

EXHIBIT "D"
TO
FACILITIES LEASE

GENERAL CONSTRUCTION PROVISIONS

TABLE OF CONTENTS

1. CONTRACT TERMS AND DEFINITIONS	1
1.1. Definitions	1
1.2. Laws Concerning The Contract	4
1.3. No Oral Agreements.....	4
1.4. No Assignment.....	4
1.5. Notice And Service Thereof.....	5
1.6. No Waiver	5
1.7. Substitutions For Specified Items	5
1.8. Materials and Work	5
2. [RESERVED]	6
3. ARCHITECT.....	6
4. CONSTRUCTION MANAGER	6
5. INSPECTOR, INSPECTIONS, AND TESTS.....	7
5.1. Project Inspector.....	7
5.2. Tests and Inspections	7
5.3. Costs for After Hours and/or Off Site Inspections.....	8
6. DEVELOPER.....	8
6.1. Status of Developer.....	8
6.2. Developer’s Supervision.....	8
6.3. Duty to Provide Fit Workers.....	10
6.4. Purchase of Materials and Equipment	11
6.5. Documents on Work	11
6.6. Preservation of Records	11
6.7. Integration of Work	12
6.8. Obtaining Licenses	12
6.9. Work to Comply With Applicable Laws and Regulations	12
6.10. Safety/Protection of Persons and Property.....	13
6.11. Working Evenings and Weekends	15
6.12. Cleaning Up.....	15
7. SUBCONTRACTORS	16
8. OTHER CONTRACTS/CONTRACTORS	17
9. DRAWINGS AND SPECIFICATIONS.....	18
10. DEVELOPER’S SUBMITTALS AND SCHEDULES	19
10.1. Construction Schedule	19
10.2. Schedule of Values	19
10.2. Monthly Progress Schedule(s).....	20
10.3. Material Safety Data Sheets (MSDS)	20
10.10. Logistics Plan.....	21
11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS.....	21
11.1. Site Investigation	21
11.2. Soils Investigation Report & Site Due Diligence.....	21
11.3. Access to Work.....	23
11.4. Layout and Field Engineering	23

11.5. Utilities & Sanitary Facilities.....	24
11.6. Surveys	24
11.7. Regional Notification Center	24
11.8. Existing Utility Lines	24
11.9. Notification	25
11.10. Hazardous Materials	25
11.11. No Signs	28
12. TRENCHES.....	28
12.1. Trenches Greater Than Five Feet	28
12.2. Excavation Safety	28
12.3. No Tort Liability of District	28
12.4. No Excavation Without Permits	29
12.5. Discovery of Hazardous Waste and/or Unusual Conditions.....	29
13. INSURANCE AND BONDS	29
13.1 Developer’s Insurance.....	29
13.2 Contract Security - Bonds	29
14. WARRANTY/GUARANTEE/INDEMNITY	30
14.1. Warranty/Guarantee	30
14.2. Indemnity.....	30
15. TIME	30
15.1. Computation of Time / Adverse Weather	30
15.2. Hours of Work.....	31
15.3. Progress and Project Completion	31
15.4. Schedule	32
15.5. Expeditious Completion	32
16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES	32
16.1. Liquidated Damages.....	32
16.2. Excusable Delay	32
16.3. No Additional Compensation for Delays Within Developer’s Control.....	33
16.4. Float or Slack in the Schedule.....	33
17. CHANGES IN THE WORK.....	33
17.1. No Changes Without Authorization.....	33
17.2. Architect Authority	34
17.3. Change Orders	34
17.4. Price Request	34
17.5. Proposed Change Order	34
17.6. Format for Proposed Change Order.....	35
17.7. Change Order Certification.....	36
17.8. Determination of Change Order Cost	36
17.9. Deductive Change Orders.....	36
17.10. Construction Change Directives / Unilateral Change Orders.....	37
17.11. Discounts, Rebates, and Refunds	37
17.12. Accounting Records.....	37
17.13. Notice Required	37
17.14. Applicability to Subcontractors	37
17.15. Alteration to Change Order Language	38
17.16. Failure of Developer to Execute Change Order.....	38
17.17. Allowances.....	38
18. REQUESTS FOR INFORMATION	38
19. PAYMENTS.....	38
19.1. Contract Price.....	38
19.2. Applications for Tenant Improvement Payments	39

19.3. District’s Approval of Application for Tenant Improvement Payment	41
20. COMPLETION OF THE WORK.....	44
20.1. Completion	44
20.2. Close-Out Procedures.....	45
20.3. Final Inspection	46
20.4. Costs of Multiple Inspections	47
20.5. Beneficial Occupancy or Use Prior to Project Completion	47
21. FINAL PAYMENT	48
21.1. Final Payment	48
21.2. Prerequisites for Final Tenant Improvement Payment	48
22. UNCOVERING OF WORK	49
23. NONCONFORMING WORK AND CORRECTION OF WORK	49
23.1. Nonconforming Work.....	49
23.2. Correction of Work.....	49
23.3 District’s Right to Perform Work	50
24. TERMINATION AND SUSPENSION AND SCOPE REDUCTION	50
24.1. Emergency Termination of Public Contracts Act of 1949	50
24.2. Suspension of Work	51
24.3. Scope Reduction	51
25. DISPUTES AND CLAIMS	51
25.1. Performance During Dispute And Claim Resolution Process.....	51
25.2. Waiver	51
25.3. Intention	51
25.4. Exclusive Remedy.....	52
25.5. Other Provisions.....	52
25.6. Subcontractors.....	52
25.7. Dispute And Claim Resolution Process	52
26. LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS	56
26.1. Labor Compliance Program	56
26.2. Wage Rates, Travel and Subsistence	56
26.3. Hours of Work	57
26.4. Payroll Records	58
26.5. Apprentices.....	59
26.6. Non-Discrimination	61
26.7. Labor First Aid	61
27. MISCELLANEOUS.....	61
27.1. Assignment of Antitrust Actions.....	61
27.2. Excise Taxes	62
27.3. Taxes.....	62
27.4. Shipments	62

This Exhibit D constitutes the “General Construction Provisions” that govern the overall construction and Project Completion by Developer.

1. CONTRACT TERMS AND DEFINITIONS

1.1. Definitions

Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:

1.1.1. Adverse Weather: Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, and (2) at the Project.

1.1.2. Allowance: Amount(s) included in the Guaranteed Project Cost that the Parties agree shall be used, if used at all, to pay for the construction of the specific scope of work identified with that amount of money. By agreeing to an Allowance amount, the Parties agree (1) the specific scope of Work may not be necessary; (2) the cost to perform the specific scope of Work cannot be determined on the Effective Date; (3) is a reasonable estimate of the cost to do the specific scope of Work.

1.1.3. Approval, Approved, and/or Accepted: Refer to written authorization, unless stated otherwise.

1.1.4. Architect: The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the District's Architect on this Project or the Architect's authorized representative.

1.1.5. Beneficial Occupancy: Occupancy of the Project by the District for its intended purpose and which produces relatively little interference with the Developer in completing construction.

1.1.6. Change Order: A written order to the Developer authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Guaranteed Project Cost or Contract Time.

1.1.7. Construction Change Directive: A written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work.

1.1.8. Construction Manager: The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.

1.1.9. Construction Schedule: The progress schedule of construction of the Project as provided by Developer and approved by District.

1.1.10. Contract, Contract Documents: The Contract consists exclusively of the documents evidencing the agreement of the District and Developer, identified as the Contract Documents. The Contract Documents consist of the following documents:

- 1.1.10.1.** Site Lease
- 1.1.10.2.** Master Facilities Lease, with all of its Exhibits
- 1.1.10.3.** These General Construction Provisions

- 1.1.10.4. Noncollusion Affidavit
- 1.1.10.5. Workers' Compensation Certification
- 1.1.10.6. Prevailing Wage Certification
- 1.1.10.7. Disabled Veterans Business Enterprise Participation Certification
- 1.1.10.8. Drug-Free Workplace Certification
- 1.1.10.9. Tobacco-Free Environment Certification
- 1.1.10.10. Lead-Based Paint Certification
- 1.1.10.11. Hazardous Materials Certification
- 1.1.10.12. Imported Materials Certification
- 1.1.10.13. Criminal Background Investigation/Fingerprinting Certification
- 1.1.10.14. Roofing Contract Financial Interest Certification
- 1.1.10.15. Storm Water Pollution Prevention Plan
- 1.1.10.16. Labor Compliance Program Information and Forms
- 1.1.10.17. Performance Bond
- 1.1.10.18. Payment Bond (Developer's Labor & Material Bond)
- 1.1.10.19. All Division 1 Documents, which shall only supplement these General Construction Provisions, but shall not control if their provisions contradict these Construction Provisions
- 1.1.10.20. All Plans, Technical Specifications, and Drawings
- 1.1.10.21. Any and all addenda to any of the above documents
- 1.1.10.22. Any and all change orders or written modifications to the above documents if approved in writing by the District

1.1.11. **Contract Time:** The time period stated in the Master Facilities Lease for Project Completion.

1.1.12. **Daily Job Report(s):** Daily Project reports prepared by the Developer's employee(s) who are present on aSite, which shall include the information required herein.

1.1.13. **Day(s):** Unless otherwise designated, day(s) means calendar day(s).

1.1.14. **Developer (or "Contractor"):** The entity identified in the Master Facilities Lease as contracting to perform the Work to be done under this Contract, or the legal representative of such a person or persons.

1.1.15. **District (or "Owner"):** The public agency or the school district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time,

1.1.15.1. Direct the Developer to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Developer will communicate with or provide notice to the District; and/or

1.1.15.2. Direct the Construction Manager or the Architect to communicate with or direct the Developer on matters for which the Contract Documents indicate the District will communicate with or direct the Developer.

1.1.16. **Drawings: (or "Plans")** The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.

1.1.17. **DSA:** Division of the State Architect.

1.1.18. **Guaranteed Project Cost (or "Contract Price"):** The total monies payable to the Developer under the terms and conditions of the Contract Documents.

1.1.19. Labor Compliance Program: (or “LCP”) If this Project is funded at least in part with State bond funds, then the LCP is the program and related documents and practices necessary for the program by which the Department of Industrial Relations Compliance Monitoring Unit, the District and/or its designee will ensure that the Developer and all Subcontractors pay prevailing wages to all workers on the Project.

1.1.20. Product(s): New material, machinery, components, equipment, fixtures and systems forming the Work, including existing materials or components required and approved by the District for reuse.

1.1.21. Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Developer to illustrate a material, product, or system for some portion of the Work.

1.1.22. Project: The planned undertaking as provided for in the Contract Documents.

1.1.23. Project Completion: Where the Work to construct the Project is 100% complete, including all punch list items. Final DSA approval of the Project is not required for Project Completion.

1.1.24. Project Inspector (or “Inspector” or “IOR”): The individual(s) retained by the District in accordance with title 24 of the California Code of Regulations to monitor and inspect the Project.

1.1.25. Program Manager: The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Program Manager is designated for Project that is the subject of this Contract, then all references to Project Manager herein shall be read to refer to District.

1.1.26. Provide: Shall include “provide complete in place,” that is, “furnish and install,” and “provide complete and functioning as intended in place” unless specifically stated otherwise.

1.1.27. Request for Information (or “RFI”): A written request prepared by the Developer requesting that the Architect provide additional information necessary to clarify or amplify an item in the Contract Documents that the Developer believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems that have arisen under field conditions.

1.1.28. Request for Substitution: A request by Developer to substitute an equal or superior material, product, thing, or service for a specific material, product, thing, or service that has been designated in the Contract Documents by a specific brand or trade name.

1.1.29. Safety Orders: Written and/or verbal orders for construction issued by the California Division of Industrial Safety (“CalOSHA”) or by the United States Occupational Safety and Health Administration (“OSHA”).

1.1.30. Safety Plan: Developer’s safety plan specifically adapted for the Project. Developer’s Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these General Construction Provisions.

1.1.31. Samples: Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.

1.1.32. Shop Drawings: All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the Developer, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.

1.1.33. Site: The Project site as shown on the Drawings.

1.1.34. Specifications: That portion of the Contract Documents, Division 1 through Division 49, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.

1.1.35. Subcontractor: A contractor and/or supplier who is under contract with the Developer or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.

1.1.36. Submittal Schedule: The schedule of submittals as provided by Developer and approved by District.

1.1.37. Surety: The person, firm, or corporation that executes as surety the Developer's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.

1.1.38. Work: All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for Project Completion.

1.2. Laws Concerning The Contract

Contract is subject to all provisions of the Constitution and laws of California governing, controlling, or affecting District, or the property, funds, operations, or powers of District, and such provisions are by this reference made a part hereof. Any provision required by law to be included in this Contract shall be deemed to be inserted.

1.3. No Oral Agreements

No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract.

1.4. No Assignment

Except as specifically permitted in the Master Facilities Lease, Developer shall not assign this Contract or any part thereof including, without limitation, any services or money to become due hereunder without the prior written consent of the District. Assignment without District's prior written consent shall be null and void. Any assignment of money due or to be come due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under this Contract in favor of all persons, firms, or corporations rendering services or supplying material to the extent that claims are filed pursuant to the Civil Code, Code of Civil Procedure, Government Code, Labor Code, and/or Public Contract Code, and shall also be subject to deductions for liquidated damages or withholding of payments as determined by District in accordance with this Contract. Developer shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the District.

1.5. Notice And Service Thereof

1.5.1. Any notice from one party to the other or otherwise under Contract shall be in writing and shall be dated and signed by the party giving notice or by a duly authorized representative of that party. Any notice shall not be effective for any purpose whatsoever unless served as indicated in the Master Facilities Lease.

1.6. No Waiver

The failure of District in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the District, Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the District under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

1.7. Substitutions For Specified Items

Developer shall not substitute any items identified in the Contract Documents without complying with the procedures indicated in the Contract Documents and without prior written approval of the District.

1.8. Materials and Work

1.8.1. Except as otherwise specifically stated in this Contract, Developer shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete this Contract within the Contract Time.

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

1.8.3. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of Work and shall be stored properly and protected as required.

1.8.4. For all materials and equipment specified or indicated in the Drawings, the Developer shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended, including incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

1.8.5. Developer shall, after award of Contract by District and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Developer shall, upon demand from District, present documentary evidence showing that orders have been placed.

1.8.6. District reserves the right but has no obligation, for any neglect in 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 date specified in the Master Facilities Lease, and all expenses

incidental to the procuring of said materials and/or equipment shall be paid for by Developer or withheld from payment(s) to Developer.

1.8.7. Developer warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon Project Completion to deliver the Site to District, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Developer further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract shall have any right to lien any portion of the Premises or any improvement or appurtenance thereon, except that Developer may install metering devices or other equipment of utility companies or of political subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Developer shall advise District as to owner thereof.

1.8.8. Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing materials or labor under any bond given by Developer for their protection or any rights under any law permitting such protection or any rights under any law permitting such persons to look to funds due Developer in hands of District (e.g., stop payment notices), and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

1.8.9. Title to new materials and/or equipment for the Work of this Contract and attendant liability for its protection and safety shall remain with Developer until incorporated in the Work of this Contract and Title is transferred to the District pursuant to the Master Facilities Lease. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of this Contract. Developer shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to District or its authorized representative and shall, at the District's request, forward it to the District.

2. [RESERVED]

3. ARCHITECT

3.1. The Architect shall represent the District during the Project and will observe the progress and quality of the Work on behalf of the District. Architect shall have the authority to act on behalf of District to the extent expressly provided in the Contract Documents and to the extent determined by District. Architect shall have authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in Architect's reasonable opinion, to insure the proper execution of the Contract.

3.2. Architect shall, with the District and on behalf of the District, determine the amount, quality, acceptability, and fitness of all parts of the Work, and interpret the Specifications, Drawings, and shall, with the District, interpret all other Contract Documents.

3.3. Architect shall have all authority and responsibility established by law, including title 24 of the California Code of Regulations.

3.4. Developer shall provide District and the Construction Manager with a copy of all written communication between Developer and Architect at the same time as that communication is made to Architect, including, without limitation, all RFIs, correspondence, submittals, claims, and proposed change orders.

4. CONSTRUCTION MANAGER

4.1. If a construction manager is used on this Project (“Construction Manager” or “CM”), the Construction Manager will provide administration of the Contract on the District's behalf. After execution of the Contract, all correspondence and/or instructions from Developer and/or District shall be forwarded through the Construction Manager. The Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions in connection with the Work, which shall all remain the Developer’s responsibility.

4.2. The Construction Manager, however, will have authority to reject materials and/or workmanship not conforming to the Contract Documents, as determined by the District, the Architect, and/or the Project Inspector. The Construction Manager shall also have the authority to require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Any decision made by the Construction Manager, in good faith, shall not give rise to any duty or responsibility of the Construction Manager to the Developer, any Subcontractor, their agents, employees, or other persons performing any of the Work. The Construction Manager shall have free access to any or all parts of Work at any time.

4.3. If the District does not use a Construction Manager on this Project, all references to Construction Manager or CM shall be read as District.

5. INSPECTOR, INSPECTIONS, AND TESTS

5.1. Project Inspector

5.1.1. One or more Project Inspector(s), including special Project Inspector(s), as required, will be assigned to the Work by District, in accordance with requirements of title 24, part 1, of the California Code of Regulations, to enforce the building code and monitor compliance with Plans and Specifications for the Project previously approved by the DSA. Duties of Project Inspector(s) are specifically defined in section 4-342 of said part 1 of title 24.

5.1.2. No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Developer shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials. Inspection of Work shall not relieve Developer from an obligation to fulfill this Contract. Project Inspector(s) and the DSA are authorized to stop work whenever the Developer and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Developer shall instruct its Subcontractors and employees accordingly.

5.1.3. If Developer and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-site, this shall only be done if it is allowable pursuant to applicable regulations and DSA. If the off-site inspections are more frequent than are reasonable for the type of off-site inspection, those inspections shall be at the expense of the Developer.

5.2. Tests and Inspections

5.2.1. Tests and Inspections shall comply with title 24, part 1, California Code of Regulations, group 1, article 5, section 4-335, and with the provisions of the Specifications.

5.2.2. The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the District's representative and not by the Developer. The Developer shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection.

5.2.3. The Developer shall notify the District's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents, that must by terms of the Contract Documents be tested, in order that the District may arrange for the testing of same at the source of supply. This notice shall be, at a minimum, seventy-two (72) hours prior to the manufacture of the material that needs to be tested. These notifications shall be submitted in all instances via hard copy and, if requested by the Project Inspector(s), also electronically via an internet-based notification/reporting system.

5.2.4. Any material shipped by the Developer from the source of supply prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated into and/or onto the Project.

5.2.5. The District will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents shall be paid for by the District and reimbursed by the Developer or deducted from the Guaranteed Project Cost.

5.3. Costs for After Hours and/or Off Site Inspections

If the Developer performs Work outside the Inspector's regular working hours or requests the Inspector to perform inspections off Site, costs of any inspections required outside regular working hours or off Site shall be borne by the Developer and may be invoiced to the Developer by the District or the District may deduct those expenses from the next Tenant Improvement Payment.

6. DEVELOPER

Developer shall construct the Work for the Contract price including any adjustment(s) to the Guaranteed Project Cost pursuant to provisions herein regarding changes to the Guaranteed Project Cost. Except as otherwise indicated herein, Developer shall provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities, transportation, taxes, and services necessary for the proper execution and Project Completion..

6.1. Status of Developer

6.1.1. Developer is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District, or any of the District's employees or agents, and Developer or any of Developer's Subcontractors, agents or employees. Developer assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Developer, its Subcontractors, agents, and its employees shall not be entitled to any rights or privileges of District employees. District shall be permitted to monitor the Developer's activities to determine compliance with the terms of this Contract.

6.1.2. As required by law, Developer and all Subcontractors shall be properly licensed and regulated by the Contractors State License Board, 3132 Bradshaw Road, Post Office Box 2600, Sacramento, California 98826, <http://www.cslb.ca.gov>.

6.2. Developer's Supervision

6.2.1. During progress of the Work, Developer shall keep on the Premises, and at all other appropriate locations where any Work related to the Contract is being performed, minimum staffing as indicated in **Exhibit K** to the Facilities Lease. These persons shall each comply with the following:

6.2.1.1. Each shall be an employee of the Developer, to whom the District does not object.

6.2.1.2. Each shall speak fluently English, written and verbal, and the predominant language of the Developer's employees.

6.2.2. Before commencing the Work herein, Developer shall give written notice to District of the name of its project manager and construction superintendent. Neither the Developer's project manager nor construction superintendent shall be changed except with prior written notice to District, unless the Developer's project manager and/or construction superintendent proves to be unsatisfactory to Developer, District, any of the District's employees, agents, the Construction Manager, or the Architect, in which case, Developer shall notify District in writing or if such project manager or construction superintendent are no longer employed by Developer. The Developer's project manager and construction superintendent shall each represent Developer, and all directions given to Developer's project manager and/or construction superintendent shall be as binding as if given to Developer.

6.2.3. Developer shall give efficient supervision to Work, using its best skill and attention. Developer shall carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and shall at once report to District, Construction Manager, and Architect any error, inconsistency, or omission that Developer or its employees and Subcontractors may discover, in writing, with a copy to District's Project Inspector(s).

6.2.4. The Developer's project manager shall devote sufficient time to the Project on site, and in the Developer's home office to pre-plan activities to meet the Project schedule and fulfill all Contract obligations. This includes making timely submittals, issuing and disseminating necessary RFI's, promptly processing and distributing bulletins, change orders and payments, keeping required logs current etc. If any of these activities fall behind contract requirements or dates necessary to complete the Project on time, the Developer must provide a full time project manager on site dedicated solely to the Project, until the deficiencies are corrected.

6.2.5. The Developer shall verify all indicated dimensions before ordering materials or equipment, or before performing work. The Developer shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the Developer with the Project Documents before commencing work. Errors, inconsistencies or omissions discovered shall be reported to the District at once. Upon commencement of any item of work, the Developer shall be responsible for dimensions related to such item of work and shall make any corrections necessary to make work properly fit at no additional cost to District. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to subcontractors or agents.

6.2.6. Omissions from the plans, drawings or specifications, or the misdescription of details of work which are manifestly necessary to carry out the intent of the plans, drawings and specifications, or which are customarily performed, shall not relieve the Developer from performing such omitted or misdescribed work, but they shall be performed as if fully and correctly set forth and described in the plans, drawings and specifications.

6.2.7. The Developer shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Developer shall be responsible to see that the finished work complies accurately with the Contract Documents.

6.3. Duty to Provide Fit Workers

6.3.1. Developer and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in work assigned to that person. It shall be the responsibility of Developer to ensure compliance with this requirement. District may require Developer to permanently remove unfit persons from Project Site.

6.3.2. Any person in the employ of Developer or Subcontractor(s) whom District may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of District.

6.3.3. The Developer shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

6.3.4. If Developer intends to make any change in the name or legal nature of the Developer's entity, Developer must first notify the District. The District shall determine if Developer's intended change is permissible while performing this Contract.

6.4. Personnel

6.4.1. All persons working for Developer and Subcontractor(s) shall refrain from using profane or vulgar language, or any other language that is inappropriate on the job site.

6.4.2. The Developer shall employ a full-time superintendent and necessary assistants who shall have complete authority to represent and act on behalf on the Developer on all matters pertaining to the Work. The superintendent shall be competent and have a minimum of five (5) years experience in construction supervision on projects of similar scale and complexity. The superintendent shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Developer with one that is acceptable. The superintendent shall not be changed without the written consent of the District unless the superintendent ceases to be employed by the Developer.

6.4.3. The Developer shall employ a competent estimator and necessary assistants, or contract for sufficient services of an estimating consultant and to process proposed change orders. The estimator shall have a minimum of five (5) years experience in estimating. The estimator shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Developer with one that is acceptable. The estimator shall not be changed without the written consent of the District unless the estimator ceases to be employed by the Developer. The Developer shall submit PCO's requested by the District within fourteen (14) calendar days.

6.4.4. The Developer shall employ a competent scheduler and necessary assistants, or contract for sufficient services of a scheduling consultant. The scheduler shall have a minimum of five (5) years experience in scheduling. The scheduler shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Developer with one that is acceptable. The scheduler shall not be changed without the written consent of the District unless the scheduler ceases to be employed by the Developer.

6.4.5. Developer shall at all times enforce strict discipline and good order among Developer's employees, and shall not employ on the Project any unfit person or anyone not skilled in the task assigned.

6.4.6. If Developer or any Subcontractor on the Project site fails to comply with any provision of paragraph 6.4, the District may have the offending person(s) immediately removed from the site, and such person(s) shall be replaced within three (3) days, at no additional expense to the District. Developer,

on behalf of it and its subcontractors, hereby waives any claim that the provisions of this paragraph or the enforcement thereof interferes, or has the potential to interfere, with its right to control the means and methods of its performance and duties under this Contract.

6.5. Purchase of Materials and Equipment

The Developer is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays.

6.6. Documents on Work

6.6.1. Developer shall at all times keep on the Work Site, or at another location as the District may authorize in writing, one legible copy of all Contract Documents, including Addenda and Change Orders, and titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code, all approved Drawings, Plans, Schedules, and Specifications, and all codes referred to in the Specifications, and made part thereof. These documents shall be kept in good order and available to District, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all authorities having jurisdiction. Developer shall be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the duties of Developer, title 24, part 1, California Code of Regulations, § 4-343.) Developer shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly titles 8 and 17. Developer shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of title 24.

6.6.2. Daily Job Reports.

6.6.2.1. Developer shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by the Developer's employee(s) who are present on Site, and must include, at a minimum, the following information:

- 6.6.2.1.1.** A brief description of all Work performed on that day.
- 6.6.2.1.2.** A summary of all other pertinent events and/or occurrences on that day.
- 6.6.2.1.3.** The weather conditions on that day.
- 6.6.2.1.4.** A list of all Subcontractor(s) working on that day,
- 6.6.2.1.5.** A list of each Developer employee working on that day and the total hours worked for each employee.
- 6.6.2.1.6.** A complete list of all major equipment on Site that day, whether in use or not.
- 6.6.2.1.7.** All complete list of all materials, supplies, and equipment delivered on that day.
- 6.6.2.1.8.** A complete list of all inspections and tests performed on that day.

6.6.2.2. Each day Developer shall provide a copy of the previous day's Daily Job Report to the District or the District's Construction Manager.

6.7. Preservation of Records

The District shall have the right to examine and audit all Daily Job Reports or other Project records of Developer's project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; all books, estimates, records, contracts, documents, cost data, subcontract job cost reports, and other data of the Developer, any Subcontractor, and/or supplier, including computations and projections related to estimating, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower,

coordination, supervision, or pricing data at no additional cost to the District. These documents may be duplicative and/or be in addition to any documents held in escrow by the District. The Developer shall make available at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Contract. Notwithstanding the provisions above, Developer shall provide any records requested by any governmental agency, if available, after the time set forth above.

6.8. Integration of Work

6.8.1. Developer shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive or be received by work of other contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as District and/or Architect may direct.

6.8.2. All cost caused by defective or ill-timed Work shall be borne by Developer, inclusive of repair work.

6.8.3. Developer shall not endanger any work performed by it or anyone else by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor except with consent of District.

6.9. Obtaining Licenses

Except for DSA fees or charges, Developer shall secure and pay for all of its required licenses, and certificates necessary for prosecution of Work before the date of the commencement of the Work or before the licenses, and certificates are legally required to continue the Work without interruption. The Developer shall obtain and pay, only when legally required, for all licenses and certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract. All final permits and certificates shall be delivered to District before demand is made for final payment.

6.10. Work to Comply With Applicable Laws and Regulations

6.10.1. Developer shall give all notices and comply with the following specific laws, ordinances, rules, and regulations and all other applicable laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and specified, including but not limited to the appropriate statutes and administrative code sections. If Developer observes that Drawings and Specifications are at variance therewith, or should Developer become aware of the development of conditions not covered by Contract Documents that will result in finished Work being at variance therewith, Developer shall promptly notify District in writing and any changes deemed necessary by District shall be made as provided in Contract for changes in Work.

6.10.1.1. National Electrical Safety Code, U. S. Department of Commerce

6.10.1.2. National Board of Fire Underwriters' Regulations

6.10.1.3. Uniform Building Code, latest addition, and the California Code of Regulations, title 24, including amendments

6.10.1.4. Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America

6.10.1.5. Industrial Accident Commission's Safety Orders, State of California

6.10.1.6. Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes

- 6.10.1.7.** Americans with Disabilities Act
- 6.10.1.8.** Education Code of the State of California
- 6.10.1.9.** Government Code of the State of California
- 6.10.1.10.** Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies
- 6.10.1.11.** Public Contract Code of the State of California
- 6.10.1.12.** California Art Preservation Act
- 6.10.1.13.** U. S. Copyright Act
- 6.10.1.14.** U. S. Visual Artists Rights Act

6.10.2. Developer shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.)

6.10.3. If Developer performs any Work that it knew, or through exercise of reasonable care should have known, to be contrary to any applicable laws, ordinance, rules, or regulations, Developer shall bear all costs arising therefrom.

6.10.4. Where Specifications or Drawings state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall, or other body or agency, Developer shall be responsible for satisfying requirements of such bodies or agencies.

6.11. Safety/Protection of Persons and Property

6.11.1. The Developer will be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours.

6.11.2. The wearing of hard hats will be mandatory at all times for all personnel on Site. Developer shall supply sufficient hard hats to properly equip all employees and visitors.

6.11.3. Any construction review of the Developer's performance is not intended to include review of the adequacy of the Developer's safety measures in, on, or near the Work Site.

6.11.4. Implementation and maintenance of safety programs shall be the sole responsibility of the Developer.

6.11.5. The Developer shall furnish to the District a copy of the Developer's safety plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.

6.11.6. Developer shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care, Project Completion and final acceptance by District. Developer shall not be responsible for damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

6.11.7. Developer shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. Developer shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, 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.

6.11.8. Hazards Control – Developer shall store volatile wastes in covered metal containers and remove them from the Site regularly, which shall be daily when appropriate for the type of hazardous wastes to be removed. Developer shall prevent accumulation of wastes that create hazardous conditions. Developer shall provide adequate ventilation during use of volatile or noxious substances.

6.11.9. Developer shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to District by Developer.

6.11.10. Developer shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, Developer shall correct such violation promptly.

6.11.11. Storm Water Permits. Developer shall comply with any District storm water requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

6.11.11.1. Developer shall perform the Work of the Project related to being the District’s Qualified SWPPP (Storm Water Pollution Prevention Plan) Practitioner (“QSP”).

6.11.11.2. As the District’s QSP, Developer shall be responsible for storm water and non-storm water visual observations, sampling, and analysis per the District’s SWPPP.

6.11.11.3. Developer shall strictly follow the requirements to implement all the provisions of the SWPPP including, without limitation, preparation of monitoring and recording reports and providing those to the District.

6.11.11.4. Developer’s indemnity obligations as indicated in the Facilities Lease are applicable to any damages, penalties, fees, charges, or related expenses assessed or charged to the District by any water boards or agencies with jurisdiction related to compliance with the Storm Water Permits.

6.11.12. In an emergency affecting safety of life or of work or of adjoining property, Developer, without special instruction or authorization, shall act, at its discretion, to prevent such threatened loss or injury. Any compensation claimed by Developer on account of emergency work shall be determined by agreement.

6.11.13. All salvage materials will become the property of the Developer and shall be removed from the Site unless otherwise called for in the Contract Documents. However, the District reserves the right to designate certain items of value that shall be turned over to the District unless otherwise directed by District.

6.11.14. All connections to public utilities and/or existing on-site services shall be made and maintained in such a manner as to not interfere with the continuing use of same by the District during the entire progress of the Work.

6.11.15. Developer shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, such as extreme heat, cold, rain, snow, dry winds, flooding, or dampness.

6.11.16. The Developer shall protect and preserve the Work from all damage or accident, providing any temporary roofs, window and door coverings, boxing, or other construction as required by the Architect. The Developer shall be responsible for existing structures, walks, roads, trees, landscaping, and/or improvements in working areas; and shall provide adequate protection therefore. If temporary removal is necessary of any of the above items, or damage occurs due to the Work, the Developer shall replace same at his expense with same kind, quality, and size of Work or item damaged. This shall include any adjoining property of the District and others.

6.11.17. Developer shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations of the Developer.

6.11.18. Developer shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District, Construction Manager or Architect, and shall not interfere with the Work or unreasonably encumber Premises or overload any structure with materials. Developer shall enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site.

6.11.19. Developer, Developer's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. No verbal or physical contact with neighbors, students, and faculty, profanity, or inappropriate attire or behavior will be permitted. District may require Developer to permanently remove non-complying persons from Project Site.

6.11.20. Developer shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, Developer shall have a civil engineer, registered as a professional engineer in California, replace them at no cost to District.

6.11.21. In the event that the Developer enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, Developer shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification shall be approved by the District prior to the commencement of any Work on or about the adjacent property. The Developer shall also indemnify the District as provided in the indemnification provision herein. These provisions shall be in addition to any other requirements of the owners of the adjacent property.

6.12. Working Evenings and Weekends

Developer may be required to work evenings and/or weekends at no additional cost to the District. Developer shall give the District seventy-two (72) hours notice prior to performing any evening and/or weekend work. Developer shall perform all evening and/or weekend work only upon District's approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Developer shall reimburse the District for any Inspector charges necessitated by the Developer's evening, weekend and/or legal holiday work, unless the District has agreed to be responsible for such costs at the District's expense in advance of the evening and/or weekend work.

6.13. Cleaning Up

6.13.1. The Developer shall provide all services, labor, materials, and equipment necessary for protecting the Work, all school occupants, furnishings, equipment, and building structure from damage until Project Completion and final acceptance by District. Dust barriers shall be provided to isolate dust and dirt from construction operations. Upon Project Completion, Developer shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Developer must erect the necessary warning signs and barricades to ensure the safety of all school occupants. The Developer at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

6.13.2. Developer at all times shall keep Premises free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. Developer shall not leave debris under, in, or about the Premises, but shall promptly remove same from the Premises on a daily basis. If Developer fails to clean up, District may do so and the cost thereof shall be charged to Developer. If Contract is for work on an existing facility, Developer shall also perform specific clean-up on or about the Premises upon request by the District as it deems necessary for the continuing education process. Developer shall comply with all related provisions of the Specifications.

6.13.3. If the Construction Manager, Architect, or District observes the accumulation of trash and debris, the District will give the Developer a 24-hour written notice to mitigate the condition.

6.13.4. Should the Developer fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the District, the District will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Guaranteed Project Cost, or District may withhold those amounts from payment(s) to Developer.

7. SUBCONTRACTORS

7.1. Developer shall provide the District with information for all of Developer's Subcontracts and Subcontractors.

7.2. No contractual relationship exists between the District and any Subcontractor, supplier, or sub-subcontractor by reason of this Contract.

7.3. Bidding for Subcontractor Work

7.3.1. Developer is required to receive at least five (5) bona fide bids from Subcontractors for all scopes of work on the Project that constitute more than three percent (3%) of the total Project scope. Prior to the Developer seeking bids, the District and Developer may negotiate a different minimum number of bona fide bids from Subcontractors, which shall be as indicated in **Exhibit K** to the Facilities Lease.

7.3.2. Developer shall provide all bids received from all Subcontractors to the District and shall justify, to the District's satisfaction, if Developer does not choose the lowest bidding Subcontractor for a specific scope of work.

7.3.3. Developer must seek District's prior approval if it wishes to provide fewer than the minimum number of bona fide bids from Subcontractors

7.4. Developer agrees to bind every Subcontractor by terms of Contract as far as those terms are applicable to Subcontractor's work including, without limitation, all provisions and requirements of the District's Labor Compliance Program ("LCP"), if an LCP is in force on this Project. If Developer shall subcontract any part of this Contract, Developer shall be as fully responsible to District for acts and omissions of any Subcontractor

and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by Developer. The divisions or sections of the Specifications are not intended to control the Developer in dividing the Work among Subcontractors or limit the work performed by any trade.

7.5. District's consent to, or approval of, or failure to object to, any Subcontractor under this Contract shall not in any way relieve Developer of any obligations under this Contract and no such consent shall be deemed to waive any provisions of this Contract.

7.6. Developer is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein all including, without limitation, section 1775 and the Developer's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws.

7.7. The Developer shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.

7.8. Developer is solely responsible for settling any differences between the Developer and its Subcontractor(s) or between Subcontractors.

7.9. Developer must include in all of its subcontracts the assignment provisions as indicated in the Termination section of these General Construction Provisions.

8. OTHER CONTRACTS/CONTRACTORS

8.1. District reserves the right to let other contracts, and/or to perform work with its own forces, in connection with the Project. Developer shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Developer's Work with the work of other contractors.

8.2. In addition to Developer's obligation to protect its own Work, Developer shall protect the work of any other contractor that Developer encounters while working on the Project.

8.3. If any part of Developer's Work depends for proper execution or results upon work of District or any other contractor, the Developer shall inspect and promptly report to the District in writing before proceeding with its Work any defects in District's or any other contractor's work that render Developer's Work unsuitable for proper execution and results. Developer shall be held accountable for damages to District for District's or any other contractor's work that Developer failed to inspect or should have inspected. Developer's failure to inspect and report shall constitute Developer's acceptance of all District's or any other contractor's work as fit and proper for reception of Developer's Work, except as to defects that may develop in District's or any other contractor's work after execution of Developer's Work.

8.4. To ensure proper execution of its subsequent work, Developer shall measure and inspect work already in place and shall at once report to the District in writing any discrepancy between that executed work and the Contract Documents.

8.5. Developer shall ascertain to its own satisfaction the scope of the Project and nature of District's or any other contracts that have been or may be awarded by District in prosecution of the Project to the end that Developer may perform this Contract in light of the other contracts, if any.

8.6. Nothing herein contained shall be interpreted as granting to Developer exclusive occupancy of the Site, the Premises, or of the Project. Developer shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Premises and/or to District or any other contractor working on the Project.

If simultaneous execution of any contract or school operation is likely to cause interference with performance of Developer's Contract, Developer shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the District of the resolution.

9. DRAWINGS AND SPECIFICATIONS

9.1. A complete list of all Drawings for the Project is to be found as an index on the Drawings themselves, and/or may be provided to the Developer and/or in the Table of Contents.

9.2. Materials or Work described in words that so applied have a well known technical or trade meaning shall be deemed to refer to recognized standards, unless noted otherwise.

9.3. Trade Name or Trade Term. It is not the intention of this Contract 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 "trade name" or "trade term" shall be considered a sufficient notice to Developer that it will be required to complete the work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.

9.4. 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 therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.

9.5. Contract Documents are complementary, and what is called for by one shall be binding as if called for by all. As such, Drawings and Specifications are intended to be fully cooperative and to agree. However, if Developer observes that Drawings and Specifications are in conflict, Developer shall promptly notify District and Architect in writing, and any necessary changes shall be made as provided in the Contract Documents.

9.6. Should any question arise concerning the intent or meaning of the Contract Documents, including the Plans and Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, these General Construction Provisions shall control over the Master Facilities Lease, which shall control over the Master Site Lease, which shall control over Division 1 Documents, which shall control over Division 2 through Division 49 documents, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings. In no case shall a document calling for lower quality and/or quantity material or workmanship control. However, in the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity shall be resolved in favor of the interpretation that will provide District with the functionally complete and operable Project described in the Drawings and Specifications. In case of ambiguity, conflict, or lack of information, District will furnish clarifications with reasonable promptness.

9.7. 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, the laws, ordinances, rules, and regulations shall be considered as a part of the Contract within the limits specified. Developer shall bear all expense of correcting work done contrary to said laws, ordinances, rules, and regulations and for which the Developer knew or reasonably should have known did not comply with those laws, ordinances, rules, and regulations.

9.8. Ownership of Drawings

All copies of Plans, Drawings, Designs, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by District, are the property of District. They are not to be used by Developer in other work and, with the exception of signed sets of Contract Documents, are to be returned to District on request at completion of Work, or may be used by

District as it may require without any additional costs to District. Neither the Developer nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. District hereby grants the Developer, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings prepared for the Project in the execution of their Work under the Contract Documents.

10. DEVELOPER'S SUBMITTALS AND SCHEDULES

10.1. Construction Schedule

The Developer shall prepare a Construction Schedule that complies with the construction schedule attached to the Facilities Lease as **Exhibit F** ("Construction Schedule") and shall provide all schedules and construction progress documentation as required in the Contract Documents. All items on the Schedule of Values must have a specific completion date on the Construction Schedule, or District has approved the Construction Schedule and the Construction Schedule is loaded and detailed as required by the Contract Documents.

10.2. Schedule of Values

The Developer has provided and the District has approved a schedule of values for all of the Work, which includes quantities and prices of items aggregating the Guaranteed Project Cost and subdivided into component parts. This schedule of values includes, at a minimum, the following information and the following structure:

10.2.1.1. Divided into at least the following categories:

- 10.2.1.1.1.** Overhead and profit;
- 10.2.1.1.2.** Supervision;
- 10.2.1.1.3.** General conditions;
- 10.2.1.1.4.** Layout;
- 10.2.1.1.5.** Mobilization;
- 10.2.1.1.6.** Submittals;
- 10.2.1.1.7.** Bonds and insurance;
- 10.2.1.1.8.** Closeout documentation;
- 10.2.1.1.9.** Demolition;
- 10.2.1.1.10.** Installation;
- 10.2.1.1.11.** Rough-in;
- 10.2.1.1.12.** Finishes;
- 10.2.1.1.13.** Testing;
- 10.2.1.1.14.** Punch list and acceptance.

10.2.1.2. Divided by each of the following areas:

- 10.2.1.2.1.** Site work;
- 10.2.1.2.2.** By each building;
- 10.2.1.2.3.** By each floor.
- 10.2.1.2.4.** By division of work.

10.2.1.3. The schedule of values shall not provide for values any greater than the following percentages of the Guaranteed Project Cost:

- 10.2.1.3.1. Mobilization and layout combined to equal not more than 1%;
- 10.2.1.3.2. Submittals, samples and shop drawings combined to equal not more than 2%;
- 10.2.1.3.3. Bonds and insurance combined to equal not more than 3%.
- 10.2.1.3.4. Punchlist and acceptance value shall not be no less than 1%.
- 10.2.1.3.5. No Schedule of Value (except noted above) shall be greater than 1%.

10.2.1.4. Closeout Documentation shall have a value in the schedule of values of not less than 2%.

10.2.1.5. The Schedule Of Values shall not be modified or amended by the Developer without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District.

10.3. Safety Plan. Developer’s Safety Plan specifically adapted for the Project. Developer's Safety Plan shall comply with the following requirements and shall be submitted to the District for information purposes only:

10.3.1. All applicable requirements of California Division of Industrial Safety (“CalOSHA”) and/or of the United States Occupational Safety and Health Administration (“OSHA”).

10.3.2. All provisions regarding Project safety, including all applicable provisions in these General Construction Provisions.

10.3.3. Developer’s Safety Plan shall be in English and in the language(s) of the Developer’s and its Subcontractors’ employees.

10.4. Complete Subcontractor List. The name, address, telephone number, facsimile number, California State Developers License number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for Project Completion, plus all information required in the Contract Documents. This includes the subcontractor Bid and fully executed Contract.

10.5. Developer must provide all schedules both in hard copy and electronically, in a format (e.g., Microsoft Project or Primavera) approved in advance by the District.

10.6. The District will review the schedules submitted and the Developer shall make changes and corrections in the schedules as requested by the District and resubmit the schedules until approved by the District.

10.7. The District shall have the right at any time to revise the schedule of values if, in the District's sole opinion, the schedule of values does not accurately reflect the value of the Work performed.

10.8. Monthly Progress Schedule(s)

10.8.1. Developer shall provide Monthly Progress Schedule(s) to the District. A Monthly Progress Schedule shall update the approved Construction Schedule or the last Monthly Progress Schedule, showing all work completed and to be completed. The monthly Progress Schedule shall be in a format acceptable to the District and contain a written narrative of the progress of work that month and any changes, delays, or events that may affect the work. The process for District approval of the Monthly Progress Schedule shall be the same as the process for approval of the Construction Schedule.

10.8.2. Developer shall also submit Monthly Progress Schedule(s) with all payment applications.

10.9. Material Safety Data Sheets (MSDS)

Developer is required to ensure Material Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Material Safety Data Sheet per the Federal "Hazard Communication" standard, or employees right to know law. The Developer is also required to ensure proper labeling on substance brought onto the job site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. Two additional copies of the Material Safety Data Sheets shall also be submitted directly to the District.

10.10. Logistics Plan. Developer shall provide a staging and logistics plan identifying laydown areas, loading and unloading areas, crane locations, fence locations, temporary utility connections, trailer locations, and emergency evacuation meeting area. This Logistics Plan must be approved by the District prior to the Developer mobilizing on the Site

11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS

11.1. Site Investigation

Developer has made a careful investigation of the Sites and is familiar with the requirements of the Contract and has accepted the known existing conditions of the Sites.

11.2. Soils Investigation Report & Site Due Diligence

11.2.1. When a soils investigation report obtained from test holes at Site is available, that report shall be available to the Developer but shall not be a part of this Contract. Any information obtained from that report or any information given on Drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of this Contract. Developer may reasonably rely thereon, however the District makes no warranty regarding the completeness or accuracy of any such report or other information regarding subsurface conditions. Developer acknowledges that it has made visual examination of Site and has made whatever tests Developer deems appropriate to determine underground condition of soil.

11.2.2. If Developer encounters subsurface or latent conditions at Site materially differing from those shown on Drawings or indicated in Specifications, or for unknown conditions of an unusual nature that differ materially from those ordinarily encountered in the Work of the character provided for in the Contract Documents, Developer shall give notice to the District immediately before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions.

11.2.2.1. The District will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Developer's cost of, or time required for, performance of any part of the Work, will equitably adjust the Contract Sum or Contract Time, or both.

11.2.2.2. If the District determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the District will notify Developer in writing, stating the reasons.

11.2.2.3. If after receiving the response, Developer still intends to pursue a Claim, it shall provide written notice within ten (10) days after it has received the decision.

11.2.2.4. Conditions will not be qualified as concealed or unknown if they were readily visible or reasonably observable.

11.2.3. Developer's 's Diligence. Developer's agreement to the Contract Price confirms that it has made a careful examination of the Contract Documents, that it has a complete understanding of the nature, extent, and location of Work to be performed and that it expressly represents that it has fully completed the following:

11.2.3.1. Developer has visited the Project Site, if required, and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions and federal, state and local laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Developer and safety precautions and programs incident thereto;

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

11.2.3.3. Developer has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents;

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

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

11.2.3.6. Developer is charged with all information and knowledge that a reasonable contractor would ascertain from having performed this required work, investigation, research, and analysis. the Guaranteed Project Cost includes entire cost of all work "incidental" to completion of the Work.

11.2.3.7. Conditions Shown on the Contract Documents: Information as to underground conditions, as-built conditions, or other conditions or obstructions, indicated in the Contract Documents, e.g., on Drawings or in Specifications, has been obtained with reasonable care, and has been recorded in good faith. However, District only warrants, and Developer may only rely, on the accuracy of limited types of information.

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

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

11.2.4. Conditions Shown in Reports and Drawings Supplied for Informational Purposes: Reference is made to the document entitled Geotechnical Data (if attached), and the document entitled Existing Conditions (if attached), for identification of:

11.2.4.1. Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the Project Site that have been utilized by Architect in preparing the Contract Documents; and

11.2.4.2. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Project Site that has been utilized by Architect in preparing the Contract Documents.

11.2.4.3. These reports and drawings are **not** Contract Documents and, except for any “technical” data regarding subsurface conditions specifically identified in Geotechnical Data and Existing Conditions, and underground facilities data, Developer may not in any manner rely on the information in these reports and drawings. Subject to the foregoing, Developer must make its own independent investigation of all conditions affecting the Work and must not rely on information provided by District.

11.3. Access to Work

District and its representatives shall at all times have access to Work wherever it is in preparation or progress, including storage and fabrication. Developer shall provide safe and proper facilities for such access so that District's representatives may perform their functions.

11.4. Layout and Field Engineering

11.4.1. All field engineering required for layout of this Work and establishing grades for earthwork operations shall be furnished by Developer at its expense. This Work shall be done by a qualified, California-registered civil engineer and/or surveyor (as appropriate) approved in writing by District and Architect.

11.4.2. The Developer shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. District shall not be liable for any claim for allowances because of Developer's error or negligence in acquainting itself with the conditions at the Sites.

11.4.3. Developer shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Developer shall replace any

benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.

11.5. Utilities & Sanitary Facilities

Developer shall provide all required utilities and sanitary facilities.

11.6. Surveys

Developer shall provide surveys done by a California-licensed civil engineer surveyor to determine locations of construction, grading, and site work as required to perform the Work.

11.7. Regional Notification Center

The Developer, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Developer unless an inquiry identification number has been assigned to the Developer or any Subcontractor and the Developer has given the District the identification number. Any damages arising from Developer's failure to make appropriate notification shall be at the sole risk and expense of the Developer. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Developer and shall not be considered for an extension of the Contract time.

11.8. Existing Utility Lines

11.8.1. Pursuant to Government Code section 4215, District assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Site at the time of commencement of construction under this Contract with respect to any such utility facilities that are not identified in the Plans and Specifications. Developer shall not be assessed for liquidated damages for delay in Project Completion caused by failure of District or the owner of a utility to provide for removal or relocation of such utility facilities.

11.8.2. Locations of existing utilities provided by District shall not be considered exact, but approximate within reasonable margin and shall not relieve Developer of responsibilities to exercise reasonable care nor costs of repair due to Developer's failure to do so. District shall compensate Developer for the costs of locating, repairing damage not due to the failure of Developer to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

11.8.3. No provision herein shall be construed to preclude assessment against Developer for any other delays in Project Completion. Nothing in this Article shall be deemed to require District to indicate the presence of existing service laterals, appurtenances, or other utility lines, within the exception of main or trunk utility lines. Whenever the presence of these utilities on the Site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Site of the construction.

11.8.4. If Developer, while performing Work under this Contract, discovers utility facilities not identified by District in Contract Plans and Specifications, Developer shall immediately notify the District and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the District shall be borne by the Developer.

11.9. Notification

Developer understands, acknowledges and agrees that the purpose for prompt notification to the District pursuant to these provisions is to allow the District to investigate the condition(s) so that the District shall have the opportunity to decide how the District desires to proceed as a result of the condition(s). Accordingly, failure of Developer to promptly notify the District in writing, pursuant to these provisions, shall constitute Developer's waiver of any claim for damages or delay incurred as a result of the condition(s).

11.10. Hazardous Materials

11.10.1. District is the generator of any hazardous materials that are on the Site and which are not brought to the Site by Developer. Developer is solely responsible for the exacerbation of Hazardous Materials. The cost of assessment, storage, and disposal of such shall be included in the Work.

11.10.2. Developer shall give written notice to District, Construction Manager, and Architect promptly, before any of the following conditions are disturbed, and in no event later than twenty-four (24) hours after first observance, of any:

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

11.10.2.2. Other material that may present a substantial danger to persons or property exposed thereto in connection with Work at the Project Site.

11.10.3. Developer's written notice shall indicate whether the hazardous waste or material was shown or indicated in the Contract Documents to be within the scope of Work, and whether the materials were brought to the site by Developer, its Subcontractors, suppliers, or anyone else for whom Developer is responsible. As used in this section the term "hazardous materials" shall include, without limitation, asbestos, lead, Polychlorinated biphenyl (PCB), petroleum and related hydrocarbons, and radioactive material.

11.10.4. In response to Developer's written notice, the District shall investigate the identified conditions.

11.10.5. If District determines that conditions do not involve hazardous materials or that no change in terms of Contract is justified, District shall so notify Developer in writing, stating reasons. If District and Developer cannot agree on whether conditions justify an adjustment in Contract Price or Contract Time, or on the extent of any adjustment, Developer shall proceed with the Work as directed by District.

11.10.6. If after receipt of notice from District, Developer does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume Work under special conditions, then District may order that portion of Work connected with the hazardous condition or affected area, be deleted from the Work, or performed by others, or District may invoke its rights to terminate the Contract in whole or in part. District will determine entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Time as a result of deleting such portion of Work, or performing the Work by others.

11.10.7. If Developer stops Work in connection with any hazardous condition and in any area affected thereby, Developer shall immediately redeploy its workers, equipment, and materials, as necessary, to other portions of the Work to minimize delay and disruption.

11.10.8. Additional Warranties and Representations

11.10.8.1. Developer represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Project Site and the Work, training, and ability to comply fully with all applicable law and contract requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to address adequately the actual or potential dangers of Contract performance).

11.10.8.2. Developer represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state, and other governmental and quasi-governmental requirements applicable to the Work.

11.10.8.3. Developer represents and warrants that it has studied carefully all requirements of the Specifications regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in the Contract, and prior to submitting its bid, has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. Developer accepts the risk that any specified procedure will result in a completed Project in full compliance with the Contract Documents.

11.10.9. Monitoring and Testing

11.10.9.1. District reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, Work monitoring, and any other tests (in addition to testing required under the agreement or applicable law), to monitor Contract requirements of safe and statutorily compliant work methods and (where applicable) safe re-entry level air standards under state and federal law upon completion of the job, and compliance of the work with periodic and final inspection by public and quasi-public entities having jurisdiction.

11.10.9.2. Developer acknowledges that District has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement, and post-abatement air monitoring, that District shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of the Work by Developer. In the event District elects to perform these activities and tests, Developer shall afford District ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests. Developer will include the potential impact of these activities or tests by District in the Contract Price and the Scheduled Completion Date.

11.10.9.3. Notwithstanding District's rights granted by this paragraph, Developer may retain its own industrial hygiene consultant at Developer's own expense and may collect samples and perform tests including, but not limited to, pre-abatement, during abatement, and post-abatement personal air monitoring, and District reserves the right to request documentation of all such activities and tests performed by Developer relating to the Work and Developer shall provide that documentation immediately upon request, but in no event later than **THREE (3)** days upon request.

11.10.10. Compliance with Laws

11.10.10.1. Developer shall perform safe, expeditious, and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal, and disposal industry, the applicable law, and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.

11.10.10.2. Developer represents that it is familiar with and shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work relating to:

11.10.10.2.1.The protection of the public health, welfare and environment;

11.10.10.2.2.Storage, handling, or use of asbestos, PCB, lead, petroleum based products or other hazardous materials;

11.10.10.2.3.The generation, processing, treatment, storage, transport, disposal, destruction, or other management of asbestos, PCB, lead, petroleum, or hazardous waste materials or other waste materials of any kind; and

11.10.10.2.4.The protection of environmentally sensitive areas such as wetlands and coastal areas.

11.10.11. Disposal

11.10.11.1. Developer has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the Project Site and for each waste disposal facility. Developer must comply fully at its sole cost and expense with these regulations and any applicable law. District may, but is not obligated to, require submittals with this information for it to review consistent with the Contract Documents.

11.10.11.2. Developer shall develop and implement a system acceptable to District to track hazardous waste from the Project Site to disposal, including appropriate "Hazardous Waste Manifests" on the EPA form, so that District may track the volume of waste deposited in each landfill and receive from each facility a certificate of receipt.

11.10.11.3. Developer shall provide District with the name and address of each waste disposal facility prior to any disposal, and District shall have the right to reject any proposed disposal facility. Developer shall not use any disposal facility to which District has objected. Developer shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to District.

11.10.12. Permits

11.10.12.1. Before performing any of the Work, and at such other times as may be required by applicable law, Developer shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. Developer shall submit evidence satisfactory to District that Developer and any disposal facility:

11.10.12.1.1.Have obtained all required permits, approvals, and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable law, and

11.10.12.1.2. Are in compliance with all such permits, approvals and the regulations.

For example, before commencing any work in connection with the Work involving asbestos-containing materials, or PCBs, or other hazardous materials subject to regulation, Developer agrees to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to District. Developer shall not conduct any Work involving asbestos-containing materials or PCBs unless Developer has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, and bonds that are required by governmental or quasi-governmental authorities, and all fees, deposits, tap fees, offsite easements, and asbestos and PCB disposal facilities expenses necessary for the prosecution of the Work, shall be procured and paid for by Developer. Developer shall give all notices and comply with the all applicable laws bearing on the conduct of the Work as drawn and specified. If Developer observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying District in writing of such fact. If Developer performs any Work contrary to applicable laws, it shall bear all costs arising therefrom.

11.10.12.2. In the case of any permits or notices held in District's name or of necessity to be made in District's name, District shall cooperate with Developer in securing the permit or giving the notice, but the Developer shall prepare for District review and execution upon approval, all necessary applications, notices, and other materials.

11.11. No Signs

Neither the Developer nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences trailers, offices, or elsewhere on the Site without specific prior written approval of the District.

12. TRENCHES

12.1. Trenches Greater Than Five Feet

Pursuant to Labor Code section 6705, if the Guaranteed Project Cost exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Developer shall, in advance of excavation, promptly submit to the District and/or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

12.2. Excavation Safety

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

12.3. No Tort Liability of District

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the District or any of its employees.

12.4. No Excavation Without Permits

The Developer shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

12.5. Discovery of Hazardous Waste and/or Unusual Conditions

12.5.1. Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four feet below the Surface, the Developer shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

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

12.5.1.2. Subsurface or latent physical conditions at the Site differing from those indicated.

12.5.1.3. 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.

12.5.2. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Developer's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described herein.

12.5.3. In the event that a dispute arises between District and the Developer whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Developer's cost of, or time required for, performance of any part of the Work, the Developer shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Developer shall retain any and all rights provided either by Contract or by law that pertain to the resolution of disputes and protests.

13. INSURANCE AND BONDS

13.1. Developer's Insurance. The Developer shall comply with the insurance requirements as indicated in the Facilities Lease.

13.2. Contract Security - Bonds

13.2.1. Developer shall furnish two surety bonds issued by a California admitted surety insurer as follows:

13.2.1.1. Performance Bond: A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.

13.2.1.2. Payment Bond: A bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with this Contract.

13.2.2. Cost of bonds shall be included in the Guaranteed Project Cost.

13.2.3. All bonds related to this Project shall be on the forms provided in the Contract Documents and shall comply with all requirements of the Contract Documents.

14. WARRANTY/GUARANTEE/INDEMNITY

14.1. Warranty/Guarantee

14.1.1. The Developer shall obtain and preserve for the benefit of the District, manufacturer's warranties on materials, fixtures, and equipment incorporated into the Work.

14.1.2. In addition to guarantees required elsewhere, Developer shall, and hereby does guarantee and warrant all Work furnished on the job against all defects for a period of **ONE (1)** year after the later of the following dates:

14.1.2.1. Project Completion,

14.1.2.2. The commissioning date for the Project, if any.

At the District's sole option, Developer shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a **ONE (1)** year period from date of completion as defined above without expense whatsoever to District. In the event of failure of Developer and/or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, Developer and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Developer and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

14.1.3. If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required above. If Developer or Surety cannot be contacted or neither complies with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the above provision, proceed to make any and all corrections and/or provide attentions the District believes are necessary. The costs of correction or attention shall be charged against Developer and Surety of the guarantees provided in this Article or elsewhere in this Contract.

14.1.4. The above provisions do not in any way limit the guarantees 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. Developer shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District.

14.1.5. Nothing herein shall limit any other rights or remedies available to District.

14.2. **Indemnity** Developer shall indemnify the District as indicated in the Facilities Lease.

15. TIME

15.1. Computation of Time / Adverse Weather

15.1.1. The Developer will only be allowed a time extension for Adverse Weather conditions if requested by Developer and only if all of the following conditions are met:

15.1.1.1. The weather conditions constitute Adverse Weather, as defined herein;

15.1.1.2. Developer can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

15.1.1.3. The Developer’s crew is dismissed as a result of the Adverse Weather; and

15.1.1.4. The number of days of delay for the month exceeds the following parameters. The District and Developer may negotiate a different minimum number of days, which shall be as indicated in **Exhibit K** to the Master Facilities Lease:

January	<u>11</u>	July	<u>0</u>
February	<u>10</u>	August	<u>0</u>
March	<u>10</u>	September	<u>1</u>
April	<u>6</u>	October	<u>4</u>
May	<u>3</u>	November	<u>7</u>
June	<u>1</u>	December	<u>10</u>

15.1.2. A day-for-day extension will only be allowed for those days in excess of those indicated herein.

15.1.3. The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

15.2. Hours of Work

Work shall be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the District and approval of any required governmental agencies.

15.3. Progress and Project Completion

15.3.1. Time of the Essence

Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Facilities Lease, the Developer confirms that the Contract Time is a reasonable period for Project Completion.

15.3.2. No Commencement Without Insurance

The Developer shall not commence operations on the Project or elsewhere prior to the effective date of insurance and bonds. The date of commencement of the Work shall not be changed by the effective date of such insurance. If Developer commences Work without insurance and bonds, all Work is performed at Developer’s peril and shall not be compensable until and unless Developer secures bonds and insurance pursuant to the terms of the Contract Documents and subject to District claim for damages.

15.3.3. Sufficient Forces

Developer and Subcontractors shall continuously furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule to obtain Project Completion within the Contract Time.

15.4. Schedule

Developer shall provide to District, Construction Manager, and Architect a schedule in conformance with the Contract Documents and as required in these General Construction Provisions.

15.5. Expeditious Completion

The Developer shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES

16.1. Liquidated Damages

Developer and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Developer shall pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Facilities Lease for each calendar day of delay beyond the Contract Time. Developer and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

16.2. Excusable Delay

16.2.1. Developer shall not be charged for liquidated damages because of any delays beyond the Contract Time which are not the fault of Developer or its Subcontractors, including acts of God as defined in Public Contract Code section 7105, acts of enemy, epidemics, and quarantine restrictions. Developer shall, within five (5) calendar days of any delay, notify District in writing of causes of delay including documentation and facts explaining the delay. District shall review the facts and extent of any delay and shall grant extension(s) of time for completing Work when, in its judgment, the findings of fact justify an extension. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted if Developer has timely submitted the Construction Schedule as required herein.

16.2.2. Developer shall notify the District pursuant to the claims provisions in these General Construction Provisions of any anticipated delay and its cause. Following submission of a claim, the District may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and Project Completion might be delayed thereby.

16.2.3. In the event the Developer requests an extension of Contract Time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. If the Developer fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any claim for delay must include the following information as support, without limitation:

16.2.3.1. The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

16.2.3.2. Specific logical ties to the Construction Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.)

16.2.3.3. A revised Construction Schedule must be submitted.

16.3. No Additional Compensation for Delays Within Developer’s Control

16.3.1. Developer is aware that governmental agencies, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Developer-prepared drawings or approve a proposed installation. Accordingly, Developer has included in the Guaranteed Project Cost, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Thus, Developer is not entitled to make a claim for damages or delays arising from the review of Developer’s drawings.

16.3.2. Developer shall only be entitled to compensation for delay when all of the following conditions are met:

16.3.2.1. The District or it’s consultants, employees, architects or contractors are responsible for the delay;

16.3.2.2. The delay was not reasonably anticipated by District and Developer; and

16.3.2.3. Developer complies with the claims procedure of the Contract Documents.

16.4. Float or Slack in the Schedule

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the District or the Developer, however it shall be used as necessary to accommodate delays in the progress of the Work which may occur during the course of construction, as determined by the District. Developer shall not be entitled to an extension of time for any claimed delays to the extent that such delays may be covered by the float.

17. CHANGES IN THE WORK

17.1. No Changes Without Authorization

17.1.1. There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's governing board has authorized the same and the cost thereof has been approved in writing by Change Order. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

17.1.2. Developer shall perform immediately all work that has been authorized by a fully executed Change Order. Developer shall be fully responsible for any and all delays and/or expenses caused by Developer's failure to expeditiously perform this Work.

17.1.3. Should any Change Order result in an increase in the Guaranteed Project Cost, the cost of that Change Order shall be agreed to, in writing, in advance by Developer and District. In the event that Developer proceeds with any change in Work without a Change Order executed by the District, Developer waives any claim of additional compensation or time for that additional work.

17.1.4. Developer understands, acknowledges, and agrees that the reason for District authorization is so that District may have an opportunity to analyze the Work and decide whether the District shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

17.2. Architect Authority

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Guaranteed Project Cost, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order or by Architect's response(s) to RFI(s).

17.3. Change Orders

17.3.1. A Change Order is a written instrument prepared and issued by the District and/or the Architect and signed by the District (as authorized by the District's governing board), the Developer, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following:

17.3.1.1. A description of a change in the Work;

17.3.1.2. The amount of the adjustment in the Guaranteed Project Cost, if any; and

17.3.1.3. The extent of the adjustment in the Contract Time, if any.

17.4. Price Request

17.4.1. Definition of Price Request

A Price Request ("PR") is a written request prepared by the District or the Architect requesting the Developer to submit to the District and/or the Architect an estimate of the effect of a proposed change in the Work on the Guaranteed Project Cost and the Contract Time.

17.4.2. Scope of Price Request

A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable Developer to provide the cost breakdowns required herein. The Developer shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

17.5. Proposed Change Order

17.5.1. Definition of Proposed Change Order

A Proposed Change Order (“PCO”) is a written request prepared by the Developer requesting that the District and the Architect issue a Change Order based upon a proposed change to the Work.

17.5.2. Changes in Guaranteed Project Cost

A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Guaranteed Project Cost.

17.5.3. Changes in Time

A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If Developer fails to request a time extension in a PCO, then the Developer is thereafter precluded from requesting time and/or claiming a delay.

17.5.4. Unknown and/or Unforeseen Conditions

If Developer submits a PCO requesting an increase in Guaranteed Project Cost and/or Contract Time that is based at least partially on Developer’s assertion that Developer has encountered unknown and/or unforeseen condition(s) on the Project, then Developer shall base the PCO on provable information that demonstrates that the unknown and/or unforeseen condition(s) were actually or reasonably unknown and/or unforeseen. If not, the District shall deny the PCO and the Developer shall complete the Project without any increase in Guaranteed Project Cost and/or Contract Time based on that PCO.

17.6. Format for Proposed Change Order

17.6.1. The following format shall be used as applicable by the District and the Developer (e.g. Change Orders, PCO’s) to communicate proposed additions and deductions to the Contract, supported by attached documentation.

	<u>SUBCONTRACTOR PERFORMED WORK</u>	<u>ADD</u>	<u>DEDUCT</u>
(a)	<u>Material</u> (attach itemized quantity and unit cost plus sales tax)		
(b)	<u>Add Labor</u> (attach itemized hours and rates, fully encumbered)		
(c)	<u>Add Equipment</u> (attach suppliers’ invoice)		
(d)	<u>SUBTOTAL</u>		
(e)	<u>Add Subcontractor’s overhead and profit</u> , not to exceed ten percent (10%) of item (d)		
(f)	<u>SUBTOTAL</u>		
(g)	<u>Add Developer’s fee, overhead, profit & general conditions</u> , not to exceed five percent (5.0%) of the sum of item (d)		
(h)	<u>SUBTOTAL</u>		
(i)	<u>Add Bond and Insurance</u> , not to exceed one and one half percent (1.5%) of Item (h)		
(j)	<u>TOTAL</u>		
(k)	<u>Time</u>		<u> </u> Days

	<u>DEVELOPER PERFORMED WORK</u>	<u>ADD</u>	<u>DEDUCT</u>
(a)	<u>Material</u> (attach itemized quantity and unit cost plus sales tax)		
(b)	<u>Add Labor</u> (attach itemized hours and rates, fully encumbered)		
(c)	<u>Add Equipment</u> (attach suppliers' invoice)		
(d)	<u>SUBTOTAL</u>		
(e)	<u>Add Developer's fee, overhead, profit & general conditions</u> , not to exceed fifteen percent (15.0%) of the sum of item (d)		
(f)	<u>SUBTOTAL</u>		
(i)	<u>Add Bond and Insurance</u> , not to exceed one and one half percent (1.5%) of item (f)		
(j)	<u>TOTAL</u>		
(k)	<u>Time</u>		_____ Days

17.7. Change Order Certification

17.7.1. All Change Orders and PCOs must include the following certification by the Developer:

The undersigned Developer approves the foregoing as to the changes, if any, and the Guaranteed Project Cost specified for each item and as to the extension of time allowed, if any, for Project Completion, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Developer knows are false are at the sole risk of Developer and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by the governing board of the District.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Developer's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

17.8. Determination of Change Order Cost

17.8.1. The amount of the increase or decrease in the Guaranteed Project Cost from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the District's discretion:

- 17.8.1.1.** District acceptance of a PCO;
- 17.8.1.2.** By amounts contained in Developer's schedule of values, if applicable;
- 17.8.1.3.** By agreement between District and Developer.

17.8.2. If the District has put in contingency(s) and/or allowance(s) in **Exhibit "C"** to the Facilities Lease, then approved Change Order(s) may be paid out of those contingency(s) and/or allowance(s), pursuant to **Exhibit "C"** and if agreed to by the District.

17.9. Deductive Change Orders

All deductive Change Order(s) must be prepared pursuant to the provisions herein. If Developer offers a proposed amount for a deductive Change Order(s), Developer shall include a minimum of five percent

(5%) total overhead, profit & general conditions to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of its deducted work. Any deviation from this provision shall on be permitted with the District's prior written approval.

17.10. Construction Change Directives / Unilateral Change Orders

17.10.1. A Construction Change Directive (or Unilateral Change Order) is a written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work. The District may as provided by law, by Construction Change Directive and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. If all or a portion of the Project is being funded by funds requiring approval by the State Allocation Board (SAB), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are released by the Office of Public School Construction (OPSC). Any dispute as to the sum of the Construction Change Directive or timing of payment shall be resolved pursuant to the Payment and Claims and Disputes provisions herein.

17.10.2. The District may issue a Construction Change Directive in the absence of agreement on the terms of a Change Order.

17.11. Discounts, Rebates, and Refunds

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Developer, and the Developer shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Developer's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein. Such discounts and rebates generated as a result of early payments shall only be credited to the District, provided that the District provides Developer with early payment in order to secure such discounts and rebates.

17.12. Accounting Records

With respect to portions of the Work performed by Change Orders, the Developer shall keep and maintain cost-accounting records satisfactory to the District, which shall be available to the District on the same terms as any other books and records the Developer is required to maintain under the Contract Documents.

17.13. Notice Required

If the Developer desires to make a claim for an increase in the Guaranteed Project Cost, or any extension in the Contract Time for Project Completion, it shall notify the District pursuant to the provisions herein. No claim shall be considered unless made in accordance with this subparagraph. Developer shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Guaranteed Project Cost or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

17.14. Applicability to Subcontractors

Any requirements under this Article shall be equally applicable to Change Orders issued to Subcontractors by the Developer to the extent as required by the Contract Documents.

17.15. Alteration to Change Order Language

Developer shall not alter Change Orders or reserve time in Change Orders. Developer shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

17.16. Failure of Developer to Execute Change Order

Developer shall be in default of the Contract if Developer fails to execute a Change Order when the Developer agrees with the addition and/or deletion of the Work in that Change Order.

17.17. Allowances

To the extent any item or portion of the Work is required by the Contract Documents to be priced as an Allowance, any amounts remaining in the Allowance which are to be deducted from the Guaranteed Project Cost shall be calculated according to the provisions of **Exhibit "C"** to the Facilities Lease and the Deductive Change Order provisions herein.

18. REQUESTS FOR INFORMATION

18.1. Any Request for Information ("RFI") shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. The Developer shall make suggestions and interpretations of the issue raised by each Request for Information. A Request for Information cannot modify the Guaranteed Project Cost, Contract Time, or the Contract Documents.

18.2. The Developer shall be responsible for any costs incurred for professional services that District may deduct from any amounts owing to the Developer, if Developer makes multiple Requests for Information that request interpretation(s) or decision(s) of a matter where the information sought is equally available to the Developer. District, at its sole discretion, shall deduct from and/or invoice Developer for all the professional services arising herein.

18.3. Requests for Information shall comply with all requirements of the Contract Documents.

18.4. Prior to submitting the RFI, Developer shall diligently review the Contract Documents for information responsive to the RFI, including information incorporated by reference. Developer should not issue RFI's regarding information contained in or inferable from the Contract Documents, including information incorporated by reference. An RFI is invalid if the RFI response is contained in or inferable from the Contract Documents.

18.5. Developer shall be responsible for preparing and submitting RFI's so as to not cause delay to the progress of the Work nor to cause any impact to the Developer's labor productivity. An RFI may be considered untimely if not submitted within **Forty Eight (48) hours** of receipt from a Developer's subcontractor. Untimely submission of any RFI will preclude Developer from asserting any claims for delay or for labor impact against the District.

19. PAYMENTS

19.1. Guaranteed Project Cost

As compensation for Developer's construction of the Project, the District shall pay Developer pursuant to the terms of **Exhibit "C"** to the Facilities Lease.

19.2. Applications for Tenant Improvement Payments

19.2.1. Procedure for Applications for Tenant Improvement Payments

19.2.1.1. Not before the fifth (5th) day of each calendar month during the progress of the Work, Developer shall submit to the District and the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Each Application for Tenant Improvement Payment shall be notarized, if required, and supported by the following or each portion thereof unless waived by the District in writing:

- 19.2.1.1.1.** The amount paid to the date of the Application for Tenant Improvement Payment to the Developer, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- 19.2.1.1.2.** The amount being requested under the Application for Tenant Improvement Payment by the Developer on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- 19.2.1.1.3.** The balance that will be due to each of such entities after said payment is made;
- 19.2.1.1.4.** A certification that the As-Built Drawings and annotated Specifications are current;
- 19.2.1.1.5.** Itemized breakdown of work done for the purpose of requesting partial payment;
- 19.2.1.1.6.** An updated and acceptable construction schedule in conformance with the provisions herein;
- 19.2.1.1.7.** The additions to and subtractions from the Guaranteed Project Cost and Contract Time;
- 19.2.1.1.8.** Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;
- 19.2.1.1.9.** The percentage of completion of the Developer's Work by line item;
- 19.2.1.1.10.** Schedule of Values updated from the preceding Application for Tenant Improvement Payment;
- 19.2.1.1.11.** A duly completed and executed conditional waiver and release upon progress payment compliant with Civil Code section 8132 from each subcontractor of any tier and supplier to be paid from the current progress payment;
- 19.2.1.1.12.** A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 8134 from each subcontractor of any tier and supplier that was paid from the progress payment from sixty (60) days prior; and
- 19.2.1.1.13.** A certification by the Developer of the following:

The Developer warrants title to all Work performed as of the date of this payment application. The Developer further warrants that all Work performed as of the date of

this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the Developer, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the District has been informed.

19.2.1.1.14. If the District has an LCP in force on this Project and if not previously submitted as required herein, all remaining certified payroll record (“CPR(s)”) for each journeyman, apprentice, worker, or other employee employed by the Developer and/or each Subcontractor in connection with the Work for the period of the Application for Payment. As indicated herein, if the District has an LCP in force on this Project, the District shall not make any payment to Developer until:

19.2.1.1.14.1. Developer and/or its Subcontractor(s) provide CPRs acceptable to the District, and

19.2.1.1.14.2. The District is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Developer and/or its Subcontractor(s) providing CPRs to the District in a timely manner will directly delay the District’s review and/or audit of the CPRs and Developer’s payment.

19.2.1. Prerequisites for Tenant Improvement Payments

19.2.1.1. First Payment Request: The following items, if applicable, must be completed before the District will accept and/or process the Developer's first payment request:

- 19.2.1.1.1.** Schedule of unit prices, if applicable;
- 19.2.1.1.2.** Receipt by Architect of all submittals due as of the date of the payment application;
- 19.2.1.1.3.** Copies of authorizations and licenses from governing authorities;
- 19.2.1.1.4.** Initial progress report;
- 19.2.1.1.5.** Surveyor qualifications;
- 19.2.1.1.6.** Written acceptance of District's survey of rough grading, if applicable;
- 19.2.1.1.7.** List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;
- 19.2.1.1.8.** All bonds and insurance endorsements; and
- 19.2.1.1.9.** Resumes of Developer’s project manager, and if applicable, job site secretary, record documents recorder, and job site superintendent.

19.2.1.2. No Waiver of Criteria. Any payments made to Developer where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Developer may pay its Subcontractors and suppliers. Developer agrees that failure to submit such items may constitute a breach of contract by Developer and may subject Developer to termination.

19.3. District's Approval of Application for Tenant Improvement Payment

19.3.1. Upon receipt of an Application for Tenant Improvement Payment, The District shall act in accordance with both of the following:

19.3.1.1. Each Application for Tenant Improvement Payment shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the Application for Tenant Improvement Payment is a proper Application for Tenant Improvement Payment.

19.3.1.2. Any Application for Tenant Improvement Payment determined not to be a proper Application for Tenant Improvement Payment suitable for payment shall be returned to the Developer as soon as practicable, but not later than seven (7) days, after receipt. An Application for Tenant Improvement Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Tenant Improvement Payment is not proper. The number of days available to the District to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the District exceeds this seven-day return requirement.

19.3.1.3. An Application for Tenant Improvement Payment shall be considered properly executed if funds are available for payment of the Application for Tenant Improvement Payment, and payment is not delayed due to an audit inquiry by a financial officer or auditor of the District, the County, or the State.

19.3.2. The District's review of the Developer's Application for Tenant Improvement Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Tenant Improvement Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

19.3.2.1. Observation of the Work for general conformance with the Contract Documents,

19.3.2.2. Results of subsequent tests and inspections,

19.3.2.3. Minor deviations from the Contract Documents correctable prior to Project Completion, and

19.3.2.4. Specific qualifications expressed by the Architect.

19.3.3. District's approval of the certified Application for Tenant Improvement Payment shall be based on Developer complying with all requirements for a fully complete and valid certified Application for Tenant Improvement Payment.

19.3.4. Payments to Developer

Within thirty (30) days after District approval of the Application for Tenant Improvement Payment, Developer shall be paid a sum equal to ninety percent (90%) of the value of the Work performed (as verified by Architect and Inspector and certified by Developer) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld as allowable herein. The value of the Work completed shall be Developer's best estimate. No inaccuracy or error in said estimate shall operate to release the Developer, or any Surety upon any bond, from damages arising

from such Work, or from the District's right to enforce each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.

19.3.5. No Waiver

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of this Contract. The District may correct or require correction of any error subsequent to any payment.

19.3.6. Warranty of Title

19.3.6.1. If a lien or a claim based on a stop payment notice of any nature should at any time be filed against the Work or any District property, by any entity that has supplied material or services at the request of the Developer, Developer and Developer's Surety shall promptly, on demand by District and at Developer's and Surety's own expense, take any and all action necessary to cause any such lien or a claim based on a stop payment notice to be released or discharged immediately therefrom.

19.3.6.2. If the Developer fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or a claim based on a stop payment notice has been so released, discharged, or secured, the District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Developer under the Contract.

19.3.7. Decisions to Withhold Payment

19.3.7.1. Reasons to Withhold Payment

The District may withhold payment to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. The District may withhold payment to such extent as may be necessary to protect the District from loss because of, but not limited to:

- 19.3.7.1.1.** Defective Work not remedied within **FORTY-EIGHT (48)** hours of written notice to Developer;
- 19.3.7.1.2.** Stop payment notices or other liens served upon the District as a result of the Contract;
- 19.3.7.1.3.** Liquidated damages assessed against the Developer
- 19.3.7.1.4.** The cost of Project Completion if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Guaranteed Project Cost or by the Contract Time;
- 19.3.7.1.5.** Damage to the District or other contractor(s);
- 19.3.7.1.6.** Unsatisfactory prosecution of the Work by the Developer:
- 19.3.7.1.7.** Failure to store and properly secure materials;

- 19.3.7.1.8.** Failure of the Developer to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;
 - 19.3.7.1.9.** Failure of the Developer to submit As-Built Drawings;
 - 19.3.7.1.10.** Erroneous estimates by the Developer of the value of the Work performed, or other false statements in an Application for Payment;
 - 19.3.7.1.11.** Unauthorized deviations from the Contract Documents;
 - 19.3.7.1.12.** Failure of the Developer to prosecute the Work in a timely manner in compliance with the milestones within the Construction Schedule, established progress schedules, and/or completion dates;
 - 19.3.7.1.13.** If the District has an LCP in force on this Project, the failure to provide certified payroll records acceptable to the District for each journeyman, apprentice, worker, or other employee employed by the Developer and/or each Subcontractor in connection with the Work for the period of the Application for Payment;
 - 19.3.7.1.14.** Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with the District's LCP, if one is in force on this Project;
 - 19.3.7.1.15.** Failure to properly maintain or clean up the Site;
 - 19.3.7.1.16.** Payments to indemnify, defend, or hold harmless the District;
 - 19.3.7.1.17.** Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;
 - 19.3.7.1.18.** Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;
 - 19.3.7.1.19.** Developer is otherwise in breach, default, or in substantial violation of any provision of this Contract.
 - 19.3.7.1.20.** Extra services for Architect.
 - 19.3.7.1.21.** Extra services for the Inspector including but not limited to overtime tests and inspection or reinspection required due to Developer's failed tests or installation of unapproved or defective materials and Developer's requests for inspection and Developer's failure to attend the inspection.
 - 19.3.7.1.22.** Any other obligation(s) of the District which the District is authorized and/or compelled by law to perform.
- 19.3.7.2.** Reallocation of Withheld Amounts. District may, in its reasonable discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, District shall make such payments on behalf of Developer only after providing fourteen (14) days prior written

notice to Developer, requesting the Developer provide information in response to same. District shall consider all information provided by Developer in exercising its discretion to pay any such claim or obligation. These payments may be made without prior judicial determination of claim or obligation. District will render Developer an accounting of funds disbursed on behalf of Developer.

19.3.7.3. If Developer defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after **FORTY-EIGHT (48)** hours written notice to the Developer and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Guaranteed Project Cost by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Guaranteed Project Cost (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

19.3.8. Payment After Cure

When Developer removes the grounds for declining approval, payment shall be made for amounts withheld because of them. No interest shall be paid on any retention or amounts withheld due to the failure of the Developer to perform in accordance with the terms and conditions of the Contract Documents.

19.4. Subcontractor Payments

19.4.7. Payments to Subcontractors

No later than seven (7) days after receipt of each Tenant Improvement Payment, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Developer shall pay to each Subcontractor, out of the amount paid to the Developer on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Developer shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

19.4.8. No Obligation of District for Subcontractor Payment

The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

19.4.9. Joint Checks

Provided Developer is in breach of its payment obligations to its subcontractors and after 14 days written notice, District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Developer and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District.

20. COMPLETION OF THE WORK

20.1. Completion

20.1.1. District will accept the Project and have the Notice of Completion recorded when Project Completion has been achieved in accordance with the Contract Documents and to the satisfaction of District.

20.1.2. The Project may only be accepted by action of the governing board of the District.

20.1.3. District, at its sole option, may accept the Project and have the Notice of Completion recorded when Project Completion has been completed to the satisfaction of District, except for minor corrective items, as distinguished from incomplete items. If Developer fails to complete all minor corrective items within thirty (30) days after the date of the District's acceptance of the Project, District shall withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed.

20.1.4. At the end of the thirty-five (35) day period, if there are any items remaining to be corrected, District may elect to proceed as provided herein related to adjustments to Guaranteed Project Cost, and/or District's right to perform the Work of the Developer.

20.2. Closeout Procedures

20.2.1. In addition to the closeout procedures indicated herein, Developer shall comply with all the closeout requirements, procedures, and actions as indicated in all Contract Documents.

20.2.2. Punch List

The Developer shall notify the Architect when Developer considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected ("Punch List"). The Developer and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the Developer to complete all Work in accordance with the Contract Documents.

20.2.3. Closeout Requirements

20.2.3.1. Utility Connections

Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

20.2.3.2. As-Built Drawings

20.2.3.2.1. Developer shall provide exact "as-built" of the Work upon Project Completion as indicated in the Contract Documents ("As-Built Drawings").

20.2.3.2.2. Developer is liable and responsible for any and all inaccuracies in As-Built Drawings, even if inaccuracies become evident at a future date.

20.2.3.2.3. Upon Project Completion and as a condition precedent to approval of final payment, Developer shall obtain the Inspector's approval of the corrected prints and provide to the District the As-Built Drawings and information on disk. When completed, Developer shall deliver corrected sepias and diskette/CD/other data storage device acceptable to District with AutoCAD file to the District.

20.2.3.3. Maintenance Manuals: Developer shall prepare all operation and maintenance manuals and date as indicated in the Contract Documents.

20.2.3.4. Closeout Documentation: Developer shall provide all Closeout Documentation, which shall include the following, without limitation:

- 20.2.3.4.1.** A full set of As-Builts, as further indicated herein
- 20.2.3.4.2.** All Maintenance Manuals, operations manual(s), and related information, as further indicated herein
- 20.2.3.4.3.** All Warranties, as further indicated herein
- 20.2.3.4.4.** Verified report(s) for all scope(s) of work (DSA-6 Verified Report, Rev 04/08, or more recent revision if available)

20.3. Final Inspection

20.3.1. Developer shall comply with Punch List procedures as provided herein and in all the Contract Documents, and maintain the presence of its District-approved project superintendent and project manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Developer demobilize its forces prior to completion of the Punch List. Upon receipt of Developer's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Developer and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

20.3.2. Upon Developer's completion of all items on the Punch List and any other uncompleted portions of the Work, the Developer shall notify the District and Architect, who shall again inspect such Work. If the Architect finds the Work complete and acceptable under the Contract Documents, the Architect will notify Developer, who shall then jointly submit to the Architect and the District its final Application for Payment.

20.3.3. Final Inspection Requirements

20.3.3.1. Before calling for final inspection, Developer shall determine that the following have been performed:

- 20.3.3.1.1.** The Work has been completed.
- 20.3.3.1.2.** All life safety items are completed and in working order.
- 20.3.3.1.3.** Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.
- 20.3.3.1.4.** Electrical circuits scheduled in panels and disconnect switches labeled.
- 20.3.3.1.5.** Painting and special finishes complete.
- 20.3.3.1.6.** Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.
- 20.3.3.1.7.** Tops and bottoms of doors sealed.

- 20.3.3.1.8. Floors waxed and polished as specified.
- 20.3.3.1.9. Broken glass replaced and glass cleaned.
- 20.3.3.1.10. Grounds cleared of Developer's equipment, raked clean of debris, and trash removed from Site.
- 20.3.3.1.11. Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.
- 20.3.3.1.12. Finished and decorative work shall have marks, dirt, and superfluous labels removed.
- 20.3.3.1.13. Final cleanup, as provided herein.

20.4. Costs of Multiple Inspections

More than two (2) requests of the District to make a final inspection shall be considered an additional service of District, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Developer and if funds are available, withheld from remaining payments.

20.5. Beneficial Occupancy or Use Prior to Project Completion

20.5.1. District's Rights to Beneficial Occupancy or Use

The District may, at its sole discretion, have Beneficial Occupancy or use of any completed or partially completed portion of the Project at any stage. Neither the District's Final Acceptance, the making of Final Payment, nor the Beneficial Occupancy or use of the Project, in whole or in part, by District shall constitute acceptance of the Project not in accordance with the Contract Documents nor relieve the Developer or the Developer'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. The District and the Developer shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Disputes and Claims provisions herein, with the added provision that during the dispute process, the District shall have the right to Beneficial Occupancy or use any portion of the Project that it needs or desires to use.

20.5.2. Inspection Prior to Beneficial Occupancy or Use

Immediately prior to partial Beneficial Occupancy or use of the Project, the District, the Developer, and the Architect shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Work.

20.5.3. No Waiver

Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Project shall not in of itself constitute or acceptance of the Project not complying with the requirements of the Contract Documents.

21. FINAL PAYMENT

21.1. Final Payment

Upon receipt and approval of a valid and final Application for Tenant Improvement Payment, the Architect will issue a final Certificate of Tenant Improvement Payment. The District shall thereupon jointly inspect the Work and either accept the Project as complete or notify the Architect and the Developer in writing of reasons why the Project is not complete. Upon acceptance of the Project (absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the District shall record a Notice of Completion with the County Recorder, and the Developer shall, upon receipt of final Tenant Improvement Payment from the District, pay the amount due Subcontractors. The amount of the final Tenant Improvement Payment shall be equal to the remaining ten percent (10%) of the value of the work performed, less the total amount to be paid as Lease Payments pursuant to Exhibit C.

21.2. Prerequisites for Final Tenant Improvement Payment The following conditions must be fulfilled prior to Final Tenant Improvement Payment:

21.2.1. A full and final waiver or release of all Stop payment notices in connection with the Work shall be submitted by Developer, including a release of Stop payment notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop payment notice rights.

21.2.2. A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 8136 from each subcontractor of any tier and supplier to be paid from the current progress payment;

21.2.3. A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 8138 from each subcontractor of any tier and supplier that was paid from the previous progress payment; and

21.2.4. The Developer shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.

21.2.5. Each Subcontractor shall have delivered to the Developer all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

21.2.6. Developer must have completed all requirements set forth under "Closeout Procedures," Including, without limitation, an approved set of complete As-Built Drawings.

21.2.7. Architect shall have issued its written approval that final payment can be made.

21.2.8. The Developer shall have delivered to the District all manuals and materials required by the Contract Documents.

21.2.9. The Developer shall have completed final clean up as provided herein.

21.2.10. After approval by the District of the Architect's Certificate of Payment,

21.2.11. After the satisfaction of the conditions set forth herein, and

21.2.12. After thirty-five (35) days following Project Completion.

21.2.13. No interest shall be paid on any amounts withheld due to a failure of the Developer to perform, in accordance with the terms and conditions of the Contract Documents.

22. UNCOVERING OF WORK

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the District, the Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be replaced at the Developer's expense without change in the Guaranteed Project Cost or Contract Time.

23. NONCONFORMING WORK AND CORRECTION OF WORK

23.1. Nonconforming Work

23.1.1. Developer shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Developer shall promptly replace and re-execute its 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 any removal or replacement pursuant hereto and/or any delays to the District or other contractors caused thereby.

23.1.2. If Developer does not remove or reasonably begin and diligently remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed five (5) calendar days, District may remove it and may store any material at Developer's expense. If Developer does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Developer.

23.2. Correction of Work

23.2.1. Correction of Rejected Work

Pursuant to the notice provisions herein, the Developer shall promptly correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Project Completion and whether or not fabricated, installed, or completed. The Developer shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

23.2.2. One-Year Warranty Corrections

If, within one (1) year after the date of Project Completion or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Developer shall correct it promptly after receipt of written notice from the District to do so. This period of one (1) year shall be extended with respect to portions of the Work first performed after Project Completion by the period of time between Project Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract and termination of the Contract. The District shall give such notice promptly after discovery of the condition.

23.3. District's Right to Perform Work

23.3.1. If the Developer should neglect to prosecute or reasonably begin and diligently prosecute the Work properly or fail to perform any provisions of this contract, the District, after **five (5) calendar days** written notice to the Developer, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Developer.

23.3.2. If it is found at any time, before or after Project Completion, that Developer has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, District may require at its option:

23.3.2.1. That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Developer at no additional cost to the District;

23.3.2.2. That the District deduct from any amount due Developer the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

23.3.2.3. That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Developer's nonconforming Work, in which case the District shall either issue a deductive Change Order or invoice the Developer for the cost of that work. Developer shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Developer.

24. TERMINATION AND SUSPENSION AND SCOPE REDUCTION

The Parties' rights to terminate the Project are as indicated in the Master Facilities Lease. In the event of a termination of the Master Facilities Lease and notwithstanding any other provision in the Contract Documents, the Surety shall remain liable to all obligees under the Payment Bond and to the District under the Performance Bond for any claim related to the Project.

24.1. Emergency Termination of Public Contracts Act of 1949

24.1.1. In addition to the Parties' right to termination under the Master Facilities Lease, this Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

24.1.1.1. Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

24.1.1.2. Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

24.1.1.3. Compensation to the Developer shall be determined on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price shall control. The District, at its sole discretion, may adopt the Guaranteed Project Cost as the reasonable value of the work done or any portion thereof.

24.2. Suspension of Work.

24.2.1. In the event that sufficient funds are not appropriated to complete the Project or the District determines that sufficient funds are not available to complete the Project, District may terminate or suspend the completion of the Project at any time by giving written notice to the Developer.

24.2.2. In the event that the District exercises this option, the District shall pay for any and all Work and materials completed or delivered onto the Site for which value is received, and the value of any and all Work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials paid for shall include a factor of ten percent (10%) for the Developer's overhead and profit and there shall be no other costs or expenses paid to Developer. All work, materials and orders paid for pursuant to this provision shall become the property of the District.

24.2.3. District may, without cause, order Developer in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as District may determine. When the District resumes the Project, the parties will attempt to negotiate an adjustment in the GPC for increases or decreases in the cost of performance of the Project caused by suspense, delay or interruption. If the parties cannot agree on an adjusted GPC, the District may terminate the leases as permitted herein.

24.3. Scope Reduction.

In cases of suspension, partial or complete termination, or at the discretion of the District, the District reserves the right to unilaterally approve a deductive Change Order to reduce scope of work or perform work with other forces or its own forces.

25. DISPUTES AND CLAIMS

25.1. Performance During Dispute And Claim Resolution Process. The Developer shall diligently proceed with Work on the Project at the same time that Disputes and Claims are addressed under this Article. It is the intent of District to resolve Disputes with the Developer as close to the events giving rise to the Disputes as possible, and to avoid stale or late Claims and the late documenting of Claims. Developer's failure to diligently proceed in accordance with the District's instructions will be considered a material breach of this Agreement.

25.2. Waiver. If Developer fails to timely submit the written notices required by the provisions in this Disputes and Claims section, Developer hereby waives and releases its rights regarding further review of its Dispute or Claim, unless Developer and District mutually agree in writing to other time limits.

25.3. Intention. The Dispute and Claims Resolution Process required herein are intended to provide a concise mechanism for resolving Disputes as they arise during the Project, while requiring accurate documentation related to contested issues as to those Disputes that are not contemporaneously resolved.

25.4. Exclusive Remedy. Compliance with the notice and claim submission procedures described in this Disputes and Claims section is an express condition precedent to the right to commence litigation, file a claim under the California Government Code, or commence any other legal action. The Developer cannot bring assert or bring any Claim in any Government Code claim or subsequent legal action until that Claim has gone through the Dispute and Claims Resolution Process . The District hereby exercises the power conferred upon it by Government Code Sections 930.2 and 930.4 to augment claims presentation procedures and create its own Dispute and Claims Resolution Process as an exclusive remedy as indicated in this Disputes and Claims section.

25.5. Other Provisions. If portions of the Contract, other than this Disputes and Claims section establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Disputes and Claims section shall control the resolution of all Disputes and Claims.

25.6. Subcontractors. Developer is responsible for providing this Disputes and Claims section to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the Developer are informed of the Dispute and Claims resolution process in this Disputes and Claims section. No Claim submitted by any party that fails to follow the provisions of this Disputes and Claims section will be considered. Developer shall indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Disputes and Claims section to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Developer.

25.7. Dispute And Claim Resolution Process

25.7.1. Dispute: A Dispute is a request, demand or assertion by Developer or by Subcontractor(s) or others who make a demand or request by and through a Subcontractor or Developer during performance of the Work regarding money and/or time adjustments with which the District does not agree.

25.7.2. Claim: A Claim is a Dispute that remains unresolved after conclusion of the Dispute Resolution Process identified below. Individual unresolved Disputes may be aggregated into one or more Claim(s).

25.7.3. Dispute Resolution Process (Not for Claims)

25.7.3.1. Identifying, Presenting and Documenting a Dispute

25.7.3.1.1. Every Dispute shall be stated with specificity in writing and signed by Developer under penalty of perjury and presented to the District within thirty (30) calendar days of the incidents giving rise to the Dispute. The writing shall:

25.7.3.1.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Dispute;

25.7.3.1.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments; and

25.7.3.1.1.3. Identify in detail line-item costs if the Dispute seeks money.

25.7.3.1.2. The writing shall be accompanied by all documents substantiating Developer's position regarding the Dispute. A Dispute that asserts an effect on any schedule milestones

and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.

25.7.3.1.3. Architect's Initial Decision. The District's Architect shall issue a written decision regarding the Dispute to the Developer within ten (10) calendar days of receipt of the written Dispute from the Developer.

25.7.3.2. Meet and Confer

25.7.3.2.1. Where There Is No Agreement: If there is no agreement between Developer and the Architect on a Developer's Dispute, including cases where a Developer's Proposed Change Order ("PCO") seeks money, time, and/or any other relief, then within ten (10) calendar days of the date of the District's written decision in response to Developer's Dispute or request for Proposed Change Order, Developer shall give written notice of its demand for a meet and confer meeting with District staff. A meet and confer meeting with District staff shall be a condition precedent to Developer seeking any further relief, including a demand for review as indicated below, in connection with the District's rejection .

25.7.3.2.2. Where There Is Partial Agreement: If Developer and the Architect partially agree on a Developer's Dispute but do not reach complete agreement, then the Architect shall issue a written decision or prepare a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, Developer shall give written notice of its demand for a meet and confer meeting with District staff. A meet and confer meeting with District staff shall be a condition precedent to Developer seeking any further relief, including a demand for review as indicated below, in connection with the District's rejection.

25.7.3.2.3. District and Developer shall schedule the meet and confer meeting as soon as reasonably possible after Developer's written notice of its demand for a meet and confer meeting.

25.7.3.3. Developer's Demand for Review of Dispute

25.7.3.3.1. Developer shall give in writing a demand for review to the Construction Manager with copy to the Architect, within ten (10) calendar days of the meet and confer meeting. The written demand for review shall include copies of all documentation the Developer intends to rely upon in substantiating Developer's position regarding the Dispute, including any supplementary documentation the Developer deems appropriate for the District's consideration.

25.7.3.3.1.1. Construction Manager's Written Decision. The Construction Manager will review the Dispute and issue a written decision to Developer and Architect within thirty (30) calendar days from the date the demand for review and supporting documentation are received. The Construction Manager has the option to meet with Developer, or with Developer and any other party, before issuing a decision.

25.7.3.3.1.2. If no decision is issued within thirty (30) days after the demand for review, the District will be deemed to have rejected Developer's Dispute in its entirety, and Developer shall proceed with the Claim Resolution Process below.

25.7.3.3.1.3. If the Construction Manager's decision completely resolves the Dispute, the District will prepare and process a Change Order, if applicable, or proceed accordingly.

25.7.3.3.1.4. If the Construction Manager rejects the Dispute in whole or in part or does not issue a timely written response, and if Developer ever intends to seek relief regarding the unresolved issues of the Dispute, then Developer shall proceed with the Claim Resolution Process below.

25.7.3.3.1.5. Developer's costs incurred in seeking relief under this Disputes and Claims section are not recoverable from District.

25.7.4. Claim Resolution Process.

25.7.4.1. If a Dispute has not been resolved during the Dispute Resolution Process, the Developer shall submit within thirty (30) days a Claim along with the required detailed documentation for the District's consideration.

25.7.4.2. The Developer shall furnish three (3) certified copies of the required Claim documentation. The Claim documentation shall be complete when furnished. The evaluation of the Developer's Claim will be based upon District records and the Claim documents furnished by the Developer.

25.7.4.3. Claim documentation shall conform to generally accepted accounting principles and shall be in the following format:

25.7.4.3.1. General Introduction

25.7.4.3.2. General Background Discussion

25.7.4.3.3. Index of Issues (listed numerically)

25.7.4.3.4. For each issue, provide the following information and begin each issue on a new page:

25.7.4.3.4.1. Background

25.7.4.3.4.2. Chronology

25.7.4.3.4.3. Developer's position including all reason(s) for District's potential liability

25.7.4.3.4.4. Supporting documentation of merit or entitlement

25.7.4.3.4.5. Supporting documentation of damages

25.7.4.3.5. All critical path method schedules, both as-planned, monthly updates, schedule revisions, and as-build along with the computer disks of all schedules related to the Claim.

25.7.4.3.6. Productivity exhibits (if appropriate)

25.7.4.3.7. Summary of Damages for each issue

25.7.4.4. Supporting documentation of merit for each issue shall be cited by reference, photocopies, or explanation. Supporting documentation may include, but shall not be limited to the Contract Documents; correspondence; conference notes; shop drawings and submittals; shop drawing logs; survey books; inspection reports; delivery schedules; test reports; daily reports;

subcontracts; fragmentary CPM schedules or time impact analyses; photographs; technical reports; requests for information; field instructions; and all other related records necessary to support the Developer's Claim.

25.7.4.5. Supporting documentation of damages for each issue shall be cited, photocopied, or explained. Supporting documentation may include, but shall not be limited to, any or all documents related to the preparation and submission of the proposal; certified, detailed labor records, including labor distribution reports; material and equipment procurement records; construction equipment ownership costs records or rental records; job cost reports; Subcontractor or vendor files and cost records; service cost records; purchase orders; invoices; Project as-planned and as-built cost records; general ledger records; variance reports; accounting adjustment records; and any other accounting materials necessary to support the Developer's Claim.

25.7.4.6. Developer shall include in its Claim documents all issue items and information that Developer contends are part of its Claim. Issues not included in the Claim documents shall not be considered.

25.7.4.7. Each copy of the Claim documentation shall be certified by a responsible officer of the Developer in accordance with the requirements of the Contract Documents.

25.7.4.8. The District may withhold from a progress payment and/or the final payment an amount not to exceed 150 percent of the disputed amount. The District may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy.

25.7.4.9. District's Written Decision. The District Representative will render a written decision to the Developer relative to the Claim. The District's written decision shall be final and binding on the party(ies) but subject to mediation.

25.7.4.10. Mediation. Within thirty (30) days after the District renders its written decision, the Developer may request that the parties submit the Dispute to mediation. Absent a request for mediation, the District's written decision is final and binding on the parties.

25.7.4.11. Litigation. If, after a mediation as indicated above, the parties have not resolved the Dispute, the receiving party's decision made pursuant to mediation will be conclusive and binding regarding the Dispute unless the submitting party commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the conclusion of such mediation or one (1) year following the accrual of the cause of action, whichever is later.

25.7.5. The District shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to the District by the Developer or any Subcontractor under the standards set forth in Government Code section 12650 *et seq.* Any Developer or Subcontractor who submits a false claim shall be liable to the District for three times the amount of damages that the District sustains because of the false claim. A Developer or Subcontractor who submits a false claim shall also be liable to the District for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$10,000 for each false claim.

25.8. Documentation of Resolution. If a Claim is resolved, the District shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate.

25.9. Dispute and Claim Resolution Process – Non-Applicability. The procedures and provisions in this Disputes and Claims section shall not apply to:

25.9.1. District’s determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;

25.9.2. District’s rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from District contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107, shall be subject to the mandatory dispute resolution provisions of this Disputes and Claims section and the Contract;

25.9.3. Personal injury, wrongful death or property damage claims;

25.9.4. Latent defect or breach of warranty or guarantee to repair;

25.9.5. Stop notices or stop payment notices;

25.9.6. Any other District rights as set forth herein;

25.9.7. Disputes arising out of or pertaining to an LCP (if applicable);

26. LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS

26.1. Labor Compliance Program

If the District, the District’s designee and/or the California Department of Industrial Relations is operating a labor compliance program (“LCP”) on this Project, Developer specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of the LCP, including, without limitation, the requirement that the Developer and all of its Subcontractors shall timely submit complete and accurate certified payroll records with each application for payment, or the District cannot issue payment. The following provisions indicated herein are specifically understood to be part of the LCP. If there is no LCP on this Project, the Developer and all of its subcontractor(s) are still required to comply with all applicable provisions of the Labor Code and the obligation to provide certified payroll records as indicated herein.

26.2. Wage Rates, Travel and Subsistence

26.2.1. Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the District’s principal office and copies will be made available to any interested party on request. Developer shall obtain and post a copy of these wage rates at the job site.

26.2.2. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the District, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

26.2.3. Developer shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of

Industrial Relations (“DIR”) (“Director”), regardless of any contractual relationship which may be alleged to exist between Developer or any Subcontractor and such workers.

26.2.4. If during the period this bid is required to remain open, the Director 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, such change shall not alter the wage rates in the Notice to Bidders or the Contract subsequently awarded.

26.2.5. Pursuant to Labor Code section 1775, Developer shall, as a penalty to District, forfeit the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Developer or by any Subcontractor under it.

26.2.5.1. The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of Developer was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Developer.

26.2.5.2. The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if Developer has been assessed penalties within the previous three (3) years for failing to meet Developer’s prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

26.2.5.3. The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the Developer willfully violated Labor Code section 1775.

26.2.5.4. 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 Developer.

26.2.6. Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification.

26.2.7. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by section 3093, and similar purposes.

26.2.8. Developer shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Developer shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

26.3. Hours of Work

26.3.1. 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 days work. The time of service of any worker employed at any time by Developer or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by

Developer to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Developer 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 times the basic rate of pay.

26.3.2. Developer shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Developer in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement of the DIR.

26.3.3. Pursuant to Labor Code section 1813, Developer shall as a penalty to the District forfeit the statutory amount (believed by the District to be currently one hundred dollars (\$100)) for each worker employed in the execution of this Contract by Developer 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 one 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.

26.3.4. 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.

26.4. Payroll Records

26.4.1. If the District, the District's designee and/or the California Department of Industrial Relations has an LCP in force on this Project then, pursuant to the provisions of section 1776 of the Labor Code, notice is hereby given that Developer shall prepare and provide to the District and/or the LCP and shall cause each Subcontractor performing any portion of the Work under this Contract to prepare and provide to the District and/or the LCP an accurate and certified payroll record ("CPR(s)"), 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 the Developer and/or each Subcontractor in connection with the Work.

26.4.1.1. In addition to any other requirements under Labor Code section 1770, et seq., the CPRs enumerated hereunder shall be certified and shall be provided to the District on a weekly basis. The CPRs from the Developer and each Subcontractor for each week shall be provided on or before Wednesday of the week following the week covered by the CPRs. District shall not make any payment to Developer until:

26.4.1.1.1. Developer and/or its Subcontractor(s) provide CPRs acceptable to the District, and

26.4.1.1.2. The District is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Developer and/or its Subcontractor(s) providing CPRs to the District in a timely manner will directly delay the District's review and/or audit of the CPRs and Developer's payment.

26.4.2. Whether or not there is an LCP in force on this Project, all CPRs shall be available for inspection at all reasonable hours at the principal office of Developer on the following basis:

26.4.2.1. A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

26.4.2.2. CPRs shall be made available for inspection or furnished upon request to a representative of District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

26.4.2.3. CPRs 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, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records reimburse the costs of preparation by Developer, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Developer.

26.4.3. The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____ (Position in business) with the authority to act for and on behalf of _____ (Name of business and/or Developer), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 for any work performed by our employees on the Project.

Date: _____ Signature: _____
(Section 16401 of the California Code of Regulations)

26.4.4. Each Developer shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.

26.4.5. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, or 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 Developer awarded Contract or performing Contract shall not be marked or obliterated.

26.4.6. Developer shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days, provide a notice of change of location and address.

26.4.7. In the event of noncompliance with the requirements of this section, Developer shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Developer must comply with this section. Should noncompliance still be evident after the ten (10) day period, Developer shall, as a penalty to District, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

26.4.8. It shall be the responsibility of Developer to ensure compliance with the provisions of Labor Code section 1776.

26.5. Apprentices

26.5.1. Developer acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Developer to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

26.5.2. 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 registered in full compliance with the provisions of the Labor Code.

26.5.3. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.

26.5.4. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

26.5.5. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Developer and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Developer or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

26.5.6. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Developer and any Subcontractor may be required to make contributions to the apprenticeship program.

26.5.7. If Developer or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

26.5.7.1. Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;

26.5.7.2. Forfeit as a penalty to District the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

26.5.8. Developer and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

26.5.9. Developer shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

26.5.10. Developer shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code section 3099, et seq.

26.6. Non-Discrimination

26.6.1. Developer herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Developer and Subcontractor.

26.6.2. Special requirements for Federally Assisted Construction Contracts: During the performance of this Contract, Developer agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

26.7. Labor First Aid

Developer shall maintain emergency first aid treatment for Developer's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) and the California Occupational Safety and Health Act of 1973 (8 Cal. Code of Regs., §1 et seq.).

27. MISCELLANEOUS

27.1. Assignment of Antitrust Actions

Although this project may not have been formally bid, the following provisions may apply:

27.1.1. Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Developer or subcontractor offers and agrees to assign to the awarding 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. § 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, made and become effective at the time the awarding body tenders final payment to the Developer, without further acknowledgment by the Parties.

27.1.2. Section 4552 of the Government Code states:

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. § 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.

27.1.3. Section 4553 of the Government Code states:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that

were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

27.1.4. Section 4554 of the Government Code states:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part 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 assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

27.1.5. Under this Article, “public purchasing body” is District and “bidder” is Developer.

27.2. 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 Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of District. No Federal Excise Tax for such materials shall be included in any Guaranteed Project Cost.

27.3. Taxes

Guaranteed Project Cost is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

27.4. Shipments

All shipments must be F.O.B. destination to Site or sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Guaranteed Project Cost shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

END OF DOCUMENT