1. DEFINITIONS

A. The District, the Contractor, and the Architect are those named as such in the Contract Documents and are referred to as if each were of the singular and masculine gender.

B. Subcontractor, as used herein, includes those having direct contact with Contractor and one who furnished material worked to a special design according to plans and specifications of this work, but does not include one who merely furnishes material not so worked.

C. Worker includes laborer, worker, or mechanic.

D. Locality in which the work is performed means the county in which the public work is done.

E. Surety is the firm or corporation that executes as surety the Contractor Performance Bond and Payment Bond. Surety must be an admitted surety insurer pursuant to Code of Civil Procedure Section 995.120.

F. Provide shall include “provide complete in place, that is, “furnish and install.”

G. As shown as indicated as detailed, refer to drawings accompanying this specification.

H. The term “work” means labor and materials, or both, incorporated in, or to be incorporated in the construction covered by the Contract Documents. Unless otherwise specified, the terms “approved”, “directed”, “satisfactory”, “accepted”, “acceptable”, “proper”, “required”, “necessary”, and “equal”, mean as approved, directed, satisfactory, accepted, proper, required, necessary and equal, in the opinion of the Architect.


2. DRAWINGS AND SPECIFICATIONS

Contract Documents are complementary, and what is called for by one document shall be binding as if called for by all. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the work. Materials or work described in words which so applied have a well known technical or trade meaning shall be deemed to refer to such recognized standards.
Interpretations. Figured dimensions on drawings shall govern, but work not dimensioned shall be as directed. Work not particularly shown or specified shall be same as similar parts that are shown or specified. Large scale drawings shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials, workmanship, and installation procedures. Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, he shall promptly notify the Architect in writing and any necessary changes shall be adjusted as provided in contract for changes in work.

Misunderstanding of drawings and specifications shall be clarified by the Architect, whose decision shall be final.

Standards, rules and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified.

Specifications and Accompanying Drawings are intended to delineate and describe the project and its component parts to such a degree as will enable skilled and competent contractors to intelligently bid upon the work, and to carry said work to a successful conclusion.

Trade Name or Trade Term It is not the intention of said documents to go into detailed descriptions of any materials and/or methods commonly known to the trade under “trade name” or “trade term”. The mere mention or notation of such “trade name” or “trade term” shall be considered a sufficient notice to Contractor that he will be required to complete the work so named with all its appurtenances according to the best practices of the trade.

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

Contract Documents In case of conflict between the drawings and specifications, the specifications shall take precedence.

Drawings and Specifications are intended to comply with all laws, ordinances, rules and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, said laws, ordinances, rules regulations shall be considered as a part of said Contract Documents within the limits specified. The Contractor shall bear all expenses of correcting work done contrary to said laws, ordinances, rules and regulations if the Contractor knew or should have known that the work as performed is contrary to said laws, ordinances, rules and regulations and if the Contractor performed same (1) without first consulting the District for further instructions regarding said work or (2) disregarded the District’s instructions regarding said work.

3. COPIES FURNISHED

Contractor will be furnished, free of charge, copies of drawings and specifications as set forth in the supplementary General Conditions. Additional copies may be obtained at cost of reproduction.
4. OWNERSHIP OF DRAWINGS

All drawings, specifications, and copies thereof furnished by the District are its property. They are not to be used on other work and with exception of signed contract sets are to be returned to it on request at completion of work.

5. PROGRESS SCHEDULE

As part of the submitted process, Contractor shall prepare an estimated progress schedule and submit same for the District’s approval. Schedule shall indicate graphically the beginning and completion dates of all phases of construction. Contractor shall provide an updated schedule on a monthly basis, or upon request by District.

6. CONTRACT SECURITY

Unless otherwise specified in the Supplementary General Conditions or Instructions to Bidders, Contractor shall furnish a surety bond in an amount equal to one hundred (100%) percent of the contract price as security for faithful performance of this contract and shall furnish a separate bond in an amount at least equal to one hundred (100%) percent of the contract price as security for payment of persons performing labor and furnishing materials in connection with this contract.

Aforesaid bonds shall be in form set forth in these documents. Upon request of Contractor, District will consider and accept multiple sureties on such bonds. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure Section 995.120 shall be accepted.

7. ASSIGNMENT

Contractor shall not assign this contract or any part thereof without prior written consent of the District. Any assignment of money due or to become due under this contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under said contract in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Code of Civil Procedure and the Government Code and shall also be subject to deductions for liquidated damages if liquidated damages have been assessed as specified in Article 6 herein.

8. CHANGE IN NAME AND NATURE OF CONTRACTOR’S LEGAL ENTITY

Should a change be contemplated in the name or nature of the Contractor’s legal entity, the Contractor shall first notify the District in order that the proper steps may be taken to have the change reflected on the Agreement.

9. SEPARATE CONTRACTS

The District reserves the right to let other contracts in connection with this work. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate his work with
theirs. If any part of Contractor’s work depends for proper execution or results upon work of any other Contractor, the Contractor shall inspect and promptly report to Architect any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute his acceptance of other Contractor’s work as fit and proper for reception of his work, except as to defects which may develop in other Contractor’s work after execution of his work.

To ensure proper execution of his subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the Architect any discrepancy between executed work and contract documents. Contractor shall ascertain to his own satisfaction the scope of the project and nature of any other contracts that have been or may be awarded by the District in prosecution of the project to the end that Contractor may perform this contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on project. If simultaneous execution of any contract for the project is likely to cause interference with performance of some other contract or contracts, the District shall decide which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The District shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts on the project, or caused by any decision or omission of the District respecting the order of precedence in performance of contracts.

10. DISTRICT’S RIGHT TO TERMINATE CONTRACT

If the Contractor refuses or fails to prosecute the work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or fails to complete said work within such time, or if the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials to complete the work in time specified, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregards laws, ordinances or instruction of the District, or otherwise be guilty of a substantial violation of any provision of the contract, or if he or his subcontractors should violate any of the provisions of this contract, then the District may, without prejudice to any other right or remedy, serve written notice upon him and his surety of its intention to terminate this contract, such notice to contain the reasons for such intention to terminate, and unless within ten (10) days after the service of such notice such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, this contract shall upon the expiration of said ten (10) days cease and terminate. In such case, Contractor shall not be entitled to receive any further payment until work is finished. In the event of any such termination, the District shall immediately serve written notice thereof upon surety and Contractor, and surety shall have the right to take over and perform this contract, provided, however, that if surety within fifteen (15) days after service upon it of said notice of termination does not give the District written notice of its intention to take over and perform this contract, or does not commence performance thereof within thirty (30) days from date of serving such notice, the District may take over the work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor, and he and his surety shall be liable to the District thereby. The District
may, without liability for doing so, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefore. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional architectural, managerial, and administrative services, such excess shall be paid to Contractor, if the expense shall exceed the unpaid balance, Contractor or Surety shall pay the difference to District.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.

11. GUARANTEE

Besides guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work for a period of one year after date of acceptance of work by the District and shall repair or replace any or all such work, together with any other work which may be displaced in so doing, that may prove defective in workmanship and/or materials within the one-year period from date of acceptance without expense whatsoever to the District, ordinary wear and tear, unusual abuse or neglect excepted. The District will give notice of observed defects with reasonable promptness. Contractor shall notify the District upon completion of repairs.

In the event of failure of Contractor to comply with above mentioned conditions within one week after being notified in writing, the District is hereby authorized to proceed to have defects repaired and made good at expense of Contractor, who hereby agrees to pay costs and charges therefore immediately on demand.

If, in the opinion of the District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District, or to prevent interruption of operations of the District, the District will attempt to give the notice required by this article. If the Contractor cannot be contacted or does not comply with the District’s requirements for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this article, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against the Contractor. Such action by the District will not relieve the Contractor of the guarantees provided in this article or elsewhere in this contract. This article does not in any way limit the guarantee on any items for which a longer guarantee is specified, or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish the District all appropriate guarantee or warranty certificates upon completion of the project.

12. NOTICE AND SERVICE THEREOF

Any notice from one party to the other under the contract shall be in writing and shall be dated and signed by party giving such notice or by duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

A. If notice is given to the District, by personal delivery thereof to the District, or by depositing same in United States mails, enclosed in a sealed envelope, addressed to the District, postage prepaid and certified.
B. If notice is given to Contractor, by personal delivery thereof to said Contractor or to his foreman at site of project, or by depositing same in United States mails, enclosed in a sealed envelope addressed to said Contractor at his regular place of business or at such other address as may have been established for the conduct of work under this contract postage prepaid and certified.

C. If notice is given to surety or other person, by personal delivery to such surety or other person or by depositing same in United States mails, enclosed in a sealed envelope, addressed to such surety or person at the address of such surety or person last communicated by him to party giving notice, postage prepaid and certified.

13. WORKERS

A. Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on work unfit persons or anyone not skilled in work assigned to him.

B. Any person in the employ of the Contractor, whom the District may deem incompetent or unfit, shall be dismissed from work, and shall not again be employed on it except with written consent of District.

C. Pursuant to Education Code section 45125.1, the Contractor will be required to conduct criminal background checks, through the California Department of Justice, of all employees providing services to the District, and certify under penalty of perjury that none have been convicted of serious or violent felonies, as specified in Penal Code sections 1192.7(c) and 667.5(c), respectively.

The Contractor will further certify that if an employee providing services to the District is subsequently convicted of a serious or violent felony, as specified, that employee will immediately cease performing services for the District and the Contractor will immediately provide notice to the District of the conviction.

14. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

Contractor shall take out and maintain during the life of this contract such public liability and property damage insurance as shall protect him and the District from all claims for personal injury, including accidental death, as well as from all claims for property damage arising from operations under this contract, in amounts as set forth in Supplementary General Conditions and/or Instructions to Bidders.

Contractor shall require his subcontractors, if any, to take out and maintain similar public liability and property damage insurance in amounts as hereinafter set forth.

15. FIRE INSURANCE

Contractor shall maintain, and cause to be maintained, fire insurance on all work subject to loss or damage by fire. Amount of fire insurance shall be sufficient to protect against loss or damage in full until work is accepted by the District.
16. PROOF OF CARRIAGE OF INSURANCE

Contractor shall not commence work nor shall he allow any subcontractor to commence work under this contract until he has obtained all required insurance and certificates, which have been delivered in duplicate to and approved by the District.

A. Certificates and insurance policies shall include the following clause:

“This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District. Date of cancellation or reduction may not be less that fifteen (15) days after date of mailing notice.”

B. Certificates of insurance shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice.

C. Certificates of insurance shall clearly state that the District is named as an additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District.

17. LAWS AND REGULATIONS

Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify District in writing, and any necessary changes shall be adjusted as provided in contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to District, he shall bear all cost arising therefrom.

Contractor shall assume all responsibility and liability for providing his employees with a workplace in accordance with all OSHA regulations. The District assumes no liability for injury of workers while on district property, or any violations of OSHA regulations. Any fines assessed against the District due to contractor’s negligence for failure to enforce OSHA regulations will be assessed against the contractor.

Contractor and subcontractor must comply with SB 854, registering with the Department of Industrial Relations (DIR) before submitting any bid to the District. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code Section 1725.5. Proof of registration is required on all bids and proposals with the District before a contract will be awarded.

18. PERMITS AND LICENSES

Permits and licenses necessary for prosecution of work shall be secured and paid for by Contractor, unless otherwise specified.

19. EXCISE TAXES

If, under federal excise tax law, any transaction hereunder constitutes a sale on which a federal
excise tax is imposed, and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purpose of such exemption; and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in any bid price.

20. PATENTS, ROYALTIES, AND INDEMNITIES

The Contractor shall hold and save the District, its officers, agents, and employees harmless from every claim or demand made, and every liability, loss, damages or expenses of any nature or kind including attorney fees, and costs, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this contract, including its use by the District, unless otherwise specifically stipulated in the contract documents and unless such liability arises from the sole negligence or willful misconduct of the District, its officer, employees, agents or independent contractors who are directly employed by the District.

21. PAYMENT.

Payment will be made under one of the following conditions and will be designated in the final Agreement between the District and Contractor:

A. OPTION ONE:

Each month within fifteen (15) days after receipt of the approved periodic estimate for partial payment, there shall be paid to Contractor a sum equal to ninety-five percent (95%) of value of the work performed up to the last day of the previous month, less the aggregate of previous payments. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and filed before the fifth (5th) day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or any bondsman from damages arising from such work or from enforcing each and every provision of this contract, and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning work, or any portion thereof given by the District or District shall remain un- complied with.

The final payment of five percent (5%) of the value of work done under this contract, if unencumbered, shall be made thirty-five (35) days after acceptance of work by District as approved by District’s Director of Facilities Construction & Contracts, Steve Garcia.

Acceptance by Contractor of said final payment shall constitute a waiver of all claims against District arising from this contract. At any time after fifty percent (50%) of the work has been completed, if the District, finds that satisfactory progress is being made, District may make any of the remaining payments in full for actual work completed or may withhold any amount up to five percent (5%) thereof as District may find appropriate based on the Contractor’s progress.
B. OPTION TWO

Payment will be made upon satisfactory completion and acceptance of entire job. Payment will be made within thirty days after receipt of invoice.

22. SUBSTITUTED SECURITY

In accordance with Section 22300 of the Public Contract Code, the District will permit the substitution of securities for any moneys withheld by the District to ensure performance under the contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the District, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor.

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

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

The escrow agreement used for the purposes of this section shall be substantially similar to the form set forth in Public Contract Code Section 22300

23. ACCEPTANCE OF COMPLETION

District shall accept completion of the contract only when the entire work (except for minor corrective items as distinguished from incomplete items) shall have been completed to the satisfaction of the District,

If the Contractor fails to complete the minor corrective items prior to the expiration of the thirty-five (35) day period immediately following Acceptance of Completion, the District shall withhold from the final payment an amount equal to twice the estimated cost, as determined by the District, of each item until such time as the last of the items has been completed.

At the end of the 35-day period, if there are items remaining to be corrected, the District may request the Contractor in writing to make immediate correction of said items; and if the Contractor fails to make such correction within ten (10) days of the date of the written notice, the District may make the correction and deduct the costs from the amount withheld therefore.

24. PAYMENTS WITHHELD

In addition to amounts which District may retain under article 22 entitled “Payments,” District may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:

A. Payments which may be past due and payable for just claims against Contractor for any
subcontractors for labor or materials furnished in and about the performance of work on the project under this contract.

B. Defective work not remedied.

C. Failure of Contractor to make proper payments to his subcontractor or for material and labor.

D. Completion of contract if there exists a reasonable doubt that contract can be completed for balance then unpaid.

E. Damage to another contractor.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, District shall be deemed the agent of Contractor and any payment so made by District shall be considered as a payment made under contract by District to Contractor, and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. District will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

25. RESOLUTION OF CONSTRUCTION CLAIMS

Claims by Contractor in the amount of $375,000 or less shall be made by Contractor and processed by District pursuant to the provisions of Part 3, Chapter 1, Article 1.5 of the Public Contracts Code, (commencing at Section 20104). All Claims shall be in writing and include the documents necessary to substantiate the claim. Nothing in subdivision (a) of Public Contract Code Section 20104.2 shall extend the time limit or supersede the notice requirements provided in this contract for filing claims by Contractor.

26. DEDUCTION FOR UNCORRECTED WORK

If the District deems it inexpedient to correct work injured or done not in accordance with contract an equitable deduction from contract price shall be made therefore.

27. CONTRACTOR’S SUPERVISION

Unless personally present on premises (including both the site and the plant) where work is being done, Contractor shall keep on the work, during its progress, a competent Construction Superintendent satisfactory to the District. The Construction Superintendent shall not be changed except with consent of the District, unless the Construction Superintendent proves to be unsatisfactory to Contractor and ceases to be in his employ.

The Construction Superintendent shall represent Contractor in his absence, and all directions given to him shall be so confirmed on written request in each case.

Contractor shall give efficient supervision to work, using his best skill and attention. He shall
carefully study and compare all drawings, specifications, and other instruction and shall at once report to District any error, inconsistency or omission which he may discover, but he shall not be liable to the District for any damage resulting from and errors or deficiencies on contract documents or other instructions by District.

28. DOCUMENTS ON WORK

Contractor shall keep one copy of all contract documents, including addenda, change orders, Title 24 of the California Code of Regulations, and the Uniform Building Code, 1988 Edition, with any State of California 1989, 1991 and any later amendments which are part of contract documents, on the job at all times. Said documents shall be kept in good order and available to District and his representatives. Contractor shall be acquainted with and comply with the provisions of Title 24 as they relate to this project. (See particularly the Duties of Contractor, Title 24, California Code of Regulations Section 4-343.)

29. PROTECTION OF WORK AND PROPERTY

The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of this contract and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor’s risk. He shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and contract documents. Contractor shall take all necessary precautions for safety of employees on the work and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. He shall erect and work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. He shall designate a responsible member of his organization on the work whose duty shall be prevention of accidents. Name and position of person so designated shall be reported to the District.

In an emergency affecting safety or life or of work or of adjoining property, Contractor, without special instruction or authorization from Architect or the District, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so authorized or instructed by Architect or by the District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.

Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.

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

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

A. Enclose working areas with a substantial barricade, arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities, and perform work which may interfere with school routing before or after
school hours. (This subsection applies to new construction on existing sites).

B. Provide substantial barricades around any shrubs or trees indicated to be preserved.

C. Deliver materials to building area over route designated by District.

D. When directed by the District, take preventive measures to eliminate objectionable dust.

E. Confine his apparatus, the storage of materials, and the operation of his workmen to limits indicated by law, ordinances, permits, or directions of District, and shall not unreasonably encumber premises with his material, and enforce all instructions of the District and Architect regarding signs, advertising, fires, danger signals, barricades, and smoking, and require that all persons employed on work comply with all regulations while on construction site.

F. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer at no cost to the District.

30. LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at his expense. Such work shall be done by a qualified civil engineer approved by the District. Any required “As-Built” drawings of site development shall be prepared by the approved civil engineer.

31. CUTTING AND PATCHING

Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure, and he shall make good after them as District may direct. All cost caused by defective or ill-timed work shall be borne by party responsible therefore.

Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with consent of District.

32. CLEANING UP

Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment caused by this work; debris shall be removed from premises. Contractor shall not leave debris under, in, or about the premises. Contractor shall not utilize any District Waste receptacles; doing so will result in liquidated damages in the amount of disposal for said receptacle. Upon completion of work, he shall clean interior and exterior of building including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign materials and similar finish surfaces and equipment and remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site.
33. CORRECTION OF WORK BEFORE FINAL PAYMENT
Contractor shall promptly remove from premises all work condemned by the District as failing to conform to the contract, whether incorporated or not. Contractor shall promptly replace and re-execute his own work to comply with the contract documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

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

34. ACCESS TO WORK
District and its representatives shall at all times have access to work wherever it is in preparation or progress.

Contractor shall provide safe and proper facilities for such access so that District representatives may perform their functions under contract.

35. DISTRICT’S INSPECTOR
All work shall be under observation of District’s Inspector. He shall have free access to any or all parts of work at any time. Contractor shall furnish inspector reasonable facilities for obtaining such information as may be necessary to keep him fully informed, respecting progress and manner of work and character of materials. Inspection of work shall not relieve Contractor from any obligation to fulfill this contract. District shall have authority to stop work whenever provisions of the contract documents are not being complied with, and Contractor shall instruct his employees accordingly.

36. SUBSURFACE CONDITIONS
If work under this Contract involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the District in writing of any:

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

B. Subsurface or latent physical conditions at the site differing from those indicated; and

C. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

If, in the District’s opinion, any change is required for performance of extra work not covered by
this Contract, the District may order such change under the provisions of Article 32 herein.
In accordance with Public Contracts Code Section 7104, any dispute arising between Contractor
and District as to any of the conditions listed in A, B, or C above, or with respect to article 32 of
this Contract, shall not excuse the Contractor from the completion date required by this Contract
and the Contractor shall proceed with all work to be performed under this Contract.

In addition, the District reserves the right to terminate this Contract should the District determine
not to proceed because of any condition described in A, B, or C above. Contractor shall receive
payment for all work performed to the date of termination.

37. MATERIALS AND WORK

Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all
materials, labor, tools, equipment, water, light, power, transportation, superintendence,
temporary constructions, of every nature, and all other services and facilities of every nature
whathsoever necessary to execute and complete this contract within the specified time.

Unless otherwise specified, all materials shall be new and the best of their respective kinds and
grades as noted and/or specified, and workmanship shall be of good quality.

Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted
progress of work and shall be stored properly and protected as required. Contractor shall be
entirely responsible for damage or loss by weather or other causes to materials or work under this
contract.

No materials, supplies, or equipment for work under this contract shall be purchased subject to
any chattel mortgage, or under a conditional sale or other agreement by which an interest therein,
or in any part hereof, is retained by seller or supplier. Contractor warrants good title to all
material, supplies and equipment installed or incorporated in work and agrees upon completion
of all work to deliver premises, together with all improvements and appurtenances constructed or
placed thereon by him, to District free from any claim, liens or charges. He further agrees that
neither he nor any person, firm or corporation furnishing any materials or labor for any work
covered by this contract shall have any right to lien upon premises or any improvements or
appurtenances thereon, except that Contractor may install metering devices or other equipment of
utility companies or of political subdivisions, title to which is commonly retained by utility
company or political subdivision. In event of installation of any such metering device or
equipment, Contractor shall advise District as to owner thereof. Nothing contained in this
article, however, shall defeat or impair right of persons furnishing material or labor under any
bond given by Contractor for their protection, or any rights under any law permitting such
persons to look to funds due Contractor in hands of district, and this provision shall be inserted in
all subcontracts and material contracts, and notice of its provision shall be given to all persons
furnishing material for work when no formal contract is entered into for such materials.
Contractor shall, after signing the agreement with the District, place orders for materials and/or
equipment as specified so that delivery of same may be made without delays to the work.
Contractor shall, upon demand from the District, furnish to the District documentary evidence
showing the orders have been placed.

District reserves the right, for any neglect in not complying with the above instructions, to place
orders for such materials and/or equipment as it may deem advisable in order that the work may
be completed at the specific date mentioned in the agreement, and all expenses incidental to the
procuring of said materials and/or equipment shall be paid for by the Contractor.

Materials shall be stored on the premises in such a manner so as not to interfere with the work
and so that no portion of the structure shall be overloaded.

Materials or work required or necessary to be tested shall be tested under supervision of, as
directed by, and at such places as may be convenient to the District. The required testing of all
structural materials shall be done by an approved Testing Laboratory.

38. SUBSTITUTIONS

Whenever in specifications any materials, process, or article is indicated or specified by grade,
patent, or proprietary name or by name of manufacture, such specification shall be deemed to be
used for the purpose of facilitating description of material process or article desired and shall be
deemed to be followed by the words “or equal” and Contractor may, unless otherwise stated,
offer any material, process or article which shall be substantially equal or better in every respect
to that so indicated or specified. If material, process or article offered by Contractor is not, in
opinion of District, substantially equal or better in every respect to that specified, then Contractor
shall furnish material, process or article specified. Burden of proof as to equality of any
material, process or article shall rest with Contractor. Contractor shall submit request together
with substantiating data for substitution of any “or equal” item within thirty-five (35) days after
award of contract. Provision authorizing submission of “or equal” justification data shall not in
any way authorize an extension of time for performance of this contract.

In event Contractor furnished material, process or article is more expensive than that specified,
difference in cost of such material, process or article so furnished shall be borne by Contractor.

39. SUB CONTRACTING

A. Contractor agrees to bind every subcontractor by terms of the contract as far as such
terms are applicable to subcontractor’s work. If Contractor shall subcontract any part of
this contact, Contractor shall be as fully responsible to the District for acts and omissions
of his subcontractor and of persons either directly or indirectly employed by his
subcontractor, as he is for acts and omissions of persons directly employed by himself.
Nothing contained in contract documents shall create any contractual relations between
any subcontractor and the District.

B. District’s consent to or approval of any subcontractor under this contract shall not in any
way relieve Contractor of his obligations under this contract and no such consent or
approval shall be deemed to waive any provisions of this contract.

D. Substitution or addition of subcontractors shall be permitted only as authorized in the
“Subletting and Subcontracting Fair Practices Act.” commencing at Section 4100 of the
Public Contract Code.

40. WAGE RATES

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

Per diem wages shall be deemed to include employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided in Section 1773.8 of the California Labor Code, apprenticeship or other training programs authorized by Section 3093 of the California Labor Code, and similar purposes when the term “per diem wages” is used herein.

If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which the work under the contract is to be performed, he shall make the change available to the district, but the change shall not affect the Request for Bids or the contract subsequently awarded.

Holiday and overtime work, when permitted by law, shall be paid for at the rate of at least one and one-half (1-1/2) times the above specified rate of per diem wages, unless otherwise specified.

There shall be paid each worker of the Contractor, or any of his subcontractors engaged in work on the project, no less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such worker.

The Contractor shall, as a penalty to the district, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code Section 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for such work or craft in which such worker is employed for any public work done under the contract by him or by any subcontractor under him. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

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

41. RECORD OF WAGES PAID: INSPECTION

Pursuant to Section 1776 of the Labor Code,

A. Each Contractor and subcontractor 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 journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work under this contract.

B. The payroll records enumerated under subdivision (A) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
1) A certified copy of an employee’s payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

2) A certified copy of all payroll records enumerated in subdivision (A) shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.

3) A certified copy of all payroll records enumerated in subdivision (A) shall be made available upon request by the public for inspection or copies thereof made: provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

C. Each Contractor shall file a certified copy of the records enumerated in subdivision (A) with the entity that requested such records within ten (10) days after receipt of a written request.

D. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual’s name, address and social security number. The name and address of the Contractor awarded the contract or performing the contract shall not be marked or obliterated.

E. The Contractor shall inform the district of the location of the records enumerated under subdivision (A), including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

F. In the event of noncompliance with the requirements of this section, 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 with this section. Should noncompliance still be evident after such a 10-day period, the Contractor shall pay a penalty of twenty-five Dollars ($25.00) to the district 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 progress payments then due.

G. The responsibility for compliance with this article shall rest upon the prime Contractor.
42. **HOURS OF WORK**

As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day’s work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this contract, upon the work or upon any part of the work contemplated by this contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

The Contractor shall pay to the District a penalty of twenty-five Dollars ($25.00) for each worker employed in the execution of this contract by the Contractor or by any subcontractor, 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 Article 3, (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

Any work necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without additional expense to the District.

43. **APPRENTICES**

Apprentices of any crafts or trades may be employed and, when required by Labor Code Section 1777.5, shall be employed provided they are properly indentured to the Contractor in full compliance with provisions of the Labor Code. The Contractor shall bear the responsibilities of compliance with Labor Code Section 1777.5 for all apprenticed occupations and agrees that he will comply with said section.

44. **ASSIGNMENT OF ANTITRUST CLAIMS**

Pursuant to Section 4550 et seq. of the Government Code, in submitting a bid to a public purchasing body the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2[commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

If the District receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with Section 4550) of Division 5 of Title 1 of the Government Code, the assignor shall be made and become effective at the time the purchasing body tenders final payment to the bidder.
Upon demand in writing by the assignor, the District shall, within one year from such demand, reassign the cause of action assigned pursuant to this article if the assignor has been or may have been injured by the violation of law for which the cause of action arose; and (A) the District has not been injured thereby; or (B) the District declines to file a court action for the cause of action.

45. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake, or otherwise, any such provision is not inserted or if not correctly inserted, then upon application of either party, the contract shall forthwith be physically amended to make such insertion or correction.

END OF SECTION