

**DISTRICT-CONTRACTOR
AGREEMENT
Section 00 5213
17-1317**

This Agreement is made and entered into this 15th day of January, 2018, by and between Willows Unified School District of Glenn County, California, First Party, sometimes hereinafter called the District and Enviroplex, Inc. Second Party, sometimes hereinafter called the Contractor.

WITNESSETH: That the parties hereto mutually have covenanted and agreed, and by these present do covenant and agree with each other, as follows:

1. The NOTICE TO CONTRACTORS, INSTRUCTIONS TO BIDDERS, BID FORM, LIST OF SUBCONTRACTORS, GENERAL and SUPPLEMENTARY CONDITIONS, CALIFORNIA BID BOND, NON-COLLUSION DECLARATION, LABOR AND MATERIAL PAYMENT and FAITHFUL PERFORMANCE BONDS, GUARANTEE, and STRUCTURAL TESTS AND INSPECTIONS LIST are attached to and are a part of this Agreement. The complete Contract includes also the Drawings, Specifications, all items listed in the Project Manual, and all modifications and amendments thereto. All Contract Documents are intended to cooperate so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all Contract Documents.
2. The said Contractor agrees to furnish all tools, equipment, apparatus, facilities, transportation, labor, and material, other than material, if any, agreed to be furnished by the District hereunder, necessary to perform and complete in a manner acceptable to the District and Architect, the work of

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ELEMENTARY SCHOOL**

as called for, and in the manner designated in, and in strict conformity with this Agreement, and with the Drawings and Project Manual adopted by the Board of Trustees, Willows Unified School District which said Drawings and Project Manual are entitled respectively

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and are hereby specifically referred to and made a part of this Agreement with like effect as if fully set forth herein.

3. It is understood and agreed that said tools, equipment, apparatus, facilities, transportation, labor, and materials shall be furnished and said work performed and completed as required in said Drawings and Project Manual under the direction and supervision of the Contractor and subject to the approval of the Architect and District. The Architect and District shall have the right to accept or reject materials or workmanship, and to determine when the Contractor has complied with the conditions of the Contract. The Building Inspector employed by the District shall represent the Architect and District on the project.
4. In accordance with SB 975 and the provisions of Section 1770 and 1773 of the Labor Code, the project is a "Public Work" and the District has determined the general prevailing rate of wages applicable to the work to be done. These rates are set forth in a schedule located as indicated in the Notice to Contractors. Said schedule is available to any interested party on request. The Contractor shall post a copy at all job sites.

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6. Pursuant to Section 4551 of the Government Code of the State of California, the following provisions shall be a part of this Contract:

In entering into a public works contract, the Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all courses of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 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, services or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor without further acknowledgement by the parties.

7. The District agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done, the sum of

One Million Three Hundred Six Thousand Nine Hundred Eleven DOLLARS

\$1,306,911.00.

which sum is to be paid according to the provisions of the General and Supplementary Conditions. This sum is payment for performance of work covered by Base Bid.

8. The Contractor shall prosecute the Work in a prompt, diligent and workmanlike manner. The time limit for the completion of said Work is [Two Hundred (200)] calendar days from and after the date the Contractor is instructed in writing by the Architect or District to proceed with the work. Should the Work contracted for under this Agreement not be completed within the Contract Performance Period plus, if any, authorized extensions of time, there will be deducted from any money due or that which may become due the Contractor under this Contract the sum of One Thousand Dollars (\$1,000) per day as liquidated damages, but not as a penalty, for each day of delay after the expiration of such period until the final physical completion of the Work and its delivery to District. In addition, extended liquidated damages (same amount as above), may be assessed by the District if punch list work is not completed as described in Section 01 1000, Summary of Work.
9. Contractor agrees to relinquish all claims for costs incurred for any approved extensions of time limit for completion of work unless such extensions are due to the willful and negligent acts of the District or Architect.

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IN WITNESS HEREOF, the said Board of Trustees has caused this Agreement to be subscribed by its duly authorized officer on its behalf, and the said Contractor has signed this Agreement the day and year first above written.

Willows Unified
School District of Glenn County, a Political Subdivision of
the State of California

by _____
Authorized Official

Enviroplex, Inc.
Contractor

by _____
Title President

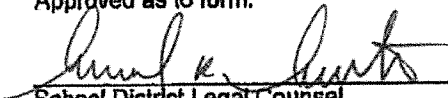
10. "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing with the performance of the work of the Contract".

Enviroplex, Inc.
Contractor

by 

Title President

Approved as to form:


School District Legal Counsel



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1.01 GENERAL

- A. AIA Document A201, 2007, "General Conditions of the Contract for Construction", Article 1 through 15 inclusive, is a part of this contract.
- B. The General Conditions are modified as follows. Where any part of the General Conditions is modified or deleted, unaltered provisions shall remain in effect.

1.02 MODIFICATIONS TO GENERAL CONDITIONS

ARTICLE 1 GENERAL PROVISIONS

§1.1 BASIC DEFINITIONS

§1.1.1 DELETE this paragraph in its entirety and SUBSTITUTE the following:

§1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the CONTRACT AGREEMENT, NOTICE TO CONTRACTORS, INSTRUCTION TO BIDDERS, ACCEPTED BID FORM, LIST OF SUBCONTRACTORS, GENERAL AND SUPPLEMENATRY CONDITIONS, CALIFORNIA BID BOND, NON-COLLUSION DECLARATION, GUARANTEE BOND and LABOR AND MATERIAL and FAITHFUL PERFORMANCE BONDS which are attached to and are part of this agreement. The complete Contract also includes the Drawings, Specifications, all items listed in the Project Manual and all modifications, addenda and amendments thereto. All Contract Documents are intended to cooperate so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all Contract Documents. Unless otherwise enumerated within the agreement the contract does not include information provided "for reference OR for information only" either bound within or attached to the project manual or drawings, advertisement or invitation to bid, instructions to bidders, samples forms, or other information furnished by the District in anticipation of receiving bids, the Contractor's bid or bid, or portions of addenda relating to the bid process or bidding requirements.

§1.1.2 THE CONTRACT, ADD the following subparagraph:

- .1 The Contract may be modified only by a written Change Order, issued and signed by the Architect and approved and signed by the District's governing board.

ADD the following paragraph:

§1.1.9 Definitions:

- .1 "Shown": as shown on the Drawings
- .2 "Directed": as directed by the Architect or District.

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- .3 "Approved", "proper", "required", "satisfactory", "suitable", "necessary": approved, proper, required, satisfactory, suitable, or necessary in the judgment of the Architect.
- .4 "Project Manual": the manual prepared for the Project, including the Bidding Requirements, Contract Forms, Conditions of the Contract, Technical Specifications, and other related documents.

§1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§1.2.1 REVISE the second sentence to read as follows:

The Contract Documents are complementary, and what is required by one shall be as binding as if required by all and shall be performed as if fully set forth in all; performance by the contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

ADD the following paragraphs:

- §1.2.4 In general, the Drawings will show dimensions, position and kind of construction; and the specifications, qualities and methods. Any work called for in the Drawings and not mentioned in the specifications, or vice versa, shall be performed as though fully set forth in both. Work not particularly detailed, marked, or specified shall be the same as similar parts that are detailed, marked or specified.
- §1.2.5 In case of conflict between the Drawings and Specifications, the Drawings shall govern in matters of quantity, the Specifications in matters of quality. In case of conflict within the Drawings involving quantities or within the Specifications involving qualities, the greater quantity and the higher quality shall be furnished.
- §1.2.6 Should conflict appear in the Drawings or Specifications, or in the work done by others affecting this work, the Contractor shall notify the Architect at once in writing and the Architect will issue instructions as to procedure. If the Contractor proceeds with the work so affected without instructions from the Architect, he shall make good any resulting damage or defects.
- §1.2.7 The general character of the detail work is shown on the Contract Drawings. The Architect will furnish additional details to more fully explain the work, and same shall be considered a part of the Contract. Any work executed before receipt of such details, if not in accordance with same, shall be removed and replaced, or adjusted, as directed, without expense to the District. Should any detail submitted later than the Contract Drawings, be in the opinion of the Contractor, more elaborate or more costly than the Contract Drawings and the Specifications indicate written notice thereof shall be given to the Architect within five days of receipt of same. The claim will then be considered, and, if justified, said detail drawings will be amended or the extra work authorized. Non-receipt of such notice shall relieve the District.
- §1.2.8 Where on any Drawings a portion of the work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply to all other like portions of the Work.

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Where ornament or other detail is indicated, such detail shall be continued throughout the courses or parts in which it occurs and shall also apply to other similar parts in the Work, unless otherwise indicated.

- §1.2.9 When specified brands or materials are called for, they are mentioned merely as standards, unless otherwise indicated the Contractor has the option of using any other brand of equal quality, if accepted by the Architect. Any material substituted for that named in the Specifications, may, if so desired by the Architect, be tested as necessary, and to the Architect's satisfaction, to proof product equality. The Contractor shall provide written reports as evidence of equality and bear the cost of such tests and reports.
- §1.2.10 Any material specified by reference to the number, symbol or title of a specified standard such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standards, shall comply with the requirements in the latest approved revision thereof and any amendments or supplements thereto in effect on the date of Notice to Contractors, except as limited to type, class or grade, or modified in such reference.
- §1.2.11 The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in these Specifications. These standards are not furnished to bidders, for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements.
- §1.2.12 Where it is required in the Specifications that materials, products, processes, equipment or the like be installed or applied in accordance with manufacturer's instructions, directions, or specifications, it shall be construed to mean that said application or installation shall be in strict accordance with the printed instructions furnished by the manufacturer of the materials considered for use under conditions similar to those at the job site. Copies of such instructions shall be furnished to the Architect in quantities required by Section 01 3300 and his acceptance thereof obtained before work is begun.

§1.5 DISTRICTSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§1.5.1 DELETE this paragraph in its entirety and SUBSTITUTE the following:

- §1.5.1 The Drawings, Specifications, and other documents, including those in electronic format, prepared on behalf of the District are instruments of the services of the Architect and its consultants and are the property of the District. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, upon request upon completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to

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this Project outside the scope of the Work without the specific written consent of the District and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the District's property interest or other reserved right.

§1.5.2 **DELETE** this paragraph in its entirety.

ARTICLE 2 DISTRICT

§2.2 **INFORMATION AND SERVICES REQUIRED OF THE DISTRICT**

§2.2.1 **DELETE** this paragraph in its entirety.

§2.2.2 **DELETE** this paragraph in its entirety.

§2.2.3 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§2.2.3 The District shall furnish surveys describing physical characteristics, legal limitations and assumed utility locations of the project site. The survey is to be based upon the most recent known information. The District provides no warranty expressed or implied in regards to actual location, utility depth or utility type. The Contractor is entitled to rely on the survey for information only and shall proceed with care to avoid damage to existing utilities shown or not shown, to remain, or to be removed or altered as part of the work.

§2.2.5 **DELETE** in its entirety and **SUBSTITUTE** the following:

§2.2.5 The District shall provide the Contractor with **10** sets of Contract Documents for the purpose of performing the work and for making reproductions as necessary for the Contractor or subcontractors to perform the work, create as-built set and prepare shop drawings pursuant to Section 1.5.2. The Contractor may purchase additional sets, if desired, at no cost to the District.

§2.3 **DISTRICT'S RIGHT TO STOP THE WORK, ADD** the following paragraph:

§2.3.1 The waiver by the District of any breach of any requirements, condition or provision of this Contract shall not be a waiver of any subsequent or other breach of this Contract nor of any terms, conditions or provisions of this Contract.

ARTICLE 3 CONTRACTOR

§3.3 **SUPERVISION AND CONSTRUCTION PROCEDURES, ADD** the following paragraphs:

§3.3.4 The Contractor shall properly locate all building and other improvements off site or on site, and shall furnish all engineering required for such work, including the locations and

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identification of bench marks, identified and verified within county records, markers, property lines and grades. The Contractor shall check floor elevations and grades against data shown on drawings, and shall report any discrepancies to the Architect before laying out the work.

- §3.3.5 Where work of one trade joins, is on, adjacent to or covers other work there shall be no discrepancy when said work is completed. In engaging one kind of work with another, marring or damaging same will not be permitted. Should improper work of any trade be covered by another that results in damage or defects, the Contractor shall rectify the work affected at no additional cost to District.
- §3.3.6 The contractor shall coordinate with and consult other contractors on the project or on the overall project site if any and the Architect, regarding the installation of other Contractor's work before starting various phases of this work and as required to avoid possible conflicts and the possibility of damage or removal of work and allow the work of others to be installed or completed without disruption to the work of either.
- §3.3.7 The contractor shall provide timely assistance required by the Architect in obtaining measurements or information regarding the work efficiency, effectiveness.

§3.4 LABOR AND MATERIALS

§3.4.1 ADD the following subparagraphs:

§3.4.1.1 Wage Rates:

- .1 Pursuant to Labor Code Section 1770 et seq., each laborer or mechanic of Contractor or any Sub-contractor engaged in work on the Project under this Contract shall be paid not less than the hourly wage rate of per diem wages set forth in the prevailing wage rate schedule published by the District of Industrial Relations regardless of any contractual relationship which may be alleged to exist between Contractor or any Sub-contractor and such laborers and mechanics.
- .2 Any laborer or mechanic employed to perform work on the Project under this Contract, which work is not covered by any of the foregoing classifications, shall be paid not less than the prevailing rate of per diem wages specified herein for the classification which most nearly corresponds to the work to be performed by him.
- .3 The foregoing specified prevailing wage rates are minimum rates only, and the Contractor may pay any wage rates in excess of the applicable rates contained in this Contract.
- .4 Pursuant to Labor Code Section 1775, the Contractor as a penalty to the District shall forfeit \$200.00 for each calendar day, or portion thereof for each worker paid less than prevailing rate established by the Department of Industrial Relations for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

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- .5 An error on the part of an awarding body does not relieve the Contractor from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Section 1770 - 1775.
- .6 Copies of the applicable prevailing wage rates are on file with the District, and they are available to any Interested party on request.
- .7 The Contractor shall make travel and subsistence payments to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations of the State of California, all in accordance with the requirements of Section 1773.8 of the Labor Code.
- .8 Apprentices shall be permitted to work as such only when they are registered individually under a bona fide apprenticeship program registered with the State Apprenticeship Agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if not such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training. Allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on the payroll with any apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he or she actually performed.

The Contractor shall furnish written evidence of the registration of contractors program and apprentices, the ratios allowed and wage rates required to be paid thereunder for the area of construction prior to the using any apprentice in the contract work.

Contractor shall comply with the provisions of Labor Code section 1777.5, and the responsibility of compliance with Section 1777.5 for all apprenticeable occupations shall be with Contractor.

- .9 In accordance with California Labor Code section 1771.4, unless exempted, all public works projects are subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR), which includes the following requirements:
 - a. Each contractor and subcontractor shall furnish electronically certified payroll records directly to the Labor Commissioner in accordance with the instructions and requirements posted by DIR on its website and other sources. As of January 1, 2016, the requirement to furnish electronic certified payroll records to the Labor Commissioner will apply to all public works projects, whether new or ongoing.
 - b. The District will have direct and immediate access to the certified payroll records submitted to DIR in order to monitor compliance, identify suspected violations and respond to Public Records Act requests.
 - c. At each job site, Contractor shall post the notice(s) required by California Labor Code section 1771.4(a)(2) and the California Code of Regulations.
 - d. The District may withhold contract payments when payroll records are delinquent or inadequate, or not submitted as required by the Labor Commissioner. The amount withheld shall be limited to those payments

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due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate. Further, a contractor may be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the subcontractor has cured the delinquency or deficiency.

- e. The District shall cooperate with any investigation of suspected violations of the requirement to pay prevailing wages on all public works projects, and withhold contract payments in accordance with any lawful order by DIR or any other agency with jurisdiction over labor compliance enforcement.
- f. Contractor shall provide site access to DIR personnel upon request.

§3.4.1.2 Legal Day's Work: In accordance with the provisions of Articles 1 and 3 of Chapter 1, Division II, of the Labor Code of the State of California, no workman in the employ of the Contractor or any subcontractor doing or contracting to do any part of the work contemplated by this Agreement shall be required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours during any one calendar week, except as provided in Section 1815 of the State Labor Code. The Contractor and each subcontractor shall keep an accurate record showing the name and actual hours worked by each workman employed on the work contemplated by this Agreement, which report shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement; and said Contractor shall forfeit, as a penalty to the District, the sum of Twenty-Five Dollars (\$25.00) for each workman employed in the execution of this Contract, by him or by any subcontractor, for each calendar day during which workman is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except as provided in Section 1815 of the Labor Code for the recovery of said penalty.

§3.4.3 ADD the following subparagraphs:

§3.4.3.1 Anti-Discrimination: The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and all rules, regulations and relevant orders of the President's Committee on Equal Employment Opportunity created thereby

§3.4.3.2 Alcohol, Drugs and Tobacco

- .1 It is the policy of the School District that all property owned by the District is to be alcohol, drug and tobacco-free. This policy prohibits the use of alcohol, illegal use of drugs, smoking and chewing tobacco on this site or within the boundaries of District property.
- .2 It is the responsibility of the Contractor to supervise all workers on the project to ensure that their conduct is not in violation of this policy and to post notices of

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this policy in prominent locations on the site. Violators will be required to leave the site. Multiple offences will result in the individual being permanently prohibited from returning.

§3.4.3.3 Fingerprint Requirements

Contractor Fingerprint Requirement Notification: Department of Justice Clearance (Education Code 45125.1), Assembly Bill 1610 and Assembly Bill 2102 amend Education Code Section 45125 to require criminal background checks of the employees of contractors providing services to educational agencies within the State of California. Fingerprinting is required on this project. Special exclusion is made in a case of emergency or exceptional situation relating to pupil health or safety where a student may be endangered or facilities need to be made safe and habitable.

The law authorized the School District to require a Contractor to comply with fingerprinting requirements if a determination is made that the contracting employees may have limited contact with pupils. The standard by which "limited contact with pupils" is measured is "the totality of the circumstances, including factors such as the length of time the contractor will be on school grounds, whether pupils will be in proximity with the site where the Contractor will be working, and whether the Contractor will be working by themselves or others."

The law allows the Department of Justice to forward one copy of the print to the FBI if it deems it necessary. It has the authority to determine if there are convictions or arrests pending for offenses that, if committed in California, would have been punishable as a violent or serious felony. An entity having a contract as specified in this section and an entity required to comply with this section by the School District with which it has a contract, shall complete the requirements of this section within 10 days of notification of award of bid.

The Contractor must complete required Department of Justice forms. The Contractor must certify in writing to the School District that none of its employees who may come in contact with pupils have been convicted of a felony as defined in Section 45122.1 by submitting the Contractor Certification Form included at the end of this Section. The Contractor shall not permit an employee to come in contact with pupils until the DOJ has completed the background check investigation.

NOTE: Failure by the Contractor to secure necessary Department of Justice clearance will not result in extensions of time to complete the work or delays in the Notice to Proceed date.

§3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§3.7.1 DELETE this paragraph in its entirety and SUBSTITUTE the following:

§3.7.1 Unless otherwise provided in the contract documents, the contractor shall secure and pay for permits as well as for other permits, fees, licenses and inspections by governing agencies necessary for proper execution and completion of the work that are customarily secured after execution of the contract and legally required to complete the work included within the Contract. Proper documentation of fee, permit, and utility services

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shall be submitted to the District through the Architect. The District shall directly reimburse the contractor costs of permits and fees associated with governmental and utility company reviews and approvals, but not for the preparation or reproduction of documents required for submittals for obtaining said permits and approvals. No markup shall be allowed the Contractor on these reimbursable charges. The Contractor shall coordinate and pay for all utility charges whether temporary or permanent until final completion. The contractor shall be responsible for coordination, placement and scheduling of the utilities. The Contractor shall notify the Architect and District immediately if utility or another company's work adversely affects the contract work or scheduling and shall endeavor to resolve the conflict.

§3.7.3 **ADD** the following subparagraph:

§3.7.3.1 All work and materials shall be in full accordance with the latest rules and regulations of Title 24 of the California Code of Regulations; and other applicable state laws or regulations pertaining to the location. Nothing within the contract documents shall be construed as permitting work that is not in accordance with these codes.

§3.7.4 **REVISE** this paragraph as follows:

DELETE from the end of the first sentence "and in no event later than 21 days after first observance of the conditions"

DELETE the word "investigate" and **SUBSTITUTE** the word "review" in the second sentence.

§3.9 **SUPERINTENDENT**

§3.9.1 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§3.9.1 During the progress of the work, Contractor shall assign to the project a competent superintendent satisfactory to the District and Architect. Before commencing work herein, Contractor shall give written notice to the District and the Architect of the name of such superintendent. Superintendent shall be in attendance at the project site during the time work is being performed and remain on the project from the time work begins until the notice of completion is filed. Superintendent shall not be changed except with written consent of the District, unless the superintendent proves unsatisfactory to the Contractor and ceases to be in its employ, in which case Contractor shall notify the District and Architect in writing. Superintendent shall represent the Contractor and all directions given by Superintendent and direction provided by or agreements reached in the performance of the work shall be as binding as if given or received by the Contractor.

§3.9.2 **REVISE** the first sentence to read as follows:

The Contractor shall within 10 days of notice to proceed and before work commences on the site submit in writing to the District and Architect the name of the proposed project superintendent and qualifications including recent experience on similar projects.

§3.10 **CONTRACTOR'S CONSTRUCTION SCHEDULE**

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§3.10.1 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§3.10.1 Within fifteen (15) days of the notice to proceed the Contractor shall prepare and submit to the District and Architect a PROGRESS SCHEDULE/Critical Path Construction Schedule showing in detail how the work is to be completed. The Schedule shall include and identify activities, if any, District specified float time, allowances for inclement weather forty (40) days per year and milestones as indicated within the Summary Of Work, Section 01 1000 and encompassing the work of the Contractor, subcontractors and critical dates upon which the work depends and as required to assure project completion not to exceed the time limits current under the Contract Documents.

If applicable, the Schedule shall identify long lead procurement periods, submittal and shop drawing preparation, review periods and other dates critical to product procurement and timely installation of the work.

The Schedule shall be revised at appropriate intervals as required by the conditions of the work and project and shall provide for expeditious and practicable execution of the Work.

§3.10.2 **DELETE** this paragraph in its entirety.

§3.11 **DOCUMENTS AND SAMPLES AT THE SITE, REVISE** as follows:

DELETE, "to the Architect for submittal" in the second sentence.

ADD the following sentence, "Said documents and samples shall be available to the Project Inspector and representatives from agencies having jurisdiction over the Work."

ADD the following paragraphs:

§3.11.1 Contractor agrees that District or its agent will have the right to review, obtain and copy all records pertaining to the performance of the contract. Contractor agrees to provide District or its agent access to its premises, upon reasonable notice, during normal business hours for the purposes of interviewing employees and inspecting and copying such books, records, accounts or other material that may be relevant to matters under investigation for the purpose of determining compliance with Public Contract Code of Regulations, et. seq., and Title 2, California Code of Regulations, sections 1865.12, et. seq. Contractor further agrees to maintain its records for a period of three years after final payment under the contract.

§3.11.2 **RECORD DOCUMENTS:** The Contractor will receive from the District one set of complete contract documents, including drawings and specifications, to be kept at the site at all times and the Contractor shall keep an accurate record, by posting supplemental drawings and statements regarding the documents with verified and actual installed locations of above ground, buried improvements and existing utilities as encountered within the project. Said records shall show grade elevations, relative to permanently fixed (sea level) benchmarks, of the installed improvements and existing sub-grade objects. For clarity, when necessary and only with the Architect's approval, drawings may be separated between trades, with one set for each trade. The drawings

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shall provide the locations and any change in direction of said improvements and objects dimensionally located from two (2) different fixed and permanent points readily accessible and identifiable portions of the building or site appurtenances. Locating dimensions shall be parallel with or perpendicular to building lines. At the end of each month the Architect and or the Project Inspector may review record documents. Should the record documents be incomplete or incorrect, an appropriate sum equivalent to the cost of uncovering the work and as required to verify the locations and conditions of the installed work may be deducted from the next progress payment and any subsequent request for payment. The deducted sum will be withheld until the Record Documents are made current and complete.

Upon completion of the work, the Record Documents shall be reviewed by the Project Inspector for verification that all work is fully identified and accurately represented. The Inspector shall indicate on the documents conformation of his review and his recommendation of acceptance. Once the Inspector is satisfied that all work is accurately shown, the documents will then be returned to the Contractor and submitted to the Architect, via submittal, for the review of the Architect and Consulting Engineers and their recommendation of acceptance. Once determined that the documents are ready for acceptance the documents will be forwarded to the District prior to final payment.

- §3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES
- §3.12.5 REVISE this paragraph to delete the words "approve" and "approved" and REPLACE with "accept" or "accepted".
- §3.12.7 REVISE this paragraph to delete the word "approved" and REPLACE with "accepted".
- §3.12.8 REVISE this paragraph to delete the words "approved" and "approval" and REPLACE with the words "accepted" or "acceptance".
- §3.12.10 REVISE the second to last sentence to delete the word "approve" and REPLACE with "accept".
- §3.13 USE OF SITE, ADD the following paragraphs:
- §3.13.1 The Contractor shall be responsible for preparing and submitting required documents for obtaining approval by local and state governing jurisdictions and for implementation of an approved Storm Water Pollution Prevention Plan. Plan shall include site winterization, temporary site access ways, place materials such as road base rock and maintain safe access to temporary facilities, parking areas and all areas of work as necessary to continue work without schedule interruption throughout the course of construction and throughout completion of the project. Temporary access ways shall be removed once need is eliminated and no remnant shall remain once removed.
- §3.13.2 Noise: Contractor shall comply with local noise ordinances as required. At existing school sites or when construction activity extends in the period when school is occupied, the Contractor shall minimize construction noise and disallow radio, music

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and the like that will disrupt teaching in a classroom. When tests are given in school, the contractor may be asked to re-schedule work to prevent disruption in the classroom.

§3.15 CLEANING UP, ADD the following paragraphs:

§3.15.3 The Contractor shall protect and preserve the work from all damage resulting from foreseeable or unforeseeable accident, vandalism, weather or other hazards, providing any temporary measures necessary to protect the work in progress. Such protection shall extend to adjoining property of the District or of others affected by the Contractor's work. The Contractor shall be responsible for protection of the work until the Notice of Completion is recorded.

§3.15.4 The Contractor shall take necessary steps to prevent air-born debris or dust from leaving the site and or affecting the occupation of other buildings on the site. The Contractor shall provide "Dust Control" sufficient to prevent accumulation on adjoining properties and facilities.

§3.17 ROYALTIES, PATENTS AND COPYRIGHTS, ADD the following at the end of the last sentence, "Immediately upon discovery."

§3.18 INDEMNIFICATION:

§3.18.1 DELETE this paragraph in its entirety and SUBSTITUTE the following:

§3.18.1 Contractor indemnifies District: Contractor shall indemnify the District, Inspector, Architect and their agents and employees and hold them free, safe, and harmless of, from, and against any and all liability for the death of, or injury to, or loss of use of any property, which may arise by reason of the acts done or omitted to be done as a result of the Work to be done by the Contractor in completion of performance of the said Work contemplated by the said Specifications and the Contract for the performance of said Work, other than for the active negligence of the District, its officers, agents and employees.

.1 Contractor shall defend or at District's sole option reimburse the District upon demand for all reasonable cost and expense which the said District may incur in resisting any claim which may be made against said District for any injury or damage to any person or property for which District is entitled to be indemnified hereunder.

.2 In any and all claims against the District or any of its agents or employees, by any employee of any subcontractor, anyone directly or indirectly employed by any of them, or anyone for those acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any sub-contractor under worker's compensation acts, disability benefit acts or other employee benefit acts. Upon demand, the Contractor shall defend any suits or actions arising from such claims.

.3 District not liable for damages: The District, its officers, agents and employees, and its authorized representatives shall not in any way or manner be answerable or suffer loss, damage, expense, or liability for any loss or damage that may

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happen to said Work, or part thereof, or in or about the same during its construction and before acceptance and the said Contractor shall assume all liabilities of every kind or nature arising from said Work, either by accident, negligence, theft, vandalism, or any cause whatever; and shall hold the District, its officers, agents and employees, and its authorized representatives harmless from all liability of every kind and nature arising from accident, negligence, or any cause whatever, other than for the active negligence of the District, its officers, agents and employees, and its authorized representatives.

- .4 District not liable for debts: Indebtedness incurred for any cause in connection with this Work must be paid by the Contractor, and the District is hereby relieved at all times from any indebtedness or claim other than the Contract price.
- .5 Contractor responsible for his work: Responsibility for Accident, Damage, etc.: To the furthest extent permitted by law, the Contractor shall be responsible for any and all loss, accident, neglect, injury, or damage to person, life, or property which may be the result of, may be caused by, or arise out of his performance of Work as contemplated by said Specifications or the execution of the Contract for performance of said Work, and for which the District might be held liable.
- .6 The foregoing indemnity provisions shall not extend to any right to recover attorney fees incurred in any action for breach of contract, and shall imply no reciprocal right to attorney fees under Civil Contract Code section 1717 or 1717.5.

ARTICLE 4 ARCHITECT

§4.1 GENERAL

§4.1.1 DELETE this paragraph in its entirety and SUBSTITUTE the following:

§4.1.1 The District has retained Rainforth Grau Architects, 2407 J Street, Suite 300, Sacramento, California 95816-4736 as Architect for this project. The Architect will advise and consult with the District and all communication between the District and Contractor, unless noted otherwise, shall be issued through the Architect. The Architect is responsible for the overall design of the project and is the final authority, in consultation with the District, in judgments of aesthetic consideration. The drawings, specifications, sketches and other data necessary to define the work covered by these contract documents have been prepared by the Architect. The Architect shall periodically make observations of the construction to determine general compliance with the contract documents and the Architect shall interpret the drawings and specifications consistent with the contract documents.

§4.2 ADMINISTRATION OF THE CONTRACT

§4.2.2 ADD the following to the end of the paragraph: "This shall not be construed to change the Architect's authority or responsibility relative to Sections 4-333 and 4-341, Title 24, Part 1."

§4.2.7 REMOVE words approve, approved or approval and SUBSTITUTE accept, accepted or acceptance. ADD "general" in front of "conformance" in the first sentence.

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- §4.2.8 **CHANGE**, in the second sentence the word "investigate" to "review".
- §4.2.9 **REMOVE**, in the first sentence, the word "inspections" and **SUBSTITUTE**, "a project review".
- §4.2.10 **DELETE** the words, "If the District and Architect agree," at the beginning of the first sentence and begin the sentence at, "The Architect..."

ARTICLE 5 SUBCONTRACTORS

§5.1 DEFINITIONS

§5.1.1 ADD the following subparagraphs:

- §5.1.1.1 A Subcontractor is a person or organization, that is required by law to be and who is licensed to and will perform work, labor, or render services to the contractor about the construction of the work, or who, under subcontract to Contractor, fabricates and/or installs a portion of the work or improvements. Has a direct contract with the Contractor to perform any work or part of the contract. Subcontractor shall be listed in the Bid Bid according to the instruction contained therein. All persons or firms within the authority of the subletting and subcontracting fair practice act, Chapter 2 of Division 5, Title I of the public contract Code, commencing with section 4100

The Contractor is as fully responsible to the District for the acts and omissions of his/her subcontractors and of persons either directly or indirectly employed by them, as he/she is for the acts and omissions of persons directly employed by him. Nothing contained within these Contract Documents shall create any contractual (including third party beneficiary) relation between any subcontractor and the District.

§5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK, ADD the following paragraphs:

- §5.2.5 The Contractor shall insert appropriate provisions in all subcontracts pertaining to the work on this project requiring the subcontractors to be bound by all applicable terms of the Contract Documents.
- §5.2.6 Contractor shall not perform work on this project with a subcontractor who is ineligible to perform work on public works projects pursuant to labor Code section 1777.1 or 1777.7.

§5.3 SUBCONTRACTUAL RELATIONS, ADD the following paragraphs:

- §5.3.1 The District and Architect will, to the extent possible, initiate communication to the subcontractor through the Contractor, who shall be responsible for the proper execution of the entire work.
- §5.3.2 When any portion of the Work that has been subcontracted by Contractor is not being performed in satisfactory manner or when materials supplied do not conform to the Contract Documents and these deficiencies form the basis of a default notice issued pursuant to Article 14, the District may direct the Contractor to discharge the subcontractor or supplier.

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- .1 Any termination of a subcontractor or supplier pursuant to this section shall be in strict conformity with the requirements of subletting and subcontracting Fair Practice Act, Part 1 Division 2 of the Public Contract Code, commencing with section 4100.
- .2 A subcontractor or supplier who has been discharged shall not again be employed to perform work under this contract.

§5.3.3 Subletting the whole or any part of the Contract shall be done only in accordance with the provisions of Public Contract Code Section 4107, which states that the Contractor shall not, without the consent of the District, either:

- .1 Substitute any person or organization as subcontractors in place of the subcontractors designated in his original bid form.
- .2 Permit any subcontractor to be assigned or transferred or allow it to be performed by any other than the original subcontractor listed in the bid form.
- .3 Sublet or subcontract any portion of the work in excess of one-half (1/2) of one percent (1%) of his bid as to which his original bid did not designate a subcontractor.

Should the Contractor violate any of the provisions of said Public Contract Code Section 4107, his so doing shall be deemed a violation of this Contract, and the District may (1) cancel the Contract, or (2) assess the Contractor a penalty in the amount of not more than ten percent (10%) of the amount of the subcontract involved, or (3) both cancel the Contract and assess the penalty.

ARTICLE 6 CONSTRUCTION BY DISTRICT OR BY SEPARATE CONTRACTORS

§6.1 DISTRICT'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§6.1.1 DELETE this paragraph in its entirety and SUBSTITUTE the following:

§6.1.1 The District reserves the right to perform construction or operations related to the Project with the District's own forces and to award separate contracts in connection with other portions of the project or other construction or operations on site. If the Contractor claims that delay or additional cost is involved because of such action the Contractor shall make such claim as provided in Article 15.

§6.1.2 DELETE this paragraph in its entirety and SUBSTITUTE the following:

§6.1.2 When separate contracts are awarded for different "trades" or "portions" of other construction or operations on the site, the term "contractor" in the contract documents in each case shall mean the Contractor who executes each separate District-Contractor, general construction Contract.

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§6.3 DISTRICT'S RIGHT TO CLEAN UP, **DELETE** this section in its entirety and **SUBSTITUTE** the following:

§6.3 DISTRICT'S RIGHT TO CLEAN UP

Should a dispute arise among the contractor, separate contractors and the District as to the responsibility under their respective contracts for clean-up as required under Article 3 above, the District may clean up and the District in consultation with the Architect, will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§7.1 GENERAL, **ADD** the following paragraphs:

§7.1.4 The District, before the date of acceptance of the Work, may order changes, including additions, deletions, or alterations in the Work (called "Construction Change Documents (CCD)"), and may order extra materials and extra work in connection with the performance of the Contract, and Contractor shall promptly comply with such orders.

§7.1.5 Contractor shall perform work required in a Construction Change Document (CCD) in accordance with the Contract Documents, except to the extent changed by the CCD. CCD's involving changes to the drawings or Specifications must be approved by the Architect, DSA, Local Fire Authority, Health Department or other authorities as applicable having jurisdiction over the Project, to the extent required by law.

§7.2 CHANGE ORDERS, **ADD** the following paragraphs:

§7.2.2 No change in the Contract shall be performed or change made unless in pursuance of a written Change Order from the District, signed by the District, Contractor and Architect stating that the extra work or change is authorized, and no claim for an addition to the contract sum or contract period shall be valid unless the extra work or change is so ordered.

§7.2.3 Price adjustment: If a proposed Construction Change Document provides for an adjustment in the Contract Sum, the adjustment shall be based on one of the following methods, as selected by the District, and shall state, identify and include state and city sales tax; Federal Excise tax shall not be included (the District will issue exemption upon request):

- .1 Mutual acceptance of a lump sum properly itemized as prescribed by the Architect and supported by sufficient substantiating data to permit evaluation;
- .2 By unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 By actual cost and a mutually acceptable fixed or percentage fee;

§7.2.4 Should methods .1,.3 or .4 as stated above be employed, the contractor shall provide a detailed breakdown including a line by line itemization for all labor, material (including trucking, delivery and small tool cost, equipment, taxes, subcontractor overhead and

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profit and general contractor overhead and profit). Labor cost for workers shall not exceed 140% prevailing rate, for regular or normal hours and this rate may not be increased for premium hours, and shall include the prevailing wage, social security, unemployment insurance, fringe benefit, workman's compensation insurance, small tools and all other related burden costs.

Charges for equipment shall be for actual hours utilized only if already on-site and for no more than 1/2 day minimum if brought to site for a particular item, included within the contract change. Timecards, invoices and receipts shall be provided as requested for support of time and materials claims. Subcontractor overhead and profit shall be limited to 10% of his subtotal for increases to the Contract Amount and at least 5% for decreases to the Contract Amount. General Contractor overhead and profit shall be limited to 5% on Subcontractor work, 5% on material-only charge, 15% on General Contractor work for increases to the Contract Amount and at least 5% for decreases to the Contract Amount. This amount shall include administration expenses, supervision, field office expense, and home office expenses including costs to prepare the change order quotations (engineering, shop drawings, submittals, etc.), as well as all costs for bonds and insurance. Credits, as well as extras, shall be itemized and include overhead costs at rates noted above.

Breakdown shall include any schedule impact associated with the change and without reservation for any future impact.

- §7.2.5 Overhead and Profit: shall include the following: Preparation of all paperwork related to changes in the work, including field review, estimating and cost breakdown; coordination and supervision, both office and field, including the Project Superintendent and or Project Manager; engineering, detailing, and revisions to shop drawings and as built documentation; general office expense; insurance, taxes, indirect supervision, bonds, warranty, small, perishable or disposable tools and incidental tools or equipment normally associated with performing work in kind.
- §7.2.6 Unit Pricing: where unit prices are established within the Contract, they shall govern in computing any additions to or deductions from the contract sum on account of any added or omitted work. Unit pricing included within the contract shall include all cost, including overhead as noted in subparagraph §7.2.5 above and no additional cost of any kind will be allowed.
- §7.2.7 Force Account: If it is impossible because of the nature of the work, or for any reason to fix an increase or decrease of price in advance, an Construction Change Document (CCD) or change order may fix the price of additional or deductive work associated with the change. Such a CCD shall be construed as the District's direction to proceed with the change in work. Subject to such limitation, such alteration, modification, extra or deduction shall be paid to or removed from the contract at the actual necessary cost as determined by the sum of the following items:
- .1 Labor, including wages and benefits at rates established pursuant to Labor Code section 1720 et seq., premiums for workers compensation insurance, Social Security and Medicare taxes, and other taxes pertaining to labor. Labor costs shall be recoverable for workers actually performing the Work, and first line

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supervision including working foreman or lead craft works, but excluding superintendents.

- .2 Material, including sales or use taxes and other taxes pertaining to materials.
- .3 Plant and equipment rental, to be agreed upon in writing. No charge for the cost of repairs to plant or equipment will be allowed. No amount will be paid for small tools, whether rented from Contractor or others. For equipment owned by the Contractor, equipment rental rates shall not exceed the labor surcharge and equipment rental rates as set forth by California Department of Transportation (Cal Trans). Please refer to the CAL Trans website: <http://www.dot.ca.gov>.
- .4 Actual cost of project superintendent and/or project manager, but added only if the Contract Time is extended by virtue of the Modification and the actual cost incurred by Contractor is increased. In the absence of a compensable delay, any additional cost for project superintendent or project manager shall be considered paid for as part of the overhead and profit payment.
- .5 Subcontractor costs computed according to these same standards.
- .6 Overhead and profit computed as provided in §7.2.3 above.

§7.2.8 Oral Modifications: Oral statements of any person shall not in any manner or degree, modify or otherwise affect the terms of the Contract.

§7.2.9 Verbal direction: In cases where the work may be adversely affected in time and or cost the District or Architect may provide verbal direction pertaining to changes in the work and work on such direction shall proceed as if written modification were provided until such time as written Construction Change Document (CCD) or change order is provided.

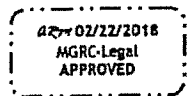
§7.2.10 Record Keeping: In the event that the pricing method selected is the "cost plus" (time and materials) method described above, Contractor shall keep and present daily to the District, in such Manner as the District prescribes. Prior to beginning additional work and at the conclusion of such work each day, or at each interval of the work, Contractor shall present to the Project Inspector for verification the number of persons, the equipment and the materials to be utilized in performing the work. Inspector shall sign documentation of verification and return the signed documentation to the Contractor. Signed documentation shall be presented to the District when work is complete and prior to inclusion, of work performed on a time and materials bases, in a written modification to the contract.

§7.2.11 Reconciliation: Contractor shall on a monthly basis along with request for payment submit a reconciliation for all work performed under a cost plus (time and material) modification during the period of the progress payment. A final reconciliation shall recap be submitted cost within thirty days after the work of the modification is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included within the reconciliation and submitted within the time periods specified.

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- §7.2.12 If additions, deletions or revisions to the work are necessary, and the execution of a written Change Order would delay the project, the Architect may, without invalidating the contract, issue an Construction Change Document directing such work to proceed prior to issuance of a Change Order. A preliminary approval from DSA may be obtained, if deemed necessary by the Architect, and a written Change Order will follow. The Contractor shall comply with such instructions without delay.
- §7.2.13 All Contractor costs for administration/project management expenses, field supervision (superintendent, foreman), field overhead and home office overhead shall be considered a part of lines (d) and (f) of 7.2.3(4) above and shall not in any case exceed 10% of line (c) and of line (e). No additional claims beyond the agreed change order amount and time shall be considered valid.
- §7.2.14 No claims for supervision or overhead shall be considered for any time extension due to weather.
- §7.2.15 Claims for supervision or overhead delays while awaiting instruction or clarification shall not be considered unless 1) the affected work is clearly within the critical path and the contractor has presented and properly maintained a CPM chart, and 2) the instruction or clarification by the Architect is not issued within reasonable receipt of written request by the contractor.
- §7.2.16 If the Contractor should claim that any instruction, request, drawing, specification, action, conditions, omission, default or other situation including a Change Order, obligates the District to pay additional compensation to the Contractor or to grant an extension of time for the completion of the Contract, or constitutes a waiver of any provision in the Contract, he shall notify the District, in writing, of such claim within 10 days from the date he has actual or constructive notice of the factual basis supporting the claim. The Contractor's failure to notify the District within such 10-day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated herein above.
- §7.2.17 Change Orders shall be processed and forwarded to the Contractor promptly for execution. The Contractor shall return the change order within 30 days fully executed or shall indicate within 7 days any disputes. The Contractor's failure to respond to the change order within the prescribed time period shall be deemed a waiver of the change order and the Contractor shall relinquish the claim against the District for additional monies or time.
- §7.2.18 Change order approval shall constitute full and final settlement for all performance time and cost considerations associated with the work or issues described within the change order, including, but not limited to, unabsorbed and extended home office overhead, extended field overhead, inefficiency and impact or delay costs of any kind.
- §7.3 CONSTRUCTION CHANGE DIRECTIVES; DELETE this section in its entirety and SUBSTITUTE the following:

§7.3 CONSTRUCTION CHANGE DOCUMENT



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- §7.3.1 The District at any time during the progress of the work shall have the right to order alterations in, additions to, deviations or omissions from the work contemplated by this Contract, and the same shall in no way make void the Contract. If any such changes involve an increase or decrease in the Contract amount, the Change Order shall state the amount to be added to or deducted from the Contract amount, and shall also state the additional time, if any needed for the performance of the work and shall comply with §7.2.1.
- §7.3.2 Upon receipt of a Construction Change Document, the Contractor shall promptly proceed with the change in the work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any provided in the instruction for determining the proposed adjustment to the contract sum or period (refer to Article 7, paragraph 7.2.3 above).
- §7.3.3 A Construction Change Document along with the Contractor's proposed costs, including any necessary time adjustment in the Contract Period, accepted by the District shall be effective immediately and shall be recorded as a Change Order Item to be included within a formal Change Order to follow. In the absence of the Contractor's proposed cost, written acceptance or disagreement with the method or estimated cost, if any, prescribed within the CCD shall determine acceptance of same.
- §7.3.4 If the contractor does not respond within ten (10) calendar days per Article 15.1.3 and 15.1.4 or disagree with the method for adjustment in the contract sum, the method and adjustment shall be determined by the architect on the basis of reasonable expenditures and savings of those performing the work attributed to the change, including in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data.
- §7.3.5 If the District and Contractor do not agree with the adjustment in contract time or the method for determining it, the adjustment or method shall be referred to the Architect for determination.

ARTICLE 8 TIME

§8.1 DEFINITIONS

§8.1.1 DELETE this paragraph in its entirety and **SUBSTITUTE** the following:

§8.1.1 Unless otherwise provided the contract time (Contractor Period) is the period of time, including authorized adjustments, allotted in the Contract Documents from the date of commencement (Notice To Proceed) to the filing of the Notice of Completion (NOC).

§8.2 PROGRESS AND COMPLETION

§8.2.3 REMOVE the words, "Substantial Completion" and **INSERT** in place the words, "Notice of Completion".

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§8.3 DELAYS AND EXTENSIONS OF TIME

§8.3.2 DELETE this paragraph in its entirety and SUBSTITUTE the following:

§8.3.2 Any claim for extension of time shall be made in writing by the Contractor to the Architect not more than ten (10) days after the commencement of the delay; otherwise any claim for such an extension of time shall be deemed waived. In the case of a continuing delay, only one claim is necessary, however, that claim must be made within ten (10) days of the commencement of that delay. Claims for delays caused by unanticipated adverse weather conditions, must prevent critical path work from taking place and must be filed for each and every day of actual delay.

Any request for an extension of time must be specific as to the cause of the delay and must specify how many days or portions of days of delay have been caused, or will be caused, by the act, omission or event giving rise to the request for the time extension. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. Adverse weather conditions shall be considered only as those conditions that exceed the average annual number of rain days as established by the Western Regional Climate Center (for the weather station closest to the project job site, visit www.wrcc.dri.edu, for information) and beyond those days otherwise identified within the contract documents.

If the Contractor files for an extension of time due to excessive moisture content of the soil, the claim shall be made within three (3) working days of the discovery. The District's soils engineer shall determine the level of moisture content allowable for the work to precede based on the type of work underway and the type of soils. An extension of time may be granted by the District only for portions or areas of the work adversely affected by the excessive moisture. The balance of the work shall proceed. The Contractor shall also notify the District when conditions appear to be adequately dry so that the moisture content can be tested to determine the length of the necessary time extension.

§8.3.3 DELETE this paragraph in its entirety and SUBSTITUTE the following:

§8.3.3 Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Unless the delay is by no way the fault of the contractor, no damages or compensation of any kind shall be paid to the Contractor because of delays in the progress of work, whether such delays are avoidable or unavoidable. The granting of an extension of time because of unavoidable delays shall in no way operate as a waiver on the part of the District of the right to collect liquidated damages for other delays, or of the right to collect other damages, or of any other rights to which the District is entitled.

ADD the following paragraphs:

§8.3.4 Delays shall be reviewed against the project schedule submitted by the Contractor at project commencement and shall be considered only if the affected item is within the

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critical path, at time of delay. Contractors shall make all efforts to identify such items which may cause delay early in the project to avoid such delays. The lack of a project schedule, as described elsewhere, shall void claims for delay unless the Architect determines the delay is justified.

- §8.3.5 Liquidated Damages: The number of calendar days required to complete the project along with critical milestones are listed in the "Bid Form" and the "Agreement", and, because actual damages for delay in completion of the work cannot be determined, the amount, if any, that may be assessed as liquidated damages for each day's delay beyond the scheduled completion date is also stated on the "Bid Form" and the "Agreement".

ARTICLE 9 PAYMENTS AND COMPLETION

§9.3 APPLICATION FOR PAYMENT

§9.3.1 DELETE this paragraph in its entirety and SUBSTITUTE the following:

- §9.3.1 At the conclusion of each month or as agreed between the District and Contractor, the Contractor shall present for review and certification of the Project Inspector an itemized Application and Certification for Payment, prepared in accordance with the accepted schedule of values. The Project Inspector shall provide written certification by way of signature presented on the application. Once certified by the Project Inspector the Contractor shall submit to the Architect, two (2) wet signed and notarized copies of the certified Application and Certification for Payment. Such application shall be supported by such data substantiating the Contractor's right to payment as the District or Architect may require, such as copies of requisitions or invoices from subcontractors and material suppliers, and shall reflect, total complete to date, total remaining through completion and retainage for each line item.

Application for payment shall be prepared for only those materials and equipment incorporated into the work in their final locations and shall not include request for payment of materials or equipment stored on or off site, unless previously agreed to in paragraph 9.3.2. Contractor shall provide a notarized lien waiver for all work included in each payment application.

- .1 Prior to submitting application for payment to the Architect, all estimates of work performed during the preceding calendar month and all requests for payment thereof or for partial payment on account of equipment delivered but not installed as herein provided shall be certified and countersigned by the Project Inspector. If errors are subsequently found in a request for payment, the errors shall be corrected by the Contractor and the request resubmitted to the Project Inspector and Architect for approval bearing the same date as corrected.
- .2 Upon request the Contractor shall submit to the architect and the Project Inspector vouchers or other satisfactory proof of the value of any work or material for which claims for payment is made on such account and receipts showing that progress payments have been duly made on such contracts, and for materials furnished.

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§9.3.1.1 **DELETE** this subparagraph in its entirety.

§9.3.2 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§9.3.2 If approved in advance by the District, payment may be made for materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the District, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the District to establish the District's title to such materials and equipment or otherwise protect the District's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off site.

ADD the following paragraphs:

§9.3.4 Payments to the Contractor on account of the Contract shall be made according to the project schedule of values as submitted to the Architect for review and as accepted by the District, including additions and deductions, if any, as hereinafter provided within Article 9.

§9.3.5 Upon assuming project work the Contractor shall verify through the Architect a proper time for presenting monthly requests for payment. The request will be for a sum equal to ninety-five percent (95%) of the value of the work complete since commencement of the work, and thereafter, upon request, similar payments shall be equal to ninety-five (95%) of the value of the work completed since the commencement of the work, less all previous payments. It is understood that, if payment requests are made in accordance with established time schedule. Payment requests will be processed within thirty (30) days upon certification by the Architect and receipt by the District. Certification by the inspector and Architect does not constitute receipt by the District. Payments for additional or extra work, if any, under this Contract shall be made in like manner.

§9.3.6 Pursuant to Public Contract Code Section 20104.50, the parties hereto agree as follows:

- .1 If the District does not make a progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a Contractor on a construction contract, the District shall pay interest to the Contractor equivalent to the legal rate set forth in Code of Civil Procedure Section 685.010(a).

This thirty day period shall be reduced by the number of days, if any, by which the District exceeds the seven (7) day return period specified in paragraph (c) below.

- .2 Upon receipt of a payment request, the District shall review the payment request as soon as practical after receipt for the purpose of determining that the payment request is a proper payment request, and

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.3 For any payment request the District determines not to be a proper payment request suitable for payment, the District shall return the request to the Contractor as soon as practicable, but not later than seven days, after the District's receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

§9.3.7 The final payment, if unencumbered, or any part thereof unencumbered, shall be made thirty-five (35) days after the date of filing of the Notice of Completion. Should any corrective measures remain incomplete or unaccepted at the time final payment is due, Contractor shall provide District with Money Order(s) or Cashier's Checks in exchange for retention. The amount of Money Order(s) or Cashier's Checks shall for an amount one and one half (1½) times the Architect's estimated value of the incomplete or unaccepted work.

§9.3.8 Pursuant to Section 22300 of the Public Contract Code of the State of California, the contract will contain provisions permitting the successful bidder to substitute securities for any moneys withheld by the District to ensure performance under the contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor.

Alternatively, the Contractor may request and the District shall make payment of retentions earned directly to the escrow agent at the expense of the Contractor. At the expense of the Contractor, the Contractor may direct the investment of the payments into securities and the Contractor shall receive the interest earned on the investments upon the same terms provided for this section for securities deposited by the Contractor. Upon satisfactory completion of the Contract, the Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from the District, pursuant to the terms of Public Contract Code Section 22300. The Contractor shall pay to each subcontractor, not less than twenty (20) days of receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of the Contractor.

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

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

The escrow agreement used shall be substantially similar to the form presented in Section 22300 of the Public Contract Code.

§9.4 CERTIFICATES FOR PAYMENT

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§9.4.1 **REMOVE** in the first sentence the words "within seven days" and **INSERT** in place the words, "within a reasonable period".

ADD the following paragraph:

§9.4.3 If during the course of construction the Architect determines that the application for payment does not reflect the work completed to date, adjustment may be made to the subsequent application for payment to reflect the actual construction progress.

§9.5 **DECISION TO WITHHOLD CERTIFICATION**

§9.5.1 **ADD** the following subparagraphs:

- .8 Contractor's failure to comply with any lawful or proper direction concerning the work given by District or any District's representative authorized to have given such instruction.
- .9 Failure to satisfy claims and /or penalties which state law assesses against Contractor for violation of such law.
- .10 Any claim or penalty asserted by or against the District by virtue of contractor's failure to comply with the provisions of all governing laws, ordinances, regulations, rules and orders.
- .11 Failure to meet the scheduled miles stones or failing to achieve goals as established within the contract or the scope of work.
- .12 Contractor's failure to provide the District with the following items in acceptable form: "record documents" updates, Construction Schedule updates, certified payroll records, and completed lien waiver and release forms.

§9.5.2 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§9.5.2 When the above reasons for withholding certification are removed and the Contractor has submitted a revised, accurate application for payment acceptable to the Architect, the Architect shall provide certification of the revised and acceptable application for payment.

§9.5.3 **DELETE** the following words at the end of the last sentence, "and the Architect will reflect such payment on the next Certificate for Payment".

§9.7 **FAILURE OF PAYMENT, REVISE** as follows: In the first sentence remove the words "within seven days" and substitute the words "within a reasonable time", delete the words "or awarded by binding dispute resolution" and delete the word "additional" in the following, "the Contractor may, upon seven additional days".

§9.8 **SUBSTANTIAL COMPLETION**

§9.8.1 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

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- §9.8.1 For the purpose of determining Substantial Completion if applicable to, or necessary under this contract, Substantial Completion shall be defined as the stage in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Architect can certify that the work is substantially complete, and so that District can safely occupy or utilize the work for its intended purpose and include the minimum requirements as stated in (a) below.

When the Contractor considers that the work or a portion thereof, which the District agrees to accept separately, is substantially complete, the Contractor shall prepare for himself and his subcontractors a list of items known to be incomplete or which require correction and shall include a similar list as comprised by the Project Inspector for submission to the Architect. Failure to include an item on such list does not alter the Contractor's responsibility to complete all work in accordance with the Contract Documents.

The Contractor shall proceed promptly to complete and correct items on the list and when complete, the Contractor shall submit to the Architect a copy of the list indicating his verification that all work is complete as confirmed by the Project Inspector. Upon receipt of the Contractor's list, the Architect will make an observation to determine whether the work or designated portion thereof is substantially complete.

When the work or designated portion thereof is substantially complete, the Architect will prepare, in conjunction with the Contractor's and the Project Inspector's list, a comprehensive list (sometimes referred to as the Punch List) of items remaining to be completed or corrected and a letter indicating his recommendation for acceptance. The Architect's letter shall establish the date of substantial completion, and shall fix the time, which shall not exceed thirty-five (35) days and in agreement with contract closeout requirements established in Specification, Section 01 7700 (if included within the Project Manual), unless upon the District's written agreement to extend the period for a specific purpose, such as arrival of equipment included with the contract, from the date of substantial completion, within which the Contractor shall finish all items remaining on the punch list accompanying the Architect's letter of recommendation.

The District shall retain sufficient funds to compensate for unfinished items identified on "punch list", and funds encumbered by filed stop notices.

- .1 Substantial Completion at a minimum shall require the following:
- .a Access to and egress from is safe and the building(s) is/are secure.
 - .b All equipment, systems and appliances are safely operating as intended, including intrusion alarm, telephone, intercom, data connections, HVAC, systems etc.
 - .c Permanent power is provided.
 - .d Fire alarm is operational with all devices are in working order and accepted by the local fire authority.
 - .e Facilities are clean and ready to occupy, and
 - .f The Final Punchlist items are "cosmetic" only and do not involve work not started or intentionally not completed.

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.g Submittal of Items Identified and required within Section 01 7700, Contract Closeout (if included in project manual).

.2 If during the Architect's review any items are found which is not sufficiently complete in accordance with the Contract Documents so as to prevent the District from occupying or utilizing the work or designated portion of the work for its intended purpose, the Contractor shall, before issuance of the Architect's recommendation to the District that the work is substantially complete, upon notice from the Architect, correct such items. In such case the Contractor shall then submit a request for another review by the Architect to determine if the work is substantially complete. The Contractor shall be responsible for costs associated with the Architects time for second review and any subsequent review.

.3 Substantial Completion does not end the contract time as defined herein and therefore does not relieve the Contractor of liquidated damages.

§9.8.2 **DELETE** this paragraph in its entirety.

§9.8.3 **DELETE** this paragraph in its entirety.

§9.8.4 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§9.8.4 When the work or designated portion thereof is complete, the Architect will prepare a recommendation of acceptance for the District that shall establish the date of Completion and shall fix the time within which the Contractor shall finish all items in the list (punch list) accompany the recommendation. Warranties required by the contract shall commence on the date of the District's occupancy or commencement of use for its intended purpose or upon filing the Notice of Completion with the County dependent upon first occurrence unless otherwise stated within the Contract Documents.

§9.8.5 **DELETE** this paragraph in its entirety.

§9.9 **PARTIAL OCCUPANCY OR USE**

§9.9.1 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§9.9.1 It is understood and agreed that the District shall have the right to occupy portions of the work as indicated within the contract documents prior to completion of the entire work, and that such occupancy or use shall not imply the District's acceptance of the work nor relieve the Contractor from completing any part of the work.

§9.9.2 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§9.9.2 In case the Contractor has not completed the work within the contract time including authorized time extensions and the contract time has expired, the District reserves the right to occupy, on written notice, any portion of the work at any time prior to completion and while work is in progress. In the event of such occupancy, the Contractor shall provide, without additional cost to the District, suitable protection by means of fencing,

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barriers, posted signs or other methods as required to prevent persons other than those directly connected with the Work from entering remaining areas where work is continuing, equipment is being operated, or materials are stored.

§9.9.3 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§9.9.3 Such occupancy by the District prior to final acceptance shall not be construed by the Contractor as being an acceptance of that part of the project so occupied, nor shall the Contractor be entitled to, or make demand for, additional compensation or extension of time because of such occupancy.

ADD the following paragraphs:

§9.9.4 Such occupancy by the District prior to final acceptance shall not be deemed to constitute a waiver of existing claims on behalf of the District or Contractor.

§9.9.5 Unless occupied prior to completion for the District's own convenience and at no fault of the Contractor, the metered cost of electricity, water, fuel, etc, for the occupied portions and cost of operating the heating and air conditioning systems for the occupied portions will be borne by the Contractor until final acceptance.

§9.9.6 Use and occupancy by the District prior to final acceptance shall not relieve the Contractor of his responsibility to provide and maintain all insurance and bonds required of the Contractor until the work is accepted and the Final Notice of Completion is filed with the County.

§9.9.7 The Contractor shall not be held responsible for damages to the occupied portion of the work resulting from the District's occupancy or use unless such damages is the result of the Contractor's failure to complete or satisfy the provisions set forth in subparagraph §9.9.2 above.

§9.10 **FINAL COMPLETION AND FINAL PAYMENT**

§9.10.1 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§9.10.1 Upon receipt of written notice that the work is ready for final review and acceptance, the Architect shall promptly conduct a review of the project and when the project is found acceptable under the requirements of the Contract Documents and the Contract is fully performed, the Architect will submit a recommendation to the District for consideration and approval of a Notice of Completion (NOC). The Notice will be acted upon by the governing body of the District at its next regular meeting no earlier than twenty-one (21) days after the Architect has recommended the project as complete.

Thirty-five (35) days after filing Notice of Completion and upon receipt of the final application for payment the Architect shall issue a final certificate for payment stating that to the best of the Architect's knowledge, information and belief and on the basis of observation, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the contractor, and noted in said final Certificate, is due and payable. The Architect's final certificate for

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payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in subparagraph 9.10.2 have been fulfilled. Warranties required under the Contract, unless otherwise agreed by the District and set forth in writing, shall commence on the date the NOC is filed.

Should work found to be incomplete or in need of correction during the Architect's review of the project remain unacceptable at the conclusion of the thirty-five (35) day period following filing of the NOC, the District may, 1) give written notice to the Contractor to cease work of unaccepted portions of the work, 2) terminate the contract, and 3) employ such forces as required to complete said work. The District will withhold monies as estimated reasonable by the Architect to pay for completion of the work, inspection, architectural and engineering services as well as administrative expenses incurred by the District. Upon completion of such work the balance of withheld monies shall be returned to the Contractor with a statement, accounting for expended funds and a breakdown of the cost expended.

Project warranty or warranties required within the contract shall not commence until the work is deemed complete and warrantable by the Architect or the appropriate manufacturer's representative.

§9.10.3 **DELETE** this paragraph in its entirety.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§10.1 **SAFETY PRECAUTIONS AND PROGRAMS, ADD** the following paragraph:

§10.1.1 The duty of Project Inspector, Architect, his employees, agents or consultants to view the Contractor's performance is not intended to include review for the adequacies of, or verification of, the Contractor's safety measures, in, on, or near the Project Site.

§10.2 **SAFETY OF PERSONS AND PROPERTY**

§10.2.1 **ADD** the following subparagraphs:

- .4 The project Work may be ongoing at the time school is in session or occupied before final acceptance therefore, the Contractor shall take all precautions to prevent injury and access to work areas by students and staff. Use of site, vehicle access, material storage and interruption to existing utility services shall be subject to District's approval and in conformance with the District's subsequent direction.
- .5 Machinery and equipment shall be guarded and other hazards shall be eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.
- .6 All materials brought to the site shall be safely stored in an orderly manner and in areas designated for such storage and in agreement with the District's use of the project site and not in conflict with areas where work is proceeding.

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- .a The Contractor shall be solely responsible for any loss, damages or injury resulting from stored materials including overloading of structures, damages to systems or finishes or failure to safeguard materials from exposure, or use prior to District acceptance.
- .b The Contractor shall not use the project site for storage of any materials or equipment not to be promptly incorporated in the construction or for immediate construction of the project.

§10.2.3 ADD the following subparagraph:

§10.2.3.1 Protection of workers in trenches: As required by Section 6705 of the California Labor Code, and in addition thereto, whenever work under the Contract involves the excavation of any trench or trenches 5 feet or more in depth, Contractor shall submit for acceptance by the District or by a registered civil or structural engineer, employed by the District, to whom authority to accept has been delegated in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation, or such trench or trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the Contractor, and all costs therefore shall be included in the price named in the Contract for completion of the work as set forth in the Contract Documents. Nothing in this section shall be deemed to allow the use of a shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this section shall be construed to impose tort liability on the District, the Engineer, nor any of their officers, agents, representatives, or employees.

§10.3 HAZARDOUS MATERIALS

§10.3.1 ADD the following subparagraph:

§10.3.1.1. No asbestos or products containing asbestos have been knowingly specified for this project. Notify the District and Architect immediately if materials containing asbestos are brought to the site for inclusion in the Work.

ARTICLE 11 INSURANCE AND BONDS

§11.1 CONTRACTOR'S LIABILITY INSURANCE

§11.1.1 ADD the following to paragraph:

The Contractor shall maintain such insurance as will protect him from claims under Workman's Compensation Acts.

Contractor shall maintain policies of public liability bodily injury insurance in an amount not less than One Million Dollars (\$1,000,000) for injury or death to any one person and not less than One Million Dollars (\$1,000,000) for injury or death to more than one

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person arising directly or indirectly out of any activity, performance, or operation under the Contract.

The hereinabove mentioned policies shall include District, Inspector, Architect, and their officers and employees as additional insureds added by the way of an endorsement to the policy and the coverage of said policies shall be expressly made primary insurance with respect to any other similar coverage carried by the District. Copies of such policies or certificates evidencing such policies shall be first approved by the District and filed with the Board of Trustees of the District. Said policies of public liability and property liability insurance shall contain a contractual liability endorsement recognizing the contractual obligation of Contractor to District contained in this paragraph. Contractor shall maintain automobile liability insurance covering owned, hired, and non-owned automobiles with minimum liability, per occurrence, of \$1,000,000 for bodily injury and property damage. All policies shall contain a provision requiring thirty (30) days written notice to be given to District prior to cancellation, modification, or reduction of limits. Policies shall be reviewed by District prior to start of construction.

§11.1.3 ADD the following to paragraph:

All policies and certificates of insurance of the Contractor shall contain the following clauses:

- .1 Insurers shall have no right of recovery or subrogation against the District (including its agents and agencies as aforesaid), it being the intention of the parties that the insurance policies so effected shall protect both parties and be the primary coverage for any and all losses covered by the above-described insurance.
- .2 The clause "other insurance provisions" in a policy in which the District is named as an insured, shall not apply to the District.
- .3 The insurance companies issuing the policy or policies shall have no recourse against the District (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.
- .4 Any and all deductibles in the above described insurance policies shall be assumed by and for the account of, and at the sole risk of the Contractor.

§11.2 DISTRICT'S LIABILITY INSURANCE, DELETE this section in its entirety.

§11.3 PROPERTY INSURANCE, DELETE subparagraphs 11.3.1.1 through 11.3.1.4 in their entirety and SUBSTITUTE the following:

Contractor shall obtain and pay for fire insurance upon all work to be done under this Contract; and upon all materials in or adjacent to said work and intended for use therein; and for full value of any building in which any part is to be remodeled. The policy shall be written for 100% of insurable value thereof, under either a Builders Risk reporting form or Completed Value Builders risk form and shall include extended coverage and

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theft and vandalism and malicious mischief endorsement. This may be waived if agreed to in writing by the District and the Contractor.

The Contractor shall be responsible for vandalism until filing the Notice of Completion regardless if the District has exercised his options for early occupancy.

Contractor shall fully maintain said insurance on the work, materials and building(s) through the date the District files the Notice of Completion with the County Recorder or until 5 days after District's legally elected board acts to accept the Work as complete. Said policy is to be maintained regardless of District's occupancy or use of the Work.

District shall be named as an additional named insured on policy and a certified copy of policy delivered to District prior to the submittal of the first payment application. Notify District at least 10 days prior to deletion of construction coverage, so District can effect necessary insurance coverage.

§11.3.2 BOILER AND MACHINERY INSURANCE, DELETE this paragraph in its entirety.

§11.3.3 LOSS OF USE INSURANCE, DELETE this paragraph in its entirety.

§11.3.4 MODIFY this paragraphs as follows:

CHANGE references to "Contractor" to read "District", and "District" to read "Contractor".

§11.3.5 DELETE this paragraph in its entirety.

§11.3.6 MODIFY this paragraphs as follows:

CHANGE references to "Contractor" to read "District", and "District" to read "Contractor".

§11.3.8 MODIFY this paragraph as follows:

CHANGE reference to "District" to read "Contractor".

§11.3.9 DELETE this paragraph in its entirety and SUBSTITUTE the following:

§11.3.9 If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the District and Contractor. If after such loss no other special agreement is made and unless the District terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§11.3.10 MODIFY this paragraph as follows:

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CHANGE reference to "District" to read "Contractor" ", and "Contractor" to read "District".

§11.4 PERFORMANCE BOND AND PAYMENT BOND

§11.4.1 ADD the following paragraph:

Simultaneously with the execution of the District-Contractor Agreement, the Contractor shall furnish a Labor and Materials Payment Bond and Faithful Performance Bond in the amount as indicated on the Notice to Contractors; said bonds shall be secured by a surety company satisfactory to the District and authorized to do business in the State of California.

ADD the following paragraph:

§11.5 GUARANTEE BOND

Prior to final payment, the Contractor shall furnish a bond issued by a responsible corporate surety licensed to do business in the State of California and acceptable to the District securing the Contractor's performance of the guarantees. Such bond shall remain in full force and effect for a period of no less than one (1) years from and after recordation of a Notice of Completion or a Notice of Cessation of Work, and shall be in a sum no less than ten (10%) percent of the total amount of the final Contract Price. In lieu of such bond, the Contractor may submit a certified or cashier's check, cash or an irrevocable, unconditional letter of credit in a form acceptable to the District, or may extend the final withhold account on terms and conditions acceptable to the District to secure performance of the Contractor's obligations on the guarantee.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§12.1 UNCOVERING OF WORK

§12.1.1 DELETE this paragraph in its entirety and SUBSTITUTE the following:

§12.1.1 If a portion of the work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the District, Architect or Project Inspector, be uncovered for the Architect's or Project Inspector's examination and replaced at the Contractor's expense and without change in the Contract Period.

§12.2 CORRECTION OF WORK

§12.2.1 DELETE this paragraph in its entirety and SUBSTITUTE the following:

§12.2.1 BEFORE OR AFTER COMPLETION

The Contractor shall promptly correct work rejected by the Architect or District or failing to conform to the requirements of the Contract Documents, whether discovered before or after completion and whether or not fabricated, installed or completed. Cost of correcting such work, including additional testing, inspections, uncovering and

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replacement, and compensation for the design services and other expenses made necessary thereby, shall be at the Contractor's expense.

§12.2.2 AFTER SUBSTANTIAL COMPLETION

§12.2.2.1 DELETE this subparagraph in its entirety and **SUBSTITUTE** the following:

§12.2.2.1 If, within one years after acceptance by the District or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the District to do so unless the District has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The District shall give such notice promptly after discovery of the condition.

§12.3 ACCEPTANCE OF NON-CONFORMING WORK, DELETE this section in its entirety and **SUBSTITUTE** the following:

§12.3 ACCEPTANCE OF NON-CONFORMING WORK

The District, in consultation with the Architect reserves the right to accept non-conforming work, in such case, acceptance of non-conforming work shall result in an equitable adjustment in the total contract price reflecting the reduced value of non-conforming work as determined by mutual agreement between District and Contractor, OR as established by the Architect through use of recognized estimating methods. Adjustments in construction cost, building structure, life safety or compliance with accessibility requirements shall be included in a change order and approved by the Division of the State Architect.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§13.1 GOVERNING LAW, REVISE to read as follows:

The contract shall be governed by laws and codes of the jurisdiction where the project is located and applicable state laws, regulations and codes.

§13.2 SUCCESSORS AND ASSIGNS, ADD the following paragraph:

§13.2.3 Contractor may not assign or delegate all or any portion of this Contract without the District's expressed written consent, and no such consent shall be given which would relieve Contractor or its surety of their responsibilities under the Contract. Contractor may assign monies due him under the Contract to banks, trust companies or other financial institutions provided written notice thereof is promptly delivered to District. Assignment of monies earned by Contractor shall be subject to the same payment obligations and retention as other payments made to it, and shall also be subject to any liens or potential stop notice or bond claims for labor, services, materials, equipment or other appliances supplied for the performance of work under this Contract.

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§13.3 WRITTEN NOTICE, ADD the following paragraph:

§13.3.1 Any notice from one party to the other under the contract shall be in writing and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner, (a) if the notice is given to the District, be personal delivery thereof to the Facility Planner or District's project representative, or by depositing the same in the United States Postal Mail Service, enclosed in a sealed envelope, addressed to the District or the District's project representative at the District's offices, postage prepaid and registered; (b) If the notice is given to the Contractor, by personal delivery thereof to said contractor or to the Contractor's duly authorized representative at the project site. Or by depositing the same in the United States Postal Service, enclosed in a sealed envelope, addressed to the Contractor's business address, postage prepaid and registered; and (c) if the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing same in the United States Postal Service, enclosed in a sealed envelope, postage prepaid and registered.

§13.4 RIGHTS AND REMEDIES

§13.4.2 **ADD** the following words after, "Architect or Contractor ", "unless stated otherwise within the contract documents,".

§13.5 TEST AND INSPECTIONS

§13.5.1 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§13.5.1 Materials, equipment, or other work requiring tests may be specified within the Contract Documents and/or identified on Division of the State Architect form SSS 103-1 as applies to the project. Products requiring inspection or test shall be adequately identified by Contractor and delivered to the site in ample time to allow for testing before intended use. Contractor shall notify District, Project Inspector and Architect when and where such materials, equipment or other work are ready for testing, and shall bear the cost of making them available for testing. Contractor shall provide written notice to the Project Inspector sufficiently before the need for testing so as to cause no delay in the Work and, in any case, at least forty-eight (48) hours prior to the need for testing.

§13.5.3 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§13.5.3 If such procedures for testing, inspection or approval under paragraphs 13.5.1 and 13.5.2 reveal material failure, faulty equipment or portions of the work that do not comply with the requirements of the Contract Documents, these items may be rejected and unsuitable work or materials shall be made to satisfactory, notwithstanding the fact that such work or materials may have previously been inspected and/or payment may have been made. The Contractor shall bear all cost associated with the correction of such failure, rejected or unsuitable work. Associated costs may include, among other costs, uncovering, replacement and reinstallation, District costs, including cost for architect's services, tests and inspections. No adjustment in the contract period will be made for corrective work.

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ADD the following paragraphs:

- §13.5.7 Inspection shall be provided as required under Title 24, Part 1, current edition, Section 4-333. All inspection costs will be paid for by the District, including special inspection required by Title 24, Part 1, Section 4-333 (c). Refer to applicable sections of the Specifications for variations in payment for this type of inspection; certain inspection costs, beyond limitations established within the Specifications, will however be back-charged to the Contractor. Refer to applicable sections, including §13.5.3 above for costs associated with re-inspection, and special inspection.
- §13.5.8 All materials, equipment and workmanship used in the Work shall be subject to inspection or testing at all times and including locations during construction and/or of manufacture. District's representative, Architect's authorized representatives, Project Inspector and representatives of other agencies having authority over the Work, including DSA, shall have access to the Work for the above purposes at all reasonable times and locations. Any material or work found to be unsatisfactory or not according to the Contract Documents may be rejected as defective or unsuitable. Defective work shall be promptly removed. Refer to paragraph §13.5.3 above. Inspection shall not relieve Contractor from complying with the requirements of the Contract Documents.
- §13.5.9 Project Inspector shall provide project inspection as required by DSA, will be employed by the District and approved by the Architect, Structural Engineer and the Division of the State Architect prior to the commencement of onsite construction.
- §13.5.10 Whenever the Contractor arranges to work at night or any time when work is conducted other than normal business hours, or to vary the period during which work is carried on each day, he shall give the District a minimum of 48 hr. written notice so that inspection may be provided. Such work shall be done without additional compensation to the Contractor. Additional inspection costs incurred because of overtime, nights or work outside normal business hours shall be paid by the District and back-charged to the Contractor.
- §13.5.11 Authorized representatives and agents of Local, State and Federal Governments shall be permitted to inspect all work, materials, payrolls, records, and shall be given access to site at all times for such inspection.
- §13.5.12 Tests of materials as required under Title 24, Part 1, California Code of Regulations shall be made as provided for under Section 4-335. District shall pay for all tests, except retests due to defective materials, or additional tests required due to substitutions of materials or when request for testing or inspection is unnecessary due to Contractor failure to perform. Such substitutions must be approved by the Architect.
- §13.5.13 When billing laboratory tests and inspection, the Testing Laboratory, in conjunction with the Project Inspector, will identify back-chargeable items as such on each invoice, copy of which invoice shall be furnished to the General Contractor for his information. The total amount of the invoice will be paid by the District and back-chargeable items will be deducted from the current OR final for payment when presented by the General Contractor.

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- §13.5.14 When specific items or areas require inspection prior to covering or concealing, the Contractor shall give reasonable written notice (48 hours minimum) to the Project Inspector prior to need for inspection.
- §13.5.15 DSA will designate a field representative who will periodically visit the site and meet with the Project Inspector for purposes of reviewing the project, for compliance with CCR Title 24 requirements. The DSA Field representative may require certain modifications to the project as constructed. In the event the Contractor believes such modifications are outside the scope of the contract or entitle the Contractor to a modification in the Contract amount or time the Contractor shall proceed as specified.
- §13.5.16 Final inspection, final review or payment, nor any interim inspection, review or progress payment shall relieve the Contractor of obligation to fulfill the Contract and perform the Work as required by the Contract Documents.

§13.6 INTEREST, DELETE this section in its entirety.

ADD the following section and paragraphs:

§13.8 CODES AND REGULATIONS

§13.8.1 All work under this Contract shall comply strictly with the rules and regulations set forth in California Code of Regulations, Title 24, Parts 1 through 6, Part 9 and Part 11, Public Works; Department of General Services/Division of the State Architect. A latest amended copy of Title 24, Parts 1 through 7 and Part 9 shall be kept on the site at all times during the construction. The Contractor shall be knowledgeable of and comply with applicable portions of the California Code of Regulations, Titles 19 and 24 and other codes ordinances, regulations or orders of public authorities having jurisdiction over the project. Contractor shall examine the Contract Documents for compliance with these codes and regulations, and shall notify the District, and Architect of any discrepancies. Changes in the Contract Documents shall be made by means of written directions approved by the District, Architect and DSA. Change order procedures shall be as described elsewhere within the Contract Documents.

§13.8.2 No deviations from the approved contract documents, effecting structure, life safety or revisions to accessibility requirements shall be permitted except upon, a Change Order, signed by the District and Architect and approved by DSA. Contractor shall keep an approved set of the approved documents, free of defect, current with postings of the Architect's Construction Change Documents (CCDs) along with responses to Request for Information (RFIs) at the site at all times.

§13.8.3 Addenda issued prior to receipt of bids shall be issued by the Architect to plan holders of record only. Addenda shall be signed by the Architect and approved by DSA.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§14.1 TERMINATION BY THE CONTRACTOR

§14.1.1 DELETE subparagraphs .3 and .4

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§14.2 TERMINATION BY THE DISTRICT FOR CAUSE

§14.2.1 DELETE this paragraph in its entirety and SUBSTITUTE the following:

§14.2.1 If the Contractor refuses or fails to progress the work or any separable part thereof with such diligence that will ensure its completion within the time specified, or any extension thereof, or fails to complete said work within such time, or withholds, or threatens to withhold continued work regardless of the reason for same, or if the Contractor should be adjudged bankrupt or if he/she makes a general assignment for the benefit for his/her creditors, or if he/she shall make an assignment for any other reason without the express written consent of the District, or if a receiver should be appointed on account of Contractor's insolvency or if Contractor refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workers or proper material to complete the work at the time specified, or if Contractor fails to make prompt payment to subcontractors or for material or labor, or disregards laws, ordinances, or instructions of District, Architect, or if Contractor or any of his/her subcontractors should otherwise violate a provision of the contract, or if Contractor or any of his/hers subcontractors should perform work in a negligent or dangerous manner, or install or construct any portion thereof so that the work does not comply with the Contract Documents, or does not meet generally recognized industry standards for workmanlike quality, District may, without prejudice to any other rights or remedy, serve written notice upon Contractor of intention to terminate Contractor's control over the project, terminate Contractor's right to complete the contract or terminate this contract. Such notice shall contain the reasons for such intention to terminate, and Contractor shall immediately cease any and all violations of the terms of this contract, ordinances, or laws and shall correct to the District's satisfaction, or make satisfactory arrangements to correct to District's satisfaction, within seven (7) days, from the date of said notice, any and all deficient conditions. If Contractor, after proper notice, fails to cease and desist or fails to cure deficiencies within the said seven (7) day period, District may terminate Contractor's control over the project, terminate Contractor's right to complete the contract or terminate this agreement by written notice to Contractor, said termination shall be effective upon delivery of written notice to Contractor, his/her officers, agents or employees, or notice by certified mail to Contractor's business address.

§14.2.2 DELETE this paragraph in its entirety and SUBSTITUTE the following:

When any of the above reasons exist, the District, upon certification by the initial Decision Maker that sufficient cause exists to justify such actions, may without prejudice to any other rights or remedies of the and after giving the Contractor and Contractor's surety, seven (7) days written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and in the interest of compensation for project debt and damages, take possession of all materials, equipment, tools, and machinery thereon owned by the Contractor until such time as outstanding debts and damages are satisfied.

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- .2 Accept assignment of subcontracts pursuant to Section 5.4 and finish the Work by whatever reasonable method the District may deem expedient.
- .3 Upon written request of the Contractor, the District shall furnish to the Contractor a detailed accounting of the costs incurred by the District in finishing the Work.

§14.2.3 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§14.2.3 In the case of termination, Contractor shall not be entitled to receive further payment until the project is complete. In the event of termination, District shall immediately serve written notice thereof upon the Surety consistent with the terms and conditions set forth in the performance bond incorporated within these contract documents. Surety shall not be allowed to reappoint or contract with Contractor to complete this project without the express written consent of the District. Upon termination, Contractor shall be ejected from the project and District may without liability for so doing, take possession of and utilize in completing the work, such materials, appliances, equipment, plant and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

§14.2.4 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§14.2.4 If the unpaid balance of the Contract sum exceeds costs of finishing the work, including compensation for Architect's services and expenses made necessary thereby, and other damages incurred by the District and not expressly waived, such excess shall be paid to the Contractor. If such cost and damages exceed the unpaid balance, the Contractor shall pay the difference to the District. The amount to be paid to the Contractor or District, as the case may be shall survive termination of the Contract.

§14.3 **SUSPENSION BY THE DISTRICT FOR CONVENIENCE**

§14.3.2 **ADD** the following subparagraph:

- .3 Loss revenue or loss profit, either actual or anticipated from work outside the scope of this contract.

§14.4 **TERMINATION BY THE DISTRICT FOR CONVENIENCE**

§14.4.1 **DELETE** this paragraph in its entirety and **SUBSTITUTE** the following:

§14.4.1 The District may terminate the performance of Work under this contract in accordance with this clause in whole, or from time to time in part, whenever the District shall determine that such termination is in the best interest of the District. Any such termination shall be effective by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of the Work under the Contract is terminated, and the date upon which such termination becomes effective. After receipt of a Notice of Termination, and except as otherwise directed by the District, the Contractor shall:

- .1 Stop work under the contract on the date and to the extent specified in the Notice of Termination;

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- .2 Place no further orders or subcontracts for materials, services or facilities except as necessary to complete the portion of the Work under the contract which is not terminated;
- .3 Terminate all orders or subcontracts to the extent that they relate to the performance of the work terminated by the Notice of Termination;
- .4 Assign to the District, in the manner and at the times, and to the extent directed by the District, all of the rights, title and interest of the Contract under the orders and subcontracts so terminated. The District shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontractors.
- .5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the District, in writing, and to the extent it may require. Its approval or ratification shall be final for all the purposes of this clause;
- .6 Transfer title to the District, and deliver in the manner, at the times and extent, if any directed by the District, (a) the fabricated and un-fabricated parts, Work in process, completed Work, supplies and other material produced as part of or acquired in connection with the performance of the Work terminated by the Notice of Termination; and (b) the completed or partially completed drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the District.
- .7 Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the District directed or authorizes, any property of the types previously referred to herein, but the Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire such property under the conditions and at a price approved by the District. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the District to the Contractor under this contract or shall otherwise be credited to the price or cost of the Work covered by this contract or paid in such other manner as the District may direct;
- .8 Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and
- .9 Take such action as may be necessary, or as the District may direct, for protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the District has or may acquire an interest.

§14.4.2 DELETE this paragraph in its entirety.

§14.4.3 DELETE this paragraph in its entirety.

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ADD the following paragraphs:

- §14.4.4 After receipt of a Notice of Termination, the Contractor shall submit to the District its termination claim, in the form and with the certification the District prescribes. Such claim shall be submitted promptly but in no event later than one (1) month from the effective date of termination, unless one or more extensions in writing are granted by the District upon request of the Contractor made in writing within such 1-month period or authorized extensions. However, if the District determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such 1-month period or extension. If the Contractor fails to submit a termination claim within the time allowed, the District may determine, on the basis of information available to the District, the amount, if any, due to the Contractor because of the termination. The District shall then pay to the Contractor the amount so determined.
- §14.4.5 Subject to the previous provisions, the Contractor and the District may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of total or partial termination of the Work under this Paragraph. The amount or amounts may not include profit on Work not yet performed, but may include profit on Work completed up to the time of Notice of Termination. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of Work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed upon amount.
- §14.4.6 If the Contractor and District fail to agree, as the previous subparagraph provides, on the whole amount to be paid to the Contractor because of the termination of Work hereunder, the District shall determine, on the basis of information available to the District, the amount, if any, due to the Contractor by the reason of the termination and shall pay to the Contractor the amounts determined as follows:
- .1 For all Contract Work performed before effective date of Notice of Termination, the total (without duplication of any items) of:
 - .a The cost of such Work;
 - .b The cost of settling and paying claims arising out of the termination of Work under subcontractors or orders as previously provided. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Contractor before the effective date of the Notice of Termination. These amounts shall be included in the cost on account of which payment is made for the cost of Work previously provided; and
 - .c A sum, as profit on the cost of the Work completed to the time of receipt of the Notice of Termination that the District determines to be fair and reasonable. But, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed, and an appropriate adjustment shall be made

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reducing the amount of the settlement to reflect the indicated rate of loss;
and

- .2 The reasonable cost of the preservation and protection of property incurred as previously provided. The total sum to be paid to the Contractor shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. Except for normal spoilage, and except to the extent that the District shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the District, of property which is destroyed, lost or stolen or damaged to the extent that it is undeliverable to the District, or to a buyer as previously provided.

§14.4.7 The Contractor shall have the right to dispute as provided hereinafter in the subparagraph entitled Remedies from any determination the District makes under the previous subparagraphs. But, if the Contractor has failed to submit its claim within the time provided and has failed to request an extension of such time, it shall have no such right of appeal. In any case where the District has determined the amount owed, the District shall pay to the Contractor the following:

- .1 If there is no right of appeal hereunder or if timely appeal has been taken, the amount so determined by the District; or
- .2 If a Remedies proceeding is initiated, the amount finally determined in such Remedies proceeding.

§14.4.8 In arriving at the amount due the Contractor under this clause there shall be deducted:

- .1 All un-liquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the contract;
- .2 Any claim which the District may have against the Contractor in connection with the Work; and
- .3 The agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold under the provisions of this clause and not otherwise recovered by or credited to the District.

§14.4.9 If the termination hereunder be partial, before the settlement of the terminated portion of this contract, the Contractor may file with the District a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract. Such equitable adjustment as may be agreed upon shall be made in the price or prices. Nothing contained herein shall limit the right of the District and the Contractor to agree upon the amount or amounts to be paid to the continued portion of the contract when the contract does not establish a contract price for the continued portion.

§14.4.10 Remedies: All claims, counter-claims, disputes and other matters in question between the District and Contract arising out of or relating to this Contract or its breach will be

**SUPPLEMENTARY CONDITIONS
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decided by way of arbitration as set forth herein or in a court of competent jurisdiction within the State of California.

- §14.4.11 The Contractor understands and agrees that the forgoing termination of Contract for convenience provisions shall be interpreted and enforced pursuant to cases interpreting and enforcing similar provisions in federal procurement contracts.

ARTICLE 15 CLAIMS AND DISPUTES

§15.1 CLAIMS

- §15.1.2 NOTICE OF CLAIMS, In the second sentence CHANGE, "21 days" to read "20 days", INSERT a period after the word Claim and delete the remaining portion of the sentence.

§15.1.5 CLAIMS FOR ADDITIONAL TIME

- §15.1.5.1 REVISE the second sentence to ADD the words, "if any" after the word "cost".

- §15.1.5.2 DELETE this subparagraph in its entirety and SUBSTITUTE the following:

If adverse weather conditions are the basis for claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the submitted project schedule.

§15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

- .1 DELETE the words "rental expenses, for losses of use".

ADD the following paragraph and subparagraphs:

§15.1.7 CLAIMS FOR \$375,000 OR LESS

- §15.1.7.1 Claim Defined: For purposes of this section, "CLAIM" means a separate demand by the Contractor of \$375,000 or less for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District.

- §15.1.7.2 Claim Procedures: For any CLAIM arising under §15.1.7, the following procedures will apply:

- .1 Filing Claims: The CLAIM must be in writing and include the documents necessary to substantiate the CLAIM. CLAIMS must be submitted no later than twenty (20) days after the event upon which the claim is predicated occurred. Failure by Contractor to submit any claim no later than twenty (20) days after the event upon which the claim is predicated occurs, shall waive Contractor's right to file claim for that event."

SUPPLEMENTARY CONDITIONS
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- .2 Claims of Less than \$50,000:
- .a For CLAIMS less than fifty thousand dollars (\$50,000), the District shall respond in writing to any written CLAIM within forty-five (45) days of receipt of the CLAIM, or may request, in writing, within thirty (30) days of receipt of the CLAIM, any additional documentation supporting the CLAIM or relating to defenses or claims the District may have against the claimant.
 - .b If additional information is thereafter required, it shall be requested and provided pursuant to this Section, upon mutual agreement of the District and the claimant.
 - .c The District's written response to the CLAIM, as further documented, shall be submitted to the claimant within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
- .3 Claims Between \$50,000 and \$375,000:
- .a For CLAIMS of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the District shall respond in writing to any written CLAIM within sixty (60) days of receipt of the CLAIM, or may request, in writing, within thirty (30) days of receipt of the CLAIM, any additional documentation supporting the CLAIM or relating to defenses of claims the District may have against the claimant.
 - .b If additional information is thereafter required, it shall be requested and provided pursuant to this Section, upon mutual agreement of the District and the claimant.
 - .c The District's written response to the CLAIM, as further documented, shall be submitted to the claimant within thirty (30) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
- .4 Informal Conference: If the claimant disputes the District's written response, or the District fails to respond within the time prescribed, the claimant may so notify the District, in writing, either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

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If following the meet and confer conference the CLAIM or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the California Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written CLAIM pursuant to this Section until the time the CLAIM is denied as a result of Informal Conference, including any period of time utilized by the meet and confer conference.

- .5 Tort Claim: This section does not apply to tort claims and does not change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code."
- .6 Civil Actions: The following procedures will apply only to civil actions filed to resolve CLAIMS under this Section of the contract:
 - .a Non-binding Mediation: Within sixty (60) days, but no earlier than ten (10) days, following the filing of responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause shown to the court or by both parties. If the parties fail to select a mediator within the fifteen (15) day period, any party may petition the court to appoint the mediator.
 - .b Judicial Arbitration: If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the California Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subsection consistent with the rules pertaining to judicial arbitration. Arbitrators shall, when possible, be experienced in construction law.
 - .c Appeals: In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

§15.1.7.3 Undisputed Claims: The District shall pay money as to any portion of a CLAIM which is undisputed except as otherwise provided in this contract.

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§15.1.7.4 Interest: In any suit filed under this Section, the District shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

END OF SECTION

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Last Updated: March 4, 2015

02/22/2018
NGRC-Legal
APPROVED

Bond No. 024231861

Premium: \$9,341.00

**BOND OF FAITHFUL PERFORMANCE
Section 00 6116
17-1317**

KNOW ALL MEN BY THESE PRESENT, that we Enviroplex, Inc., the Contractor in the Contract hereto annexed, as Principal, and Liberty Mutual Insurance Company, as Surety, are held firmly bound unto the **Willows Unified School District of Glenn County**, a Political Subdivision of the State of California, in the sum of One Million Three Hundred Six Thousand Nine Hundred Eleven DOLLARS
\$ 1,306,911.00

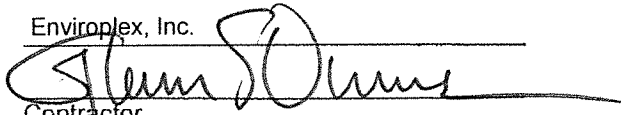
Lawful money of the United States, for which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these present.

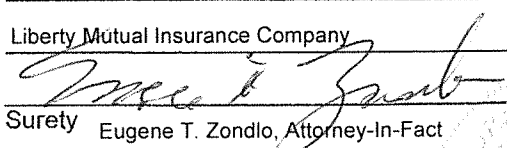
Signed, sealed and dated February 14, 2018

The condition of the above obligation is that said Principal, as Contractor in the Contract hereto annexed, shall faithfully perform each and all of the conditions of said Contract to be performed by him, and shall furnish all tools, equipment, apparatus, facilities, transportation, labor and material, other than material, if any, agreed to be furnished by the District, necessary to perform and complete in a good and workmanlike manner, the work of

**BID FOR MODULAR CLASSROOM AND TOILET ROOM BUILDINGS AT MURDOCK
ELEMENTARY SCHOOL
Willows Unified School District**

In strict conformity with the terms and conditions set forth in the Contract hereto annexed, then this obligation shall be null and void; otherwise bond shall remain in full force and effect and the said Surety will complete the contract work under its own supervision, by contract or otherwise, and pay all costs thereof for the balance due under terms of the Contract, and the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work.

Enviroplex, Inc.

Contractor

Liberty Mutual Insurance Company

Surety Eugene T. Zondlo, Attorney-In-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)

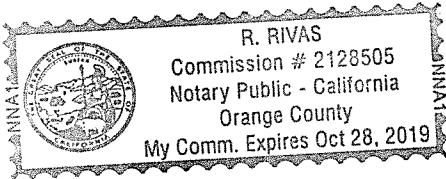
On FEB 14 2018 before me, R. Rivas, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Eugene T. Zondlo
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
R. Rivas, Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Eugene T. Zondlo
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

**BOND FOR LABOR AND MATERIALS PERFORMANCE
Section 00 6113
17-1317**

KNOW ALL MEN BY THESE PRESENT, that we, Enviroplex, Inc., the Contractor in the Contract hereto annexed, as Principal, and Liberty Mutual Insurance Company, as Surety, are held firmly bound unto the Willows Unified School District of Glenn County, a Political Subdivision of the State of California, in the sum of

One Million Three Hundred Six Thousand Nine Hundred Eleven DOLLARS

\$ 1,306,911.00

lawful money of the United States, for which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these present.

Signed, sealed and dated February 14, 2018

The conditions of the above obligation is that if said Principal as Contractor in the Contract hereto annexed, or his or its subcontractors, fails to pay for any vendors materials, provisions, or other supplies, or items used in, upon, for, or about the performance of the work contracted to be done by said Contractor, namely, to furnish all tools, equipment, apparatus facilities, transportation, labor and material, other than material, if any, agreed to be furnished by the District, necessary to perform and complete, in a good and workmanlike manner, the work of

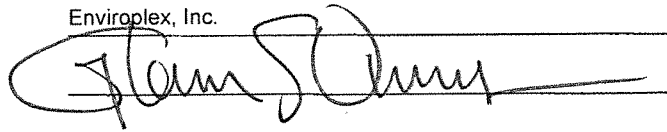
**BID FOR MODULAR CLASSROOM AND TOILET ROOM BUILDINGS AT MURDOCK ELEMENTARY SCHOOL
Willows Unified School District,**

in strict conformity with the terms and conditions set forth in the Contract hereto annexed, or for any work or labor done thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or any amounts required to be deducted, withheld and paid over to the Franchise Tax Board from the wages of employees of the Principal or his subcontractor pursuant to Section 18806 of the Revenue and Taxation Code with respect to such work and labor; Surety will pay for same in an amount not exceeding the amount specified in this bond and, in case suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court.

**BOND FOR LABOR AND
MATERIALS PERFORMANCE
Section 00 6113
17-1317**

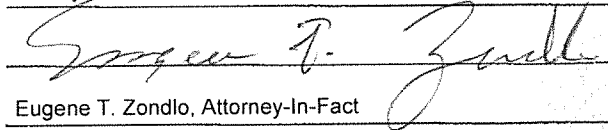
This bond is executed in accordance with the requirements of Sections 3247 et seq. of the Civil Code, and is subject to the provisions thereof, and shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under and by virtue of the provisions of Section 3181 of the Civil Code, or to their assigns; and the said Surety for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder shall in any way affect obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work.

Enviroplex, Inc.



Contractor

Liberty Mutual Insurance Company



Eugene T. Zondlo, Attorney-In-Fact

Surety

[Bonds are to be printed on single piece of paper back-to-back.]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)

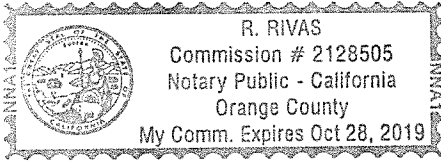
On FEB 14 2018 before me, R. Rivas, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Eugene T. Zondlo
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *R. Rivas*
R. Rivas, Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Eugene T. Zondlo
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6998385

American Fire and Casualty Company
The Ohio Casualty Insurance Company

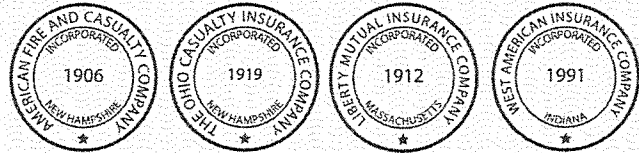
Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Edith Garibay; Eugene T. Zondlo; Rosa E. Rivas

all of the city of LOS ANGELES, state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 27th day of May, 2015.



American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 27th day of May, 2015, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2017
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

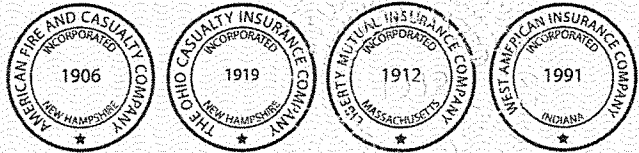
ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 14th day of February, 2018.



By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.