contract Documents. The Owner reserves the right to terminate the Contract pursuant to Article 15.2 hereof should the Owner determine not to proceed because of any condition described in (i), (ii) or (iii) above.

4.3 Supervision and Construction Procedures.

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

4.3.2 Responsibility for the Work. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and all other persons performing any portion of the Work under a contract with the Contractor. The Contractor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Project Manager, Project Inspector or the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

4.3.3 Surveys. The Contractor shall prepare or cause to be prepared all detailed surveys necessary for performance of the Work, including without limitation, slope stakes, points, lines and elevations. The Contractor shall be responsible for the establishment, location, maintenance and preservation of benchmarks, reference points and stakes for the Work. The cost of any surveys and the establishment, location, maintenance and preservation of benchmarks, reference points and stakes shall be included within the Contract Price. The Contractor shall be solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes.

4.3.4 Construction Utilities. The Owner will furnish and pay the costs of utility services for the Work as set forth in the Contract Documents and Supplementary Conditions, if any; all other utilities necessary to complete the Work and to completely perform all of the Contractors' obligations shall be obtained by the Contractor without adjustment of the Contract Price. The Contractor shall furnish and install necessary or appropriate temporary distributions of utilities, including utilities furnished by the Owner. Any such temporary distributions shall be removed by the Contractor upon completion of the Work. The costs of all such utility services, including the installation and removal of temporary distributions thereof, shall be borne by the Contractor and included in the Contract Price.

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

equipment on the Site necessarily idled during such work. Contractor shall not be assessed Liquidated Damages for delay in completion of the Work when such delay is caused by the failure of the Owner or the Owner of the utility to provide for removal or relocation of such utility facilities. Nothing in this Article 4.3.5 shall be deemed to require the Owner to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Site. If the Contractor encounters utility facilities not identified by the Owner in the Drawings, Specifications, or other Contract Documents, the Contractor shall immediately notify, in writing, the Owner, the Project Inspector, the Architect, the Project Manager and the utility owner. In the event that such utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price.

4.3.6 Conferences and Meetings. A material obligation of the Contractor under the Contract Documents is the attendance by the Contractor's supervisory personnel for the Work and the Contractor's management personnel as required by the Contract Documents or as requested by the Owner. The Contractor's personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of the Contractor and to bind the Contractor. The Contractor is solely responsible for arranging for the attendance by Subcontractors, Material Suppliers at meetings and conferences relating to the Work as necessary, appropriate or as requested by the Owner.

4.3.6.1 Pre-Construction Conference. The Contractor's representatives (and representatives of Subcontractors as requested by the Owner) shall attend a Pre-Construction Conference at such time and place as designated by the Owner. The Pre-Construction Conference will generally address the requirements of the Work and Contract Documents, and to establish construction procedures. Subject matters of the Pre-Construction Conference will include as appropriate: (a) administrative matters, including an overview of the respective responsibilities of the Owner, Architect, Project Manager, Contractor, Subcontractor, Project Inspector and others performing any part of the Work or services relating to the Work; (b) Submittals; (c) Changes and Change Order processing; (d) employment practices, including Certified Payroll preparation and submission and prevailing wage rate responsibilities of the Contractor; (e) Progress Schedule development and maintenance; (f) development of Schedule of Values and payment procedures; (g) communication procedures, including the handling of Requests for Information; (h) emergency and safety procedures; (i) Site visitor policies; (j) conduct of Contractor/Subcontractor personnel at the Site; and (k) punchlist/close-out procedures.

4.3.6.2 Progress Meetings. Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). The Contractor's representatives and representatives of Subcontractors (as requested by the Owner) shall attend Progress Meetings. Progress Meetings will be chaired by the Architect or the Project Manager and will generally include as agenda items: Site safety, field issues, coordination of Work, construction progress and impacts to timely completion, if any. The purposes of the Progress Meetings include: a formal and regular forum for discussion of the status and progress of the Work by all Project participants, a review of progress or resolution of previously raised issues and action items assigned to the Project participants, and reviews of the Progress Schedule and Submittals.

4.3.6.3 Special Meetings. As deemed necessary or appropriate by the Owner, Special Meetings

will be conducted with the participation of the Contractor, Subcontractors and other Project participants as requested by the Owner.

4.3.6.4 Minutes of Meetings. Following conclusion of the Pre-Construction Conference, Progress Meetings and Special Meetings, the Architect or the Project Manager will prepared and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the Contractor notifies the Architect and the Project Manager in writing of objections or corrections to minutes prepared hereunder within five (5) dates of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the meeting or conference. No objections or corrections of any Subcontractor or Material Supplier shall be submitted directly to the Architect or the Project Manager; such objections or corrections shall be submitted to the Architect and the Project Manager through the Contractor. If the Contractor timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled Progress Meeting.

4.3.7 Temporary Sanitary Facilities. At all times during Work at the Site, the Contractor shall obtain and maintain temporary sanitary facilities in conformity with applicable law, rule or regulation. The Contractor shall maintain temporary sanitary facilities in a neat and clean manner with sufficient toilet room supplies. Personnel engaged in the Work are not permitted to use toilet facilities at the Site.

4.3.8 Noise and Dust Control.

4.3.8.1 Noise Control. The Contractor shall install noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction Equipment noise at the Site shall be limited and only as permitted by applicable law, rule or regulation. If classes are in session at any point during the progress of the Work, and, in the Owner's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operation of the college, at the Owner's request, the Contractor shall schedule the performance of all such Work around normal college hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall such arrangements result in adjustment of the Contract Price or the Contract Time.

4.3.8.2 Dust Control. The Contractor shall be fully and solely responsible for maintaining and upkeeping all areas of the Site and adjoining areas, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and Owner personnel. Additionally, the Contractor shall take specific care to avoid deposits of airborne dust or airborne elements. Such protection devices, systems or methods shall be in accordance with the regulations set forth by the EPA and OSHA, and other applicable law, rule or regulation. Additionally, the Contractor shall be the sole party responsible to regularly and routinely clean up and remove any and all deposits of dust and other elements. Damage and/or any liability derived from the Contractor's failure to comply with these requirements shall be exclusively at the cost of the Contractor, including, without limitation, any and all penalties that may be incurred for violations of applicable law, rule or regulation, and any amounts expended by the Owner to pay such damages shall be due and payable to the Owner on demand. Contractor shall replace any damaged property or part thereof and professionally clean any and all items that become

covered or partially covered to any degree by dust or other airborne elements. If classes are in session at any point during the progress of Work, and, in the Owner's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of the college, at the Owner's request, the Contractor shall schedule the performance of all such Work around normal college hours and make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall such arrangements result in adjustment of the Contract Price or the Contract Time.

4.3.8.3 Contractor Failure to Comply. If the Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, the Owner, Architect, Owner Inspection or Project Manager shall notify the Contractor in writing and the Contractor shall take immediate action. Should the Contractor fail to respond with immediate and responsive action and not later than twenty-four (24) hours from such notification, the Owner shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred by the Owner in connection with such actions shall be the sole responsibility of, and be borne by, the Contractor; the Owner may deduct such amounts from the Contract Price then or thereafter due the Contractor.

4.4 Labor and Materials.

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

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

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

4.4.4 Prohibition on Harassment.

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

4.4.4.2 Contractor's Adoption of Anti-Harassment Policy. Contractor shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim. Contractor shall require that any Subcontractor or Sub-subcontractor performing any portion of the Work to adopt and implement policies in conformity with this Article 4.4.4.

4.4.4.3 Prohibition of Harassment at the Site. Contractor shall not permit any person, whether employed by Contractor, a Subcontractor, Sub-subcontractor, or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to appropriate sanctions in accordance with the anti-harassment policy adopted and implemented pursuant to Article 4.4.4.2 above. Any person, performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any student, faculty member or staff of the Owner or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon the Owner's receipt of any notice or complaint that any person employed directly or indirectly by Contractor in performing or providing the Work has engaged in a prohibited form of harassment, the Owner will promptly undertake an investigation of such notice or complaint. In the event that the Owner, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the Owner shall promptly notify the Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the Owner's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, Owner shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof. Contractor and the Surety shall defend, indemnify and hold harmless the Owner and its employees, officers, board of trustees, agents, and representatives from any and all claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys' fees, which arise out of, or pertain in any manner to: (i) the assertion by any person dismissed from performing or providing work at the direction of the Owner pursuant to this Article 4.4.4.3; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of the Contractor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of the Contractor and the Surety under the preceding sentence are in addition

to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

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

4.6 Permits, Fees and Notices; Compliance With Laws.

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

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

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

4.7 Submittals.

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

4.7.2 Contractor's Submittals.

4.7.2.1 Prompt Submittals. The Contractor shall review, approve and submit to the Architect or such other person or entity designated by the Owner, the number of copies of Submittals required by the Contract Documents. All Submittals required by the Contract Documents shall be prepared, assembled and submitted by the Contractor to the Architect within the time frames set forth in the Submittal Schedule incorporated and made a part of the Approved Construction Schedule prepared and submitted by the Contractor pursuant to Article 7 of these General Conditions. Contractor's submission of Submittals in conformity with the Submittal Schedule is a material obligation of the Contractor. In the event of Contractor's failure or refusal to deliver Submittals to the Architect in accordance with the Submittal Schedule, the Contractor shall be subject to per diem assessments in the amount of \$1,000 per day for each day of delayed submission for any Submittal beyond the date set forth in the Submittal Schedule for Contractor's submission of such Submittal. Contractor

and Owner acknowledge and agree that if Contractor shall fail to deliver Submittals in accordance with the Submittal Schedule, the Owner will incur costs and expenses not contemplated by the Contract Documents, the exact amount of which are difficult to ascertain and fix. Contractor and the Owner acknowledge and agree that the amount of \$1,000 per diem assessment for delayed submission of Submittals represents a reasonable estimate of costs and expenses the Owner will incur as a result of delayed submission of Submittals and that the same is not a penalty. Notwithstanding Contractor's submission of all required Submittals in accordance with the Submittal Schedule, in the event that the Owner or the Architect reasonably determines that all or any portion of such Submittals fail to comply with the requirements of Articles 4.7.2.2, 4.7.2.3 and 4.7.2.4 of these General Conditions and/or such Submittals are not otherwise complete and accurate so as to require re-submission, Contractor shall bear all costs associated with the review and approval of resubmitted Submittals, including without limitation Architect's fees incurred in connection therewith; provided that such costs are in addition to, and not in lieu of, any per diem assessments imposed under this Article 4.7.2.1 for Contractor's delayed submission of Submittals. In the event of the Owner's imposition of the per diem assessments due to the Contractor's delayed submission of Submittals or in the event of the Owner's assessment of costs and expenses incurred to review incomplete or inaccurate Submittals, the Owner may deduct the same from any portion the Contract Price then or thereafter due the Contractor. Submittals not required by the Contract Documents or which do not otherwise conform with the requirements of the Contract Documents may be returned without action. No adjustment to the Contract Time or the Contract Price shall be granted to the Contractor on account of its failure to make timely submission of any Submittal.

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

4.7.2.3 Verification of Submittal Information. By approving and submission of Submittals, the Contractor represents to the Owner and Architect that the Contractor has determined and verified materials, field measurements, field construction criteria, catalog numbers and similar data related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. Each Submittal shall include the following certification duly executed by the Contractor's Superintendent or Project Manager:

"The Contractor has reviewed and approved the field dimensions and construction criteria of the attached Submittal. The Contractor has verified that the Submittal includes notations of any portion of the Work depicted in the Submittal which is not in strict conformity with the Contract Documents. The information in the attached Submittal has been reviewed and coordinated by the Contractor with information included in other Submittals."

4.7.2.4 Information Included in Submittals. All Submittals shall be accompanied by a written transmittal or other writing by the Contractor providing an identification of the portion of the Drawings or the Specifications pertaining to the Submittal, with each Submittal

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

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

4.7.2.6 No Performance of Work Without Architect Review. The Contractor shall perform no portion of the Work requiring the Architect's review of Submittals until the Architect has completed its review and returned the Submittal to the Contractor indicating "No Exception Taken" to such Submittal. The Contractor shall not perform any portion of the Work forming a part of a Submittal or which is affected by a related Submittal until the entirety of the Submittal or other related Submittal has been fully processed. Such Work shall be in accordance with the final action taken by the Architect in review of Submittals and other applicable portions of the Contract Documents.

4.7.3 Architect Review of Submittals. The purpose of the Architect's review of Submittals and the time for the Architect's return of Submittals to the Contractor shall be as set forth elsewhere in the Contract Documents. If the Architect returns a Submittal as rejected or requiring correction(s) with re-submission, the Contractor, so as not to delay the progress of the Work, shall promptly thereafter resubmit a Submittal conforming with the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in accordance with the Architect's direction. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals. The Architect's review of the Submittals is for the limited purposes described in the Contract Documents.

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

4.8 Materials and Equipment.

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

4.8.2 Approval of Substitutions or Alternatives. The Contractor may propose to furnish alternatives or substitutes for a particular item specified in the Contract Documents, provided that such

proposed substitution or alternative complies with the requirements of the Specifications relating to substitutions of specified items and the Contractor certifies to the Architect that the quality, performance capability and functionality (including visual and/or aesthetic effect) of the proposed alternative or substitute will meet or exceed the quality, performance, capability and functionality of the item or process specified, and must demonstrate to the Architect that the use of the substitution or alternative is appropriate and will not delay completion of the Work or result in an increase to the Contract Price. The Contractor shall submit engineering, construction, dimension, visual, aesthetic and performance data to the Architect to permit its proper evaluation of the proposed substitution or alternative. If requested by the Architect, Contractor shall promptly furnish any additional information or data regarding a proposed substitution or alternative which the Architect deems reasonably necessary for the evaluation of the proposed substitution or alternative. The Contractor shall not provide, furnish or install any substitution or alternative without the Architect's review and final action on the proposed substitution or alternative; any alternative or substitution installed or incorporated into the Work without first obtaining the Architect's review and final action of the same shall be subject to removal pursuant to Article 12 hereof. The Architect's decision evaluating the Contractor's proposed substitutions or alternatives shall be final. Neither the Contract Time nor the Contract Price shall be increased on account of any substitution or alternative proposed by the Contractor and which is accepted by the Architect; provided, however, that in the event a substitution or alternative accepted by the Architect and purchase, fabrication and/or installation or such accepted substitution or alternative shall be less expensive than the originally specified item, the Contract Price shall be reduced by the actual cost savings realized by the Contractor's furnishing and/or installation of such approved substitution or alternative. The Contractor shall be solely responsible for all costs and fees incurred by the Owner to review a proposed substitution or alternative, including without limitation fees of the Architect, of the Architect's consultant(s) and/or governmental agencies to review and/or approve any proposed substitution or alternative. The Contractor shall be solely responsible for any increase in the cost of any accepted substitution or alternative or any Work affected by such alternative or substitution. The foregoing notwithstanding, all requests for the Architect's review and approval of any proposed substitution or alternative and all engineering, construction, dimension and performance data substantiating the equivalency of the proposed substitution or alternative shall be submitted by Contractor not later than thirty-five (35) days following the date of the Owner's award of the Contract to Contractor by action of the Owner's Board of Trustees; any request for approval of proposed alternatives or substitutions submitted thereafter may be rejected summarily. The foregoing process and time limits shall apply to any proposed substitution or alternative regardless of whether the substitute or alternate item is to be provided, furnished or installed by Contractor, any Subcontractor, any Sub-Subcontractor, Material Supplier or Manufacturer.

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

4.8.4 Owner's Right to Place Orders for Materials and/or Equipment. Notwithstanding any other provision of the Contract Documents, in the event that the Contractor shall, upon request of the Owner or the Architect, fail or refuse, for any reason, to provide reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, or should the Owner determine, in its sole and reasonable discretion, that any orders for materials and/or equipment have not been placed in a manner so that such materials and/or equipment will be delivered to the Site so the Work can be completed without delay or interruption, the Owner shall have the right, but not the obligation, to place such orders on behalf of the Contractor. If the Owner exercises the right to place orders for materials and/or equipment pursuant to the foregoing, the Owner's conduct shall not be deemed to be an exercise, by the Owner, of any control over the means, methods, techniques, sequences or procedures for completion of the Work, all of which remain the responsibility and obligation of the Contractor. Notwithstanding the right of the Owner to place orders for materials and/or equipment pursuant to the foregoing, the election of the Owner to exercise, or not to exercise, such right shall not relieve the Contractor from any of Contractor's obligations under the Contract Documents, including without limitation, completion of the Work within the Contract Time and for the Contract Price. If the Owner exercises the right hereunder to place orders for materials and/or equipment on behalf of Contractor pursuant to the foregoing, Contractor shall reimburse the Owner for all costs and fees incurred by the Owner in placing such orders; such costs and fees may be deducted by the Owner from the Contract Price then or thereafter due the Contractor.

4.9 Safety.

4.9.1 Safety Programs. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety programs required by applicable law, ordinance, regulation or governmental orders in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. The Contractor's safety program shall include all actions and programs necessary for compliance with California or federally statutorily mandated workplace safety programs, including without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code §§8350 et seq.). Without limiting or relieving the Contractor of its obligations hereunder, the Contractor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs. Prior to commencement of Work at the Site, the Contractor shall provide the Project Manager with the Contractor's proposed safety program for the Work for the Project Manager's review and acceptance. Without adjustment of the Contract Price or the Contract Time, the Contractor shall modify and re-submit its proposed safety plan to incorporate modifications thereto requested by the Project Manager. The Project Manager is authorized to enforce the Contractor's obligation to implement the safety program accepted by the Project Manager.

4.9.2 Safety Precautions. The Contractor shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and (iii) other property or items at the site of the Work, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall take adequate precautions and measures to protect existing roads, sidewalks, curbs, pavement, utilities, adjoining property and improvements thereon (including without limitation, protection from settlement or loss of lateral support) and to avoid damage thereto. Without adjustment of

the Contract Price or the Contract Time, the Contractor shall repair, replace or restore any damage or destruction of the foregoing items as a result of performance or installation of the Work.

4.9.3 Safety Signs, Barricades. The Contractor shall erect and maintain, as required by existing conditions and conditions resulting from performance of the Contract, reasonable safeguards for safety and protection of property and persons, including, without limitation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Owners and users of adjacent sites and utilities.

4.9.4 Safety Notices. The Contractor shall give or post all notices required by applicable law and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

4.9.6 Emergencies; First Aid. In an emergency affecting safety of persons or property, the Contractor shall act, to prevent threatened damage, injury or loss. The Contractor shall maintain stocked emergency first aid kits at the Site which comply with applicable law, rule or regulation.

4.9.7 Hazardous Materials.

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

4.9.7.2 Prohibition on Use of Asbestos Construction Building Materials ("ACBMs"). Notwithstanding any provision of the Drawings or the Specifications to the contrary, it is the intent of the Owner that ACBMs not be used or incorporated into any portion of the Work. In the event that any portion of the Work depicted in the Drawings or the Specifications shall require materials or products which the Contractor knows, or should have known with reasonably diligent investigation, to contain ACBMs, Contractor shall promptly notify the Architect and the Project Inspector of the same so that an appropriate alternative can be made in a timely manner so as not to delay the progress of the Work. Contractor warrants to the Owner that there are no materials or products used or incorporated into the Work which contain ACBMs. Whether before or after completion of the Work, if it is discovered that any product or material forming a part of the Work or incorporated into the Work contains ACBMs, the Contractor shall at its sole cost and expense remove such product or material in accordance with any laws, rules, procedures and regulations applicable to the handling, removal and disposal of ACBMs and to replace such product or material with non-ACBM products or materials and to return the affected portion(s) of the Work to the finish condition depicted in the Drawings and Specifications relating to such portion(s) of the Work. Contractor's obligations under the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, the Contractor's

completion of the Work or the Owner's acceptance of the Work. In the event that the Contractor shall fail or refuse, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of the Owner's written notice to the Contractor of the existence of ACBM materials or products in the Work, the Owner may thereafter proceed to cause the removal and replacement of such materials or products in any manner which the Owner determines to be reasonably necessary and appropriate; all costs, expenses and fees, including without limitation fees and costs of consultants and attorneys, incurred by the Owner in connection with such removal and replacement shall be the responsibility of the Contractor and the Contractor's Performance Bond Surety.

4.9.7.3 Disposal of Hazardous Materials. Contractor shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about the Contractor's obligations hereunder shall include without limitation, the transportation and disposal of any Hazardous Materials in strict conformity with any and all applicable laws, regulations, orders, procedures or ordinances.

4.10 Maintenance of Documents.

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

4.10.2 Maintenance of Record Drawings. During its performance of the Work, the Contractor shall maintain Record Drawings consisting of a set of the Drawings which are marked to indicate all field changes made to adapt the Work depicted in the Drawings to field conditions, changes resulting from Change Orders and all concealed or buried installations, including without limitation, piping, conduit and utility services. All buried or concealed items of Work shall be completely and accurately marked and located on the Record Drawings. The Record Drawings shall be clean and all changes, corrections and dimensions shall be marked in a neat and legible manner in a contrasting color. Record Drawings relating to the Structural, Mechanical, Electrical and Plumbing portions of the Work shall indicate without limitation, circuiting, wiring sizes, equipment/member sizing and shall depict the entirety of the as built conditions of such portions of the Work. The Record Drawings shall be continuously maintained by the Contractor during the performance of the Work. At any time during the Contractor's performance of the Work, upon the request of the Owner, the Project Inspector or the Architect, the Contractor shall make the Record Drawings maintained here under available for the Owner's review and inspection. The Owner's review and inspection of the Record Drawings during the Contractor's performance of the Work shall be only for the purpose of generally verifying that Contractor is continuously maintaining the Record Drawings in a complete and accurate manner; any such inspection or review shall not be deemed to be the Owner's approval or verification of the completeness or accuracy thereof. The failure or refusal of the Contractor to continuously maintain complete and

accurate Record Drawings or to make available the Record Drawings for inspection and review by the Owner may be deemed by the Owner to be Contractor's default of a material obligation hereunder. Without waiving, restricting or limiting any other right or remedy of the Owner for the Contractor's failure or refusal to continuously maintain the Record Drawings, the Owner may, upon reasonably determining that the Contractor has not, or is not, continuously maintaining the Record Drawings in a complete and accurate manner, take appropriate action to cause the continuous maintenance of complete and accurate Record Drawings, in which event all fees and costs incurred or associated with such action shall be charged to the Contractor and the Owner may deduct the amount of such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In accordance with Article 8.4.2 of these General Conditions, prior to receipt of the Final Payment, Contractor shall deliver the Record Drawings to the Architect.

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

4.12 Clean-Up. The Contractor shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material or rubbish caused or generated by performance of the Work. Without limiting the generality of the foregoing, Contractor shall maintain the Site in a "broom-clean" standard on a daily basis. In the event that the Work of the Contract Documents includes painting and/or the installation of floor covering, prior to commencement of any painting operations or the installation of any flooring covering, the area and adjoining areas of the Site where paint is to be applied or floor covering is to be installed shall be in a "broom-clean" condition. Prior to completion of the Work, Contractor shall remove from the Site all rubbish, waste material, excess excavated material, tools, Construction Equipment, machinery, surplus material and any other items which are not the property of the Owner under the Contract Documents. At completion of the Work, the Contractor shall clean the building interior and exterior, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal surfaces, areas where debris, dust and similar items have collected, clean and polish all glass, plumbing fixtures, finish hardware, metal/wood/stone finishes. As directed by the Project Manager, Owner or Architect, the Contractor shall remove temporary fencing, barricades, planking, temporary sanitary facilities, temporary utility distributions and other temporary facilities. Upon completion of the Work, the Site and all adjoining areas shall be left in a neat and broom clean condition satisfactory to Owner. The Project Inspector or Project Manager shall be authorized to direct the Contractor's clean-up obligations hereunder. If the Contractor fails to clean up as provided for in the Contract Documents, the Owner may do so, and all costs incurred in connection therewith shall be charged to the Contractor; the Owner may deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.

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

4.14 Facilities and Information for the Project Inspector.

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

4.14.2 Facilities for Project Inspector. The Contractor shall provide, without adjustment of the Contract Price, for use by the Project Inspector, the Owner and Project Manager the facilities, equipment, furnishings and services set forth in the Contract Documents or Supplementary Conditions, if any. If the Contractor does not provide the facilities, furnishings, equipment and services set forth in these documents, or fails to pay timely any charges or fees arising out of the use of the same, the Owner may, as applicable, procure facilities, furnishings, equipment and services required by the Contract Documents or pay outstanding charges. Contractor shall reimburse the Owner for all costs, including the Owner's administrative costs, incurred by the Owner pursuant to the preceding sentence; in lieu of the Contractor's reimbursement and at the sole and exclusive discretion of the Owner, such costs may be deducted by the Owner from any portion of the Contract Price or thereafter due the Contractor.

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

4.16 Cutting and Patching. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly. The Contractor shall not damage or endanger any portion of the Work, or the fully or partially completed construction of the Owner or separate contractors by cutting, patching, excavation or other alteration. When modifying new Work or when installing Work adjacent to an existing structure/facility, the Contractor shall match, as closely as conditions of the Site and materials will allow, the finishes, textures and colors of the existing structure/facility and refinish elements of the existing structure/facility. The Contractor shall not cut, patch or otherwise alter the construction by the Owner or separate contractor without the prior written consent of the Owner or separate contractor thereto, which consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold consent to the request of the Owner or separate contractor to cut, patch or otherwise alter the Work.

4.17 Encountering of Hazardous Materials. In the event the Contractor encounters Hazardous Materials at the Site which have not been rendered harmless or for which there is no provision in the Contract Documents for containment, removal, abatement or handling of such Hazardous Materials, the Contractor shall immediately stop the Work in the affected area, but shall diligently proceed with the Work in all other unaffected areas. Upon encountering such Hazardous Materials, the Contractor shall immediately notify the Project Inspector and the Architect, in writing, of such condition. The Contractor shall proceed with the Work in such affected area only after such Hazardous Materials have been rendered harmless, contained, removed or abated. In the event such Hazardous Materials are encountered, the Contractor shall be entitled to an adjustment of the Contract Time to the extent that the Work is stopped and Substantial Completion of the Work is affected thereby. In no event shall there be an adjustment to the Contract Price solely on account of the Contractor encountering such Hazardous Materials.

4.18 Wage Rates; Employment of Labor.

4.18.1 Labor Compliance. Labor Compliance is monitored and enforced by the Compliance Monitoring Unit of the Department of Industrial Relations. Contractor will perform the Work of the Agreement while complying all applicable provisions of the District's labor compliance program, or the State's labor compliance. Contractor and all of its Subcontractors, Sub-subcontractors, and Material Suppliers, must timely submit complete and accurate certified payroll records as required by the Contract Documents and by law. Contractor and its

Subcontractors, Sub-subcontractors, and Material Suppliers, must register as Public Works Contractors with the Department of Industrial Relations. Project contractors and subcontractors shall be required to maintain and furnish to the Owner, at designated times, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury. The Owner shall withhold contract payments when payroll records are delinquent or inadequate. The Owner may withhold contract payments equal to the amount of underpayment, with penalties, when, after investigation, it has been established that underpayment has occurred. Copies of the Labor Compliance Program and the required rates are on file and available at the Owner office and online at <http://www.dir.ca.gov/DLSR>. Contractor and subcontractors shall be required to submit payroll reports in an electronic format as prescribed by the Owner, which will require the Contractor and Subcontractor to enter the certified payroll through a secured web based software program.

4.18.2 Determination of Prevailing Rates. Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2 of the California Labor Code at §§1770 et seq., the Owner has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed. Holidays shall be as defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed under the Contract. Per diem wages include employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided in California Labor Code §1773.8, apprenticeship or other training programs authorized by California Labor Code §3093, and similar purposes when the term "per diem wages" is used herein. Holiday and overtime work, when permitted by law, shall be paid for at the rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. The Contractor shall post, at appropriate and conspicuous locations on the Site, a schedule showing all determined general prevailing wage rates.

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

4.18.4 Prevailing Rate Penalty. The Contractor shall, as a penalty, forfeit Two Hundred Dollars (\$200.00) to the Owner for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier, in connection with the Work. Pursuant to California Labor Code §1775, the difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4.18.5 Payroll Records. Pursuant to California Labor Code §1776, the Contractor and each Subcontractor, of any tier, shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each person employed for the Work. The payroll records shall be certified and available for inspection at all reasonable hours at the principal office of the Contractor on the following basis: (i) a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request; (ii) a certified copy of all payroll records shall be made available for inspection or furnished upon request to the Owner, the Division of Labor Standards Enforcement

and the Division of Apprenticeship Standards of the Department of Industrial Relations; (iii) a certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the Owner, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, Subcontractors and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor; (iv) the Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; (v) any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Owner, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. The Contractor shall inform the Owner of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change or location and address. In the event of noncompliance with the requirements of this Article 4.18.4, the Contractor shall have ten (10) days in which to comply, subsequent to receipt of written notice specifying in what respects the Contractor must comply herewith. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the Owner, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from any portion of the Contract Price then or thereafter due the Contractor. The Contractor is solely responsible for compliance with the foregoing provisions.

4.18.6 Compliance Monitoring. Contractor and all subcontractors shall be subject to all applicable requirements related to public works and must furnish certified payroll records to the Labor Commission as required by law. Contractor shall comply with all requirements of the Labor Code and attendant regulations pertaining to prevailing wage monitoring and compliance. Contractor shall permit the District, the CMU, the Labor Commission, or their designee to interview Contractor's employees concerning compliance with prevailing wage, apprenticeship, and related matters, whether or not during work hours, and shall require each subcontractor to provide the District, the CMU, the Labor Commission, or their designee with such access to its employees.

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

Division of Labor Statistics and Research
P. O. Box 420603
San Francisco, California 94142
(415) 703-4281

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

4.18.7 On Site Worker Interviews: The Owner or Owner Representative shall make periodic site visits to observe and interview workers regarding the payment of prevailing wages and proper work classifications. Contractor and each subcontractor shall cooperate and coordinate with the Owner

and provide unaccompanied access to workers on the job site.

4.18.8 Hours of Work.

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

4.18.8.2 Penalty for Excess Hours. The Contractor shall pay to the Owner a penalty of Twenty-five Dollars (\$25.00) for each worker employed on the Work by the Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

4.18.8.3 Contractor Responsibility. Any Work performed by workers necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without adjustment to the Contract Price or any other additional expense to the Owner. The Contractor shall be responsible for costs incurred by the Owner which arise out of Work performed by the Contractor at times other than regular working hours and regular working days. Upon determination of such costs, the Owner may deduct such costs from the Contract Price then or thereafter due the Contractor.

4.18.9 Apprentices.

4.18.9.1 Employment of Apprentices. Any apprentices employed to perform any of the Work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code §3077 who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code §§3070 et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

4.18.9.2 Apprenticeship Certificate. When the Contractor or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, the Contractor and such Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected, provided, however, that the approval as established by the Joint

Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of Apprenticeship. The Joint Apprenticeship Committee or Committees, subsequent to approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or such Subcontractor in order to comply with California Labor Code §1777.5. The Contractor and Subcontractors shall submit contract award information to the applicable Joint Apprenticeship Committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the Joint Apprenticeship Committee or Committees, administering the apprenticeship standards of the crafts or trades in the area of the site of the Work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards.

4.18.9.3 Ratio of Apprentices to Journeymen. The ratio of Work performed by apprentices to journeymen, who shall be employed in the Work, may be the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five hours of labor performed by a journeyman, except as otherwise provided in California Labor Code §1777.5. The minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen. Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the Joint Apprenticeship Committee, is employed at the site of the Work and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the completion of the Work. The Contractor shall, however, endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the site of the Work. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a Joint Apprenticeship Committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. The Contractor or any Subcontractor covered by this Article and California Labor Code §1777.5, upon the issuance of the approval certificate, or if it has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that it employs apprentices in such craft or trade in the State of California on all of its contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 ratio as set forth in this Article and California Labor Code §1777.5. This Article shall not apply to contracts of general contractors, or to contracts of specialty contractors not bidding for work through a general or prime contractor, involving less than Thirty Thousand Dollars (\$30,000.00) or twenty (20) working days. The term "Apprenticeable Craft or Trade," as used herein shall mean a craft or trade determined as an Apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

4.18.9.4 Exemption From Ratios. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Article when

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

4.18.9.5 Contributions to Trust Funds. The Contractor or any Subcontractor, of any tier, who, performs any of the Work by employment of journeymen or apprentices in any Apprenticeable Craft or Trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Work, to which fund or funds other contractors in the area of the site of the Work are contributing, shall contribute to the fund or funds in each craft or trade in which it employs journeymen or apprentices in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Division of Labor Standards Enforcement is authorized to enforce the payment of such contributions to such fund(s) as set forth in California Labor Code §227. Such contributions shall not result in an increase in the Contract Price.

4.18.9.6 Contractor's Compliance. The responsibility of compliance with this Article for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Article are subject to the provisions of California Labor Code §3081. In the event the Contractor willfully fails to comply with the provisions of this Article and California Labor Code §1777.5, pursuant to California Labor Code §1777.7, the Contractor shall: (i) be denied the right to bid on any public works contract for a period of one (1) year from the date the determination of non-compliance is made by the Administrator of Apprenticeship; and (ii) forfeit, as a civil penalty, One Hundred Dollars (\$100.00) (or \$300 for knowing subsequent violations) for each calendar day of noncompliance. Notwithstanding the provisions of California Labor Code §1727, upon receipt of such determination, the Owner shall withhold such amount from the Contract Price then due or to become due. Any such determination shall be issued after a full investigation, a fair and impartial hearing, and reasonable notice thereof in accordance with reasonable rules and procedures prescribed by the California Apprenticeship Council. Any funds withheld by the Owner pursuant to this Article shall be deposited in the General Fund or other similar fund of the Owner. The interpretation and enforcement of California Labor Code §§1777.5 and 1777.7 shall be in accordance with the rules and procedures of the California Apprenticeship Council.

4.18.10 Employment of Independent Contractors. Pursuant to California Labor Code §1021.5, Contractor shall not willingly and knowingly enter into any agreement with any person, as an

independent contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such person hold a valid contractor's license issued pursuant to California Business and Professions Code §§7000 et seq. and such person does not meet the burden of proof of his/her independent contractor status pursuant to California Labor Code §2750.5. In the event that Contractor shall employ any person in violation of the foregoing, Contractor shall be subject to the civil penalties under California Labor Code §1021.5 and any other penalty provided by law. In addition to the penalties provided under California Labor Code §1021.5, Contractor's violation of this Article 4.18.7 or the provisions of California Labor Code §1021.5 shall be deemed an event of Contractor's default under Article 15.1 of these General Conditions. The Contractor shall require any Subcontractor or Sub-Subcontractor performing or providing any portion of the Work to adhere to and comply with the foregoing provisions.

4.19 Assignment of Antitrust Claims. Pursuant to California Government Code §4551, the Contractor and its Subcontractor(s), of any tier, hereby offers and agrees to assign to the Owner all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C. §15) or under the Cartwright Act (California Business and Professions Code §§16700 et seq.), arising from purchases of goods, services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time the Owner tenders Final Payment to the Contractor, without further acknowledgment by the parties. If the Owner receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under California Government Code §4550 et seq., the assignor thereof shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the Contract Price, less the expenses incurred by the Owner in obtaining that portion of the recovery. Upon demand in writing by the assignor, the Owner shall, within one year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose: and (i) the Owner has not been injured thereby; or (ii) the Owner declines to file a court action for the cause of action.

4.20 Limitations Upon Site Activities. Except in the circumstances of an emergency, no construction activities shall be permitted at or about the Site except during the Owner's hours and days set forth in the Supplementary Conditions. Work performed outside of the hours and days noted in the Supplementary Conditions will not result in adjustment of the Contract Time or the Contract Price; unless Work outside of the hours and days noted in the Supplementary Conditions is expressly authorized by the Owner.

ARTICLE 5: SUBCONTRACTORS

5.1 Subcontracts. Any Work performed for the Contractor by a Subcontractor shall be pursuant to a written agreement between the Contractor and such Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required under Article 6 of these General Conditions, the prevailing wage and labor compliance requirements listed in Article 4, and the termination provisions of Article 15, and obligates the Subcontractor to assume toward the Contractor all the obligations and responsibilities of the Contractor which by the Contract Documents the Contractor assumes toward the Owner, the Owner Inspector, DSA, the Project Manager and the Architect. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the Owner, unless the Contract is terminated and Owner, in writing, elects to assume the Subcontract. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the Owner if the Contract

is terminated by the Owner pursuant to Article 15.1 hereof, subject to the prior rights of the Surety obligated under a bond relating to the Contract. The Contractor shall provide to the Owner copies of all executed Subcontracts and Purchase Orders to which Contractor is a party within thirty (30) days after Contractor's execution of the Agreement. During performance of the Work, the Contractor shall, from time to time, as and when requested by the Owner, the Architect or the Project Manager provide the Owner with copies of any and all Subcontracts or Purchase Orders relating to the Work and all modifications thereto. The Contractor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the two preceding sentences is Contractor's default of a material term of the Contract Documents. All Subcontractors must be appropriately licensed and registered as public works contractors with the Department of Industrial Relations to perform any portion of the Work.

5.2 Substitution of Listed Subcontractor.

5.2.1 Substitution Process. Any request of the Contractor to substitute a listed Subcontractor will be considered only if such request is in strict conformity with this Article 5.2 and California Public Contract Code §4107. All costs incurred by the Owner, including without limitation, costs of the Project Inspector, the Architect, the Project Manager or attorneys' fees in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs may be deducted by the Owner from the Contract Price then or thereafter due the Contractor.

5.2.2 Responsibilities of Contractor Upon Substitution of Subcontractor. The Owner's consent to Contractor's substitution of a listed Subcontractor shall not relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Price. The substitution of a listed Subcontractor shall not, under any circumstance, result in, or give rise to any to any increase of the Contract Price or the Contract Time on account of such substitution. In the event of the Owner's consent to the substitution of a listed Subcontractor, the Architect shall determine the extent to which, if any, revised or additional Submittals will be required of the newly substituted Subcontractor. In the event that the Architect determines that revised or additional Submittals are required of the newly substituted Subcontractor, the Architect shall promptly notify the Contractor, in writing, of such requirement. In such event, revised or additional Submittals shall be submitted to Architect not later than thirty (30) days following the date of the Architect's written notice to the Contractor pursuant to the foregoing sentence; provided that if in the reasonable and good faith judgment of the Architect, the progress of the Work or completion of the Work requires submission of additional or revised Submittals by the newly substituted Subcontractor in less than thirty (30) days, the Architect shall so state in its written notice to the Contractor. In the event that the revised or additional Submittals are not submitted by Contractor within thirty (30) days, or such earlier time as determined by the Architect pursuant to the preceding sentence, following the Architect's written notice of the requirement for revised or additional Submittals, Contractor shall be subject to the per diem assessments for late Submittals as set forth in Article 4.7.2.1 of these General Conditions. Any revised or additional Submittals required pursuant to this Article 5.2.2 shall conform with the requirements of Article 4.7 of these General Conditions. Contractor shall reimburse the Owner for all fees and costs, including without limitation fees of the Project Manager, Architect and/or any design consultant to the Architect or the Owner and DSA fees, incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this Article 5.2.2; the Owner may deduct such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In the event that additional or revised Submittals are required pursuant to this Article 5.2.2, such requirement shall not result in an increase to the Contract Time or the Contract Price.

5.3 Subcontractors' Work. Whenever the Work of a Subcontractor is dependent upon the Work of the Contractor or another Subcontractor, the Contractor shall require the Subcontractor to: (a) coordinate its Work with the dependent Work; (b) provide necessary dependent data and requirements; (c) supply and/or install items to build into the dependent Work of others; (d) make appropriate provisions for dependent Work of others; (e) carefully examine and understand the portions of the Contract Documents (including Drawings, Specifications and Field Clarifications) and Submittals relating to the dependent Work; and (f) examine the existing dependent Work and verify that the dependent Work is in proper condition for the Subcontractor's Work. If the dependent Work is not in a proper condition, the Subcontractor shall notify the Contractor in writing and not proceed with the Subcontractor's Work until the dependent Work has been corrected or replaced and is in a proper condition for the Subcontractor's Work.

ARTICLE 6: INSURANCE; INDEMNITY; BONDS

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

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

6.3 Builder's Risk "All-Risk" Insurance. Builders Risk Insurance covering the risks of loss, damage or destruction of Work in progress or in place at the site resulting from the perils of fire, malicious mischief, vandalism, and collapse will be obtained by the Owner at the Owner's discretion.

6.4 Insurance Policy Requirements. Each policy of insurance required by the Contract Documents shall confirm the following requirements.

6.4.1 Minimum Coverage Amounts. The insurance required of the Contractor hereunder shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater. In the event of any loss or damage covered by a policy of insurance

required to be obtained and maintained by the Contractor hereunder, the Contractor shall be solely and exclusively responsible for the payment of the deductible, if any, under such policy of insurance, without adjustment to the Contract Price on account thereof.

6.4.2 Required Qualifications of Insurers. The Contractor and Subcontractors' policies of Commercial General Liability and Property/Casualty insurance and the Contractor's Builders Risk insurance will be accepted by the Owner only if the insurer(s) are: (a) A.M. Best rated A- or better; (b) A.M. Best Financial Size Category VII or higher; and (c) authorized under California law to transact business in the State of California and authorized to issue insurance policies in the State of California. If at any time during performance of the Work, the insurer(s) issuing a policy of insurance covering Commercial General Liability, Property/Casualty or Builder Risk is/are not A.M. Best rated A- or better and is/are not A.M. Best Financial Size Category VII or higher, the Contractor or Subcontractor, as applicable shall within thirty (30) days of the Owner's written notice of the insufficiency of an insurer to the Contractor, obtain insurance coverage(s) from alternative insurer(s) who is/are then A.M. Best rated A- or better and who is/are A.M. Best Financial Size Category VII or higher. If the Contractor fails to deliver Certificate(s) of Insurance from an alternative insurer(s) meeting or exceeding the A.M. Best rating and A.M. Best Financial Size Category set forth above, within thirty (30) days of the date of the Owner's issuance of a written notice pursuant to the preceding sentence, in addition to any other right or remedy of the Owner under the Contract Documents or arising by operation of law, the Owner may withhold disbursement of any Progress Payment otherwise due hereunder until the Contractor has delivered such Certificate(s) of Insurance from an alternative insurer(s).

6.5 Evidence of Insurance; Subcontractor's Insurance.

6.5.1 Certificates of Insurance. Prior to commencing the Work, Contractor shall deliver to the Owner Certificates of Insurance evidencing the insurance coverages required by the Contract Documents. Failure or refusal of the Contractor to so deliver Certificates of Insurance may be deemed by the Owner to be a default of a material obligation of the Contractor under the Contract Documents, and thereupon the Owner may proceed to exercise any right or remedy provided for under the Contract Documents or at law. The Certificates of Insurance and the insurance policies required by the Contract Documents shall contain a provision that coverages afforded under such policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner. The insurance policies required of Contractor hereunder shall also name the Owner, the Project Manager and the Architect as additional insureds as their interests may appear. Should any policy of insurance be canceled before Final Acceptance of the Work by the Owner and the Contractor fails to immediately procure replacement insurance as required, the Owner reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the Owner in connection therewith from any sum then or thereafter due the Contractor under the Contract Documents. The Contractor shall, from time to time, furnish the Owner, when requested, with satisfactory proof of coverage of each type of insurance required by the Contract Documents; failure of the Contractor to comply with the Owner's request may be deemed by the Owner to be a default of a material obligation of the Contractor under the Contract Documents.

6.5.2 Subcontractors' Insurance. Contractor shall require that every Subcontractor, of any tier, performing or providing any portion of the Work obtain and maintain the policies of insurance set forth in Articles 6.1 and 6.2 of these General Conditions; the coverages and limits of liability of such policies of insurance to be obtained and maintained by Subcontractors shall be as set forth in the Supplementary Conditions. The policies of insurance to be obtained and maintained by

Subcontractors hereunder are in addition to, and not in lieu of, Contractor obtaining and maintaining such policies of insurance. Each of the policies of insurance obtained and maintained by a Subcontractor hereunder shall conform with the requirements of this Article 6. Upon request of the Owner, Contractor shall promptly deliver to the Owner Certificates of Insurance evidencing that the Subcontractors have obtained and maintained policies of insurance in conformity with the requirements of this Article 6. Failure or refusal of the Contractor to provide the Owner with Subcontractors' Certificates of Insurance evidencing the insurance coverages required hereunder is a material default of Contractor hereunder.

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

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

6.8 Indemnity. Unless arising solely out of the gross negligence or willful misconduct by the Owner, the Contractor shall indemnify, defend and hold harmless the Indemnified Parties who are: (i) the Owner and its Board of Trustees, officers, employees, agents and representatives (including the Project Inspector); (ii) the Architect and its consultants for the Work and their respective agents and employees; and (iii) the Project Manager and its agents and employees. The Contractor's obligations hereunder includes indemnity, defense and hold harmless of the Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorneys' fees and costs which arise, in whole or in part, from the Work, the Contract Documents or the acts, omissions or other conduct of the Contractor, any Subcontractor or any person or entity engaged by them for the Work. The Contractor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; (iv) Stop Payment Notice claims asserted by any person or entity in connection with the Work; and (v) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of Contractor, any of Contractor's Subcontractors, of any tier, or any other person or entity employed directly or indirectly by Contractor in connection with the Work and

their respective agents, officers or employees. The obligations of the Contractor, as set forth in (v) above shall include, without limitation losses, costs, expenses, damages and other claims asserted by any other Contractor to the Owner in connection with the Work or in connection with a work of improvement related to or affected by the Work. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability subject to Contractor's obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, the Contractor shall, at its sole cost and expense, defend the named Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the named Indemnified Parties. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are subject to, or bound by, Contractor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Contractor shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Contractor's obligations hereunder are binding upon Contractor's Performance Bond Surety and these obligations shall survive notwithstanding Contractor's completion of the Work or the termination of the Contract.

6.9 Payment Bond; Performance Bond. Prior to commencement of the Work, the Contractor shall furnish a Performance Bond as security for Contractor's faithful performance of the Contract and a Labor and Material Payment Bond as security for payment of persons or entities performing work, labor or furnishing materials in connection with Contractor's performance of the Work under the Contract Documents. Unless otherwise stated in the Supplementary Conditions, the amounts of the Performance Bond and the Payment Bond required hereunder shall be one hundred percent (100%) of the Contract Price. Said Labor and Material Payment Bond and Performance Bond shall be in the form and content set forth in the Contract Documents. The failure or refusal of the Contractor to furnish either the Performance Bond or the Labor and Material Payment Bond in strict conformity with this Article 6.9 may be deemed by the Owner as a default by the Contractor of a material obligation hereunder. Upon request of the Contractor, the Owner may consider and accept, but is not obligated to do so, multiple sureties on such bonds. The Surety on any bond required under the Contract Documents shall be an Admitted Surety Insurer as that term is defined in California Code of Civil Procedure §995.120.

ARTICLE 7: CONTRACT TIME

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

7.2 Progress and Completion of the Work.

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

Completion of the Work within the Contract Time.

7.2.2 Substantial Completion. Substantial Completion is that stage in the progress of the Work when the Work is complete in accordance with the Contract Documents so the Owner can occupy or use the Work for its intended purpose. Substantial Completion shall be determined by the Architect and the Project Inspector upon request by the Contractor in accordance with the Contract Documents. The good faith and reasonable determination of Substantial Completion by the Project Inspector and the Architect shall be controlling and final.

7.2.3 Correction or Completion of the Work After Substantial Completion.

7.2.3.1 Punchlist. Upon achieving Substantial Completion of the Work, the Owner, The Project Inspector, the Project Manager, the Architect and the Contractor shall jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by the Contractor (“the Punchlist”). The exclusion of, or failure to include, any item on the Punchlist shall not alter or limit the obligation of the Contractor to complete or correct any portion of the Work in accordance with the Contract Documents.

7.2.3.2 Time for Completing Punchlist Items. In addition to setting forth items for correction or completion pursuant to Article 7.2.3.1, the Project Manager, if any, Contractor and Architect shall, after the joint inspection, establish a reasonable time for Contractors’ completion of all Punchlist items. If mutual agreement is not reached for the Contractor’s completion of Punchlist items, the Architect shall determine such time, and in such event, the time determined by the Architect shall be final and binding upon the Owner and Contractor so long as the Architect’s determination is made in good faith. The Contractor shall promptly and diligently proceed to complete all Punchlist items within the time established. In the event that the Contractor shall fail or refuse, for any reason, to complete all Punchlist items within the time established, Contractor shall be subject to assessment of Liquidated Damages in accordance with Article 7.4 hereof. The foregoing notwithstanding, if the Contractor fails or refuses to complete all Punchlist items, the Owner may in its sole and exclusive discretion and without further notice to Contractor, elect to cause the completion of all remaining Punchlist items provided, however that such election by the Owner is in addition to and not in lieu of any other right or remedy of the Owner under the Contract Documents or at law. If the Owner elects to complete Punchlist items of the Work, pursuant to the foregoing, Contractor shall be responsible for all costs incurred by the Owner in connection herewith and the Owner may deduct such costs from the Contract Price then or thereafter due the Contractor, if these costs exceed the remaining Contract Price due to the Contractor, the Contractor and the Performance Bond Surety are liable to Owner for any such excess costs

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

7.2.5 Contractor Responsibility for Multiple Inspections. In the event the Contractor shall request determination of Substantial Completion or Final Completion by the Project Inspector and the Architect and it is determined by the Project Inspector and the Architect that the Work does not

then justify certification of Substantial Completion or Final Completion and re-inspection is required at a subsequent time to make such determination, the Contractor shall be responsible for all costs of such reinspection, including without limitation, the fees of the Architect and the salary of the Project Inspector. The Owner may deduct such costs from the Contract Price then due or thereafter due to the Contractor.

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

7.3 Construction Schedule.

7.3.1 Schedule Definitions:

7.3.1.1 Bid Schedule shall be the schedule issued with the Bid documents, which shall be used by the Contractor, and any requisite Sub-Contractor(s) for the preparation of their Bid.

7.3.1.2 Preliminary Base Line Construction Schedule shall be the schedule issued by the Project Manager, within ten (10) days after of the Notice Proceed is issued by or on behalf of the Owner, which may have been modified since the development of the Bid Schedule but such modification does not affect any critical path activity durations, but may adjust the Project Completion dates if the Notice to Proceed has varied from the Bid Schedule.

7.3.1.3 Base Line Construction Schedule shall be developed from the input of each Contractor for a Bid Package to the Preliminary Base Line Construction Schedule. This shall be used for the initial commencement of construction, scheduling and monitoring of the Project on a continual basis until an Updated Construction Schedule is issued.

7.3.1.4 Updated Construction Schedule shall be all the Schedules issued after the Base Line Construction Schedule. Additionally, the Updated Construction Schedule may be used for bidding by any Contractor for work to commence on the Project subsequent to the Base Line Construction Schedule.

7.3.1.5 Recovery Schedule shall be provided by the Contractor for a Bid Package to recover lost time due to delays with the progress of the Contractor's Work, ability to meet Milestones and/or Project completion dates/requirements.

7.3.1.6 Construction Schedule(s) shall be used in the Contract Documents to collectively refer the Bid Schedule, Preliminary Base Line Construction Schedule, Base Line Construction Schedule, and Updated Construction Schedule.

7.3.1.7 Three (3) Week Look Ahead Schedules shall be issued on a weekly basis at the Project Team Meeting identifying work in more detail than the activities shown in the Construction Schedules.

7.3.2 Bid Schedule. The Bid Schedule is for bidding purposes to establish preliminary contract durations. The Project will be constructed by separate multiple prime contractors, each under direct contract with the Owner for a specific scope of Work of the Project, as further defined

in the Bid Package descriptions for each separate multiple prime contractor to the Owner and in accordance with Articles 4.3 and 10.2. The scheduling and coordination of the Work of each Bid Package and the Work of the Project shall be by the Project Manager. The Contractors awarded a Contract for a portion of the Project shall comply with the Project Manager's directives regarding the scheduling, sequencing and coordination of the Work of each Bid Package. The Owner expressly reserves the right to modify the Bid Schedule based upon input from each Contractor or other project requirements. The Contractor acknowledges and agrees that modifications to the Bid Schedule after award of the Contract shall not be a basis for adjustment of the Contract Time or the Contract Price.

7.3.3 Preliminary Bid Package Schedules. Within fourteen (14) days following issuance of the Notice To Proceed for a majority of the Bid Packages, the Project Manager shall arrange a Project Kick-Off meeting with all Contractors to review a Preliminary Baseline Schedule. This Preliminary Baseline Schedule shall include any modifications incorporated since development of the Bid Schedule. Within seven (7) days after the Project Kick-Off meeting, each Contractor shall prepare and submit to the Project Manager all revisions and recommendations to the Preliminary Baseline Schedule indicating, in graphic form, the estimated rate of progress, manpower required (estimated men per day) and sequence of all Work of the Bid Package as required under the Contract Documents. Each Contractor for a Bid Package acknowledges and agrees that its proposed modifications to the Preliminary Baseline Schedule are subject to acceptance by the Owner and the Project Manager in the sole and exclusive discretion of the Owner and the Project Manager. Contractors may submit proposed revisions to the Preliminary Baseline Schedule depicting completion of the Work of the Contractor's Bid Package in a duration shorter than the Contract Time established for the Bid Package; provided that if such proposed modifications to the Preliminary Baseline Schedule are accepted, such acceptance shall not be a basis for adjustment to the Contract Price in the event that completion of the Work of the Bid Package shall occur after the time depicted therein, nor shall revisions to the Preliminary Baseline Schedule be the basis for any extension of the Contract Time. If a Contractor does not propose modifications or other recommendations relating to the Preliminary Baseline Schedule within seven (7) days after the Kick-Off meeting, the Preliminary Baseline Schedule shall be deemed to be accepted by the Contractor. The Project Manager shall review, incorporate, or reject the proposed modifications to the Preliminary Baseline Schedules and issue a final Baseline Schedule within fourteen (14) days of receipt of Contractor's information stated herein.

7.3.4 Baseline Construction Schedule. Based upon the approved input to the Preliminary Baseline Schedule for the entirety of the Project, the Project Manager will develop and issue a Baseline Construction Schedule. **The Baseline Construction Schedule shall control and govern over the sequencing and scheduling noted in the Bid Schedule.** The Work of each Bid Package shall conform to the Baseline Construction Schedule, including updates and/or revisions thereto. The Baseline Construction Schedule shall be reviewed and updated at Project meeting(s) held periodically during the progress of the Work. If the Work of any Bid Package appears to be delayed such that the Work of the Bid Package will not comply with required milestone dates, the Bid Package Substantial Completion date and/or the Project completion date set forth in the Baseline Construction Schedule(s), the Contractor whose activity is on the critical path and/or who has caused the delay(s) shall be liable and assessed Liquidated Damages in accordance with the terms and provisions of the Agreement and these General Conditions.

No extended overhead, general conditions money, impact costs, out-of-sequence money or any other type of compensation, by any name or characterization, shall be paid to the

Contractor for any delay to any activity not designated as a critical path item on the latest approved Construction Schedule(s), and if any delay occurs to any critical path item, such compensation shall only be payable to the Contractor in accordance with the terms and provisions of Articles 7 and 9.

- 7.3.5 Updated Construction Schedules.** In the event that the progress of the Work of a Bid Package or the sequencing of the activities of the Work Bid Package shall materially differ from that indicated in the Baseline Construction Schedule, the Project Manager may direct the Contractor for a Bid Package to propose revisions to update the approved Baseline Construction Schedule. The Contractor shall prepare and submit, within two (2) days, to the Project Manager revised input, in graphic form, to the Baseline Construction Schedule. The Contractor may request consent of the Project Manager to revise the approved Baseline Construction Schedule. Any such request shall be considered by the Project Manager and Owner only if in writing setting forth the Contractor's proposed revision(s) to the Baseline Construction Schedule and the reason(s) therefore. The Project Manager and Owner may consent to, or deny, any such request of the Contractor to revise the Baseline Construction Schedule in its reasonable discretion. Also, the Project Manager may incorporate elements of the Three (3) Week Look Ahead Schedules, as described below, into the Updated Construction Schedule. The Project Manager will incorporate accepted revisions to the Baseline Construction Schedule and issue an Updated Construction Schedule.
- 7.3.6 Recovery Schedules.** The Contractors working on critical path items or whose progress of Work is behind schedule as indicated in the current Updated Construction Schedule shall monitor and update the most recently approved Updated Construction Schedule on a monthly basis, (or more frequently as required) by the conditions or progress of the Work, or as may be requested by the Project Manager. The Contractor for such Bid Packages shall provide the Project Manager with updated Recovery Schedules indicating utilized and projected manpower, progress achieved and activities commenced or completed within the prior Updated Construction Schedule. The Contractor must also provide a written and/or graphic plan to the Project Manager, within 48 hours of request, that recovers lost time to achieve the milestone dates and sequencing of activities established in the most recent Updated Construction Schedule. The Project Manager may direct the sequence in which the various portions of Work within a Bid Package or between Bid Packages shall be performed and may adjust the Construction Schedule(s) at any time the Project Manager considers the completion date to be in jeopardy because of "activities behind schedule". Without adjustment of the Contract Time or the Contract Price, the Contractor for a Bid Package shall comply and perform in accordance with revisions to the Construction Schedule(s) issued by the Project Manager hereunder. If requested by the Project Manager, the Contractor shall also submit, with its updates, a narrative statement including a description of current and anticipated problem areas of the Work, delaying factors and their impact, and an explanation of corrective action taken or proposed by the Contractor. The Owner may, from time to time, and in the Owner's sole and exclusive discretion, transmit to the Contractor's Performance Bond Surety the Construction Schedule, any updates thereof and the narrative statement described hereinabove. The Owner's election to transmit, or not to transmit such information, to the Contractor's Performance Bond Surety shall not limit the Contractor's obligations under the Contract Documents.
- 7.3.7 Three (3) Week Look Ahead Schedule.** The Contractor shall prepare, report, submit and maintain the Construction Schedule, on a weekly or regular basis, by submitting a Three (3) Week Look Ahead Schedule at Project Meetings. The Three (3) Week Look Ahead Schedule

shall provide additional definition of manpower, activities and sequencing than identified on the Construction Schedule. The form, content and extent of detail in the Contractor prepared Three (3) Week Look Ahead Schedules shall be as required by the Project Manager. The Project Manager shall assimilate each of the various Contractors Three (3) Week Look Ahead Schedules into an overall Project Three (3) Week Look Ahead Schedule and issue it at the following Project Meeting to utilize as a comparison of progress against the most recent Construction Schedule. Failure of the Contractor to provide a Three (3) Week Look Ahead Schedule may be deemed by the Owner as the Contractor's default in the performance of a material obligation under Contract Documents.

- 7.3.8 Cost of Scheduling.** Any and all costs or expenses required or incurred to prepare, submit, maintain, and update the Construction, Recovery or Three (3) Week Look Ahead Schedules shall be solely at the expense of the Contractor without adjustment to the Contract Price. The Contract Price shall not be subject to adjustment on account of costs, fees or expenses incurred or associated with the Contractor's preparation, submittal, and maintenance or updating of the Bid Package Construction Schedules. If the Contractor does not comply with this Owner's request for an updated schedule, the Owner may have the update completed by others at the Contractor's expense. In such event, the updated Construction Schedule shall be deemed binding upon the Contractor and the Owner may deduct all costs, fee or expenses in preparing such updated Construction Schedule(s) from any portion of the Contract Price then or thereafter due the Contractor.
- 7.3.9 Scheduling Software & Requirements.** Unless otherwise provided in the Supplementary Conditions, the Construction Schedules required under this Article 7 shall; (A) be prepared with a commercially available computer software program in a critical path format; (B) indicate the date(s) for commencement and completion of various portions of the Work of the Bid Package including without limitation, procurement, fabrication and delivery of major items, materials or equipment; (C) indicate manpower (estimated men per day) and other resources required for completion of each schedule activity; (D) indicate costs for completion of each schedule activity; (E) identify each Submittal required by the Contract Documents, the date for the Contractor's submission of each Submittal and the date for the return of the reviewed Submittal to the Contractor.
- 7.3.10 Float.** As used herein, "float time" shall be deemed to refer to the time between earliest finish date and the latest finish date of each activity shown on the Construction Schedule. If the Construction Schedules required under this Article 7 incorporate therein any "float" time, such float shall be deemed to jointly belong to and owned by the Owner and the Contractor. If the construction progress is ahead of schedule based on the Construction Schedule(s) and a delay is encountered (even if such delay is an Owner caused delay), no compensation of any type will be due the Contractor and the Owner may claim float days equal to the delay until such float days are exhausted and the delay extends the overall project substantial completion date.
- 7.3.11 Contractor Schedule Responsibility.** Each Contractor is responsible for prosecuting the Work of its Bid Package in accordance with the then most current Updated Construction Schedule. Each Contractor for a Bid Package shall be liable to the Owner for all consequences of its delayed completion of the Bid Package or portions thereof, including without limitation, liability for: (A) assessment and withholding of Liquidated Damages for delayed Substantial Completion of the Work of the Bid Package or portions of the Work of the Bid Package, as set forth in Paragraph 7.5.1 of the Supplementary Conditions; and (B) costs, losses, expenses, damages, claims or other demands asserted by other contractors for other Bid Packages ("Other Contractors") the progress

of which are delayed, interrupted, hindered or otherwise impacted by the Contractor's failure to complete the Work of its Bid Package in accordance with the then most current Updated Construction Schedule. The obligation of the Contractor and the Contractor's Performance Bond Surety to defend, indemnify and hold harmless the Indemnified Parties, as set forth in Article 6.8 of the General Conditions, shall be deemed to include claims, demands, actions, causes of actions or proceedings initiated by Other Contractors based in whole or in part on the delays of the Contractor in completing the Work of the Contractor's Bid Package, or portions thereof, in accordance with the then most current Updated Construction Schedule.

7.4 Adjustment of Contract Time. If Substantial Completion is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with this Article 7.4.

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

7.4.12 Compensable Delays. If Substantial Completion of the Work is delayed and such delay is caused by the acts or omissions of the Owner, the Architect, or separate contractor employed by the Owner (collectively "Compensable Delays"), upon Contractor's request and notice, in strict conformity with Articles 7 and 9 of these General Conditions, the Contract Time will be adjusted by Change Order for such reasonable period of time as determined by the Architect and the Owner. In accordance with California Public Contract Code §7102, if the Contractor's progress is delayed by any of the events described in the preceding sentence, Contractor shall not be

precluded from the recovery of damages directly and proximately resulting therefrom, provided that the Owner is liable for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the reasonable contemplation of the Owner and the Contractor at the time of execution of the Agreement. In such event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or Construction Equipment directly resulting from such delay, and shall exclude indirect or other consequential damages. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, Articles 9 and 14 of these General Conditions.

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

7.4.14 Adjustment of Contract Time.

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

7.4.14.2 Limitations Upon Adjustment of Contract Time on Account of Delays. Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last. If an Unexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcusable Delay. In addition to the foregoing limitations upon extension of the Contract Time, no adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless such delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule as of the date on which such delay first occurs. The Owner shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the Owner shall deny any request by the Contractor for an adjustment of the Contract Time for any delay which does not actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule.

7.5 Liquidated Damages. Should the Contractor neglect, fail or refuse to: (i) submit Submittals in accordance with the Approved Construction Schedule; (ii) achieve Substantial Completion of the Work within the Contract Time, (subject to adjustments authorized under the Contract Documents); (iii) or to complete Punchlist items within the time established pursuant to the Contract Documents, the Contractor agrees to pay to the Owner the amount of per diem Liquidated Damages of \$1,000 per day, not as a penalty but as Liquidated Damages, for every day beyond the Contract Time, as

adjusted, until Submittals are submitted, Substantial Completion or completion of the Punchlist items are achieved. The Liquidated Damages amounts are agreed upon by and between the Contractor and the Owner because of the difficulty of fixing the Owner's actual damages in the event of delayed submission of Submittals, Substantial Completion or completion of Punchlist items. The Contractor and the Owner specifically agree that said amounts are reasonable estimates of the Owner's damages in such event, and that such amounts do not constitute a penalty. Liquidated Damages may be deducted from the Contract Price then or thereafter due the Contractor. The Contractor and the Surety shall be liable to the Owner for any Liquidated Damages exceeding any amount of the Contract Price then held or retained by the Owner. In the event that the Contractor shall fail or refuse to complete Punchlist items and the Owner elects to exercise its right to cause completion or correction of such items pursuant to Article 7.2.3.2 hereof, the Owner's assessment of Liquidated Damages pursuant to the foregoing shall be in addition, and not in lieu of, the Owner's right to charge Contractor with the cost of completing or correcting such items of the Work, as provided for under Article 7.2.3.2. The Contractor and the Owner acknowledge and agree that the provisions of this Article 7.5 are reasonable under the circumstances existing at the time of the Contractor's execution of the Agreement.

ARTICLE 8: CONTRACT PRICE

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

8.4 Cost Breakdown. Within fifteen (15) days of the execution of the Agreement by Contractor, Contractor shall furnish, on forms provided by the Owner, a detailed estimate and complete Cost Breakdown of the Contract Price. The Cost Breakdown shall be subject to the Owner's review and approval of the form and content thereof. In the event that the Owner shall reasonably object to any portion of the Cost Breakdown, within ten (10) days of the Owner's receipt of the Cost Breakdown, the Owner shall notify the Contractor, in writing of the Owner's objection(s) to the Cost Breakdown. Within five (5) days of the date of the Owner's written objection(s), Contractor shall submit a revised Cost Breakdown to the Owner for review and approval. The foregoing procedure for the preparation, review and approval of the Cost Breakdown shall continue until the Owner has approved of the entirety of the Cost Breakdown. Once the Cost Breakdown is approved by the Owner, the Cost Breakdown shall not be thereafter modified or amended by the Contractor without the prior consent and approval of the Owner, which may be granted or withheld in the sole reasonable discretion of the Owner. Notwithstanding any provision of the Contract Documents to the contrary, payment of the Contractor's overhead, supervision and general conditions costs and profit, as such items are reflected in the Cost Breakdown, shall be made by the Owner in equal installments with its disbursements of Progress Payments and the Final Payment with the amount of each such installment equal to the aggregate amount of such items as reflected in the Cost Breakdown divided by the number of months of the Contract Time.

8.5 Progress Payments.

8.5.1 Applications for Progress Payments. During the Contractor's performance of the Work, the Contractor shall submit monthly, on the first working day of each month, to the Project Manager and the Architect, Applications for Progress Payments, on forms approved by the Owner, setting forth an itemized estimate of Work completed in the preceding month for the

purpose of the Owner's making of Progress Payments thereon. Values utilized in the Applications for Progress Payments shall be based upon the Owner approved Cost Breakdown pursuant to Article 8.2 above and such values shall be only for determining the basis of Progress Payments to Contractor, and shall not be considered as fixing a basis for adjustments, whether additive or deductive, to the Contract Price, or for determining the extent of Work actually completed.

8.5.2 Owner's Review of Applications for Progress Payments. In accordance with Public Contract Code §20104.50, upon receipt of an Application for Progress Payment, the Owner shall cause the same to be reviewed by the Project Inspector, the Project Manager, if one is designated by the Owner, and the Architect, as soon as is practicable after receipt of such Application for Progress Payment. Such review shall be for the purpose of determining that the Application for Progress Payment is a proper Progress Payment request. For purposes of this Article 8.3.2, an Application for Progress Payment shall be deemed "proper" only if it is submitted on the form approved by the Owner, with all of the requested information of such form of Application for Progress Payment completely and accurately provided by the Contractor and such completed Application for Progress Payment is accompanied by: (i) Certified Payrolls of the Contractor and all Subcontractors, of any tier, for laborers performing any portion of the Work for which a Progress Payment is requested; (ii) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §8120, et seq. of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment requested; (iii) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §8120, et seq. of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment received by the Contractor under the prior Application for Progress Payment; (iv) if applicable, a current union statement reflecting that the Contractor and any Subcontractor of any tier, are current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which the Contractor or any such Subcontractor is a party to or is otherwise bound by; and (v) a certification by the Contractor that it has continuously maintained, or caused to maintain, the Record Drawings reflecting the actual as-built conditions of the Work performed for which the Progress Payment is requested, it being understood that such certification is subject to verification by the Owner, Architect or the Project Manager prior to disbursement of the Progress Payment. In accordance with Public Contract Code §20104.50, an Application for Progress Payment determined by the Owner not to be a proper Application for Progress Payment shall be returned by the Owner to the Contractor as soon as is practicable after receipt of the same from the Contractor, but in no event not more than seven (7) days after the Owner's receipt thereof. The Owner's return of any Application for Progress Payment pursuant to the preceding sentence shall be accompanied by a written document setting forth the reason(s) why the Application for Progress Payment is not proper.

8.5.3 Architect and Project Inspector Review of Applications for Progress Payments. Upon receipt of an Application for Progress Payment, the Architect, and the Project Inspector shall inspect and verify the Work to determine whether it has been performed in accordance with the terms of the Contract Documents and to determine the portion of the Application for Progress Payment which is properly due to the Contractor under the terms of the Contract Documents.

8.5.4 Owner's Disbursement of Progress Payments.

8.5.4.1 Timely Disbursement of Progress Payments. In accordance with Public Contract Code

§20104.50, within thirty (30) days after the Owner's receipt of a proper Application for Progress Payment, there shall be paid, by Owner, to Contractor a sum equal to ninety-five percent (95%) of the value of the Work indicated in the Application for Progress Payment which is actually in place as of the date of the Application for Progress Payment and as verified and approved by the Project Inspector and the Architect and the pro rata portion of the Contractor's overhead, supervision and general conditions costs and profit for that month; provided, however, that the Owner's obligation to disburse any Progress Payment shall be subject to the Owner's receipt of all documents set forth in Article 8.3.2 above, each and all of which are conditions precedent to the Owner's obligation to disburse Progress Payments. If an Application for Progress Payment is determined not to be proper due to the failure or refusal of the Contractor to submit documents with the Application for Progress Payment, as required by Article 8.3.2, or incompleteness or inaccuracies in any such documents submitted or if it is reasonably determined that the Record Drawings have not been continuously maintained to reflect the actual as built conditions of the Work completed in the period for which the Progress Payment is requested, the thirty (30) day period hereunder for the Owner's timely disbursement of a Progress Payment shall be deemed to commence on the date that the Owner is actually in receipt of documents not submitted with the Application for Progress Payment, or corrections to documents with the Application for Progress Payment so as to render them complete and accurate, or the date upon which the Contractor accurately and fully completes preparation of the Record Drawings relating to the Work for which the Progress Payment is requested.

8.5.4.2 Untimely Disbursement of Progress Payments. In accordance with Public Contract Code §20104.50, in the event that the Owner shall fail to make any Progress Payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Progress Payment, the Owner shall pay the Contractor interest on the undisputed amount of such Application for Progress Payment equal to the legal rate of interest set forth in California Code of Civil Procedure §685.010(a). The foregoing notwithstanding, in the event that the Owner shall determine that any Application for Progress Payment is not proper, pursuant to Article 8.3.2 above, and the Owner does not return such Application for Progress Payment within the seven (7) day period provided for in Article 8.3.2, the period of time for the Owner's disbursement of the Progress Payment on such Application for Progress Payment without incurring the interest liability shall be reduced by the number of days exceeding the seven (7) day return period.

8.5.4.3 Owner's Right to Disburse Progress Payments by Joint Checks. Provided that the Owner is in receipt of the applicable Subcontract or Purchase Order, the Owner, may in its sole discretion, issue joint checks to the Contractor and such Subcontractor or Material Supplier in satisfaction of its obligation to make Progress Payments or the Final Payment due hereunder.

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

8.5.5 Progress Payments for Changed Work. The Contractor's Applications for Progress Payment may include requests for payment on account of Changes in the Work which have been properly authorized and approved by the Project Inspector, the Architect and all other

governmental agencies with jurisdiction over such Change in accordance with the terms of the Contract Documents and for which a Change Order has been issued. Except as provided for herein, no other payment shall be made by the Owner for Changes in the Work.

8.5.6 Materials or Equipment Not Incorporated Into the Work.

8.5.6.1 Limitations Upon Payment. Except as expressly provided for herein, no payments shall be made by the Owner on account of any item of the Work, including without limitation, materials or equipment which, at the time of the Contractor's submittal of an Application for Progress Payment, has/have not been incorporated into and made a part of the Work.

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

8.5.6.3 Materials or Equipment Not Delivered or Stored at the Site. No payments shall be made by the Owner for materials or equipment to be incorporated into the Work where such materials or equipment have not been delivered or stored at the Site. The foregoing notwithstanding, the Owner may, in its sole and exclusive discretion, elect to make payment for materials or equipment not incorporated into the Work and which are not delivered or stored at the Site at or prior to the time of the Contractor's submittal of an Application for Progress Payment incorporating therein a request for payment of such materials or equipment provided that each and all of the following have been complied with: (a) adequate arrangements, reasonably satisfactory to the Owner, have been made by the Contractor to store and protect such materials or equipment which include without limitation, insurance reasonably satisfactory to the Owner, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage; and (b) the establishment of procedures reasonably satisfactory to the Owner by which title to such materials or equipment will be vested in the Owner upon the Owner's payment therefor. The Contractor acknowledges that the discretion to make, or not to make, payment for such materials or equipment pursuant to the

preceding sentence shall be exercised exclusively by the Owner; the Owner's exercise of discretion not to make payment for such materials or equipment shall not be deemed the Owner's default hereunder. In the event that the Owner shall elect to make payment for materials or equipment not at the Site, the costs and expenses incurred to comply with the requirements of (a) and (b) of this Article 8.3.6.3 shall be borne solely and exclusively by the Contractor and no payment shall be made by the Owner on account of such costs and expenses.

8.5.6.4 Materials or Equipment in Fabrication or Transit. The provisions of this Article 8.3.6 notwithstanding, the Owner shall not make any payment on account of any materials or equipment which are in the process of being fabricated or which are in transit to the Site of or other storage location.

8.5.7 Exclusions From Progress Payments. In addition to the Owner's right to withhold disbursement of any Progress Payment provided for in the Contract Documents, neither the Contractor's Application for Progress Payment shall include, nor shall the Owner be obligated to disburse any portion of the Contract Price for amounts which the Contractor does not intend to pay any Subcontractor, of any tier, or Material Supplier because of a dispute or any other reason.

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

8.5.9 Substitute Security for Retention. In accordance with the provisions of California Public Contract Code §22300, eligible and equivalent securities may be substituted for any monies withheld by the Owner to ensure the Contractor's performance under the Contract Documents at the request and expense of the Contractor and in conformity with the provisions of California Public Contract Code §22300. The foregoing and the provisions of California Public Contract Code §22300 notwithstanding, failure of the Contractor to request the substitution of eligible and equivalent securities for monies to be withheld by the Owner within ten (10) days following award of the Contract to Contractor shall be deemed a waiver of such right.

8.6 Final Payment.

8.6.1 Application for Final Payment. When the Contractor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, the Contractor shall submit an Application for Final Payment on such form as approved by the Owner. Thereupon, the Architect and the Project Inspector will promptly make a final inspection of the Work and when the Architect and the Project Inspector find the Work acceptable under the Contract Documents and that the Contract has been fully performed by the Contractor, the Architect and the Project Inspector will thereupon promptly approve the Application for Final Payment, stating that to the best their knowledge, information and belief, the Work has been completed in accordance with the terms of the Contract Documents. The

Final Payment shall include the remaining balance of the Contract Price and any retention from Progress Payments previously withheld by the Owner.

- 8.6.2 Conditions Precedent to Disbursement of Final Payment.** Neither Final Payment nor any remaining Contract Price shall become due until the Contractor submits to the Owner each and all of the following, the submittal of which are conditions precedent to the Owner's obligation to disburse the Final Payment: (i) an affidavit or certification by the Contractor that payrolls, bills for materials and other indebtedness incurred in connection with the Work for which the Owner or the Owner's property may or might be responsible or encumbered have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after the Contractor's receipt of Final Payment is currently in effect; (iii) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover any period following Final Payment as required by the Contract Documents; (iv) consent of the Surety on the Labor and Material Payment Bond and Performance Bond, to Final Payment if required; (v) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of the Contractor, Subcontractors of any tier and Material Suppliers in accordance with California Civil Code §8120, et seq., with each of the same stating that there are, or will be, no claims for additional compensation after disbursement of the Final Payment; (vi) Operations and Maintenance manuals and separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work; (vii) the Record Drawings; (viii) the form of Guarantee included in the Contract Documents duly executed by an authorized representative of the Contractor; (ix) any and all other items or documents required by the Contract Documents to be delivered to the Owner upon completion of the Work; (x) the completion and submittal of all reports required by the Contract Documents, including without limitation, verified reports required by applicable provisions of the California Code of Regulations; and (xi) if required by the Owner, such other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, stop payment notices, claims, security interest or encumbrances arising out of the Contract to the extent and in such form as may be required by the Owner.
- 8.6.3 Disbursement of Final Payment.** Provided that the Owner is then in receipt of all documents and other items in Article 8.4.2 above as conditions precedent to the Owner's obligation to disburse Final Payment, not later than sixty (60) days following Final Acceptance the Owner shall disburse the Final Payment to the Contractor. Pursuant to California Public Contract Code §7107, if there is any dispute between the Owner and the Contractor at the time that disbursement of the Final Payment is due, the Owner may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute.
- 8.6.4 Waiver of Claims.** The Contractor's acceptance of the Final Payment is a waiver and release by the Contractor of any and all claims against the Owner for compensation or otherwise in connection with the Contractor's performance of the Contract.
- 8.6.5 Claims Asserted After Final Payment.** Any lien, stop payment notice or other claim filed or asserted after the Contractor's acceptance of the Final Payment by any Subcontractor, of any tier, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor who further agrees to indemnify, defend and hold harmless the Owner and its officers, agents, representatives and employees from and against any claims, demands or judgments arising or

associated therewith, including without limitation attorneys' fees incurred by the Owner in connection therewith. In the event any lien, stop payment notice or other claim of any Subcontractor, Laborer, Material Supplier or others performing Work under the Contract Documents remain unsatisfied after Final Payment is made, Contractor shall refund to Owner all monies that the Owner may pay or be compelled to pay in discharging any lien, stop payment notice or other claim, including, without limitation all costs and reasonable attorneys' fees incurred by Owner in connection therewith.

8.7 Withholding of Payments. The Owner may withhold any Progress Payment or the Final Payment, in whole or in part, or backcharge the Contractor to the extent it may deem advisable to protect the Owner on account of: (i) defective Work or Work not in conformity with the requirements of the Contract Documents which is not remedied; (ii) failure of the Contractor to make payments when due Subcontractors or Material Suppliers for materials or labor; (iii) claims filed or reasonable evidence of the probable filing of claims by Subcontractors, laborers, Material Suppliers, or others performing any portion of the Work under the Contract Documents for which the Owner may be liable or responsible including, without limitation, Stop Payment Notice Claims filed with the Owner pursuant to California Civil Code §8500 et seq.; (iv) a reasonable doubt that the Contract can be completed for the then unpaid balance of the Contract Price; (v) tax demands filed in accordance with California Government Code §12419.4; (vi) other claims, penalties and/or forfeitures for which the Owner is required or authorized to retain funds otherwise due the Contractor; (vii) any amounts due from the Contractor to the Owner under the terms of the Contract Documents; or (viii) the Contractor's failure to perform any of its obligations under the Contract Documents or its default under the Contract Documents or its failure to maintain adequate progress of the Work. In addition to the foregoing, the Owner shall not be obligated to process any Application for Progress Payment or Final Payment, nor shall Contractor be entitled to any Progress Payment or Final Payment so long as any lawful or proper direction concerning the Work or the performance thereof or any portion thereof, given by the Owner, the Project Inspector, the Architect or any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by the Contractor. When the Owner is reasonably satisfied that the Contractor has remedied any such deficiency, payment shall be made of the amount withheld. In lieu of making payment of withheld amounts to the Contractor, the Owner may, in its sole exclusive discretion, apply withheld amounts to the payment and satisfactions of debts and obligations of the Contractor relating to the Work. In doing, the Owner shall be an agent of the Contractor for the sole and limited purpose of making payment(s) to others for the Work on behalf of the Contractor; payments made by the Owner pursuant to the foregoing shall be deemed payments to the Contractor and the Contract Price shall be adjusted to reflect such payment(s). The Owner shall not be liable to the Contractor or others for its good faith decision to make or not make payment(s) of amounts withheld from the Contractor pursuant to the foregoing. If the Owner elects to make payments to other of amounts withheld from the Contractor, the Owner may do so without prior judicial determination; the Owner will render the Contractor a complete and accurate accounting of amounts withheld and paid to others on behalf of the Contractor.

8.8 Payments to Subcontractors. The Contractor shall pay all Subcontractors for and on account of Work of the Contract performed by such Subcontractors in accordance with the terms of their respective subcontracts and as provided for pursuant to California Public Contract Code §10262, the provisions of which are deemed incorporated herein by this reference. In the event of the Contractor's failure to make payment to Subcontractors in conformity with California Public Contract Code §10262, the provisions of California Public Contract Code §10253 shall apply; by this reference, the provisions of California Public Contract Code §10253 are incorporated herein in its entirety, except that the references in said Section 10253 to "the director" shall be deemed to refer to the Owner. The Contractor shall timely make payment of retention due Subcontractors in accordance with Public

Contract Code §7107.

8.9 Computerized Job Cost Reporting System.

- 8.9.1 Job Cost Reporting.** The Contractor and each Subcontractor with a Subcontract valued at One Million Five Hundred Thousand Dollars (\$1,500,000.00) or greater shall maintain a computerized job cost reporting system conforming with the requirements set forth herein. The computer program(s) utilized by the Contractor and applicable Subcontractors shall be subject to the review and acceptance by the Owner. The job cost reporting systems for the Work shall be updated in regular intervals of not more than one (1) calendar month.
- 8.9.2 Job Cost Reporting System Requirements.** The computerized job cost programs utilized by the Contractor and applicable Subcontractors shall conform and comply with generally accepted accounting principles applied in a consistent manner and with recognized and generally accepted construction industry accounting standards, guidelines and procedures. The job cost reporting system format and configuration shall follow the general format of the Owner approved Cost Breakdown and budgets established for each line item shall be traceable to a bid estimate of costs. The job cost reporting systems utilized by the Contractor and applicable Subcontractors shall be capable of: (a) providing overall cost status on a monthly and cumulative basis; (b) providing comparative analysis of the original budgeted costs, actual costs, remaining budget, and projected cost of completion; the job cost reporting system shall be capable of providing comparative analysis for individual line items and the totality of the Work reflected in the job cost report and; (c) tracking adjustments to original budget amounts for Changes to the Work (including, without limitation, issued, pending and potential Change Orders).
- 8.9.3 Job Cost System Information.** Upon request of the Owner the Contractor and applicable Subcontractors shall make available written job cost reports and/or provide the Owner with the electronic files of the then current or requested job cost report. The Contractor's obligations hereunder are material.

9 CHANGES

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

may make Changes to bring the Work or the Project into compliance with environmental requirements or standards established by state or federal statutes and regulations enacted after award of the Contract.

9.2 Oral Order of Change in the Work. Any oral order, direction, instruction, interpretation, or determination from the Owner, the Project Inspector or the Architect which, in the opinion of the Contractor, causes any change to the scope of the Work, or otherwise requires an adjustment to the Contract Price or the Contract Time, shall be treated as a Change only if the Contractor gives the Architect and the Project Inspector written notice within ten (10) days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith and the Owner provides prior written approval of the Change. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the Owner can promptly investigate and consider alternative measures to address the order, direction, instruction, interpretation or determination giving rise to Contractor's notice. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice within ten (10) days of such order, direction, instruction, interpretation or determination shall be deemed Contractor's waiver of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of such order, direction, instruction, interpretation or determination. The written notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested, and the source of the order, directions, instructions, interpretation or determination that the Contractor regards as a Change. Unless the Contractor acts in strict accordance with this procedure, any such order, direction, instruction, interpretation or determination shall not be treated as a Change and the Contractor hereby waives any claim for any adjustment to the Contract Price or the Contract Time on account thereof. No increase in Contract Price or Contract Time will be permitted without prior written approval of the Owner's Board of Trustees.

9.3 Contractor Submittal of Data. Promptly after receipt of a written order directing a Change in the Work, the Contractor shall submit to the Architect, the Project Inspector and the Owner a detailed written statement setting forth the general nature of the Change, the amount of any adjustment to the Contract Price on account thereof, properly itemized and supported by sufficient substantiating data to permit evaluation of the same, and the extent of adjustment of the Contract Time, if any, required by such Change. No claim or adjustment to the Contract Price or the Contract Time shall be allowed if not asserted by the Contractor in strict conformity herewith or if asserted after Final Payment is made under the Contract Documents.

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

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

9.4.1.1 Mutual Agreement. By negotiation and mutual agreement, on a lump sum basis, between the Owner and the Contractor on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change. Upon request of the Owner or the Architect, the Contractor shall provide a detailed estimate of increase or decrease in costs directly associated with performance of the Change along with cost breakdowns of the components of the Change and supporting data and documentation. The Contractor's estimate of increase or decrease in costs pursuant to the foregoing, if requested, shall be in sufficient detail and in such form as to allow the Owner, the Project Inspector and the Architect to review and assess the

completeness and accuracy thereof. The Contractor shall be solely responsible for any additional costs or additional time arising out of, or related in any manner to, its failure to provide the estimate of costs within the time specified in the request of the Owner or the Architect for such estimate.

9.4.1.2 Determination by the Owner. By the Owner, whether or not negotiations are initiated pursuant to Article 9.4.1.1 above, based upon actual and necessary costs incurred by the Contractor as determined by the Owner on the basis of the Contractor's records. In the event that the procedure set forth in this Article 9.4.1.2 is utilized to determine the extent of adjustment to the Contract Price on account of Changes to the Work, promptly upon determining the extent of adjustment to the Contract Price, the Owner shall notify the Contractor in writing of the same; the Contractor shall be deemed to have accepted the Owner's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor shall notify the Owner, the Architect, and the Project Inspector, in writing, not more than five (5) days from the date of the Owner's written notice, of any objection to the Owner's determination. Failure of the Contractor to timely notify the Owner, the Architect, and the Project Inspector of Contractor's objections to the Owner's determination of the extent of adjustment to the Contract Price shall be deemed Contractor's acceptance of the Owner's determination and a waiver of any right or basis of the Contractor to thereafter protest or otherwise object to the Owner's determination. Notwithstanding any objection of the Contractor to the Owner's determination of the extent of any adjustment to the Contract Price pursuant to this Article 9.4.1.2, Contractor shall, pursuant to Article 9.7 below, diligently proceed to perform and complete any such Change.

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

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

9.4.1.3.2 Materials and Equipment. Contractor shall be compensated for the costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the

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

9.4.1.3.3 Construction Equipment. Contractor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by the Contractor from the Architect, the Project Inspector and the Owner, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. The Contractor shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of \$500.00 or less. Construction Equipment costs claimed by the Contractor in connection with the performance of any Change to the Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, the Project Inspector and the Owner, the allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by the Contractor incidental to the use of such Construction Equipment.

9.4.1.3.4 Mark-up on Costs of Changes to the Work. In determining the cost to the Owner and the extent of increase to the Contract Price resulting from a Change adding to the Work, the allowance for mark-ups on the costs of the Change for all overhead (including home office and field overhead), general conditions costs and profit associated with the Change shall not exceed the percentage set forth in the Supplementary Conditions, regardless of the number of Subcontractors, of any tier, performing any portion of any Change to the Work. The foregoing notwithstanding, in the event that the Saylor Current Construction Costs, or a mutually agreed to estimating manual in the event that Saylor Current Construction Costs shall cease publication is utilized to determine the costs of a Change and the cost computation therein includes an allowance for overhead, general conditions costs, and/or profit, the Contractor and any subcontractor, of any tier, performing any portion of such Change, shall not be entitled to an allowance for overhead general conditions costs and/or profit beyond that reflected for such item of Change in the Saylor Current Construction Costs or other mutually agreed upon estimating manual. If a Change to the Work reduces the Contract Price, no profit, general conditions or overhead costs shall be paid by the Owner to the Contractor for the reduced or deleted Work. In such event, the adjustment to the Contract Price shall be the actual cost reduction realized by the reduced or deleted Work multiplied by the percentage set forth in the Supplementary Conditions for mark-ups on the cost of a Change adding to the scope of the Work.

9.4.1.3.5 Contractor Maintenance of Records. In the event that Contractor shall be directed to perform any Changes to the Work pursuant to Article 9.1 or 9.2, or should the Contractor encounter conditions which the Contractor, pursuant to Article 9.6, believes would obligate the Owner to adjust the Contract Price and/or the Contract Time, Contractor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that more than one Change to the Work is performed by the Contractor in a calendar day, Contractor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. In the event that any Subcontractor, of any tier, shall provide or perform any portion of any Change to the Work, Contractor shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Contractor's Superintendent or Contractor's authorized representative; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, complete and relate only to the Change referenced therein. All records maintained by a Subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such Subcontractor's authorized representative or Superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the Owner, the Architect or the Project Inspector upon request. In the event that Contractor shall fail or refuse, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the

adjustment to the Contract Price on account of any Change to the Work is determined pursuant to this Article, the Owner's reasonable good faith determination of the extent of adjustment to the Contract Price on account of such Change shall be final, conclusive, dispositive and binding upon Contractor. Contractor's obligation to maintain records hereunder is in addition to, and not in lieu of, any other Contractor obligation under the Contract Documents with respect to Changes to the Work.

9.4.2 Adjustment to Contract Time. In the event of any Change(s) to the Work pursuant to this Article 9, the Contract Time shall be extended or reduced by Change Order for a period of time commensurate with the time reasonably necessary to perform such Change. In the event that any Change shall require an extension of the Contract Time, the Contractor shall not be subject to Liquidated Damages for such period of time. If completion of the Work is delayed by causes for which the Owner is responsible and the delay is unreasonable under the circumstances involved, and not within the contemplation of the Contractor and the Owner at the time of execution of the Agreement, the Contractor shall not be precluded from the recovery of damages arising therefrom.

9.4.3 Addition or Deletion of Alternate Bid Item(s). If the Bid for the Work includes proposal(s) for Alternate Bid Item(s), during Contractor's performance of the Work, the Owner may elect, pursuant to this Article to add any such Alternate Bid Item(s) if the same did not form a basis for award of the Contract or delete any such Alternate Bid Item(s) if the same formed a basis for award of the Contract. If the Owner elects to add or delete any such Alternate Bid Item(s) pursuant to the foregoing, the cost or credit for such Alternate Bid Item(s) shall be as set forth in the Contractor's Bid. If any Alternate Bid Item is added or deleted from the Work pursuant to the foregoing, the Contract Time shall be adjusted by the number of days allocated for the added or deleted Alternate Bid Item in the Contract Documents; if days are not allocated for any Alternate Bid Item added or deleted pursuant to the foregoing, the Contract Time shall be equitably adjusted.

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

Order, any action of the Board of Trustees to approve and ratify such Change Order shall be deemed to be limited to the Change Order as prepared by the Architect; such approval and ratification of such Change Order shall not be deemed the Owner's approval and ratification of any unapproved amendment or modification by the Contractor to such Change Order.

9.6 Contractor Notice of Changes. If the Contractor should claim that any instruction, request, the Drawings, the Specifications, action, condition, omission, default, or other situation obligates the Owner to increase the Contract Price or to extend the Contract Time, the Contractor shall notify the Project Inspector, and the Architect, in writing, of such claim within ten (10) days from the date of its actual or constructive notice of the factual basis supporting the same. The Owner shall consider any such claim of the Contractor only if sufficient supporting documentation is submitted with the Contractor's notice to the Project Inspector, and the Architect. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the Owner can promptly investigate and consider alternative measures to address such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the Owner's review and evaluation) within ten (10) days of its actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which the Contractor believes there should an adjustment of the Contract Time or the Contract Price shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of any such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. In the event that the Owner determines that the Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with the Contractor's written notice under this Article 9.6, any such adjustment shall be determined in accordance with the provisions of Articles 9.4.1 and 9.4.2.

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

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

9.9 Minor Changes in the Work. The Architect may order minor Changes in the Work not involving an adjustment in the Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall add no adjustment to the Contract Price or the Contract Time. The Contractor shall carry out such orders promptly.

9.10 Unauthorized Changes. Any Work beyond the lines and grades shown on the Contract Documents, or any extra Work performed or provided by the Contractor without notice to the Architect, and the Project Inspector in the manner and within the time set forth in Articles 9.2 or 9.6 shall be considered unauthorized and at the sole expense of the Contractor. Work so done will not be

measured or paid for, no extension to the Contract Time will be granted on account thereof and any such Work may be ordered removed at the Contractor's sole cost and expense. The failure of the Owner to direct or order removal of such Work shall not constitute acceptance or approval of such Work nor relieve the Contractor from any liability on account thereof.

10 SEPARATE CONTRACTORS

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

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

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

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

11 TESTS AND INSPECTIONS

11.1 Tests; Inspections; Observations.

11.1.1 Contractor's Notice. If the Contract Documents, laws, ordinances or any public authority with jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, the Contractor shall give the Architect, the and the Project Inspector written notice of the readiness of such Work for observation, testing or inspection at least two (2) working days prior to the time for the conducting of such test, inspection or observation. If inspection, testing or observation is by authority other than the Owner, the Contractor shall inform the Project Inspector and the Project Manager not less than two (2)

working days prior to the date fixed for such inspection, test or observation. The Contractor shall not cover up any portion of the Work subject to tests, inspections or observations prior to the completion and satisfaction of the requirements of such test, inspection or observation. In the event that any portion of the Work subject to tests, inspection or approval shall be covered up by Contractor prior to completion and satisfaction of the requirements of such tests, inspection or approval, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time on account thereof.

11.1.2 Cost of Tests and Inspections. Reasonable costs for tests and inspection of materials shall be paid by the Owner. Should any act, omission or other conduct of the Contractor, any of its Subcontractors, of any tier, or Material Suppliers cause the number of hours or the costs of such tests or inspections to exceed a reasonable amount, as solely determined by the Owner, the Contractor shall be solely responsible for all such excess costs and the Owner may deduct such amount from any portion of the Contract Price then or thereafter due the Contractor.

11.1.3 Testing/Inspection Laboratory. The Owner shall select duly qualified person(s) or testing laboratory(ies) to conduct the tests and inspections to be paid for by the Owner and required by the Contract Documents. Tests and inspections required of the Work shall be as set forth in the Contract Documents and as required by applicable law, rule or regulation, including without limitation, Title 24 of the California Code of Regulations. Test/inspection standards shall be as set forth in the Contract Documents or established by applicable law, rule or regulation. Where inspection or testing is to be conducted by an independent laboratory or testing agency, materials or samples thereof shall be selected by the laboratory, testing agency, the Project Inspector, the Project Manager or the Architect and not by the Contractor.

11.1.4 Additional Tests, Inspections and Approvals. If the Architect, the Project Manager, the Project Inspector or public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect, the Project Manager and the Project Inspector of when and where tests and inspections are to be made so the Project Inspector and the Architect may observe such procedures. The Owner shall bear the costs of such additional tests, inspections or approvals, except to the extent that such additional tests, inspections or approvals reveal any failure of the Work to comply with the requirements of the Contract Documents, in which case the Contractor shall bear all costs made necessary by such failures, including without limitation, the costs of corrections, repeat tests, inspections or approvals and the costs of the Architect's services or its consultants in connection therewith.

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

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

progress of the Work.

12 UNCOVERING AND CORRECTION OF WORK

12.1 Inspection of the Work.

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

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

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

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

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

- 12.5 Removal of Non-Conforming or Defective Work.** The Contractor shall, at its sole cost and expense, remove from the Site all portions of the Work which are defective or are not in accordance with the requirements of the Contract Documents which are neither corrected by the Contractor nor accepted by the Owner.
- 12.6 Failure of Contractor to Correct Work.** If the Contractor fails to commence to correct defective or non-conforming Work within 3 days of notice of such condition and promptly thereafter complete the same within a reasonable time, the Owner may correct it in accordance with the Contract Documents. If the Contractor does not proceed with correction of such defective or non-conforming Work within the time fixed herein, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage after written notice, the Owner may sell such materials or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including without limitation compensation for the Architect's services, attorneys' fees and other expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Price shall be reduced by the deficiency. If payments of the Contract Price then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and the Surety shall promptly pay the difference to the Owner.
- 12.7 Acceptance of Defective or Non-Conforming Work.** The Owner may, in its sole and exclusive discretion, elect to accept Work which is defective or which is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable.

13 WARRANTIES

- 13.1 Workmanship and Materials.** The Contractor warrants to the Owner that all materials and equipment furnished under the Contract Documents shall be new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents. All Work shall be of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Any Work, or portion thereof not conforming to these requirements, including substitutions or alternatives not properly approved in accordance with the Contract Documents may be deemed defective. Where there is an approved substitution of, or alternative to, material or equipment specified in the Contract Documents, the Contractor warrants to the Owner that such installation, construction, material, or equipment will equally perform the function and have the quality of the originally specified material or equipment. The Contractor expressly warrants the merchantability, the fitness for use, and quality of all substitute or alternative items in addition to any warranty given by the manufacturer or supplier of such item.
- 13.2 Warranty Work.** If, within one year after the date of Final Acceptance, or such other time frame set forth elsewhere in the Contract Documents, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, or otherwise contrary to the warranties contained in the Contract Documents, the Contractor shall commence all necessary corrective action not more than seven (7) days after receipt of a written notice from the Owner to do so, and to thereafter diligently complete the same. In the event that Contractor shall fail or refuse to commence correction of any such item within said seven (7) day period or to diligently prosecute such corrective actions to completion, the Owner may, without further notice to Contractor, cause such corrective Work to be performed and completed. In such event, Contractor and Contractor's

Performance Bond Surety shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of the Owner in securing and overseeing such corrective Work. Nothing contained herein shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract Documents. The obligations of the Contractor hereunder shall be in addition to, and not in lieu of, any other obligations imposed by any special guarantee or warranty required by the Contract Documents, guarantees or warranties provided by any manufacturer of any item or equipment forming a part of, or incorporated into the Work, or otherwise recognized, prescribed or imposed by law. Neither the Owner's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by Owner shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.

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

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

14 SUSPENSION OF WORK

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

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

15 TERMINATION

15.1 Termination for Cause.

15.1.1 Owner's Right to Terminate. The Owner may terminate the Contract upon the occurrence of any one or more of the following events of the Contractor's default: (i) if the Contractor

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

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

15.1.3 Completion by the Surety. In the event that the Contract is terminated pursuant to this Article 15.1, the Owner may demand that the Surety take over and complete the Work. The Owner may require that in so doing, the Surety not utilize the Contractor in performing and completing the Work. Upon the failure or refusal of the Surety to take over and begin completion of the Work within twenty (20) days after demand therefor, the Owner may take over the Work and prosecute it to completion as provided for above.

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

15.1.5 Costs of Completion. In the event of termination under this Article 15.1, the Contractor shall not be entitled to receive any further payment of the Contract Price until the Work is completed. If the unpaid balance of the Contract Price as of the date of termination exceeds the Owner's direct and indirect costs and expenses for completing the Work, including without limitation, attorneys' fees and compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work performed prior to the effective date of termination with a reasonable allowance for overhead and profit. If the Owner's costs and expenses to complete the Work exceed the unpaid Contract Price, the Contractor and/or the Surety shall pay the difference to the Owner.

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

15.1.7 Conversion to Termination for Convenience. In the event the Contract is terminated under this Article 15.1, and it is determined, for any reason, that the Contractor was not in default under the provisions hereof, the termination shall be deemed a Termination for Convenience of the Owner and thereupon, the rights and obligations of the Owner and the Contractor shall be determined in accordance with Article 15.2 hereof.

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

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

16 MISCELLANEOUS

- 16.1 Governing Law.** This Contract shall be governed by and interpreted in accordance with the laws of the State of California.
- 16.2 Marginal Headings; Interpretation.** The titles of the various Articles of these General Conditions and elsewhere in the Contract Documents, and the Table of Contents, are used for convenience of reference only and are not intended to, and shall in no way, enlarge or diminish the rights or obligations of the Owner or the Contractor and shall have no effect upon the construction or interpretation of the Contract Documents. The Contract Documents shall be construed as a whole in accordance with their fair meaning and not strictly for or against the Owner or the Contractor.
- 16.3 Successors and Assigns.** Except as otherwise expressly provided in the Contract Documents, all terms, conditions and covenants of the Contract Documents shall be binding upon, and shall inure to the benefit of the Owner and the Contractor and their respective heirs, representatives, successors-in-interest and assigns.
- 16.4 Cumulative Rights and Remedies; No Waiver.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not in lieu of or otherwise a limitation or restriction of duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner shall constitute a waiver of a right or remedy afforded it under the Contract Documents or at law nor shall such an action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 16.5 Severability.** In the event any provision of the Contract Documents shall be deemed illegal, invalid, unenforceable and/or void, by a court or any other governmental agency of competent jurisdiction, such provision shall be deemed to be severed and deleted from the Contract Documents, but all remaining provisions hereof, shall in all other respects, continue in full force and effect.
- 16.6 No Assignment by Contractor.** The Contractor shall not sublet or assign the Contract, or any portion thereof, or any monies due thereunder, without the express prior written consent and approval of the Owner, which approval may be withheld in the sole and exclusive discretion of the Owner. The Owner's approval to such assignment shall be upon such terms and conditions as determined by the Owner in its sole and exclusive discretion.
- 16.7 Gender and Number.** Whenever the context of the Contract Documents so require, the neuter gender shall include the feminine and masculine, the masculine gender shall include the feminine and neuter, the singular number shall include the plural and the plural number shall include the singular.
- 16.8 Independent Contractor Status.** In performing its obligations under the Contract Documents, the Contractor is an independent contractor to the Owner and not an agent or employee of the Owner. Nothing contained herein shall be deemed or construed as creating a relationship of employer and employee between the Owner and the Contractor or any Subcontractors, employees of the Contractor or Subcontractors or their respective agents and representatives. Neither the Contractor, Subcontractors nor any employees of the Contractor or Subcontractors are entitled to any rights or privileges of Owner employees.
- 16.9 Notices.** Except as otherwise expressly provided for in the Contract Documents, all notices which the Owner or the Contractor may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by postage prepaid, First Class Certified Return Receipt Requested United States Mail, addressed to the Owner or the Contractor at their respective

address set forth in the Contract Documents, or such other address(es) as either the Owner or the Contractor may designate from time to time by written notice to the other in conformity with the provisions hereof. In the event of personal delivery, such notices shall be deemed effective upon delivery, provided that such personal delivery requires a signed receipt by the recipient acknowledging delivery of the same. In the event of mailed notices, such notice shall be deemed effective on the third working day after deposit in the mail.

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

16.11 Dispute Resolution; Arbitration.

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

16.11.2 Arbitration. Except as provided in Article 16.11.1, any other claims, disputes, disagreements or other matters in controversy between the Owner and the Contractor arising out of, or related, in any manner, to the Contract Documents, or the interpretation, clarification or enforcement thereof shall be resolved by arbitration conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the AAA closest to the Site. The award rendered by the Arbitrator(s) shall be final and binding upon the Owner and the Contractor. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. In the event more than one Demand for Arbitration is made by either the Owner or the Contractor, all such controversies shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the Owner and the Contractor. The Contractor's Surety, a Subcontractor or Material Supplier to the Contractor and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements with the Contractor, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the Owner and the Contractor, in which case an appropriate severance order shall be issued by the Arbitrator(s). The expenses and fees of

the Arbitrator(s) shall be divided equally among the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other cost and expense incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators' fees but excluding attorneys' fees, to the prevailing party. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

16.11.3 Inapplicability to Bid Bond. The provisions of this Article 16.11 shall not be applicable to disputes, disagreements or enforcement of rights or obligations under the Bid Bond; all claims, disputes and actions to enforce rights or obligations under the Bid Bond shall be adjudicated only by judicial proceedings commenced in a court of competent jurisdiction.

16.12 Capitalized Terms. Except as otherwise expressly provided, capitalized terms used in the Contract Documents shall have the meaning and definition for such term as set forth in the Contract Documents.

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

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

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

16.16 Prohibited Interests. No employee of the Owner, who is authorized in such capacity on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or subcontract in connection with the Work shall become directly or indirectly financially interested in the Work or any part thereof.

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

[END OF SECTION]