



NORTHSHORE SCHOOL DISTRICT No. 417

Bothell, Washington

INVITATION FOR BIDS

Classroom Lock Security Upgrades Phase 2

Bids Due: Mar 11, 2020 at 2:00PM PST

VOLUME 3

General Conditions

ARTICLE 1 GENERAL

1.01 DEFINITIONS

- A. Acceptance – The full and satisfactory physical completion of all or part of the Work including all physical Punch List work.
- B. Addenda/Addendum – Written modifications issued by District to the Invitation for Bids (IFB) that make changes to the IFB Documents, including but not limited to project requirements, drawings, and specifications.
- C. As-Built Drawings – Neatly and legibly marked set of Contract Drawings, maintained by the Contractor with up to date information, showing all Changes in the Work, including final locations of all items of Work.
- D. Bid – The written offer of a Bidder submitted to District as required by the Invitation for Bids.
- E. Bid Documentation – Any and all work papers, spreadsheets, takeoffs, material lists, subcontractor quotes, vendor or material quotes, lists of wage rates and equipment rates (both rented and owned) and any and all papers, documents and electronic information or computer files created or used by Contractor when preparing its Bid.
- F. Bidder – An individual, firm, partnership, corporation, joint venture, or other legal entity submitting a bid for the Work.
- G. Change – An alteration that modifies the scope of Work, equipment, materials, facilities, services, site, performance, schedule, or other material provision of the Contract.
- H. Change Notice – Request for Proposal (CN-RFP) - A written request by District to the Contractor for a Cost and Schedule proposal for a Change to the Contract. A CN-RFP does not authorize the Contractor to commence performance of the changed Work.
- I. Change Notice – Work Directive (CN-WD) - A written directive by District to the Contractor to immediately proceed with a Change in the Work. Work Directives are incorporated into the Contract by a subsequent Change Orders.
- J. Change Order – A written document signed by District that alters the scope of the Work, the Contract Time, the Contract Price, or makes any other change to the Contract.
- K. Claim – A written demand by the Contractor seeking (1) the payment of money or adjustment to the Contract Price; (2) an extension of Contract Time; (3) an adjustment of Contract terms; and /or, (4) other relief arising under or relating to this Contract.
- L. Construction Schedule – The schedule, prepared by the Contractor in accordance with the requirements of the Contract and accepted by District, setting forth the logical sequence of activities required for the Contractor's orderly performance and completion of the Work in accordance with the Contract and specifically to meet the specified Contract Milestones.
- M. Contract (aka "Agreement") – Written agreement executed by District and the Contractor which sets forth the rights and obligations of the parties in connection with the Work.
- N. Contract Documents – The Change Orders, Agreement Form with attachments, General Conditions, Contract Specifications, Contract Drawings, any materials

referenced therein, and any other documents listed in the Contract as embodying the legally binding obligations between District and the Contractor for completion of the Work.

- O. Contract Drawings – Plans, profiles, typical cross sections, general cross sections, elevations, schedules, and details listed or included in the Contract Documents.
- P. Contract Milestone – A date specified in the Contract by which the Contractor is required to complete a designated portion or segment of the Work.
- Q. Contract Price – The amount payable to the Contractor under the terms and conditions of the Contract based on lump sum prices, unit prices, provisional sums, or combination thereof, with adjustments made in accordance with the Contract.
- R. Contract Specifications – The part of the Contract Documents containing written directions or requirements that specify the requirements which have to be fulfilled for the completion of the Work. This may also be referred to as “Project Requirements”.
- S. Contract Time – The time allotted in the Contract Documents for completion of the Work. The Contract Time begins upon the effective date of the Notice to Proceed and ends on the date of Final Acceptance. Contract Time incorporates the Contract Milestones established for the Contract.
- T. Contractor – The person, persons, partnership, joint venture, company or corporation which enters into this Contract with District for the performance of Work required by this Contract.
- U. Contractor's Project Manager – Contractor's authorized representative that is charged with the professional execution of this Contract, as designated in writing to District.
- V. Cost and Schedule Proposal – A document prepared by the Contractor at the request of District, which proposes in detail changes to the Work and/or adjustments to the Contract Price and/or Contract Time.
- W. Critical Path – The longest, continuous sequence of activities that begins at the start of the Contract (effective date of the Notice to Proceed) and concludes with the completion of the Contract Milestone(s). This path represents the longest chain of interrelated activities throughout the network from beginning to end. These activities are critical because delay to an activity on this path will extend the Contractor's attainment of one or more Contract Milestone(s).
- X. Days or days – Calendar days, unless otherwise specified.
- Y. Defective Work – Specific elements of the Work that do not conform to the requirements of the Contract and that will not be accepted by District, at District's discretion.
- Z. District – The Northshore School District #417
- AA. District Project Manager – District's authorized representative designated to perform technical and administrative functions of this Contract.
- BB. Equitable Adjustment – An adjustment to the Contract Price and / or Contract Time to compensate the Contractor for Extra Work, as part of a negotiated Change Order.
- CC. Equivalent – Equal or better quality and performance to that specified in the Contract Documents.
- DD. Extra Work – Furnishing of materials and equipment and the performance of Work neither directly nor by implication called for in the Contract Documents that is necessary for the Contractor's timely completion of the Work through no fault,

- error, omission, negligence, neglect, lack of planning, or lack of diligence of the Contractor.
- EE. Field Clarification – a document prepared by District and issued to the Contractor that clarifies and/or corrects minor discrepancies in the Contract Documents that do not affect the cost or schedule of the Work.
- FF. Final Acceptance – Written notice from District acknowledging that the Contractor has fulfilled all of its obligations under the Contract and that District has accepted the Work as of the date stated in the Notice. Final Acceptance is a condition precedent to Final Payment.
- GG. General Conditions – District's standard general contractual provisions for construction contracts which, as augmented and supplemented by other Contract Documents, describe the contractual relationship of the parties and their rights and responsibilities to each other.
- HH. Hazardous or Contaminated Substance – (a) any substance, product, waste, or material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq.; the Clean Water Act, 33 U.S.C. Sections 1251, et seq.; or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, as now or any time thereafter in effect; (b) any substance, product, waste, or other material of any nature whatsoever that may give rise to liability under any of the above statutes or under any reported decision of a state or federal court; (c) petroleum or crude oil, excluding de minimus amounts; and (d) asbestos.
- II. Industry Standards – Drawings and specifications or portions thereof published by industry organizations, which are not Contract Documents unless specifically listed as such in a Specification.
- JJ. Non-Conforming Work – Specific elements of the Work that do not conform to the requirements of the Contract but that otherwise may be acceptable to District, at District's discretion.
- KK. Notice – Communication in writing, unless otherwise specified, which complies with the notice requirements of the Contract Documents, to provide or issue any information, warning, announcement, instruction, consent, approval, certificate or determination by any person or party to the Contract.
- LL. Notice of Intent to Claim - A written notice of a potential claim submitted by the Contractor to District within the time limits and in accordance with the conditions specified in the Contract Documents.
- MM. Notice to Proceed – Written notice issued by District which establishes the date on which the Contractor may commence Work and directs the Contractor to proceed with all or a portion of the Work.
- NN. Product Data – Information furnished by the Contractor to describe materials used for some portion of the Work, such as written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, and diagrams.
- OO. Project – District's Project, of which this Contract is a part.

- PP. Provisional Sum or Allowance - An amount established in the Contract Documents for inclusion in the Contract Price to cover Work which may or may not be carried out by Contractor and which cannot be accurately quantified at the time of Bid, with provision that variations between such amount and the finally determined cost of the prescribed items will be reflected in Change Orders appropriately adjusting the final Contract Price. Any amount included in the Contract Price but not used in the course of the Work shall be returned to District by way of deductive Change Order.
- QQ. Punch List – The list(s) of elements of the Work that remain to be completed or corrected after achievement of Substantial Completion of the Work or portions of the Work which must be completed as a condition of Acceptance.
- RR. Reference Documents – Drawings, specifications, and other documents that do not specify Work required by the Contract, but which provide supplemental information regarding the Contract.
- SS. Reference Specifications – Specifications prepared by or belonging to Utilities or third parties (including but not limited to other governmental bodies) in whose rights-of-way, easements or properties all or part of the Work is to be executed.
- TT. Request for Information (RFI) – The document by which the Contractor requests clarification, verification or information on a portion of the Work.
- UU. Samples – 1) Representative quantities of materials taken in specified amounts and frequencies for subsequent testing in accordance with specified procedures; or 2) physical examples of materials to be supplied or workmanship, which shall, when approved by District, establish standards by which the Work shall be compared and evaluated.
- VV. Schedule of Values – The breakdown of the Contract Price into specific components of the Work used as the basis for progress payments.
- WW. Site (aka Project Site) – The areas that are occupied by or used by the Contractor, Subcontractors, Consultants, Subconsultants during performance of the construction of the Work, and are indicated in the Contract Documents as being within the project limits. This includes any areas outside the project limits, which are designated in writing by District as being part of the Project Site. For purposes of the Contract Documents, and not for prevailing wage determinations, off-site precast factories/facilities will not be considered part of the Site.
- XX. District Controlled Float – If specified in the IFB Documents, an activity or activities that the Contractor shall enter into its Construction Schedule in a specified location(s) with a specified duration(s) that is under the sole control of District.
- YY. Subcontract – Any Contract between the Contractor and a Subcontractor, or between Subcontractors of any tier, to perform a portion of the Work.
- ZZ. Subcontractor – An individual, firm, partnership, or corporation that has a contractual obligation with a Consultant, Contractor or other Subcontractor to perform some part of the Work required for the completion of the Contract, and whose principals or employees are actively performing such Work at the Project Site.
- AAA. Submittal – Written or graphic document or sample that is required by the Contract Documents and is prepared for the Work by the Contractor, a Subcontractor or Supplier, and submitted to District by the Contractor, including shop drawings, product data, samples, certificates, schedules of material or other data. Submittals are not Contract Documents.

- BBB. Substantial Completion – The time at which the Work or a portion thereof has progressed to the point where it is sufficiently complete in accordance with the Contract Documents, so that the Work, or a specified portion thereof, can be utilized for the purpose for which it is intended.
- CCC. Substitution – An item of significant difference in material, equipment or configuration which functionally meets the requirements of the Contract Documents but does not meet the Specifications and is equivalent to the specified item. Equivalency will be determined at the sole discretion of District.
- DDD. Suppliers – Any person, firm, partnership, corporation, joint venture, or combination thereof, other than a Subcontractor, contracting with the Contractor, either directly or through a lower-tiered contractual relationship, to furnish goods or services in connection with the Contract.
- EEE. Technical Data - Any plans, drawings, designs, specifications, technical reports, operating manuals, notes, data, documentation, and computer software (in source code and object code form), not specifically designated as existing proprietary know-how of the Contractor, its Subcontractors or Suppliers, which are required to be supplied as part of the Work.
- FFF. Unknown Hazardous and Contaminated Substances – Hazardous or Contaminated Substances that were not indicated in the Contract Documents that were present on the Site prior to construction, and that are unexpectedly encountered by the Contractor during the performance of the Work.
- GGG. Utility or Utilities – All public and private facilities, other than the District system facilities, which relate to 1) the conveyance and supply of water, sewage, gas, chemicals, steam, petroleum products, and other piped installations; or 2) electrical energy, telephone, telegraph communications, radio, and television.
- HHH. Utility Standards – Drawings and specifications for Utilities published or issued by municipalities or utility companies.
- III. Work – The requirements of the Contract as specified, shown, indicated or implied in the Contract Documents, including all alterations, amendments or extensions thereto made by Change Orders.

1.02 INTENT AND INTERPRETATION OF CONTRACT DOCUMENTS

The intent of the Contract Documents is to describe the construction and completion of the Work. Where the Contract Documents describe portions of the Work in general terms, but not in complete detail, the best practice shall be followed and only materials and workmanship of best quality shall be used. Unless otherwise specifically stated in the Contract, the Contractor shall furnish, deliver, provide, and pay for all materials, labor, professional services, tools, equipment, water, light, power, heat, transportation, supervision, temporary construction of any nature, consumables, and other services and facilities of any nature, whatsoever necessary, to execute, complete and deliver the Work within the Contract Time. The Work shall be executed in strict conformance to the Contract requirements.

The Contract Documents set forth the requirements as to the nature of the completed Work and do not purport to control the means and methods of performing Work, unless specifically set forth in the Contract Documents. The Contractor is wholly responsible for making its own decisions about the means and methods of performing the Work. If any references have been made in the Contract Documents to responsibilities of work by crafts and specialty or trade

contractors, these references were made for the convenience of preparing the Contract Documents and are not intended to limit any responsibility of the Contractor to provide a complete installation under the Contract.

1.03 CONFORMITY TO CONTRACT DOCUMENTS

The Work in all cases shall conform to the lines, grades, cross sections, and dimensions shown on the Contract Documents or approved modifications thereto, and shall be within the tolerances specified, or, if no tolerance is specified, as determined by the District Project Manager.

1.04 ORDER OF PRECEDENCE

- A. The Contract Documents are intended to be complementary and to describe and provide for complete Work. They are also to be interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. The documents identified below are listed in order of precedence. To the extent that there are different provisions in Contract Documents that address the same matter or subject and these different provisions conflict, the document having the highest priority that addresses the matter or subject shall control. If conflicting provisions within the same level of Contract Documents exist, and one is more stringent than another, the more stringent provision will prevail.

Change Orders

Agreement Form with Attachment(s)

General Conditions

Insurance Requirements

Prevailing Wage Rates

Contract Specifications

Contract Drawings

Geotechnical Baseline Report (if provided)

Geotechnical Data Report (if provided)

Geotechnical Characterization Report (if provided)

Utility Standards

Industry Standards, only when specifically incorporated into a Contract Specification

Reference Specifications

Reference Drawings

- B. In case of differences between small and large-scale drawings, the large-scale drawings shall govern. Schedules on drawings shall take precedence over conflicting notations on drawings. In the event of discrepancy between any drawing and the figures written thereon, the figures, unless otherwise indicated, shall govern over-scaled dimensions.
- C. Utility Standards referenced in the Contract Documents shall apply only to material and workmanship with respect to work, which upon completion is to be accepted by a municipality or a utility company. The commercial terms within these references (e.g. Control of Work, Temporary Traffic Control, Legal Relations and Responsibilities to the Public, and Measurement and Payment) are not included in the reference.

- D. References to Industry Standards, material specifications, test methods, or other publications of other governmental agencies, or other recognized national organizations are those officially adopted by those agencies and organizations. Industry Standards (if specifically incorporated by any Specification) apply only to material, workmanship and procedure. Commercial terms (e.g. Control of Work, Temporary Traffic Control, Legal Relations and Responsibilities to the Public, and Measurement and Payment) are not included in the reference. All material, equipment and workmanship specified by the number, symbol, or title of a referenced Industry Standard shall comply with the latest edition or revision thereof and all amendments and supplements thereto in effect on the date that the Bids are due, except where a particular edition or revision thereof is indicated in the reference.

1.06 REQUESTS FOR INFORMATION / FIELD CLARIFICATIONS

A. Request for Information

If the Contractor discovers, or in the exercise of reasonable diligence should have discovered, that the Work to be performed is not sufficiently detailed or explained in the Contract Documents, or that there is an apparent conflict or inconsistency between any part of the Contract Documents, the Contractor shall promptly apply to the District for such further written explanations as may be necessary using a Request for Information (RFI) form to be provided or approved by the District. The District will address the RFI in writing. Before submitting a RFI, the Contractor shall diligently and thoroughly examine the Contract Documents. Costs incurred by District to respond to RFIs which could have been avoided had the Contractor examined the Contract Documents shall be the responsibility of the Contractor. The Contractor shall also plan its Work in an efficient manner so as to allow for timely responses to RFIs. If requested by the District, the Contractor shall prioritize its RFIs and explain the reasons for such priority. The Contractor's submission of an RFI shall be a condition precedent to a Contractor submitting a Request for Change related to any conflict or inconsistency, and the Contractor's failure to apply to the District for interpretation or clarification of any known conflict or inconsistency shall

bar any subsequent claim related to the conflict or inconsistency. The Contractor's submission of an RFI does not fulfill the requirements of Articles 4 and 10 and shall not constitute a Claim.

1. District will reply to the RFI with reasonable promptness. If Contractor submits an RFI on an activity less than twenty (20) days prior to the commencement of that activity, Contractor shall not be entitled to any time extension or adjustment to the Contract Price due to the time it takes District to respond to the RFI.
2. Responses by District to RFIs are not changes to the Contract. If Contractor believes a response to an RFI constitutes changed work or causes an adverse impact to performance of the Work or schedule, the Contractor is required to submit a Request for Change in accordance with the requirements of Article 4.02.

B. Field Clarification

If District identifies minor discrepancies in or a need to clarify information contained in the Contract Documents, District may issue a Field Clarification to so correct the minor discrepancies or provide the clarification. Because Field Clarifications should not have any effect on the cost or time of performance of the Work, they do not provide for either a time

extension or a change in the Contract Price. If Contractor believes that a Field Clarification constitutes changed work for which a time extension or additional compensation is necessary, the Contractor is required to submit a Request for Change in accordance with the requirements of Article 4.02.

1.07 SITE INVESTIGATION AND CONDITIONS AFFECTING WORK

A. By submitting its Bid for the Work and executing the Contract, the Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the condition of the site itself, including without limitation the general and local conditions which can affect the work or its costs, including but not limited to local weather, geotechnical conditions, traffic patterns, availability of labor, available utilities, local requirements, adequacy and accuracy of Contract Documents, the character of equipment and materials required to perform the Work, and conditions bearing upon utilities as relates to temporary or permanent relocation or installation thereof.

B. The Contractor acknowledges that any geotechnical, soils or subsurface reports, including core sample reports, referenced in the Contract Documents are only intended to describe the conditions at those particular locations at a particular point in time, and are not guaranteed to represent the actual conditions the Contractor will encounter during the course of the Work. The Contractor acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site and information available to the Contractor in the Contract Documents or Reference Documents.

1. If a Geotechnical Baseline Report (GBR) is provided with the Invitation for Bid (IFB) documents, then it shall be used and relied upon by the Bidder(s) to develop their Bids.
2. If a GBR is not provided with the IFB, the Contractor must make its own judgments regarding (1) the character, quality, and quantities of surface and subsurface materials or obstacles to be encountered using the information in the Contract Documents or Reference Documents, and (2) information that is reasonably ascertainable from an inspection of the Site.

C. Any failure of the Contractor to take actions described and acknowledged in this Article will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to District.

D. By bidding for the Work and by executing the Contract, the Contractor certifies that it has carefully reviewed, has had clarified, and understands all of the Contract Documents; has inspected the job site as needed to evaluate and assess all pertinent existing conditions applicable to the Work, and is satisfied as to its ability and intention to conduct and complete the Work required in the Contract Documents on the terms and conditions stated in the Contract. In particular, the Contractor certifies that it has reviewed the requirements for the format and detail of records to be maintained at all times during the performance of Work, and that it has instituted or will implement the preparation and maintenance of all such records. In particular, the Contractor represents as follows:

1. It is familiar with and is satisfied as to all Federal, state and local laws and regulations that may affect the cost, progress, performance and furnishing of the Work;
2. It has correlated with the Contract Documents the information known to the Contractor, information and observations obtained from visits to the site, and reports and drawings identified in the Contract Documents; and
3. It has given District written notice of all conflicts, errors, ambiguities or discrepancies that the Contractor has discovered in the Contract Documents and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 2 AUTHORITY AND RESPONSIBILITY

2.01 CONTRACT IS BETWEEN CONTRACTOR AND DISTRICT

The Contractor is an independent contractor with respect to the performance of all Work hereunder, retaining control over the detail of its own operations and the Contractor shall not be considered the agent, partner, fiduciary or trustee of District. The Contractor shall not conduct itself as nor claim to be an officer or employee of District. The Contractor will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of District, including, but not limited to, workers compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit. No employee of the Contractor or any Subcontractor is or shall be deemed to be an officer or employee of District. Subcontractors to the Contractor will not be recognized as having a direct relationship with District, nor are Subcontractors intended or incidental third-party beneficiaries to this Contract.

2.02 DUTY OF CONTRACTOR

- A. The Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other persons that the Contractor or any Subcontractor hired to perform or assist in performing the Work.
- B. The Contractor shall enforce strict discipline and good order among its employees at all times and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him or her. Any person employed on the project by the Contractor or any of its Subcontractors who, in the opinion of District, does not perform his or her work in a proper and skillful manner or is intemperate, disorderly, reckless, or engages in any abuse or harassment, shall, at the written request of District, be removed forthwith by his or her employer, shall not again be employed on the project without the approval of District, and shall at the Contractor's own expense be replaced by a suitably qualified person.

2.03 AUTHORITY OF DISTRICT PROJECT MANAGER

A. District will designate a Project Manager prior to or concurrent with District's issuance of the Notice to Proceed. The Project Manager is District's point of contact for the Contractor. The District Project Manager shall have the authority to administer the Contract so that the completion thereof may be accomplished in accordance with the contractual requirements.

B. The District Project Manager may designate technical support staff to perform functions under the Contract, such as inspection of the Work, review and/or inspection and acceptance of materials, supplies, services, including construction, witness of functional testing, and other functions of a technical or administrative nature.

C. District and the District Project Manager shall have access to the Site and the Work at all times. Should the performance of the Contractor, or the quality of the Contractor's work or materials furnished, not meet the standards specified, the District Project Manager may take or require such measures as the District Project Manager deems necessary to ensure compliance with contractual requirements. Any failure by the District Project Manager to take these actions shall not relieve Contractor from performing its Contract obligations. The Contractor shall carry out the instructions of the District Project Manager or any person to whom the District Project Manager delegates authority and gives the Contractor written notice of said delegation, concerning the Work.

2.04 CONTRACTOR'S PROJECT MANAGEMENT AND SUPERVISION

A. The Project Manager shall have complete authority to represent and to act for the Contractor. If for any reason and at any time, the Project Manager and/or General Superintendent submitted by the Contractor is not acceptable to District, or becomes unacceptable, the Contractor shall

propose additional candidates within ten (10) days of receiving written notice from District. If the Contractor wishes to replace its Project Manager or General Superintendent at any time during the performance of this Contract, it first shall submit the résumé of its new candidate to District for District's approval, which shall not be unreasonably withheld. The Contractor shall not make the substitution without District's prior written approval. District, in its sole discretion, may require the Contractor to remove the Project Manager, General Superintendent, or any other employee from the Site in the event such person fails to uphold or meet the requirements of the Contract, including without limitation, compliance with nondiscrimination laws and regulations, or fails to perform in a competent, qualified or professional manner. Failure by District to require the Contractor to remove such personnel shall not relieve Contractor of its Contract obligations.

B. The Contractor's Project Manager, or a designee, shall be present at the site of the Work at all times while the Work is actually in progress. The Contractor's Project Manager shall notify the District Project Manager of the name(s) and means to contact the individual(s) who have the authority to act for the Contractor's Project Manager at such times that the Contractor's Project Manager is not present on any particular part of the Work. In the absence of such notification, the District Project Manager may give direction to the superintendent or foreman in charge of the particular part of the Work in reference to which the directions are given so

long as said directions are confirmed by the District Project Manager in writing to the Contractor's Project Manager.

C. The Contractor was awarded the Contract due in part to the Contractor's submittal of qualifications for key personnel under the requirements of RCW 39.04.350. Contractor's failure to use such key personnel after award of the Contract shall (subject to the exception in Part 2.04D) constitute a breach of Contract entitling District at its option to any and all remedies, including but not limited to specific performance, revocation of the Contract Award, refusal to authorize Notice to Proceed, suspension of Work for such time period as is necessary for Contractor comply with the Contract by mobilizing the specific individuals, and/or termination of the Contract.

D. District will not enforce the provisions in Part 2.04C in the event compliance becomes impossible or commercially impracticable, provided Contractor first submits substitute key personnel of equivalent skills, credentials and experience for approval by District which shall not be unreasonably withheld.

2.05 SUBCONTRACTING

A. The Contractor shall be responsible for obtaining from its Subcontractors and submitting to District all required certifications, documentation, and submittals, including but not limited to technical submittals, federal certificates, small business compliance forms, or other documentation that is required to be submitted under the terms of this Contract. The Contractor shall be responsible for ensuring that all Contract requirements provided for in the Contract Documents that are specific to subcontracting will be included in Subcontracts.

B. The Contractor is responsible for evaluating each of its Subcontractors under this Contract and shall award subcontracts only to Subcontractors who meet the Responsibility criteria of RCW 39.06.350. All Subcontractors shall be properly licensed, registered, or certified, as applicable, to perform the assigned Work. If requested by District, the Contractor shall provide documentation regarding the Contractor's evaluation of any Subcontractor's responsibility and that the Subcontractor is properly licensed, registered or certified, as applicable. The Contractor shall require all Subcontractors to comply with all provisions of this Contract and shall pass down the requirements of this Contract to its Subcontractors so that all the provisions of this Contract are fully effective.

C. Subcontracting shall create no contract between District and the Subcontractor, nor shall the Subcontractor have any rights against District by reason of its Subcontract with the Contractor. The Contractor shall be responsible for all Work furnished, and no Subcontract shall relieve the Contractor of any of the Contractor's obligations or liabilities under the Contract.

D. The Contractor shall be fully responsible and liable for the acts or omissions of all Subcontractors and Suppliers including persons directly or indirectly employed by them, their guests, and invitees. The Contractor shall have sole responsibility for managing and coordinating the operations of its Subcontractors and Suppliers, including the settlement of disputes with or between them.

E. If a Subcontractor's work fails to meet Contract requirements or demonstrates careless or unacceptable workmanship and the Subcontractor fails to respond to notice of such defective work or to improve workmanship, the District Project Manager may direct the Contractor to

replace the Subcontractor, in which event the Subcontractor shall not again be employed on the Work under the Contract.

F. The on-site production of materials produced by other than the Contractor's forces shall be considered as subcontracted. The erection, establishment, or reopening of on-site plants for production of materials and the operation thereof in the production of said materials for use on the Work shall conform to the requirements relating to labor and insurance set forth in the Contract Documents.

2.06 CONTRACTOR'S PLANT AND EQUIPMENT

The Contractor shall furnish plant and equipment that shall be of adequate number, size, and condition to produce satisfactory quality of Work, including without limitation all applicable federal requirements. All plant and equipment used by the Contractor shall meet all applicable safety, noise, and emission regulations and permit requirements as well as other requirements of the Work. Plant and equipment that fails to meet the requirements of the Contract or to produce a satisfactory product or result shall, upon written order by District, be removed immediately and not used again on the Project without District's prior written approval. All additional costs, delay or impact resulting from Contractor's use of plant or equipment failing to meet Contract requirements shall be at Contractor's expense.

2.07 ACCEPTANCE OF EXISTING CONDITIONS

If any part of the Contractor's Work depends on proper execution of the work of other forces or existing conditions, the Contractor shall report to the District Project Manager, before using the work, all defects found in such work that render it unsuitable for the Contractor's Work. Such report shall be in writing and shall be submitted within thirty (30) days of being granted access to the work. Failure of the Contractor to report such defects shall constitute an acceptance of the other forces' work or existing conditions as fit and proper for the execution of the Contractor's Work and shall preclude any claim for additional compensation or schedule extension for uncovering the Work or correcting defects, except for defects in the other force's work which are latent and not reasonably discernible. Any request for additional compensation based on defective work of others or existing conditions shall be governed by the procedures of Article 4, Changes and Change Order Process.

ARTICLE 3 CONTROL OF THE WORK

3.01 NOTICES AND COMMUNICATIONS

A. District

All notices, communications, product data, submittals, and other documentation (hereinafter "Communications") submitted by the Contractor to District during the course of Contract performance shall be in writing and in English. The Contractor shall deliver Communications to the District Project Manager either in person or at his/her designated office via courier, U.S. Postal Service, or overnight delivery service.

B. Contractor

Communications from District shall be delivered through the District Project Manager and shall be deemed to be well and sufficiently given to the Contractor if delivered to its project office, if

mailed or delivered to the Contractor's post office box or address as stated in the Contract, or if faxed to the Contractor at a designated fax number or emailed, followed up by hard copy.

C. Communications shall be numbered and marked in accordance with specifications related to Document Control in the Contract Documents.

3.02 COORDINATION WITH OTHERS

A. District reserves the right to perform work not included in the Contract or let other contracts to third parties to perform other work in the vicinity of, or relating to, this Contract. Other government agencies may also be performing other work in the vicinity of or relating to this Contract such as inspections, utility maintenance / relocation / construction, road maintenance / construction and other activities. Private developers or businesses may be engaged in activities in the vicinity of, or relating to, this Contract. The Contractor shall cooperate with District, other agencies, and other contractors or developers in scheduling and coordinating the Contractor's Work with the work of others in order to minimize conflicts, avoid interruptions or delays to others and promote the orderly completion of the Work as a whole. The Contractor shall not commit or permit any act that will interfere with the performance of work by any government agency, contractor, developer, or District.

B. Unless specifically identified otherwise, the Contractor may not have exclusive access to or use of work areas. Unless the Contractor has exclusive access to a work area, the Contractor may be required to use facilities and areas concurrently with others. When other forces are employed on related or adjacent work, the Contractor shall conduct its operations in such manner as to cause the least possible delay and hindrance to the other forces. The Contractor shall be responsible to District for all damage to the Work, persons, and property caused to other forces by Contractor's operations and for loss to other forces caused by the Contractor's unnecessary delays and for failure to finish the Work within the time specified for completion.

C. If the Contractor is unreasonably delayed by others, immediate notification shall be made in writing to the District Project Manager. Any request for a time extension or additional compensation allegedly resulting from such delay shall be made in accordance with the procedures of Article 4, Changes and Change Order Process and Article 10.02 B, Delays. The Contractor shall mitigate and minimize any such delay by other forces.

3.03 CONTRACT RECORDS

A. The Contractor shall keep and maintain comprehensive records and documentation relating to the Work under this Contract, as well as documents related to the Contractor's bid and contract cost accounting records for this Contract. The Contract Records shall include, but are not limited to, Bid Documentation, Contract Documents, subcontracts, purchase orders, employment records, payrolls, project cost accounting records, prevailing wage records, plans, specifications, addenda, shop drawings, Change Orders, and all working documents leading to Change Orders, field test records, quality control documents, daily construction logs by all field supervisors and contract management personnel, correspondence relating to the Contract, and drawings labeled as as-built. Contract Records shall be maintained and retained by the Contractor for the audit period required.

B. EEO/Non-Discrimination Documentation. The purpose of this sub-section is to ensure that the Contractor and all of its subcontractors at every tier maintain sufficient written

documentation so that District can easily and quickly verify that all hiring and termination decisions related to workers fully complies with applicable Title VI, equal employment opportunity and nondiscrimination laws, regulations, and policies. When any employee or prospective employee of the Contractor or a subcontractor at any tier (including, but not limited to, an apprentice or journey level worker sent by the appropriate union hall) is terminated, turned away without the opportunity to work, or otherwise denied the opportunity to work on the Site for any reason other than completion of all work to be performed by individuals with the skills of the particular worker, the Contractor shall retain, and make available to District within 5 business days of a request to review, the following documentation:

1. Written documentation explaining why the specific individual was terminated, turned away, or otherwise denied the opportunity to work on the Site; and
2. Written objective, non-discriminatory criteria used to determine whether such individual was sufficiently qualified to perform the work and how such criteria relates to the particular work.

C. Cost records shall be kept in accordance with generally accepted accounting principles and the Contract Documents and shall include all records reasonably necessary, as determined by District, to verify all costs incurred and any schedule revision required.

D. The Contractor shall ensure each of its Subcontractors maintains and retains for said audit period all Contract Records pertaining to the performance of the Subcontractor's Work under this Contract in full compliance with Article 3.03A and C. In the event this Contract is funded in part with federal funds, and the federal grant requires different reporting or retention periods, the more stringent requirement will apply.

3.04 AUDIT ACCESS TO RECORDS

The Contractor shall permit, and shall require Subcontractors to permit, authorized representatives of District to audit, inspect, examine, and copy the Contract Records that are maintained by Contractor, any affiliated company or any Subcontractor involved in the Contract at any reasonable time and shall provide such assistance as may be reasonably required in the course of such inspection, including the right to interview personnel. District further reserves the right to examine and re-examine the Contract Records during the six (6) year period following the Final Payment and until all pending matters are closed. Such audit(s) may include examination of the Contract Records for evaluation of any Change Order or Claim, or any issue related to performance of the Work. The Contractor shall in no event dispose of, destroy, alter, or mutilate said Contract Records in any manner whatsoever for six (6) years after Final Payment and until all pending matters are closed. No additional compensation will be provided to the Contractor for compliance with the requirements of this Article.

3.05 SUBMITTALS AND SHOP DRAWINGS

A. Where required by the Contract Documents, the Contractor shall submit specified information that will demonstrate that the Contractor's proposed materials, equipment, or methods of Work are in compliance with the Contract Documents. District will not be obligated to accept or pay for materials, equipment or Work for which submittals are required herein, unless and until all submittals have been submitted and reviewed in accordance with the Contract Documents.

B. Review and other appropriate action with regard to Submittals by District shall be for general conformance with the Contract requirements and shall not relieve the Contractor of responsibility for any errors or omissions in such Submittals, nor from compliance with the requirements of the Contract Documents; and further, the Contractor shall have no claim under the Contract on account of the failure, or partial failure, of the method of work, material, or equipment so reviewed.

Review by District shall not constitute approval of the safety precautions employed by the Contractor during construction, or constitute approval of the Contractor's means or methods of construction. The Contractor shall not deviate from shop drawings, product data, samples, or similar submittals that have been reviewed with a finding of "No Exception Taken" without submitting the proposed deviation for District's review and appropriate action.

C. District reserves the right to charge the Contractor for all, or some portion of, the costs of excessive or unreasonable costs of reviewing submittals repeatedly rejected for being incomplete or inadequate.

D. Submittals offered to demonstrate methods, procedures, sequences, or duration for performing the Work or to detail temporary elements such as shoring or formwork, shall be reviewed by District for general compliance with applicable requirements of the Contract. Such review will not include a detailed analysis of the design or an evaluation of the adequacy of the method, procedure, resource commitments, or time allocated for performance.

E. Contractor shall make Submittals to District only after (1) reviewing all Contractor and Subcontractor Submittals for accuracy and compliance with the Contract and (2) coordinating all Submittals with all Work by other trades.

3.06 CUTTING AND PATCHING

The Contractor shall be responsible for all cutting, fitting, and patching required to complete the Work or to make its parts fit together properly. The appearance following any cutting, fitting, or patching shall conform to the appearance of adjacent like materials or surfaces and be consistent with the overall appearance of the Project. The Contractor shall be responsible for any damages caused by its cutting, fitting, and patching, whether of its own Work or of other work affected by the cutting, fitting or patching. The Contractor may not alter any work other than its own except by permission by District. Such permission by District shall not relieve the Contractor from responsibility for the Work affected by the cutting, fitting, or patching.

3.07 INSPECTION, SAMPLING, AND TESTING

A. Contractor Testing

1. It is the Contractor's responsibility to provide materials, supplies, equipment and workmanship that conforms to the Contract Documents. Unless specifically provided otherwise in the Contract Documents, the Contractor shall be responsible for demonstrating and documenting that the materials or equipment to be incorporated into the Work comply with the Contract Documents. Materials testing shall be performed by an Independent Testing Laboratory in accordance with the Contract Documents. The Contractor shall bear all costs of said tests.

2. In the event that a third-party public agency has authority over materials or equipment, approval must be obtained from said third-party public agency prior to District's approval. Approval by a third-party public agency does not constitute approval by District. The Contractor shall provide District, and any applicable third-party public agency, with a schedule by which any testing will be conducted as well as timely notice of the time and place of any such tests. The Contractor shall maintain complete test records and submit them to District upon request or as required elsewhere by the Contract Documents.

3. Any mechanical, electrical and instrumentation systems which function as a completed system must be tested or inspected as a complete system in addition to any tests or inspections conducted for the component parts.

4. If conformance of materials or equipment to the requirements in the Contract is not determinable through inspection and tests, the Contractor shall provide properly authenticated documents, certificates, or other satisfactory proof of conformance. Such documents, certifications, and evidence shall include performance characteristics, materials of construction, and the physical and chemical characteristics of materials. All costs associated with such certification shall be paid by the Contractor.

B. District Inspection and Testing

1. District reserves the right to sample, inspect, or test the materials, equipment, and Work, as it deems necessary at any reasonable time during the Work. Said testing and inspection may occur on or off the site. District shall conduct such tests or inspections in a manner that will cause no undue delay in the Work. The Contractor shall provide District with sufficient notice, access, and assistance to allow District's representative to inspect, sample, and test materials and equipment prior to their incorporation into the Work or to inspect, sample, or test Work prior to covering the Work. Re-inspection or re-testing required because of non-conformance to specified requirements will be charged to the Contractor.

2. District, at any time prior to Final Acceptance, may require the Contractor to uncover either portions of or all of the Work for inspection, sampling, and testing. The Contractor shall restore these portions of Work to the standard required by the Contract. The uncovering and restoration shall be done at the Contractor's expense, if the Work uncovered does not comply with the Contract, if it complies but was done without required documentation, or if District was given insufficient notice to allow adequate time for inspection, sampling, or testing. If the Work uncovered meets the Contract requirements and was done with sufficient notice to District, the costs of uncovering and restoration shall be paid by District in accordance with Article 4, Changes and Change Order Process.

3. The District Project Manager may inspect the production of material or the manufacture of products at the source of supply. Plant inspection, however, will be undertaken with the cooperation and assistance of both the Contractor and the material producer. The District Project Manager or the District Project Manager's authorized representative shall have reasonable entry at all times to such parts of the plant as concern the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The District Project Manager

assumes no obligation to inspect materials at the source of supply. The responsibility for incorporating satisfactory materials in the Work rests entirely with the Contractor, notwithstanding any prior inspections or tests.

4. The District Project Manager's inspection is conducted to verify that the Contractor has performed its work properly. Any observation, verification, inspection, or approval of the Work or materials by District shall not relieve the Contractor of any of the Contractor's obligations to fulfill the Contract as prescribed. Work and materials not meeting Contract requirements shall be made acceptable to District. Unsuitable work or materials may be rejected, notwithstanding that payment for such Work or materials may have been previously authorized and included in a progress payment.

5. Unless the subject items are expressly accepted by District in writing, any inspection and testing done by District is for the sole benefit of District only and does not constitute or imply acceptance; relieve the Contractor of responsibility for providing adequate quality control measures; relieve the Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment; relieve the Contractor of its responsibility to comply with the requirements of the Contract Documents; or impair District's authority to reject defective or non-conforming Work or invoke any remedy to which it may be entitled.

3.08 NON-CONFORMING WORK AND DEFECTIVE WORK

A. Defective Work - If District determines that material, equipment, or workmanship proposed for or incorporated in the Work does not fully comply with the requirements of the Contract and will not be accepted by District (Defective Work), District may reject such Work upon written notice to the Contractor. In such event, District may, at its discretion, (1) require the Contractor to promptly repair, replace or correct all Work not performed in accordance with the Contract; (2) require the Contractor to provide a suitable corrective action plan, which shall only be performed if approved by District; or (3) provide a suitable corrective action plan and direct the Contractor to execute it, and in such case Contractor shall have the option of (i) implementing the District plan or (ii) promptly repairing, replacing or correcting all Work not performed in accordance with the Contract. Regardless of the option chosen by District, the Contractor shall implement such plan with no delay to the Project Schedule, at no additional cost to District, and within a period provided by District. If the corrective action plan as accepted or directed by District does not remedy the Defective Work, the Contractor shall remain responsible for remedying the Defective Work to District's satisfaction and at no additional cost or schedule delay to District. The Contractor shall also be responsible for repairing all property and work damaged by the Contractor at no cost or schedule delay to District.

B. Non-Conforming Work - District may at its option retain Work that does not fully comply with the requirements of the Contract. A reasonable value for such Non-Conforming Work will be determined by District, and appropriate deductions will be made in the payments due or to become due to the Contractor. Final acceptance will not act as a waiver of District's right to recover from the Contractor an amount representing the deduction for retention of Non-Conforming Work.

C. District's inspection of the Work or right to reject Work that does not fully comply with the Contract shall not relieve the Contractor of its responsibility for performing the Work in full conformance with the Contract Documents. No failure or forbearance of District in notifying the Contractor of Work that does not fully comply with the Contract shall relieve the Contractor of its Contract responsibility to ensure that the Work is performed in accordance with the Contract Documents.

3.09 ACCEPTANCE OF WORK

A. Inspection - When the Contractor has concluded the Work or a designated portion thereof, the Contractor shall notify District in writing that the work is complete and ready for inspection. Upon receipt of the notification, District will promptly by inspection determine the actual status of the Work in accordance with the terms of the Contract. If District finds materials, equipment, or workmanship not in conformance with the Contract, District will prepare a punch list of such corrective items and submit the list to the Contractor. At any time prior to Acceptance, District may add punch list items. The Contractor shall complete all punch list items and notify District that the Work is ready for Acceptance. Upon such notice, District will verify that the Work has been completed. If such Work has not been completed and additional inspections become necessary because of the acts or omissions of the Contractor, the Contractor shall reimburse District for its costs related to such inspections. Following completion of the corrective Work and inspection by District, District shall issue a Notice of Acceptance of the Work or a designated portion thereof.

B. Substantial Completion - At the Contractor's request or as determined by District, District will conduct an inspection and review of required documents to determine Substantial Completion of all or a designated portion of the Work. If upon inspection and document review, District determines that the Contractor has in fact achieved Substantial Completion, District will issue to the Contractor a Notice of Substantial Completion. The Notice of Substantial Completion will provide the Contractor with a punch list of corrective actions or other work to be completed for Acceptance. The Contractor shall complete all punch list work within thirty (30) days after receiving the Substantial Completion Notice. Failure to do so may result in a determination by District to have the work done by others. The Contractor will be responsible for all costs associated with completing the punch list work. Further, District reserves the right to commence use of any portion of Work that has been substantially completed. In such event, District will assume care, custody and control of said portion of the Work, including responsibility for operation and maintenance costs associated with use of said Work. In no case shall the Notice of Substantial Completion be construed as relieving the Contractor from liquidated damages due to delay for any portion(s) of the Work not specifically referenced therein, or any other requirement under the Contract Documents. Such Notice shall not constitute Acceptance or Final Acceptance.

Prior to District granting Substantial Completion for any Contract Milestone, the Contractor is required to have submitted acceptable copies of all as-built drawings, operation and maintenance manuals, test report and warranties, and Contractor must have provided and completed all training of operations and maintenance personnel required by the Contract that are associated with the Milestone for which Substantial Completion is being requested.

C. Acceptance - A written Notice of Acceptance issued by District shall constitute Acceptance

of a designated portion of the Work. A Notice of Acceptance shall not waive claims by or rights of District to revoke acceptance or for any unauthorized, Non-Conforming or Defective Work, nor shall the making of any progress payment be deemed a waiver of claims or rights of District under this Contract. District shall not be barred from requiring the Contractor to remove, replace, repair, or dispose of any unauthorized, Non-Conforming or Defective Work or from recovering damages for any such Work. Contractor shall remain responsible for site security through the date of Acceptance. District's rights hereunder shall exist and remain to the full extent permitted by law and as set forth in this Contract. The Contract Warranty shall commence upon Acceptance.

D. Final Acceptance - A written Notice of Final Acceptance shall constitute District's acknowledgement that the Contractor has fulfilled all of its obligations under the Contract and that District has accepted the Work as of the date stated in the Notice. The Contractor may request Final Acceptance from District upon full and satisfactory completion of all Contract Work and fulfillment of all obligations under this Contract.

3.10 USE OF COMPLETED OR PARTIALLY COMPLETED PORTIONS OF THE WORK

A. District shall have the right to take possession of or use completed or partially completed portions of the Work notwithstanding that the time for completing such portions may not have expired. Such use by District shall in no case be construed as Substantial Completion, Acceptance or Final Acceptance of the Work, and shall neither relieve the Contractor of any of its responsibilities under the Contract, nor act as a waiver by District of any of the conditions thereof. Such use shall not trigger the commencement of Warranty provisions under this Contract or as provided by manufacturers, unless specifically provided otherwise in writing by District. Operations and maintenance costs incurred as a result of District's use of such portions will be borne by District.

B. If such use increases the cost or delays the completion of remaining portions of the Work for which Contractor seeks payment and/or additional time, the Contractor must notify District of its

Request for Change in writing as required by the Contract and may be entitled to such additional compensation or extension of time, or both, as determined in accordance with Article 4, Changes and Change Order Process. Any disputes regarding such entitlement shall be resolved in accordance with the provisions of Article 10, Delays and Claims. The Contractor shall not be entitled to extra compensation for District's possession of portions of Work that are specifically required in the Contract to be placed into use and operation or that are required to be turned over to District upon a given Contract Milestone date before completion of the entirety of the Work.

C. In the course of such use, if the Work proves to not be in compliance with the Contract, District shall have the right to continue such use until such portion of the Work can be taken out of service so that the Contractor can, at no additional cost to District, correct defects, errors, omissions, or replace unsatisfactory materials, as necessary for such portions of the Work to comply with the Contract. Upon notice and opportunity to cure by the Contractor, District, at its option, may perform or have another entity perform the corrective work. The Contractor shall remain responsible for the cost of the corrective work.

3.11 LOSS OR DAMAGE TO WORK AND MATERIAL

Until District's Acceptance of any completed or partially completed Work, the Contractor shall have the responsibility for care, custody and control of the Work and of the materials to be used therein, including materials for which the Contractor has received partial payment, materials in transit, and materials which have been furnished by District, and shall bear the risk of injury, loss or damage to any part thereof by the action of the elements or from any other cause. The Contractor shall replace, rebuild, repair or restore all damage to any portion of the Work and materials occasioned by any cause before its completion and Acceptance, at no additional cost to District. Contractor shall, at the Contractor's expense, provide suitable drainage and erect such temporary structures as are necessary to protect the Work and materials as herein specified. A suspension of Work shall not relieve the Contractor of responsibility for the Work and materials as herein specified. The Contractor shall properly store materials for which partial payments have been made by District or which have been furnished by District. Such storage by the Contractor shall be on behalf of District and District shall at all times be entitled to possession of such materials, and the Contractor shall promptly return the same to the site of the Work when requested. The Contractor shall not dispose of any of the materials so stored except on written authorization from the District Project Manager.

3.12 WARRANTY OF WORK

A. The Contractor warrants that the Work and any portion thereof: (a) shall meet the requirements of the Contract, (b) shall be free of defects in material and workmanship, and (c) shall be free of defects in design(s) where such design(s) is performed or provided by the Contractor, Subcontractors or Suppliers. This Warranty shall apply to Defective Work and Non-Conforming Work that is discovered within twelve (12) months after the date of Acceptance. If corrective work is performed by the Contractor under this Warranty, the Warranty shall also apply to discrepancies and defects in the corrective work that are discovered within twelve (12) months after the corrected work is again placed in operation. These warranty terms shall be extended for any period that a portion of the Work cannot be used for the purpose intended as a result of discrepancies or defects. This Warranty shall apply whether or not designs, data or information have been reviewed or approved by District or the District Project Manager, but shall not apply to defects caused by misuse and/or improper operation or maintenance of the Work by District.

B. District will notify the Contractor in writing, by email or facsimile confirmed in writing, on discovery of Defective Work or Non-Conforming Work covered by this Warranty in accordance with the provisions of Article 3.08, Non-Conforming Work and Defective Work. The Contractor shall commence to remedy the Defective Work or Non-Conforming work in accordance with the provisions of Article 3.08, Non-Conforming Work and Defective Work.

C. The Warranty provided under this Article shall be in addition to those specific warranty requirements for particular equipment or work items indicated in the Contract Documents, and in addition to other rights or remedies available to District under this Contract or at law. Warranties shall be secured by the Performance Bond, or in District's sole discretion, other financial security acceptable to District, such as a warranty bond or letter of credit.

1. In circumstances in which District determines that it would be inefficient or impracticable for the Contractor to perform the corrective work, District reserves the right to select another firm to perform the corrective work or to perform the corrective work itself upon notice to the Contractor. Such corrective work by another firm, or by District, shall be at Contractor's expense, provided that Contractor is kept fully informed as to the details and costs of any such corrective work. If the Contractor performs work at the job site under these guaranty provisions, the Contractor shall furnish insurance coverage therefore as specified in the Insurance Requirements. Prior to beginning such work, the Contractor shall furnish certification of insurance satisfactory to District.
2. Unless otherwise required by District, the Contractor shall commence to perform the corrective work required to satisfy this warranty within fifteen (15) days from the date of written notification. The Contractor shall at its sole expense perform the corrective work on an overtime and/or shift work basis, and shall procure required materials using the fastest means available when necessary to minimize the impact to other District contractors or District's loss of operating time. The Contractor shall diligently prosecute the corrective work and shall complete such corrective work within the time frame stipulated by District.
3. If the Contractor fails to make or undertake the corrections or removal/replacement with due diligence within the time periods specified above, District is hereby authorized to make such corrections. In case of an emergency, whereby delay could cause serious loss or damage in the opinion of District, corrections or replacement may be made prior to or concurrent with notice being sent to the Contractor. All expenses in connection with such corrections or replacement by District, including the cost for professional services, will be charged to the Contractor.

D. Nothing in this warranty is intended to limit any manufacturer's warranty, which provides District with greater warranty rights than set forth in the Contract Documents.

3.13 WARRANTY OF TITLE

A. The Contractor shall have no property right in the materials and equipment used after they have been attached or affixed to the Work or existing real property, or after any payment has been made by District towards the value of materials delivered to the site of the Work, or stored

subject to or under the control of District. Title to all such materials shall become the property of District upon being so attached or affixed or after any payment towards the value of materials stored off site or delivered to the site of the Work or stored subject to or under the control of District, whichever occurs earlier.

B. No material, supplies, equipment, or items for the Work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein, or in any part thereof is retained by the seller or Supplier. The Contractor shall warrant good title to all materials, supplies, equipment, and items installed or incorporated in the Work. Upon completion of all the Work, the Contractor shall deliver the same together with all improvements and appurtenances constructed or placed thereon by the Contractor to District free from any

claims, liens, or charges. Neither the Contractor nor any person, firm, or corporation furnishing any material or labor for any Work covered by this Contract shall have any right to lien upon any improvement or appurtenance thereon. This Article shall not defeat or impair the right of the persons furnishing materials or labor to recover under any payment bond given by the Contractor for their protection.

C. The provisions of this Article shall be inserted or referenced in or otherwise made a part of all subcontracts and material contracts, and notice of its provisions shall be given to all persons furnishing materials for the Work whenever no formal contract is entered into for such materials. Additionally, as a part of the subcontract, material contract, or notice, the Contractor shall provide to such Subcontractors and Suppliers the name, address, and phone number of the Contractor's bonding company and the bond number applicable to the Contract under which the Subcontractor or Supplier would make its claim.

3.14 MANUFACTURER'S WARRANTIES

The Contractor shall furnish to District any manufacturer's or Supplier's guarantee or warranty furnished in connection with the purchase by the Contractor or any Subcontractor of any equipment, materials, or items required, provided such guarantee or warranty shall be in addition to those specific guarantee or warranty requirements for particular equipment or Work items indicated in the Specifications and shall not relieve the Contractor of its obligations under Article 3.12, Warranty of Work.

ARTICLE 4 CHANGES AND CHANGE ORDER PROCESS

4.01 CHANGES

A. District reserves the right to make by written order, designated or indicated to be a Change Order, alterations to, deviations from, additions to, or deletions from the Contract Documents. Such changes may be made without notice to any surety(ies) or guarantors. Within the Performance and Payment Bonds and any financial guarantees, the surety(ies) and guarantors must waive notice of any Change Orders and agree to be bound in all ways to District for any such Change Orders as if it (they) had received notice of the same. Change Orders are required to make any changes to the Contract Price, Contract Documents, or Contract Time. All additions, deductions, or changes to the Work as directed by Change Orders shall be executed under the conditions of the Contract.

B. Pending resolution of any issue or dispute related to a Change Order, RFC, CN-RFP and/or CN-WD, Contractor shall continue to perform all Work, including the Contract Work associated with the pending change unless District explicitly waives this requirement in writing. Contractor shall also be governed by all applicable provisions of the Contract related to compensation and/or additional time for changed work, inclusive of Article 10.

C. Adjustments in the Contract Price - One of the following methods shall be used to determine the cost and/or value of any work covered by a Change Order, RFC, CN-RFP, CN-WD or Claim. District and the Contractor shall negotiate in good faith to determine an equitable adjustment of the Contract Price. The available methods are:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities involved in the changed Work;

2. Where Provisional Sums are provided for work items, the provisional sums shall be applied to changes for those work items;
3. By establishment of new unit prices and related quantities for the changed work;
4. By reference to catalog prices or other published prices offered to the public in the open marketplace;
5. By mutual acceptance of a firm fixed price (also referred to as lump sum);
6. On a time and materials basis in accordance with Article 9.09, Payment on Time and Material Basis.

In the event of disagreement, District shall determine the method for calculating the adjustment to increase or decrease the Contract Price.

D. All Change Orders (CO) and Change Notices (CN) shall be issued through the District Project Manager. No other order, statement, act of omission or conduct of any representative of District or third party will be treated as a change hereunder. Nothing in this Article shall be construed to bind District for acts of its employees or agents exceeding their authority.

E. Nothing in this Article shall be deemed to require a change in Contract Price or Contract Time when additional, extra, or changed work is the result of actual conditions or performance differing from that assumed by the Contractor (except for differing site conditions) or as a result of the Contractor's error in judgment or mistake in designing, estimating, contracting, constructing or otherwise performing the Work. The Contractor shall not be entitled to a change in the Contract Price or Contract Time for delays caused by the Contractor or its Subcontractors, employees, or agents or for any non-compliance with any Contract provisions, applicable law, regulations, or permit requirements affecting the Work.

F. The Contractor's records pertaining to Changes pursuant to this Article are subject to audit as set forth in Article 3.04, Audit Access to Records.

G. Where the firm fixed price/lump sum method is used, the Contractor shall provide a detailed cost breakdown supporting its requested compensation and any additional cost documentation requested by District. Any adjustment to the Contract Price made under the firm fixed price/lump sum method shall include all applicable costs for labor, equipment, material, overhead and profit.

H. Where the firm fixed price/lump sum method is used and the cost of the Change is negotiated after completion of the Work, the allowed profit and overhead markup shall not exceed that for work performed on a time and material basis as permitted in Article 9.09, Payment on a Time and Material Basis.

I. Where the firm fixed price/lump sum method is used and the cost of the Change is negotiated before completion of the Extra Work, the negotiated profit and overhead markup is not subject to a fixed maximum and is to be based on a reasonable calculation of direct and indirect costs incurred in executing the Extra Work, including any delays, impacts or inefficiencies.

J. Where any unit price method is used, the applicable unit price shall include reimbursement for all direct and indirect, onsite and offsite, costs of the changed Work, including profit and overhead.

4.02 REQUEST FOR CHANGE

- A. If the Contractor believes it is entitled to an adjustment of the Contract Price or Contract Time for any reason, Contractor shall submit a Request for Change (RFC) to District in writing (in a format acceptable to District) in accordance with the provisions of the Contract. The Contractor in the RFC must specify the reasons for such change, including relevant facts and any impacts on the cost and / or schedule.
- B. The Contractor may request additional compensation and/or time through a RFC, but only in the event Contractor provides a written Notice to District no later than fourteen (14) days after the onset or occurrence of the event or condition giving rise to the RFC.
- C. The Contractor in its RFC shall provide District with a reasonably detailed explanation of the nature and cause of the event or condition giving rise to the RFC, a reasonably accurate calculation of the adjustment to the Contract Price and/or Contract Time, and the reasons why District is responsible for the relief sought. District shall review the RFC and may require additional information or cost documentation from Contractor to help determine the validity and / or value of the requested change.
- D. Any RFC that is approved by District will be incorporated into a Change Notice or a Change Order. If the RFC is denied, but the Contractor believes that it does have merit, the Contractor must submit a Notice of Intent to Claim in accordance with Paragraph 10.01A, Notice of Intent to Claim, if it wishes to preserve its right to seek any adjustment to the Contract Price and/or Contract Time.

4.03 CHANGE NOTICE

A. Change Notice - Request for Proposal (CN-RFP).

1. District may issue a Change Notice – Request for Proposal to the Contractor describing a proposed change and requesting the Contractor to submit a Cost and Schedule Proposal (in a format acceptable to District). A CN-RFP does not authorize a Contractor to commence performance of the changed Work. After receipt of the Cost and Schedule Proposal, District may:

- a. Proceed no further with the proposed change,
- b. Issue a Change Notice - Work Directive incorporating part or all of the proposed change, or
- c. Issue a Change Order incorporating part or all of the proposed change.

B. Change Notice - Work Directive (CN-WD).

1. District may issue a Change Notice - Work Directive ordering the Contractor to proceed with a change in the Work. A CN-WD may be issued under one of the following circumstances:

- a. to execute changes in the Work covered by the unit prices or a lump sum price contained in the Contract;
- b. to execute changes in the Work on a Time and Material basis, in accordance with Article 9.09, Payment on Time and Material Basis; or
- c. to direct the Contractor to execute change(s) in the Work pending resolution of an equitable adjustment to the Contract Price and/or Contract Time. If District and the Contractor cannot reach agreement on changes to the Contract Price

and/or Contract Time prior to starting on the changed Work, the Contractor shall maintain cost records in accordance with Article 9.09, Payment on Time and Material Basis.

2. The Contractor shall not commence performance of the Work described in the CN-WD, until the CN-WD is issued by District. The CN-WD shall expressly specify the:

- a. intention to treat such items as changes in the Work;
- b. scope of the changes in the Work; and
- c. basis under which changes to the Total Contract Price and/or Contract Time will be determined.

3. When the Contractor receives a CN-WD, the Contractor shall promptly 3. proceed with the Work as indicated in the CN-WD. The Contractor shall carry on the Work and adhere to the schedule. No work shall be delayed or postponed pending resolution of any dispute or disagreement except as District and the Contractor may otherwise agree in writing.

4. Until such time as resolution of an equitable adjustment is reached, the Contractor shall maintain its records in accordance with Article 9.09, Payment on Time and Material Basis. The CN-WD shall become the basis for a Change Order when the amount of the adjustment to the Total Contract Price and/or Contract Time can be determined. The issuance of a CNWD is sufficient authority for a Change Order, but only within the stated limits of the value of the CN-WD.

5. The CN-WD shall contain a Not to Exceed (NTE) amount. Contractor may invoice District for changed work performed under the CN-WD but only up to and not in excess of the NTE amount. The Contractor is required to notify District at the point at which 80 percent of the NTE amount has been expended, and provide an estimate of the cost to complete the changed Work. If District agrees that costs in excess of the NTE amount are justified, District may issue a revised CN-WD increasing the NTE amount or negotiate a lump sum amount for the changed Work.

C. Contractor's Cost and Schedule Proposal - If directed by District in the Change Notice, the Contractor shall submit a Cost and Schedule Proposal to District within fifteen (15) days (or more, if District at its option so determines) after receipt of the Change Notice. The Cost and Schedule Proposal shall detail price and scheduling information, showing all of the impacts on the Contract Price and Construction Schedule as a result of the changes identified in the Change Notice. If any prices or other aspects are conditional, such as orders being made by a certain date or the occurrence of a particular event at a specified time, the Contractor shall identify these conditions in its Cost and Schedule Proposal. The cost breakdown shall have separate estimates of the costs of added Work and any deleted Work and shall be prepared using one or more of the cost methods described in Article 4.01C as directed by District, and shall be presented in a manner such that all phases of work can be easily identified. The Contractor shall submit detailed cost breakdowns as described above for any Subcontractor proposed to perform Work under the change. The Contractor shall also provide detailed scheduling analysis demonstrating the effect of the changed work on the Contract Milestones.

4.04 CHANGE ORDER

A. The Change Order shall expressly state that it is District's intention to treat the items described therein as changes in the Work; identify scheduling requirements, time extensions, prices, and all costs of any nature arising out of the change; and shall contain a statement that the adjustment to the Total Contract Price, if any, includes all amounts to which the Contractor is entitled as a result of the events giving rise to the Change Order. The execution of a Change Order by both parties shall be deemed to be an agreement to all costs and time of performance related to the change, including full and complete payment and final settlement of all extensions of time, changes, Claims, damages and costs for all time, direct or indirect overhead costs, profit and any and all other costs associated with delay, disruption, impact, inefficiency, acceleration, stand-by or any other costs related to the Work covered by or affected by the change.

B. Bilateral Change Order: District will issue a Change Order as soon as practicable following agreement with Contractor's Cost and Schedule Proposal, if District decides to proceed with the changed work. If the Contractor agrees with the terms and conditions of a Change Order, the Contractor shall sign the Change Order and return it to the District Project Manager for execution by District. There will be no reservation of rights by either party on a bilateral Change Order.

C. Unilateral Change Order: District may unilaterally issue a Change Order at any time making changes within the general scope of the Contract, without invalidating the Contract and without providing notice to sureties. In addition, in the event that the Contractor and District are unable to agree on the terms and conditions, the amount of any change or adjustment to be made to the Total Contract Price or Contract Time, District may execute a Unilateral Change Order. If Contractor disagrees with the adjustment to Contract Price or Contract Time as stated in the Unilateral Change Order, Contractor must file a claim in accordance with the requirements of Article 10, Delays and Claims. If the Contractor fails to follow the claim procedures in Article 10, the Contractor shall not be entitled to any claim for additional compensation or schedule extension arising out of or relating to the Unilateral Change Order other than that specified in the Unilateral Change Order. The Contractor is required to continue with performance of all work associated with the Unilateral Change Order pending resolution of any Claim under Article 10.

D. When a Change Order has been executed by District, the Contractor shall promptly proceed with the Work as indicated in the Change Order. The Contractor shall carry on the Work and adhere to the schedule during all disputes or disagreements with District. No work shall be delayed or postponed pending resolution of any dispute or disagreement, except as District and the Contractor may otherwise agree in writing.

E. At District's request the Contractor shall submit, on a form provided by District, a Non-Conflict of Interest Certification for any Change Order.

F. Special Rules When Pricing Change Orders- Premium increase(s)/decrease(s) for Performance and Payment Bonds:

1. Premium increase(s) / decrease(s) for Performance and Payment Bonds will not be paid as a part of Change Order payments, but will be paid / deducted as a lump sum in the final payment. Verification of increased / decreased payment, from the surety, must be provided and will be included in the final reconciling Change Order.

2. If the surety should require an immediate payment for the increased Bond(s) value as a result of a large Change Order, the Contractor must supply evidence of the payment made and a copy of the surety's request for early payment.

4.05 REVIEW OF ESCROWED BID DOCUMENTS

If this Contract requires the escrowing of bid documentation, the Contractor warrants to District that the Bid Documentation submitted to Escrow in accordance with these requirements represents the complete and accurate information used by the Contractor to prepare its Bid, and that the calculations, rates, and quotations provided therein constitute the basis under which the Contractor bid the Work. The Contractor further warrants that no other Bid Documentation concerning the Contractor's calculation of its bid shall be utilized by the Contractor during disputes and / or litigation of Claims brought by the Contractor arising out of this Contract, unless otherwise approved by District.

Escrow Bid Documentation may be reviewed and used by District to determine the Contractor's bid concept, to evaluate the Contractor's breakdown of the Contract Price, evaluate productivity and schedule in association with Changes and / or Claims. In the event that a Request for Change is unresolved by mutual negotiation or a Claim is submitted by the Contractor, District may at its option review the escrowed Bid Documentation to verify the fairness and reasonableness of any proposed adjustment in the Contract Price or Contract Time. If District elects to obtain access to such materials, District will notify the Contractor and permit the Contractor to obtain equal access. By mutual agreement between District and the Contractor, District may copy the Escrow Bid Documentation and provide the working copies to District personnel, agents or consultants. District, its agents and consultants may maintain such working copies of the Bid Documents and, at the request of the District Project Manager, all copies of the Escrow Bid Documentation will be returned to District.

The Contractor's authorized representative shall access the Escrow Bid Documentation only in the presence of an authorized District representative. The Contractor shall notify the District Project Manager at least seven (7) days prior to the desired date to schedule such access. If a Disputes Review Board or Mediator is used to resolve disputed Claims, the Board members or Mediator shall have unrestricted use and access to the Escrow Bid Documentation for purposes of evaluating, understanding, resolving and settling disputes / claims. The Dispute Review Board or Mediator shall maintain submitted documents in a secure location, marked confidential and proprietary, and shall return said documents to District at the conclusion of the DRB or mediation process.

If the Contractor fails to fully meet the requirements of this Article and later presents a Claim to District for additional compensation or time extension, such failure to fully comply with said requirements shall act as a waiver of all Claims made.

4.06 SCHEDULE EXTENSIONS

If the Contractor is delayed in completion of the critical path of the Work either by reason of changes made under this Article, or by a delay for which the Contractor is entitled to additional time as specified in Article 10, Delays and Claims, and if Contractor meets all Contract requirements for seeking an increase in time to complete the Work associated with a Contract Milestone(s), the Contractor shall submit a Request for Change within the time allowed by the

Contract Documents specifying the number of days of time requested. The Contractor shall demonstrate the schedule impact of changes and delays in order to justify any schedule extensions.

4.07 CONSTRUCTIVE CHANGE ORDER

Except as herein expressly stated, no order, statement, act, or omission of District unless provided in writing shall be treated as a change or Change Order under the Contract or entitle the Contractor to an adjustment under the Contract. If the Contractor considers that an act, omission, order or statement by the District Project Manager or District deviates from the Contract requirements or may entitle the Contractor to extra compensation or a time extension, the Contractor shall submit a Request for Change as provided above. Failure to submit a timely and documented RFC shall constitute a waiver of any Claim associated with the subject of such alleged constructive change. The Contractor shall not proceed with the Work until appropriate directions are received from District.

4.08 EXCLUSIVE REMEDIES

The procedures specified herein and in Article 10, Delays and Claims, of these General Conditions are the Contractor's exclusive remedy for any claim against District, whether for extension of the Contract Time, an increase in the Contract Price, actual or constructive changes, delays, impacts, inefficiencies, equitable adjustments or otherwise. The requirements of Article 10 cannot be waived except by explicit written waiver signed by District and Contractor. No course of conduct or dealings between the parties, no express or implied acceptance of change or alterations to the Work, and no claim that District has been unjustly enriched by an alteration or Change to the work, shall be the basis of any other claim for an increase in Contract Price or extension in the Contract Time for completion of the Work.

4.09 ELIMINATED WORK

A. District may, by written order to the Contractor, omit work, equipment and/or material to be provided under this Contract, and the value of the omitted work equipment and/or material (inclusive of associated profit and overhead) will be deducted from the Contract Price. The deducted value will be based upon the applicable unit price or lump sum, or if there is no such price, the deducted value will be a lump sum agreed upon in writing by the Contractor and District based on the Schedule of Values and other cost information submitted by the Contractor or obtained otherwise by District. In the event that no agreement can be reached on a lump sum basis, District shall be entitled to a deduction based on the value as if the work were to be paid for on a Time and Material basis as provided in Article 9.09, Payment on Time and Material Basis.

B. Should any Contract item of the Work be eliminated in its entirety, in the absence of an executed Change Order covering such elimination, payment will be made to the Contractor for actual costs incurred in connection with such eliminated Contract item if incurred prior to the date of notification in writing by the District Project Manager of such elimination.

C. If acceptable material is ordered by the Contractor for the eliminated work prior to the date of notification of such elimination by the District Project Manager, and if orders for such material cannot be canceled, it will be paid for by District at the actual cost to the Contractor. In

such case, the material paid for shall become the property of District and the actual cost of any further handling will be paid for by District. If the material is returnable to the vendor and if the District Project Manager so directs, the material shall be returned and the Contractor will be paid for the actual cost of charges made by the vendor for returning the material. The actual cost of handling returned material will be paid for by District.

4.10 DIFFERING SITE CONDITIONS

A. The Contractor shall immediately upon discovery and before the conditions are further disturbed, notify the District Project Manager, verbally and in writing of:

1. Subsurface or latent physical conditions at the Site which differ materially from the conditions indicated in the Contract Documents;
2. Unknown physical conditions at the site, of an unusual nature, which differ materially from the conditions ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract.

B. In areas not affected by the alleged differing site conditions, the Contractor shall continue with performance of the Work.

C. The District Project Manager will promptly investigate the conditions and provide direction with respect to continuing performance of the Work in the area of the alleged differing site conditions.

D. Unless otherwise agreed upon in writing by District, within seven (7) days of the Contractor's initial written notification of the Differing Site Condition to District, the Contractor shall provide:

1. A detailed description of the Differing Site Condition;
2. A reasonable estimate of the price and time impacts such Differing Site Condition shall cause to the Contract; and
3. Substantive, contractual, and technical basis supporting the existence of the Differing Site Condition and its impacts.

E. Within fourteen (14) days from receipt of the Contractor's detailed description of impacts, District shall either:

1. Issue a Change Notice (CN) or a Change Order (CO);
2. Make a written determination that the event or condition does not justify any changes to the Contract;
3. Request additional information, or
4. Respond to the Contractor and indicate when a determination will be made, if it cannot be made within the above stated fourteen (14) days.

F. If District finds that conditions are materially different and cause a material increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work under this Contract, the District Project Manager will make an equitable adjustment in the cost or the time required for the performance of the Work, as provided in Paragraph H below.

G. No request by the Contractor for an equitable adjustment to the Contract or claim for a Differing Site Condition shall be allowed unless the Contractor has fully complied with the written notice required in Paragraphs A and D above, unless by explicit written waiver District has agreed to extend the applicable notice deadline prior to its expiration. Such notice shall be

a condition precedent to any request for an equitable adjustment or claim, and failure to comply shall waive the Contractor's right to make a request for an equitable adjustment or claim.

H. Cost and time adjustments for a differing site condition accepted as a change by the District Project Manager shall be resolved in accordance with this Article and Article 10, Delays and Claims, except to the extent that an equitable adjustment for any condition, otherwise within the scope of this Article, has been addressed by unit price or Provisional Sum item, which shall control if provided.

All other provisions and requirements of this Article shall apply to such conditions, including without limitation, notification obligations and investigation requirements with respect to any such conditions.

I. After providing Notice to District and upon receiving direction from the District Project Manager, the Contractor shall be required to continue with performance of all work and maintain its progress with the Work pending resolution of the Differing Site Condition.

J. If the Contractor does not agree with District's determination that the event or condition does not justify any change to the Contract, the Contractor must file a Claim in accordance with Article 10, Delays and Claims, or such right to any adjustment in Contract Price and/or Contract Time shall be waived.

4.11 VALUE ENGINEERING CHANGE PROPOSALS (VECPs)

A. District encourages the Contractor to submit Value Engineering Change Proposals (VECPs) in order to avail District of potential cost or time savings or increased safety during construction. The Contractor and District will share any savings in accordance with this Article. VECPs may be submitted at any time after Notice to Proceed. A proposal merely to delete or reduce scope of Work does not constitute a VECP.

B. The Contractor shall submit VECPs directly to the District Project Manager. As a minimum, the following information shall be submitted by the Contractor with each VECP:

1. Description of the existing Contract requirements that are involved in the proposed change;
2. Description of the proposed change;
3. Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages;
4. Itemization of the Contract requirements that shall be changed if the VECP is accepted (e.g., drawing numbers and specification);
5. Justification for changes in function or characteristics of each affected item, and effect of the change on performance of the end item;
6. Effect of proposed change on life-cycle costs, including operation, maintenance, replacement costs, and life expectancy;
7. Date or time by which a Change Order adopting the VECP shall be issued in order to obtain the maximum cost reduction, noting any effect on contract completion time or delivery schedule; and
8. Cost estimate for existing Contract requirements correlated to the Contractor's unit price or lump sum breakdown and the proposed changes in those requirements.
9. Costs of development and implementation by the Contractor shall be provided.

10. Additional costs to District (e.g., costs of testing, redesign, and effect on other contracts) shall also be estimated.

C. District retains the right to reject a VECP without review, without recourse by the Contractor if a similar change is already under review; or if in District's sole opinion, the potential savings are unlikely to justify the cost of the review; or if the proposed change is otherwise unacceptable to District.

D. District shall expeditiously process VECPs accepted for review but shall not be liable for any delay in acting upon any VECP submitted pursuant to this Article. District may accept, in whole or in part, by Change Order, any VECP submitted pursuant to this Article. Until an order to proceed is issued on a VECP, the Contractor shall remain obligated to perform in accordance with this Contract. Change Orders made pursuant to this Article will so state. District's decisions as to acceptance or rejection of any VECP shall be at District's sole discretion and shall be final and not subject to review by a dispute resolution process or otherwise.

E. The Contractor shall include appropriate value engineering incentive provisions in all subcontracts of \$100,000 or greater, and may include those provisions in any subcontract. In determining Estimated Net Savings for cost reduction proposals that involve a Subcontractor, only actual costs to the Contractor and Subcontractor, as defined in Paragraph E above, will be allowed as Contractor Costs. Incentive payments made to the Subcontractor by the Contractor in connection with the cost reduction proposal will not be allowed in determining Net Savings.

F. District is subject to public disclosure of records in accordance with Washington State Law. Material and information, which may be submitted as part of any VECP, will be subject to such public disclosure pursuant to State law.

G. The compensation provisions of this Article shall constitute the Contractor's exclusive and complete compensation for District's use of the VECP, and the Contractor shall have no right to additional compensation for future or additional uses of the VECP. District shall have an absolute and unrestricted right to use the concepts, ideas, methods, materials, and any other salient feature of a VECP, for any purpose other than on the Contract or contracts for which it was submitted.

H. In the event District and Contractor cannot agree on the Estimated Net Savings, District may at its option (i) terminate the proposed VECP or (ii) unilaterally determine the Estimated Net Savings. If Contractor disagrees with such unilateral determination and seeks to assert a Claim, Contractor shall comply with the Claim requirements of the Contract Documents.

ARTICLE 5 MATERIALS AND EQUIPMENT

5.01 GENERAL

A. The Contractor shall furnish all materials, including without limitations, equipment and completely or partially assembled items, required to complete the Work, except materials that are designated in the Contract Documents to be furnished by District.

B. Material and equipment furnished and installed for this Work shall be new and of a quality equal to or better than that specified.

C. District's acceptance of materials on the basis of compliance documentation, inspection or testing shall not relieve the Contractor of its obligation for conformance with the Contract.

D. Manufacturers' warranties, instruction sheets, and parts lists, which are to be furnished with certain materials, shall be delivered to the District Project Manager before Substantial Completion.

E. The materials and equipment provided and work performed by the Contractor shall strictly conform to the requirements contained in the Contract Documents. The burden of proof that the completed Work conforms to the Contract Documents shall be on the Contractor.

F. The Contractor shall not use any permanently incorporated materials or equipment unless such use is approved in writing by District. Where Contractor's request is granted for the use of certain materials, the Contractor shall properly use and maintain, and upon completion of its use, and at its own expense, recondition such materials or equipment to the satisfaction of District.

5.02 MATERIALS CERTIFICATIONS

A. All materials except materials specified by brand name or mark or manufacturer, furnished for use or incorporation in the Work, shall be covered by quality certifications, test results or other documentation as required by the Contract to establish compliance of the products with Contract requirements. Unless specific tests are required by the specifications, the Contractor may provide certifications to establish acceptability of the products furnished. Materials or products which require certification or other documentation shall not be incorporated until certifications have been delivered and the product approved by District for incorporation.

B. When the Contract requires documentation that materials comply with a given specification or Industry Standard, the Contractor shall provide documents that include a certification that the material conforms to all applicable Contract requirements. The documentation shall identify the material, list the applicable specifications and tests covered by the certification, describe the source of the material, and the quantity of material certified. The certifying document shall originate with manufacturer or producer of the material and shall bear the signature of a person qualified to perform the certification and authorized to sign on behalf of the manufacturer or producer. If applicable, the certificate shall list any marking or other identification of the certified material.

C. For fabricated or manufactured materials, in addition to the documentation required by this Article, the Supplier shall furnish documentation that the fabrication or manufacturing process complies with Contract requirements. The documentation shall be comparable to that required by this Article and shall list the name and address of the manufacturer or fabricator, the specific processes covered by the certification and procedures and equipment used, tests performed and testing frequency, and any other pertinent information required to demonstrate Contract compliance.

D. For materials specified or approved by brand name or mark, an identifying label or other marking affixed by the manufacturer, which contains sufficient information to verify that the material furnished is the material specified, will be accepted as documentation in lieu of additional certification. Other physical characteristics or packaging information may be accepted at District's discretion to demonstrate compliance.

E. District may require testing at the Contractor's expense of materials that are delivered without acceptable identification, certification or other required documentation. Work that

incorporates materials for which the required documentation has not been provided will be considered nonconforming work.

F. District reserves the right to sample and test any material provided for use or incorporation into the Work. The Contractor shall furnish, at no cost to District, all samples requested for testing. If District's tests indicate that the material tested does not comply with Contract requirements, all materials covered by the same certification as the test sample shall be considered as non-conforming.

G. If, at any time, District deems the Contractor's testing is not adequate, the Contractor shall immediately take corrective action as directed by District.

5.03 EQUIVALENT MATERIALS AND EQUIPMENT

When material or equipment is specified by one or more patents, brand names, or catalog numbers, it shall be understood that this is for the purpose of defining the performance or other salient requirements and shall be understood as if followed by the words "or equal," whether or not such words appear. Should the Contractor propose to furnish an "or equal" material or equipment then Contractor shall demonstrate conformance to the specified performance, testing, quality or dimensional requirements and suitability of the material or equipment for the use intended. The District Project Manager shall promptly review and approve or disapprove Contractor's proposed "or equal" material or equipment and any such approval shall not relieve Contractor of its obligations to achieve the specified performance, testing, quality or dimensional requirements and suitability of any approved "or equal" material or equipment for the use intended under this Contract.

5.04 SUBSTITUTIONS

A. If material or equipment is specified as a sole source, District will not consider substitutions.

B. Materials or equipment of equal or better capacity, quality, or function may be allowed by District, in its sole discretion, upon written request for substitution by the Contractor. Requests for substitution shall be made in accordance with these Contract Documents. Denial of a request for substitution is not grounds for any claim against District.

C. Except for sole source materials or equipment, the Contractor may offer material or equipment of equal or better quality and performance in substitution for those specified in the Contract Documents. Substitutions may be considered when a product becomes unavailable through no fault of the Contractor. District will consider offers for substitution only from the Contractor and not from Suppliers, distributors, manufacturers, or Subcontractors. If the offered substitution necessitates changes to or coordination with other portions of the Work, the Contractor, as a condition of District's acceptance of the substitution, shall perform such changes or coordination at no additional cost to District. Substitutions shall be submitted to District in sufficient time to avoid delays to the Work. The Contractor shall be responsible for any delay or cost resulting from untimely submittal of substitution requests.

D. The Contractor has the burden of demonstrating that the proposed substitution's function, quality, and performance will be equal in all respects to that of the specified item.

E. A request for substitution constitutes a representation that the Contractor:

1. Has investigated the proposed product and determined that it meets or exceeds the quality level of the specified product;

2. Will coordinate installation and make changes to other Work that may be required for the Work to be complete with no additional cost to District;
3. Waives claims for additional costs or time extension that may subsequently become apparent; and
4. Bears all District costs of any redesign or modification to other systems, parts, equipment or components of the Contract Work resulting from the substitution.

F. Substitutions will not be considered when they are indicated or implied on Shop Drawings or product data submittals without a separate written request. Substitutions will not be considered when they are due to the Contractor's failure to order the specified items in a timely manner.

G. District shall be the sole judge of whether the offered substitution is in conformance with the Contract Documents for the Work and whether the changes to other portions of the Work necessitated by the incorporation of the offered substitution are acceptable. Any savings resulting from the use of a substituted item shall be passed on to District in the form of a Value Engineering Cost Proposal.

5.05 MANUFACTURER'S DIRECTIONS

Manufactured articles, materials, solvents, and equipment or other goods shall be transported, stored, applied, installed, connected, erected, adjusted, tested, operated, and maintained as recommended by the manufacturer, unless otherwise specified herein. Items shall be installed by the manufacturer where recommended or directed; however, the Contractor shall not be relieved of responsibility for such installation and costs.

5.06 RESPONSIBILITY FOR PERFORMANCE

Designation of brand names, components, and/or equipment in the Specifications shall not relieve the Contractor from responsibility for performance in accordance with contractual requirements. The Contractor is responsible for notifying the District Project Manager of any inappropriate brand name, component, and/or equipment that may be called for in the Specifications, and for proposing a suitable alternate for consideration. Any substitution required by District or the District Project Manager under this Article shall be implemented in accordance with the procedures set forth in Article 4, Changes and Change Order Process.

ARTICLE 6 PROSECUTION AND PROGRESS OF THE WORK

6.01 CONTRACT TIME

A. All time requirements set forth in the Contract Documents are of the essence in the performance of this Contract. Unless specifically authorized in writing by District, the Contractor is not allowed to perform Work or incur costs under this Contract until the effective date of the Notice to Proceed. The Contractor shall proceed with performance of the Work under this Contract immediately after the effective date of Notice to Proceed and shall continuously and diligently prosecute the Work and specified portions thereof to completion on or before the time or times set forth in this Contract. Any work performed by the Contractor prior to the effective date of Notice to Proceed shall be at the Contractor's risk. The Contract Time shall not be extended or reduced except by Change Order. The Contractor shall not be

entitled to receive delay damages or costs for non-realization of anticipated early completion of the Work before a Contract specified Milestone date.

B. The Contractor shall work such hours including overtime operations and/or extra shifts, within the parameters of permitted working days and hours, as may be necessary to meet its performance obligations under the Contract.

C. The Contractor shall comply with all local requirements and permit conditions relating to acceptable hours of operation for construction sites, and to noise control and abatement. If the Contractor deems that a waiver of any local requirements is necessary to enable the Contractor to perform the Work in accordance with the Contract requirements, it is the Contractor's responsibility to obtain said waivers, at no additional cost to District.

D. All time periods measured in days for Contract Milestones and Notices shall be based upon calendar days, unless specified otherwise. Time periods measured in days for each Contract milestone and notice shall be computed by excluding the day upon which the period begins to run and including the last day of the period unless the last day is Saturday, Sunday or a legal holiday as defined in RCW 1.16.050. If the last day of the period is a Saturday, Sunday or legal holiday, the period shall run until, and shall include, the next day that is not a Saturday, Sunday, or legal holiday.

E. When an extension of time for completion of a milestone is granted, the extended date for completion of that milestone shall be calculated using the sum of the number of days originally allowed plus the number of days extension of time, commencing on the effective date of the Notice to Proceed.

6.02 CONSTRUCTION SCHEDULES

A. Preparation and Submittal of Schedules

1. The Contractor shall develop and deliver, in accordance with the Contract Documents, the various schedules and progress reports to District for review and acceptance. District's review shall not constitute approval or acceptance of the schedules' sequencing or time of completion, nor of the Contractor's means and methods of construction.
2. The Contractor shall not be entitled to payment, nor shall District be required to make payment for any Contract Work, until the Construction Schedule complies with the Contract requirements.

B. Float

1. Float is defined as the number of days by which a Work activity identified in the construction schedules could be delayed from its "early start date" until the date upon which the Work activity would become a Critical Path Activity.
2. Any float (other than District Controlled Float), slack time, or contingency within the Construction Schedules (i.e., the difference in time between the Contract's early completion date and the Contract Milestone(s)) is not for the exclusive use of either District or the Contractor, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Contract Milestones. Use of such jointly owned float shall be on a first come, first served basis and may be applied to delays caused (without limitation) by unmarked utility interferences or third parties.

3. The Contractor shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, etc. Since float time, other than District Controlled Float, within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the Contract Milestone(s). Since float time within the construction schedule is jointly owned, it is acknowledged that District-caused delays on the Contract may be offset by District-caused time-savings. In such an event, the Contractor shall not be entitled to receive a time extension or delay damages until all District-caused time-savings are exceeded.
4. The Contractor shall have no right to District Controlled Float and no right for additional compensation of any kind for District's use of this float. Contractor's costs and time for the District Controlled Float shall be included in the Contractor's bid price and Construction Schedule. In the event District does not use all of its controlled float, there will be no reduction in the Contract Price at the completion of the Work.

6.03 FAILURE TO MAINTAIN PROGRESS

If, in the opinion of the District Project Manager, the Contractor is not maintaining its anticipated progress towards the completion of the Milestones and / or falls behind the approved construction schedules, the Contractor shall take any and all steps necessary to improve its progress. If the Contractor fails to implement appropriate remedial actions, the District Project Manager may require the Contractor to increase the number of shifts, increase the number of crews and/or operations, initiate or increase overtime operations, increase days of work in the work week, increase the amount of construction plant, or all of the foregoing. District may also require the Contractor to submit for approval supplemental progress schedules that detail specific operation changes to be instituted to regain the approved schedule. The cost of the actions necessary to improve the Contractor's progress will be the responsibility of the Contractor and will not be reimbursed by District.

6.04 PROTECTION OF PROPERTY

In addition to the requirements set forth elsewhere in the Contract Documents, the Contractor shall comply with the following general requirements:

- A. Protect all public and private property, insofar as it may be endangered by the Contractor's operations, and take every reasonable precaution to avoid damage to such property.
- B. Restore and bear the cost of restoration of any public or private improvement, facility, structure or land and landscaping inside or outside of the work site, which is damaged or injured directly or indirectly by or on account of an act, omission, or neglect in the execution of the Work; restore to a condition substantially equivalent to that existing before such damage or injury occurred, by repairing, replacing, rebuilding, or otherwise affecting restoration thereof, or if this is not feasible, make a suitable settlement with the owner of the damaged property. All restoration shall be governed by the requirements of local authorities, including but not limited to local codes, standards, and permit conditions.
- C. Give reasonable notice through the District Project Manager to occupants of buildings on property adjacent to the Work to permit the occupants to remove vehicles, trailers and other possessions as well as salvage or relocate plants, trees, fences, sprinkler systems, or other

improvements in the work site which are designated for removal or which might be destroyed or damaged by work operations.

D. Protect all trees, lawns, and planted areas within the work site that are designated for preservation.

6.05 RIGHTS-OF-WAY, EASEMENTS, AND PREMISES

A. The Contractor shall confine construction activities within property lines, right-of-way, limits of easement, and limits of Construction Permits as shown or specified in the Contract Documents unless arrangements are made with owner(s) of adjacent private property. If additional space or property is needed to accommodate the Contractor's method of construction of the Work or for additional staging area or for the convenience of the Contractor, the Contractor shall acquire the right to use such additional space and shall bear all related costs and responsibilities. Prior to the use of any private property outside the specified limits, the Contractor shall file with the District Project Manager written permission from the property owner(s) and provide copies of all applicable documents.

B. The Contractor shall make no arrangements with any person or entity to permit occupancy or use of any land, structure, or building within the limits of the Site, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between District and any owner, former owner, or tenant of such land, structure, or building.

C. District does not assert that the staging areas shown on the drawings are sufficient to perform the work efficiently, and the Contractor shall procure, at its own expense, any additional staging area it requires to perform the work, and such costs for additional staging shall have been included in its bid price. The Contractor shall be responsible for obtaining all necessary permits for additional staging areas and for the cost of additional NEPA/SEPA or any other environmental review. All Contractor-proposed staging areas must be authorized by District, who will conduct or direct the appropriate environmental review. The Contractor shall reimburse District for any costs incurred by District for such reviews.

D. The contractor shall notify District a minimum of thirty (30) days prior to entering a staging area that is provided by the District. Prior to entry onto the staging areas the Contractor shall meet on site with District's Project Manager. Contractor shall comply with Property Management's procedures for transfer of the property to, and from, the Contractor, including requirements for maintenance of the areas during construction and final restoration of the properties at the end of construction. Such maintenance requirements have been included in the Contract Documents

E. The contractor shall notify District a minimum of thirty (30) days and a maximum of sixty (60) days prior to entering a Temporary Construction Easement (TCE) unless a longer notification period is specified elsewhere in the Contract. District shall then set an activation date for the start of the Temporary Construction Easement and shall notify the property owner in writing. Prior to Entry into a TCE area the Contractor shall meet on site with District's Project Manager, and comply with procedures for transfer of the TCE area to the contractor.

6.06 PUBLIC SAFETY AND CONVENIENCE

The Contractor shall conduct its operations to ensure the least possible obstruction and inconvenience to the public, and the Contractor shall have under construction no greater length

or amount of work than the Contractor can prosecute properly with due regard to the rights of the public.

6.07 EMERGENCY WORK

A. In an emergency affecting the safety of persons, the Work, or adjoining property, the Contractor, without special instructions or authorization from the District Project Manager, shall act to prevent such threatened loss or injury. In such an emergency, the Contractor shall perform such additional work as required. Any compensation claimed by the Contractor on account of emergency work shall be governed by Article 4, Changes and Change Order Process, or as deemed appropriate by the District Project Manager.

B. If, during the Warranty period or during the progress of the Contract, the Contractor is absent from the locations of the Work at the time when a failure or faulty condition of the Contractor's work requires emergency action in the public interest, District shall have the right to make repairs or corrections by itself or with other forces, as required, and District may withhold from monies due the Contractor any costs which District incurs from such emergency work.

6.08 PROTECTION OF UTILITIES

A. Facilities and installations of various utilities may be present in the area of Work. In general, the locations of existing major utilities, whether above ground or underground, are indicated on the Contract Drawings. This information has been obtained from utility maps and field surveys. District does not guarantee the accuracy or completeness of the information. It is understood that other facilities not shown on the Contract Drawings may be encountered during the course of the work. In any case, most minor lines such as water, gas, electric power and communication, sewer services, and sprinkler irrigation lines may not be indicated. The Contractor shall protect any utility property that is on or adjacent to the Site or affected by the Work. Existing utilities, whether shown on the Contract Drawings or not, shall be maintained, relocated, rerouted, removed, repaired, and restored as may be necessary by the Contractor in a manner satisfactory to owners and operators of the utilities and to District. The Contractor shall contact the utility owners and arrange construction operations and schedules to minimize any interruption of utility services. The Contractor shall provide utility owners with notice as may be required by said utilities for location of utility services, scheduling of outages, or other utility activities needed to accommodate the Contractor's operations.

B. The Contractor shall comply with the requirements of RCW 19.122, Underground Utilities, and take steps to ascertain the exact location of all facilities prior to doing work which may damage such facilities or interfere with their service. Where the location of a facility is not indicated, or is, in the opinion of the District Project Manager, doubtful, the Contractor may be directed to make such excavations and explorations as are necessary to ascertain the correct location.

C. When performing work in streets and easements, the Contractor shall notify all affected utilities and local agencies of its proposed operations and properly coordinate and expedite the Work in such a manner as to cause the least amount of conflict and interference between the work and operations of other agencies. In the event of disruption or threat of disruption to utility services as a result of construction-related activities, regardless of cause, the Contractor

shall notify District immediately and shall notify and cooperate with the utility as well as any fire, police, or other public authority which may be affected by the disruption, as required by said utility, agency, or authority.

D. The Contractor shall document all incidents of damage or impacts to utilities that are the result of Work activity, and report all such incidents to District immediately with the date, time, place and type of property damage.

E. The Contractor shall ensure that unauthorized personnel are strictly prohibited from the operation of utility or agency water valves and hydrants and shall obtain written permission from the applicable proper utility or agency prior to using any water hydrant or operating any water valve. No Work shall be undertaken around fire hydrants until provisions for continued access and service have been approved by the local fire authority.

6.09 TEMPORARY CONSTRUCTION FACILITIES AND UTILITIES

A. Temporary facilities and utilities shall be installed in compliance with federal, state, and local codes and statutes, at the Contractor's expense. The installation and maintenance of all temporary facilities will be subject to the approval of District, and unless otherwise authorized in writing by District, all such facilities shall be removed before Acceptance of the Work.

B. Before proceeding with the erection of any construction facilities, including temporary structures, machinery, offices, and warehouses, the Contractor shall, at its expense, notify and furnish District with such information and drawings as District may request showing locations of such facilities, capacities and capabilities of the machinery and equipment, and projected utility requirements. Such construction facilities shall be fully adequate for the uses intended and fully comply with the requirements of the Contract.

6.10 TEMPORARY REARRANGEMENT OF UTILITIES

The Contractor may desire to rearrange utilities temporarily for Contractor's convenience. In this case, the Contractor shall make whatever arrangements are necessary with the owners of such utility or other facility for such rearrangement and bear all expenses in connection therewith. Further, the Contractor shall maintain all utility facilities placed by the Contractor in temporary locations, and all utilities within the construction area not required to be permanently rearranged but which are required to be shored or supported during the construction period. Unless otherwise indicated, the cost of such temporary rearrangement and maintenance shall be borne by the Contractor and no other compensation shall be due the Contractor for this work.

6.11 REARRANGEMENT OF UTILITIES BY OTHERS

Some or all of the utilities and other facilities, both above ground and below ground, which are required to be rearranged to accommodate the specified work, may be rearranged by other forces. In the event that rearrangement will be performed prior to the start of the Contractor's operations, or where the rearrangement must be coordinated with the Contractor's construction operations, the existing facilities which are to be rearranged by others will be indicated in the Contract Documents. Where such a rearrangement by others is indicated in the Contract Documents, the Contractor will have no liability for the cost of performing the work; however, the Contractor shall cooperate with those involved in such rearrangement. Wherever

necessary, the work of the Contractor shall be coordinated with the rearrangement of utility or other facilities, and the Contractor shall make arrangements with the owner of such facilities for the coordination of the work. The Contractor shall anticipate potential delays by the utility owners and such reasonable delays shall not be the basis for additional compensation or time extensions. Only in the event that the utility owners fail or refuse to relocate or do so in a manner causing unreasonable delays to the critical path of the Work, may the Contractor request a time extension as provided in Article 4, Changes and Change Order Process.

6.12 EXPLORATION FOR UTILITIES

Where excavations or explorations to determine the location of utilities are directed by the District Project Manager and where it is determined by the District Project Manager that the rearrangement of an underground facility, which is not shown in the Contract Documents, is essential in order to accommodate the Work, the District Project Manager will provide for the rearrangement of such facility by other forces or, when so ordered by a CN-WD or CO, such rearrangement shall be performed by the Contractor and will be paid for as provided in Article 4, Changes and Change Order Process. In the event of unscheduled or unanticipated disruption(s) or threat of disruption(s) to utility services as a result of construction-related activities, regardless of cause, the Contractor shall promptly notify District, the affected utility, and fire and/or police agencies as necessary, and shall cooperate with those authorities. If temporary disruption(s) of utility service(s) is (are) unavoidable pursuant to the Work, the Contractor shall immediately notify the District Project Manager and secure authorization from District before disrupting the utility service(s). Operation of utility or agency water valves and hydrants by unauthorized personnel is strictly prohibited without obtaining written permission from the applicable authority prior to using any water hydrant or operating any water valve. No work shall be undertaken around fire hydrants until provisions for continued access and service have been approved by the local fire authority.

6.13 SAFETY, FIRST AID AND SECURITY

A. The Contractor shall be solely and completely responsible for conditions of the Site and the safety of all persons and property twenty-four (24) hours per day during the performance of the Work of this Contract. The Contractor shall:

1. Maintain the site and perform the work in a manner that meets statutory, regulatory and common law requirements for the provision of a safe place to work and that does not pose unreasonable safety risks to employees of District or the public;
2. Initiate, maintain, and supervise all safety precautions and programs in connection with the performance of the Work;
3. Protect the lives and health of employees performing the work and other persons who may be affected by the Work, and
4. Prevent damage to and theft of materials, supplies, and equipment whether on-Site or stored off-Site.

B. The Contractor shall comply with all applicable local, state and federal laws, ordinances, rules, regulations and orders of any public authority building and construction codes, and safety regulations bearing on the safety of people and property and their protection from damage, injury or loss. In the case of conflict, the more stringent requirement shall apply. Any review of

the Contractor's performance conducted by District or its consultants, does not and shall not be intended to include review of the adequacy of the Contractor's safety measures in, on, or near the Site.

C. The minimum safety requirements and procedures for accident prevention, safety and loss prevention, accident and incident reporting, and control for the Work are contained in other Contract Documents. Failure to comply with these minimum requirements may result in a material breach of contract. The minimum safety requirements contained in the Contract are intended to supplement, and not replace the Contractor's Safety and Security Program or Site Safety and Security Plan.

D. Prior to construction, the Contractor shall have in place a Contractor's Safety and Security Program (CSSP). From this Program the Contractor shall prepare a Contractor's Site Safety and Security Plan (SSSP) identifying the methods by which all applicable safety and security requirements of this Contract and the applicable Federal, state and local requirements will be met. The Contractor shall ensure its Subcontractors have either a written safety program that conforms to the applicable requirements or formally adopt the Contractor's Safety and Security Program and Site Safety and Security Plan. The Contractor shall submit a copy of its CSSP and SSSP to District in upon request. District's review of the CSSP or SSSP shall not be deemed to constitute approval or acceptance thereof and shall not transfer any responsibility for the safety of the Work site from the Contractor to District.

E. As the property owner, District retains the right to grant consent to inspections pursuant to State and Federal law. This includes all accident and criminal investigations and general schedule, complaint, and follow-up safety and health inspections conducted by the State of Washington Department of Labor and Industries (WISHA) and the Federal Occupational and Health Administration (OSHA).

6.14 ORDER OF WORK

When required by the Contract Documents, the Contractor shall follow the sequence of operations set forth therein. Full compensation for conforming to such requirements will be considered as included in the prices paid for the various Contract items of the Work and no additional compensation will be allowed therefore.

6.15 LIABILITY FOR EXPENSES

The Contractor shall be liable to District for expenses incurred due to the Contractor's failure to perform tasks in accordance with the Contract requirements. Such expenses may include costs to District for providing personnel to perform tasks on behalf of the Contractor and shall be subject to an advance notice to the Contractor that such expenses are expected to be incurred. These expenses may be deducted as unilateral credit Change Orders or as part of the Change Orders issued in accordance with Article 4, Changes and Change Order Process.

ARTICLE 7 LEGAL REQUIREMENTS

7.01 HEADINGS

The parties agree that Article and Section headings and other titles used in this Contract are for convenience only, and are not to be used to interpret this Contract.

7.02 WAIVER OF CONTRACT TERMS

No act or failure to act on the part of District with respect to the exercise or enforcement of any provision of this Contract (including but not limited to rights or remedies conferred upon District under this Contract, performance, or construction standards) shall be deemed to be a waiver on the part of District of any provision of this Contract. No waiver of one provision by District shall act as a waiver of any other provision or as a subsequent waiver of the same provision. No waiver shall be effective against District except an express waiver in writing.

7.03 PROHIBITED INTEREST

The Contractor shall not offer or confer any interest, direct or indirect, in this Agreement or the proceeds thereof (or hire or retain in any way, directly or indirectly) to or on any member, officer, or employee of District or its governing body, or of any of its component agencies during such person's tenure or one year thereafter, unless such interest has been disclosed in writing to District and District has determined that no prohibited conflict of interest or ethical violation exists in the circumstances.

7.04 SUCCESSOR'S OBLIGATIONS

The grants, covenants, provisos and claims, rights, powers, privileges and liabilities contained in the Contract shall be read and held as made by and with, and granted to and imposed upon, the Contractor and District and their respective heirs, executors, administrators, successors and assigns. A Surety under the Performance Bond allowed by District to complete the Work in the event of a default, termination, or other failure of the Contractor to perform the Work, shall comply fully with all Contract requirements and shall not use the defaulted or terminated Contractor for continuation or completion of the Work unless District consents.

7.05 ASSIGNMENT OF CONTRACT

The Contract shall not be assigned in whole or in part by the Contractor without the prior consent of District. To the maximum extent permitted by law, involuntary assignment of the Contract caused by the Contractor being adjudged bankrupt, assignment of the Contract for the benefit of the Contractor's creditors, or appointment of a receiver on account of the Contractor's insolvency shall be considered as a failure to comply with the provisions of the Contract and subject to the termination provisions contained herein.

7.06 JOINT VENTURE CONTRACTOR

A. In the event the Contractor is a joint venture of two or more partners, the grants, covenants, provisos and claims, rights, power, privileges, and liabilities of the Contract shall be construed and held to be several as well as joint. Any notice, order, direction, request, or any communication given by District to the Contractor under this Contract shall be well and sufficiently given to all persons being the Contractor if given to any one or more of such joint venture partners. Any notice, request or other communication given by any one of such joint venture partners to District under this Contract shall be deemed to have been given by and shall bind all joint venture partners being the Contractor.

B. In the event of the dissolution of the joint venture Contractor, District shall have the unqualified right to select which joint venture partner(s), if any, shall continue with the Work under this Contract. Such selected partner(s) shall assume all liabilities, obligations, rights, and benefits of the Contractor under this Contract. Dissolution of the joint venture shall not be effected without prior consultation with District. In the event of failure or inability of any joint venture partner(s) to continue performance under this Contract, the remaining joint venture partner(s) shall perform all services and Work and assume all liabilities, obligations, rights, and benefits to the Contractor under this Contract. Nothing in this Article shall be construed or interpreted to limit District's rights under this Contract or by law to determine whether the Contractor or any joint venture partner thereof has performed within the terms of this Contract.

7.07 CONFLICT OF INTEREST

By submission of its Bid, the Contractor covenants that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest that conflicts in any manner or degree with the Work, materials to be provided or services required to be performed under this Contract. Furthermore, the Contractor shall not employ any person or agent having any such conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose in writing such interest to District and take action immediately to eliminate the conflict or to withdraw from this Contract, as District requests. The Contractor shall not employ any consultant who is concurrently employed by District or by District's consultants (including, but not limited to, surveyors, engineers, architects, and testing laboratories), without first obtaining District's approval in writing.

7.08 PERMITS, FEES, AND NOTICES

A. Except as otherwise indicated, the Contractor shall procure all necessary permits and licenses, pay all charges and fees, comply with all permit conditions and give all notices necessary and incident to the due and lawful prosecution of the Work. Failure of the Contractor to perform any of the requirements specified herein shall result in the Contractor's liability as set forth herein. Upon written request the Contractor shall furnish District with satisfactory documentation evidencing compliance with the applicable requirements.

B. The Contractor shall be fully liable to District and any permit issuing authority for any costs and damages arising out of or relating to Contractor's failure to obtain a permit or for any failure to comply with the terms of any permit, including (1) costs associated with completing the Work authorized and/or required by any government permit within the time or times, if any, stipulated in such permit and any fees or penalties assessed by the permit issuing authority, (2) any damages or costs assessed under Article 7.14, and (3) delays to the Work solely caused by the Contractor's failure to timely complete Work, or any separate part thereof. As used herein, the term "permit issuing authority" includes any authority whose permit or license is necessary and incident to the due and lawful prosecution of the Work.

C. The Contractor shall be responsible for identifying, securing, and paying for all necessary licenses, fees, inspections, waivers, utility connection fees, building and other permits, and similar authorizations from governmental and utility authorities required to fulfill the Contract

requirements and the Contractor's obligations except for those identified in the Contract as being furnished or paid for by District.

D. The Contractor shall maintain at the Work Site copies of all permits, licenses, certificates, or other documentation demonstrating compliance with any applicable statute, regulation, ordinance, or rule or other requirements of this Contract. The Contractor shall provide copies of such documentation to District promptly upon request.

E. The Contractor shall be liable for and shall pay all fines, assessments, and other costs resulting from the Contractor's violation of any applicable federal, state, or local statute, regulation, ordinance, or other restriction.

F. The Contractor shall not be entitled to any additional compensation or extension of time as a result of the Contractor's violation of applicable regulatory requirements. If a delay results from such a violation, the Contractor shall be responsible for all costs including, but not limited to, overtime premium associated with regaining the time lost as a result of such delay, and any damages, including liquidated damages, which may result from Contractor's failure to comply with the construction schedule as a result of such delay.

7.09 PUBLICITY AND ADVERTISING

The Contractor, its Subcontractors, and Suppliers shall not publish nor cause to be published any advertisement or other material, including news releases and technical papers, regarding the subject matter of this Contract at any time without the prior written authorization of District. The Contractor shall not display any signs, posters, or any other advertising matter in or on the Work or on or around the site other than those prescribed by the Contract or by law without the prior written authorization of District. In addition, advertising or other copy mentioning District or quoting the opinions of any of its employees shall not be released before such copy is approved in writing by District. Any material proposed for publication shall be factual and shall not state or imply endorsement by District of any firm, service or product.

7.10 LIABILITY AND INDEMNIFICATION

A. The Contractor shall comply, and require its subcontractors to comply, with all District resolutions, motions and federal, state, and local laws, regulations, and ordinances applicable to the work and services to be performed under this Agreement.

B. Insurance Coverage, whether owner-provided, contractor-provided, or otherwise, shall not relieve the Contractor, Subcontractors or Suppliers of their responsibility for liability or damages to District under the Contract Documents.

C. The Contractor shall be solely responsible for any claims for wages or compensation by the Contractor employees, agents, and representatives, including subcontractors, and save and hold District harmless therefrom.

D. The Contractor shall indemnify, defend and hold District harmless for any costs and pay any damages or judgments related to any claim brought by any person employed in any capacity by the Contractor, Subcontractors, or any agency on the Work, with respect to the payment of wages, salaries, or other compensation or benefits, including but not limited to benefits such as medical, health, retirement, vacation, sick leave, etc.

E. To the maximum extent permitted by law, the Contractor agrees to defend, release, indemnify and save harmless District, its successors and assigns, and its and their shareholders,

officers, officials, directors, contractors, and employees, (collectively "the Indemnified Parties") from and against any liability including any and all suits, claims, actions, losses, costs, penalties, response costs, and damages of whatsoever kind or nature to the extent arising out of, in connection with, or incident to the Contractor's performance or failure to perform this Contract or the Work; provided, however, that if the provisions of RCW 4.24.115 apply to the Work and any injuries to persons or property arising out of performance of this Agreement are caused by or result from the concurrent negligence of the Contractor or its Subcontractors, agents or employees, and an Indemnified Party, the indemnification applies only to the extent of the negligence of the Contractor, its Subcontractors, agents or employees.

THE CONTRACTOR SPECIFICALLY ASSUMES POTENTIAL LIABILITY FOR ACTIONS BROUGHT BY THE CONTRACTOR'S OWN EMPLOYEES OR FORMER EMPLOYEES AGAINST ANY INDEMNIFIED PARTY, AND FOR THAT PURPOSE THE CONTRACTOR SPECIFICALLY WAIVES ALL IMMUNITY AND LIMITATIONS ON LIABILITY UNDER THE WORKERS COMPENSATION ACT, RCW TITLE 51, OR ANY INDUSTRIAL INSURANCE ACT, DISABILITY BENEFIT ACT OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION THAT WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH CLAIM. THIS INDEMNITY OBLIGATION SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR A SUBCONTRACTOR UNDER WORKERS' COMPENSATION, DISABILITY BENEFIT OR OTHER EMPLOYEE BENEFITS LAWS. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO AND WAS THE SUBJECT OF MUTUAL NEGOTIATION. PROVIDED, HOWEVER, THE CONTRACTOR'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS PARAGRAPH EXTENDS ONLY TO CLAIMS AGAINST THE CONTRACTOR BY DISTRICT, AND DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONTRACTOR'S EMPLOYEE DIRECTLY AGAINST THE CONTRACTOR.

F. The Contractor further agrees to assume the defense of the Indemnified Parties with legal counsel acceptable to District, whose acceptance shall not be unreasonably withheld, in all legal or claim proceedings arising out of, in connection with, or incidental to the performance of this Agreement or the Work. The Contractor shall pay all defense expenses, including attorneys' fees, expert fees, and costs (collectively "defense costs") incurred directly or indirectly on account of such litigation or claims, and the Contractor shall satisfy any judgment rendered in connection therewith. In the event that any lien is placed upon the property of any of the Indemnified Parties as a result of such suits or legal proceedings, the Contractor agrees to immediately cause the same to be dissolved and discharged by giving bond or otherwise. The Contractor may settle any suit, claim, action, loss, cost, penalty, or damages, subject to the approval of District, whose approval shall not be unreasonably withheld, if such settlement completely and forever extinguishes any and all liability of the Indemnified Parties. In the event of litigation between the parties to enforce the rights under this Article, reasonable attorney fees shall be allowed to the prevailing party.

G. The Contractor further agrees that any review and/or approval by District and/or others hereunder shall not relieve the Contractor of any of its obligations to perform to generally accepted professional standards applicable to the types of services and work provided hereunder or in any way diminish its liability for the performance of such obligations or its obligations to provide the indemnities hereunder.

H. The foregoing indemnities and duties to defend shall survive the termination of this Agreement and final payment hereunder, and are in addition to any other rights or remedies which District and/or any of the Indemnified Parties may have by law or under this Agreement. In the event of any claim or demand made against any Indemnified Party hereunder, District may, in its sole discretion, reserve, retain or apply any monies due to the Contractor under the Agreement for the purpose of resolving such claims; provided, however, that District may release such funds if the Contractor provides District with adequate assurance of the protection of District's and the other Indemnified Parties' interests.

I. The Contractor shall not assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by District; provided, however, that claims for money due or to become due to the Contractor from District under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such claim assignment shall be furnished promptly to District.

J. District's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

7.11 OWNERSHIP OF WORK PRODUCT

All information, including drawings, specifications and other data, prepared or developed by the Contractor in performance of the Work, whether or not required to be furnished to District, shall be the property of District and may be used by District without restriction. The Contractor hereby

assigns and transfers to District any and all copyrights for such materials. Prior to the completion of the Work, the Contractor shall provide District with a list of all such information which has not previously been furnished to District. District will then have thirty (30) days to advise the Contractor which information shall constitute District property. Before requesting Acceptance, the Contractor shall deliver to District the information that has been identified to constitute District property.

7.12 RIGHTS IN TECHNICAL DATA

A. The Contractor shall assume all risks arising from the use of patented or copyrighted materials, equipment, devices or processes not furnished by District, used on or incorporated in the Work, and shall indemnify, defend and hold harmless District, and all of its directors, officers, employees and agents to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages or expenses (including attorney's fees and related costs), whether direct or indirect, arising out of or relating to the ownership, possession or use of any patented materials, equipment, devices or processes. In case such material, equipment, devices or processes are held to constitute an infringement and their use enjoined, the Contractor at the Contractor's expense shall:

1. secure for District the right to continue using said materials, equipment, devices or processes by suspension of the injunction or by procuring a license, or licenses, or
2. replace such materials, equipment, devices or processes, or
3. modify them so that they become non-infringing or

4. remove the enjoined materials, equipment, devices or processes and refund the sums paid therefore without prejudice to any other rights of District or the District Project Manager.

B. The preceding Paragraph A shall not apply to any materials or processes specified by District or its Contractors, or manufactured to the design of District or its Contractor in accordance with the details contained in the Contract Documents, if authorized by District; and for such materials and processes the Contractor assumes no liability whatsoever for infringement, except to the extent that the Contractor knew, or should have known of the infringement and failed to promptly notify District thereof.

C. If any invention, improvement, or discovery of the Contractor is conceived or first reduced to practice in the course of Work or under this Contract, and such invention, improvement, or discovery may be patented under the laws of the United States of America or any foreign country, the Contractor shall immediately notify District and provide a detailed report. The rights and responsibilities of District, the Contractor, and the federal government with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws, regulations, policies and any grant agreements. Except for Contractor's use in conjunction with the Work required by this Contract, the Contractor may not publish or reproduce such data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of District.

D. This Article shall survive any expiration or termination of this Contract.

7.13 SEVERABILITY

If a provision of this Contract is found by a court of competent jurisdiction to be unenforceable, the validity and enforceability of the remaining provisions shall remain unaffected, and the parties shall negotiate an equitable adjustment of this Contract so that the purposes of this Contract are effected.

7.14 COMPLIANCE WITH LAWS AND REGULATIONS

A. The Contractor shall keep fully informed concerning all governmental requirements, including but not limited to all State, federal, county and municipal laws, ordinances and regulations which in any manner affect the performance of the Work, or the materials and equipment used in the Work, or which in any way affect those engaged or employed to work in connection with the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same including the specific legal requirements referenced in the Contract Documents. The Contractor shall at all times comply with, and shall cause all the Contractor's agents, employees and Subcontractors to comply with all such governmental requirements, and shall indemnify, defend and hold harmless District and all of its directors, officers, agents, and employees against all claims, liabilities, losses, damages and expenses (including attorney's fees and related costs) arising from or based on the violation of any such governmental requirement whether by the Contractor or Contractor's agents, employees or Subcontractors. If any discrepancy or inconsistency is discovered in the Contract Documents for the work in relation to any such governmental requirements, the Contractor shall immediately report the same to the District Project Manager in writing.

B. The Contractor shall comply and, to the best of its ability, shall require its subcontractors to comply with all District policies applicable to the Work to be performed under this Agreement (for

example District's policy on equal employment opportunity and harassment). Copies of District policies are available upon request.

C. The Contractor shall exercise reasonable efforts to stay apprised of changes to said governmental requirements. The Contractor shall bring any such changes to the attention of the District Project Manager and identify with particularity the effect of such changes on the Work. Impacts of time or cost from such change will be investigated and managed through the Change Order process. Any such changed law, ordinance, resolution, or regulation supersedes any conflicting provisions of this Contract.

D. Suspected Violation of Governmental Requirements - If the Contractor knows or has reason to know of any suspected violation of Governmental Requirement by itself or any Subcontractor

under the Contract, the Contractor must promptly and fully investigate and immediately report the existence of such investigation to District. The Contractor shall fully report, in writing, to District the facts and information ascertained in the investigation and shall allow District to examine all of Contractor's documentation related to the investigation. If District reasonably believes access to any individual worker is necessary for a District investigation, whether such worker is an employee of Contractor or a Subcontractor of any tier, Contractor must make available, within 1 day of a written request, such worker for interview by District's representative who has been designated in the written request. The Contractor may withhold communications properly considered attorney-client privileged.

E. The Contractor is liable for all actual costs reasonably incurred by District directly related to District's response to or necessary actions required for the violation of any Governmental Requirement or a settlement by Contractor associated with such alleged violation, including the total personnel costs of District employees and other District costs, outside attorneys' fees and costs, and outside consultants' fees and costs. District may withhold such amounts from sums otherwise payable to Contractor under the Contract. For purposes of this Article 7.14:

1. Environmental Violation occurs when any federal, state, or local governmental entity or other applicable environmental permitting authority has found any portion of the Work or Contractor's performance thereof to be in violation of any environmental permit or other applicable federal, state, or local environmental law, regulation, or requirement.

2. Safety Violation occurs when any federal, state, or local governmental entity or other applicable authority has found any portion of the Work or Contractor's performance thereof to be in violation of any applicable federal, state, or local safety law, regulation, or requirement.

3. Violations of Title VI, equal employment opportunity laws, or non-discrimination laws occur (a) when any federal, state, or local governmental entity or other applicable authority has found the Contractor or any subcontractor to have been in violation of Title VI, equal employment opportunity law or non-discrimination law, or (b) when District or an investigator hired by District determines that sufficient facts exist to

support a prima facie violation of Title VI, equal employment opportunity law or non-discrimination law regulation or policy applicable to this Contract.

7.15 TEMPORARY EROSION AND SEDIMENTATION CONTROL

The Contractor shall plan for and implement all necessary temporary measures shown in the Contract Documents, or as required to prevent pollution of soil and water, and control, respond to, and dispose of potential pollutants or hazardous materials until Acceptance of the Work. The Contractor shall comply with requirements set forth in any federal, state, or local permits. The Contractor shall meet or exceed all requirements of the permits. Within thirty (30) days of Notice to Proceed and before any site work is performed, District will transfer coverage, for the entire site of the Work, under the permit to the Contractor as the New Permittee.

7.16 CRITICAL AREAS

The Contractor shall protect all identified critical areas within and adjacent to the work area at all times. Critical areas are defined in applicable Contract Specification and include wetlands, streams, tributaries, buffers, designated wildlife habitat, wildlife habitat corridors, significant trees and other critical (or sensitive) areas. Only those critical areas specifically designated to be affected may be affected. In the event that additional critical areas are discovered at, near, or on the Site, the Contractor shall verbally notify the District Project Manager within twenty-four (24) hours. Contractor shall also, within seven (7) days, provide written notice in the manner prescribed by this Contract. If directed by the District Project Manager, the Contractor shall immediately suspend any construction activity that would be in violation of any applicable permits issued for the Contract or Project. Any such suspension of the Work shall remain in effect until permission to proceed has been obtained by District from the appropriate permitting agency. In such an event, District will work with the Contractor to develop a work-around plan to mitigate any delay and disruption to the Contractor's Work, and Contractor shall use best efforts to mitigate any such delay or disruption. Compensation for the work-around plan will be made in accordance with the Contract Documents in accordance with Article 4, Changes and Change Order Process.

7.17 NOXIOUS WEED AND PEST CONTROL

District is dedicated to controlling and limiting the spread of noxious weeds and pests by implementing an Integrated Pest Management (IPM) program. The IPM program is an effective and environmentally sensitive approach to pest management and control that relies on a combination of common-sense practices using current, comprehensive information on the life cycles of pests and their interaction with the environment, pest-resistant varieties, biological controls, physical techniques, and strategic use of pesticides. This program, in combination with available pest control methods, is used to manage pest damage by the most economical means, with the least possible hazard to people, property, and the environment. IPM takes advantage of all appropriate pest management options including, but not limited to, the judicious use of pesticides or those pesticides that are produced from natural sources, as opposed to synthetic chemicals. Contractor acknowledges the importance of the IPM program and shall use best efforts to comply with the requirements of the IPM program, as set forth in the applicable Contract Specifications.

7.18 TAXES

A. Retail Sales Taxes - District is NOT exempt from retail sales tax.

B. Federal Excise Taxes - District is exempt from Federal Excise Taxes and an exemption certification will be furnished upon request.

C. Other Taxes - The Contract Price includes all other taxes applicable to the Contractor's completion of the Work, including without limitation, B&O taxes applicable to all tiers performing the Work.

D. No increase will be made to the amount to be paid by District under this Contract because of any misunderstanding by or lack of knowledge of the Contractor as to liability for, or the amount of, any taxes for which the Contractor is liable or responsible by law or under this Contract.

7.19 LIENS PROHIBITED

The Contractor shall not permit any lien or claim to be filed or prosecuted against District, its property or its right-of-way on account of any labor or material furnished or any other reason for work arising out of this Contract. If any lien shall be filed, the Contractor shall satisfy, discharge and extinguish or cause such lien to be satisfied, discharged and extinguished immediately, including at District's option obtaining a court order extinguishing the lien, as a condition precedent to final payment.

7.20 ARCHAEOLOGICAL FINDS

The Contractor shall comply fully with the requirements set forth in Chapter 27.53 RCW-- Archaeological Sites and Resources. The Contractor shall immediately notify District if any artifacts, skeletal remains, or other archaeological resources (as defined under RCW 27.53.040) are unearthed during excavation or otherwise discovered on the Site. If directed by the District Project Manager, the Contractor shall immediately suspend any construction activity that would be in violation of Chapter 27.53 RCW. The suspension of Work shall remain in effect until permission to proceed has been obtained by District from the State Historic Preservation Officer or private landowner, as applicable. If this should occur, District will work with the Contractor to develop a work-around plan to minimize disruption to the Contractor's work and schedule. Such suspension and/or work-around plan may allow the Contractor an adjustment in Contract Time or Contract Price, in accordance with Article 4, Changes and Change Order Process. District shall have sole and exclusive title to any discovered articles.

7.21 ENDANGERED SPECIES

In the event that there is a discovery at, near, or on the Site of species listed as threatened or endangered under the federal or state endangered species acts that were not identified and discussed in the Condition of Biological Assessment provided by District, District will work with the Contractor to develop a work-around plan to mitigate the delay and disruption to the Contractor's Work. Compensation for the work-around plan will be made in accordance with the Contract Documents in accordance with Article 4, Changes and Change Order Process.

7.22 HAZARDOUS OR CONTAMINATED SUBSTANCES

A. The Contractor shall conduct its Work to meet the requirements set forth in the Contract Documents and any applicable laws or regulations regarding Hazardous or Contaminated Substances encountered on the site or during performance of the Work, regardless of whether the presence of such materials was anticipated in the Contract Documents.

B. If the Contractor encounters suspected Unknown Hazardous or Contaminated Substances, the Contractor shall give immediate oral notice to District, followed by written notice in accordance with Article 4.11, Differing Site Conditions. The Contractor shall comply with the requirements contained in the Specifications regarding Unknown Hazardous and Contaminated Substances. If any materials prove, through investigation, to contain hazardous or contaminated substances, District may direct that the materials be removed (1) by requiring the Contractor to perform the Work in accordance with all applicable laws and regulations, or (2) by making arrangements with third parties to do the Work, in which case the Contractor must cooperate with any such third parties. Except as provided below, the Contractor will be entitled to an equitable adjustment for extra work performed under this provision. Such compensation will be made under the Provisional Item for Unknown Hazardous and Contaminated Substances. If a provisional item is not provided in the Contract, compensation and time adjustments will be made in accordance with Article 4, Changes and Change Order Process and Article 10, Delays and Claims.

C. Contractor's Operations - Throughout the performance of this Contract, the Contractor shall be responsible for preventing a release or the spread of hazardous and/or contaminated substances as a result of the Contractor's operations.

1. Any Hazardous or Contaminated Substances generated by or used by the Contractor during the course of performance of the Work or otherwise resulting from the Contractor's Work shall be the sole responsibility of the Contractor. The Contractor shall be responsible for properly handling, storing, using, and disposing of any and all such Hazardous or Contaminated Substances in accordance with all applicable federal, state, and local laws, regulations, or permit requirements.
2. In the event of release of Hazardous or Contaminated Substances, the Contractor shall immediately notify District and shall take all appropriate measures, consistent with protecting the health and safety of Contractor personnel, District personnel, and the public, to stop the spread of any hazardous and/or contaminated substances.
3. The Contractor shall promptly clean up and dispose of materials containing Hazardous or Contaminated Substances resulting from the release to the satisfaction of District and in accordance with the governing regulatory agencies and all applicable federal, state, and local laws, regulations, and permits. District shall be responsible for the reporting of all reportable releases to federal, state, and local regulatory and emergency response agencies.
4. The cost of cleanup and disposal of hazardous or contaminated material that is negligently released by the Contractor during performance of the Work shall be borne by the Contractor.
5. Except as provided in Article 7.10, Liability and Indemnification, the Contractor shall indemnify and hold District harmless for any and all negligent releases of hazardous or

contaminated materials brought onto the site by the Contractor during the performance of this Contract.

D. Records of Remediation Activities - The Contractor shall keep separate cost records of its clean-up activities on sites where hazardous substances are found. Such records shall include invoices and back up documentation of the costs for investigative, sampling, testing and monitoring activities related to the hazardous substances. The Contractor's records will also include all invoices and back up documentation for the excavation, hauling and disposal of hazardous substances and all other costs related to the Contractor's remediation of hazardous substances. The Contractor's remediation cost records shall be segregated by the parcel number of the site or identified by some other acceptable method for identifying the location of the contamination. The Contractor's system for maintaining cost records for its remediation activities shall be subject to District's review and approval. The Contractor shall make its remediation cost records available to District to review and copy at any time.

7.23 RESPONSIBILITY FOR PRE-EXISTING HAZARDOUS AND CONTAMINATED SUBSTANCES

A. The parties recognize that District may assert that third parties rightfully bear the ultimate legal responsibility for any or all hazardous and contaminated substances which may currently be present on the Site. The parties further recognize that certain state or federal statutes or regulations provide that individuals or firms may be held liable for damages or claims related to hazardous and contaminated substances under such doctrines as joint and several liability and/or strict liability. The parties do not intend for the Contractor to be exposed to any such liability arising solely out of pre-existing Site contamination, whether known or unknown, except for any release or threatened release of a hazardous and contaminated substance which was negligently or recklessly disturbed, removed, or handled by the Contractor, its employees, agents, officers, or Subcontractors, or any other Persons for whom the Contractor may be contractually or legally responsible, in the handling of such hazardous and contaminated substances regardless of the source, origin, or method of deposit of the hazardous substance.

B. For purposes of this Contract only, District shall reimburse the Contractor for, and otherwise indemnify, defend, and save the Contractor harmless from claims, damages, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, arising out of the presence, release, or threatened release of hazardous and contaminated substances on or from the Site, irrespective of whether such substances were generated or introduced on the Site before or after execution of this Contract and irrespective of whether District was aware of, or directly involved in, the generation or introduction of such materials, but specifically excluding from this obligation those conditions for which Contractor has agreed to be responsible as described in this Article.

C. Except for hazardous and contaminated substances for which the Contractor is responsible as described in this Article without contradiction of any assertion by District of third-party liability, and for purposes of this Contract only:

1. The Contractor shall not be required to execute any dangerous waste manifests as a "generator," and
2. Hazardous and contaminated substances encountered in the performance of the Work shall be disposed of, if at all, utilizing an EPA Identification Number or other

appropriate legal device obtained by, and carried in the name of, District or a person designated by District.

D. The obligations set forth in this Article shall not be construed to negate, abridge, or reduce other rights or obligations, which would otherwise exist in favor of a party indemnified thereunder.

E. Without limiting their generality, the indemnities set forth in this Article are intended to operate as agreements pursuant to Section 107(3) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e).

7.24 REMEDIATION OF KNOWN AND UNKNOWN HAZARDOUS AND CONTAMINATED SUBSTANCES

A. The Contractor shall review all reports generated as a result of previous investigations and be prepared to respond to all known hazardous and/or contaminated substances, the presence of underground storage tanks, and other identified environmental concerns, all in accordance with the Contract Documents. Known hazardous and/or contaminated substances and related concerns identified during the studies are shown in the Contract Documents and shall be remediated / mitigated as required in the specifications. Unknown hazardous and/or contaminated substances not identified in these previous studies, but discovered during construction, shall be addressed by District and the Contractor in accordance with the Contract Documents.

B. Contractor Qualifications - The Contractor shall comply with applicable laws and regulations regarding the presence of known or unknown hazardous and/or contaminated substances encountered on the Site or during performance of the Work. This obligation shall require Contractor to conduct appropriate site clean-up activities, in compliance with the Contract Documents. District reserves the right to request and review the qualifications of proposed personnel, Subcontractor(s), equipment or facilities to be used in the performance of this work and to approve or reject them.

7.25 USE OF EXPLOSIVES

A. The use of explosives will not be permitted without the written approval of the District Project Manager. Such approval will be granted only after the Contractor has satisfied the District Project Manager on the safety of the Contractor's proposed operation, protection of the public and compliance with applicable laws and regulations, and the Contractor has obtained the written consent of the authority having jurisdiction.

B. All explosives shall be stored in a secure manner, in compliance with all governmental requirements.

C. The Contractor shall notify each public utility and property owner having structures near the site of the Work of the Contractor's intention to use explosives, sufficiently in advance to enable them to take such steps as they deem necessary to protect their property from injury. Such notice will not relieve the Contractor of responsibility for any damage resulting from the Contractor's blasting operations.

7.26 CONTRACTOR ACQUISITION AND / OR MERGER

If the Contractor executing this Agreement ceases to exist as an independent business entity by means of acquisition by and / or merger with a successor or otherwise, the Contractor shall notify District in writing not less than thirty (30) days prior to the effective date of the circumstance causing the cessation of the independent business status. District reserves the right to take steps to ensure it has contractual privity with the successor. The Contractor shall cooperate with this effort by agreeing to an assignment, a novation, or other document required to transfer the rights and responsibilities of the Contractor to the successor.

7.27 APPLICABLE LAWS AND JURISDICTION

This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington and, to the extent incorporated into (or made applicable to the Work by) the Contract Documents, the laws of the United States of America. Subject to the provisions herein regarding exhaustion of administrative remedies, the Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

ARTICLE 8 INSURANCE

Contractor shall maintain the following insurance issued by insurance companies admitted in the State of Washington and acceptable to the District, with a Best Rating of no less than "B+VII", providing no less than the following coverage and limits. Such insurance shall protect against claims arising from any act or omission of the Contractor or the Subcontractors or by anyone employed directly or indirectly by either of them. Certificates of Insurance shall state that the coverage cannot be cancelled or materially changed without 30 days prior notice to the District:

- A. Commercial General Liability with a limit of \$1,000,000 bodily injury, personal injury and property damage combined per occurrence, with \$2,000,000 aggregate is required. Such insurance shall include contractual, broad form property damage, and fire and water damage legal liability.
- B. Endorsements, naming the District and its officials, employees, agents, and agencies having jurisdiction as additional insured, are required.
- C. Automobile Liability covering all autos with a limit of \$1,000,000 bodily injury and property damage combined per accident.
- D. Evidence of Worker's Compensation.

The District carries builder's risk insurance on its property for the interest of the District only. The Contractor is responsible for any damage, which it may cause. The Contractor may choose to purchase builders risk or other insurance to cover this risk.

ARTICLE 9 PAYMENT

9.01 COMPLIANCE PREREQUISITE TO PAYMENT

A. District shall pay the Contractor for the Work in accordance with the unit prices bid or Schedule of Values as described in Article 9.02, Schedule of Values, depending on the payment method to be used. Payment to the Contractor shall be based upon approval of the payment request by District and the Work performed in conformance with the Contract. District will not approve payments for portions of the Work not performed in full compliance with provisions of the Contract, and applicable laws, ordinances, resolutions, regulations, permits and/or easements, and may withhold such payments to the Contractor in accordance with Article 9.06, Withholding Payments.

B. The Contractor shall be responsible, and have no claim whatsoever against District, for all costs and effects of delays resulting or arising from suspension and/or Stop Work orders issued by District and/or any governmental authority as a result of incidents of non-compliance with the Contract or any laws, ordinances, or regulations by the Contractor and/or its Subcontractors and Suppliers.

9.02 SCHEDULE OF VALUES

The Contractor may be required to submit a Schedule of Values for the Contract Price which is acceptable to District. The initial submittal shall be made within thirty (30) days after issuance of the Notice to Proceed. The Schedule of Values shall be prepared in accordance with the requirements of the Specifications. The Contractor warrants that such values are accurate representations and allocations of the value of each activity on which District may rely. Failure to submit a Schedule of Values that is acceptable to District will delay the processing of progress payments.

9.03 PROGRESS PAYMENTS

Please refer to the IFB Documents, Section 3.5.

9.04 RETAINAGE WITHHELD

Pursuant to RCW 39.08.010, retainage will be withheld from Contractor's payments, and the Contractor's payment and performance bonds must also be conditioned on the payment of: (i) the claims of any person or persons arising under the contract to the extent such claims are provided for in RCW 39.08.010, and (ii) the state with respect to taxes, increases, and penalties incurred on the Work of this Contract under Titles 50, 51, and 82 RCW which may be due.

9.05 WITHHOLDING PAYMENTS

A. The Contractor shall only be paid monies earned by fulfilling its responsibilities under this Contract. Monies shall not be considered earned if any of the following conditions applies:

1. The Work for which the Contractor is claiming payment was not performed in accordance with the Contract;
2. The Contractor's pay request does not contain all the required documentation or is otherwise not in conformance with the requirements of this Contract;

3. There is a good faith dispute over all or a portion of the amount due, in accordance with 39.04.250 RCW;
4. Failure of the Contractor to make payments owed to Subcontractors, or for labor, materials, or equipment;
5. Failure of Contractor to submit Construction Schedule, schedule(s) of value or updated Construction Schedules that are acceptable to District and timely in accordance with the Contract;
6. Failure to maintain progress of the Work in accordance with the accepted Construction Schedule unless such failure is solely caused by District or by Unavoidable Delays, or failure to take necessary steps to regain time or deliver the Work in the prescribed Contract Time;
7. Failure to comply with Contract safety requirements;
8. Imposition of any liquidated damages under the Contract;
9. Defective or Non-Conforming Work;
10. Failure to comply with Governmental Requirements;
11. Third party claims filed or reasonable evidence that third party claims will be filed; and/or Failure to comply with Title VI, Equal Employment Opportunity 12. laws and regulations, or non-discrimination laws and regulations after written notice and direction, in the form of an NCR, from District to comply.

B. In the event District withholds all or a part of a payment for deficiencies in either performance, or in a payment request, District will notify the Contractor in accordance with RCW 39.76. The Contractor shall have the right to correct all deficiencies that are the basis for the withholding and resubmit the pay request at any time for reconsideration.

C. In the event District withholds all or part of a payment because of a dispute, the Contractor may receive the payment by resolving the dispute, or by agreeing to accept the payment tendered by District as full and final resolution as between District and the Contractor to all claims arising from the dispute.

9.06 PROMPT PAYMENT TO SUBCONTRACTORS AND RELEASE OF AMOUNTS WITHHELD FROM SUBCONTRACTORS

A. When the Contractor receives a payment under this Contract, the Contractor shall comply with the following provisions:

1. The Contractor shall pay to each Subcontractor not later than five (5) business days after the receipt of the payment, amounts paid to the Contractor on account of the work performed by the Subcontractor in accordance with the provisions of RCW 39.04.250, unless payment is otherwise excused under the provisions of RCW 39.04.250.
2. If the Contractor fails or neglects to make such payment within five (5) business days, the Contractor shall pay to the Subcontractor interest computed at one percent per month on amounts due for the period beginning on the day after the required payment date and ending on the day on which payment of the amount due is made.
3. The Contractor shall include in each of its Subcontracts a provision setting forth the payment and interest penalty clause set forth in this Article 9.07. In addition, the Contractor shall require its Subcontractors to include such a payment and interest clause in each of their Subcontracts and to require each of their Subcontractors to

include such clauses in their Subcontracts with each lower tier Subcontractor or Supplier. The time limit for payment under all Subcontracts below the first tier shall be five (5) business days.

4. The payment and interest clauses in this Article 9.07 shall not be construed to impair the right of the Contractor or a Subcontractor at any tier to negotiate and include in their Subcontracts provisions related to withholding of part or all of progress payments without incurring any obligation to pay a late payment interest penalty thereon in accordance with the Subcontract agreement.

B. If the Contractor withholds any portion of payments to a Subcontractor during performance of the Subcontractor's work, whether under Washington State law or otherwise, the Contractor shall comply with the provisions in this Paragraph 9.07B to release such withhold monies following satisfactory completion of the Subcontractor's work.

1. The Contractor shall monitor the work of each Subcontractor to ensure such work is consistent with the terms of the subcontract between the Contractor and Subcontractor.

2. The Contractor shall determine that a Subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required in the subcontract and the Contract between District and the Contractor. Upon making such determination, the Contractor shall provide a written notice of such determination to the Subcontractor and submit a copy of the notice to the District Project Manager.

9.07 FINAL PAYMENT

A. District will make Final Payment to the Contractor following Final Acceptance of Work, including submittal of "Affidavits of Wages Paid" for the Contractor and each Subcontractor approved by the Industrial Statistician of the Washington State Department of Labor and Industries. Final Payment shall include the entire sum found to be due hereunder after deducting therefrom such amounts as the terms of this Contract permit. Prior estimates and payments, including those relating to extra work or work omitted, shall be subject to correction by the Final Payment. Final Payment will be made only for materials actually incorporated in the Work; and, all materials remaining for which progress payments have been made shall revert to the Contractor, unless otherwise agreed, and progress payments made for these items shall be deducted from the Final Payment for the Work.

B. By accepting Final Payment, the Contractor shall be deemed thereby to have released District from all claims of Contractor and all liability to the Contractor for things done or furnished in connection with the Work and for every act and neglect of District and others relating to or arising out of the Work. Payment by District shall not release the Contractor or its surety from any obligation under the Contract or under the Performance and Payment Bonds, which obligations shall continue through the Contract Warranty period.

9.08 PAYMENT ON TIME AND MATERIAL BASIS

A. Direct Labor

1. For all labor, foreman and below, engaged in the extra work subject to this Article, the Contractor shall receive:

- a. The applicable prevailing wages paid on the Contract for each hour that labor is actually engaged in changed work.
 - b. The cost of the payroll taxes and unemployment compensation premiums.
 - c. The cost of any health, welfare, pension, or collective bargaining agreement benefits paid, including Worker's Compensation.
2. No overtime will be allowed, unless written authorization has been given by District.

B. Materials

For all materials and prices approved by District used in the extra work subject to this Article, the Contractor shall receive the cost of material, including freight charges and Washington State Sales Tax (if applicable), as shown by the receipted bills for materials and freight.

C. Equipment

1. For all construction and automotive equipment required in the performance of the extra work subject to this Article, payment for the use and operation of equipment (owned, leased or rented on a monthly basis by the Contractor) shall be made by District under the provisions of this Article. Such charge shall not include any item of equipment or tool with a new cost of less than \$500.
2. For Work being performed pursuant to these time and material provisions, reimbursement shall fall into one of two types of equipment ownership (Owned or Rental) and two categories of usage: operated equipment, and standby equipment.
 - a. Owned Equipment is defined to include that equipment, owned by or under a lease/purchase or lease/option to purchase agreement with the Contractor, a constituent member of the Contractor, or an entity owned and/or controlled by the Contractor or one of its constituent members.
 - b. Rented Equipment is defined to include equipment that is on a short-term rental, long term rental, or lease. Equipment that is on a lease/purchase or lease/option to purchase agreement will be considered as Owned Equipment. If Owned Equipment is not available and Rented Equipment necessary to perform the changed Work is obtained from an outside source, payment for the "ownership" aspect of the cost will be made as stipulated below. In addition, if the rental rate does not include an "operation" component, the Contractor shall be reimbursed for the estimated hourly operating costs as provided below. The Contractor shall be responsible for monitoring the use of such rental equipment to obtain the overall best rates for its utilization. The Contractor shall use its best efforts to minimize the overall cost of such rentals to District.
3. Cost Computations for Owned Equipment:
 - a. The basis for cost computations for operated Owned Equipment shall be as stated in the Cost Reference Guide for Construction Equipment (CRG) by Primedia Information, Inc. or its successor. The CRG version that shall be used will be that which is in effect at the time of performance of the Work. The equipment costs shall be calculated as follows:
 - (1) Charges to District for the "ownership" component of the equipment shall be computed and charged to yield the hourly rate based on the sum

of depreciation, cost of facilities capital, and overhead components of the CRG for said equipment.

(2) After eight (8) hours of equipment use in a twenty-four (24) hour period, and after forty (40) hours of equipment use in a week, the equipment "ownership" rate shall be 50 percent of the rate established in Subparagraph (1) above.

(3) The costs of fuel, lubricants, tires and other expendables, repairs, parts, service, maintenance, and overhaul (the operating cost) shall be charged at the sum of the Total Operating Cost/Hour plus the Overhaul Costs/Hour (which shall collectively be referred to hereafter as the "Operating Cost/Hour") set forth in the CRG. This rate shall be paid only for hours that the equipment is operated in performance of the changed Work that is subject to these time-and-materials provisions. If the item of equipment is electrically powered with the electricity being supplied by a public utility and if the CRG does not have an electrical fuel cost per hour component in the Operating Cost/Hour, the cost of electricity to operate the equipment will be calculated and submitted to District for approval. The approved rate shall be added to and become a part of the "Operating Cost/Hour."

(4) The application of any adjustment factors is hereby excluded.

(5) Normal working conditions will be assumed and used as the basis for the rate calculation.

(6) Equipment Operators will be paid for as direct labor under Paragraph 9.08A, Direct Labor, above and are not part of the calculated rate for equipment. Compensation for equipment mechanics, oilers (not assigned to a specific item of equipment on a full time basis), and other indirect support (labor or equipment) for the equipment fleet is included within the equipment rates otherwise established herein.

(7) Transportation costs to and from the work Site for equipment mobilized to the Site specifically to perform the changed Work, if approved in advance by District, will be paid as an item to be billed to District. This cost will be treated as a Service when performing the markup calculations. No separate payment for transportation costs will be made if the equipment is brought to the Site for other than changed Work.

(8) If a rate is not provided in the CRG, and the Contractor and District cannot otherwise arrive at a mutually agreeable rate for its use, the Contractor shall furnish appropriate equipment and cost information to District. District will calculate an appropriate rate following the principles established in the CRG.

(9) If practicable under the circumstances, all equipment rates shall be established in writing before commencing any changed Work. If it is necessary to employ such equipment in performance of the changed Work before it is practicable to provide rates to District, the Contractor

shall provide rates at the earliest opportunity available to it without hindering the prosecution of the Work.

b. For Owned Equipment on standby in the performance of the extra work subject to this Article, if approved by District, the standby rate will be only the ownership portion of the applicable rate. The total standby cost per day will be based on the number of hours that the equipment is on standby in the performance of the changed Work. The standby hours will be calculated as follows:

(1) The total standby hours per day will be a maximum of eight (8) hours less the operating hours paid as a result of the changed Work and less the hours that the item of equipment was or could have been used on other changed or non-changed Work and less any hours that the equipment was in a "non-operational" condition, as determined and approved by District.

(2) The total standby hours per week will be a maximum of forty (40) less the operating hours paid for the changed Work and less the hours that the item of equipment was or could have been used on other changed or nonchanged Work and less any hours that the equipment was in a "nonoperational" condition, as determined and approved by District.

4. Cost Computation for Rental Equipment

a. For Rented Equipment that is operated in the performance of the extra work subject to this Article, the cost shall be calculated as follows:

(1) The ownership rate per hour shall be calculated by dividing the invoiced amount by the normal hours covered by the invoice. If the normal rental period would be by the month, then District shall not approve rental invoices submitted on a weekly, daily or hourly rate basis or allow ownership rates to be calculated on any rate other than a monthly rate. The same logic shall apply for a normal rental period of a week or a day.

(2) If the invoice is based on a single shift of operation, then after eight (8) hours of equipment use in a twenty four (24) hour period, and after forty (40) hours of equipment use in a week, the equipment "ownership" rate shall be 50 percent of the rate established in Sub-paragraph (1) above.

(3) The costs of fuel, lubricants, tires and other expendables, repairs, parts, service, and maintenance (the "operating" cost) shall be charged at the Total Operating Cost/Hour set forth in the CRG unless the rental invoice is for equipment which is "operated and maintained", in which case there will be no additional payment for operating costs. This rate shall be paid only for hours that the equipment is operated in performance of the changed Work that is subject to these time-and-materials provisions. If the item of equipment is electrically powered with the electricity being supplied by a public utility, the cost of electricity to operate the equipment will be calculated and submitted to District for

approval. The approved electrical cost per hour shall be added to and become a part of the "Total Operating Cost/Hour".

(4) The application of any adjustment factors is hereby excluded.

(5) Normal working conditions will be assumed and used as the basis for the rate calculation.

(6) Equipment Operators will be paid for as direct labor under Paragraph 9.09A, Direct Labor, and are not part of the rate calculated for rented equipment unless the rental invoice is for equipment which is "operated and maintained", in which case there will be no additional payment for equipment operators and/or oilers. Compensation for equipment mechanics, oilers (not assigned to a specific item of equipment on a full time basis), and other indirect support (labor or equipment) for the equipment fleet is included within the equipment rates otherwise established herein.

(7) Transportation costs to and from the work Site for equipment mobilized to the Site specifically to perform the changed Work, if approved in advance by District, will be paid as a discrete item to be billed to District. This cost will be treated as a Service when performing the markup calculations. No separate payment for transportation costs will be made if the equipment is brought to the Site for changed Work and is also used on Contract Work items.

(8) If a rate is not provided in the CRG and the Contractor and District cannot otherwise arrive at a mutually agreeable rate for its use, the Contractor shall furnish appropriate cost information to District. District will calculate an appropriate rate following the principles established in the CRG.

(9) If practicable under the circumstances, all equipment rates shall be established in writing before commencing any changed Work. If it is necessary to employ such equipment in performance of the changed Work before it is practicable to provide rates to District, the Contractor shall provide rates at the earliest opportunity available to it without hindering the prosecution of the Work.

b. For Rented Equipment on standby in the performance of the extra work subject to this Article, if approved by District, the rate per hour to be paid will be only the ownership portion of the applicable rental rate as calculated above. The total standby cost per day will be based on the number of hours that the equipment is on standby in the performance of the changed Work. The standby hours will be calculated as follows:

(1) The total standby hours per day will be a maximum of eight (8) hours less the operating hours paid as a result of the changed Work and less the hours that the item of equipment was or could have been used on other changed or non-changed Work and less any hours that the equipment was in a "non-operational" condition, as determined and approved by District.

(2) The total standby hours per week will be a maximum of forty (40) hours less the operating hours paid for the changed Work and less the hours that the item of equipment was or could have been used on other changed or non-changed Work and less any hours that the equipment was in a "nonoperational" condition, as determined and approved by District.

D. Markups-Percentage Allowances

The Contractor will be permitted to apply overhead and profit markups, not exceeding the percentage stated herein, to its increased cost resulting from any change in the Work ordered by District for which payment is to be made under the time-and-material provisions of this Contract. These overhead and profit markups are maximum allowable percentages subject to reduction by audit.

Markup allowable at the tier for the entity performing the extra work with its own forces, whether the Contractor or a Subcontractor at any tier, shall not exceed 15% of total direct costs of the changed Work. The Contractor's markup allowable to cover the overhead and profit for Work performed by a Subcontractor shall not exceed 6% of the Subcontractor's cost. In no event shall the combined overhead and profit markup paid to Contractor and first tier Subcontractors exceed 21%, unless the work is performed by Subcontractors at the second-tier or lower, in which case an additional 6% markup is allowed at each tier. The markup allowance made shall constitute compensation for all management and supervision above the foreman level, sing and surveying, safety, administration; use of equipment and tools costing \$500 or less; all administrative and overhead expense; insurance premiums not paid herein; profit; other indirect expense; losses of all kinds; home office overhead expense; and all other items of cost not specifically designated herein as items for which specific payment is to be made. No other reimbursement, compensation, or payment will be made for any such services, costs, or other items.

E. Time and Material Records and Invoices

1. All charges related to Time and Material Work authorized by the District Project Manager shall be tracked on a daily basis. The Contractor shall complete a comprehensive Time and Material work report form, furnished by District or alternate approved by District, which details all the labor, services, material and equipment utilized in the course of completing the Time and Material Work. The report shall itemize the materials used, and shall cover the direct cost of labor and materials, and the charges for equipment rental and operation, whether furnished by the Contractor, Subcontractor or other force. The daily report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked; quantity, type and cost of materials used; and also the size, type, and identification number of equipment; the hours operated, and the hours of District authorized standby.
2. All charges related to Time and Material Work shall be verified in the field by District at the end of each Work shift. The Contractor shall complete a field report at the end of each shift that itemizes and summarizes all the charges. The report shall be signed by the Contractor's Representative and, upon verification by District, copies of the signed report shall be provided immediately to District's representative. The signature of

District's Inspector shall not be construed as acceptance of the Work or approval of the value invoiced by the Contractor. The District Project Manager shall have the authority to review the charges related to Time and Material Work for reasonableness and efficiency, and to determine if the work for which the Time and Material reports have been submitted is in fact extra work. In the event that certain charges are deemed unreasonable or unnecessary for the Time and Material Work being performed by the Contractor, the District Project Manager shall direct the Contractor to delete such charges from the Time and Material Work Records. Evidence of District's verification of all field reports shall be submitted by the Contractor with its draft invoice.

3. Invoices for Time and Material Work shall show, in payroll form, the dates, names, hours worked each day, rates of pay, and amounts paid for each individual employed on such Work and shall give in detail the nature of the Work performed by each employee.

4. Invoices for materials and services shall be fully itemized showing dates of delivery, quantities, unit prices, amounts, and discounts, and shall be accompanied by photocopies of vendor invoices covering each item. Such invoices shall be submitted with the daily report sheets. If invoices are not available, they shall be submitted with subsequent daily report sheets; however, except as provided by law, no payment shall be made for material charges until valid copies of vendor's invoices are submitted. Should said vendor's invoices not be submitted within sixty (60) days after the date of delivery of the material or fifteen (15) days after completion and acceptance of the Work, whichever comes first, the District Project Manager reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available in the quantities concerned delivered to the location of the Work, less any discounts provided in these General Conditions.

5. Invoices for Owned or Rented Equipment charges shall be fully itemized showing a complete description including size and capacity of equipment, number of hours operated and/or number of hours at District ordered standby for each day, the hourly rates being charged to District for both ownership and operating elements, and the total amount charged, for each individual piece of equipment used. If rates were not preapproved by District as specified herein, the Contractor shall also include the rate computation and appropriate back-up materials as described herein.

6. Invoices for Time and Material Work shall be prepared and submitted in accordance with the payment procedures outlined in this Contract. All invoices, payrolls, and other documents which support the invoice for the Time and Material work shall be submitted with the progress payment request, shall state the Contract number, and Contract Item under which the Work was performed.

7. Failure to present complete Time and Material records and invoicing in proper form after the close of the month in which the time and materials Work was performed shall constitute a waiver by the Contractor of its right to present such a billing or invoice thereafter or to receive payment therefore, unless the Contractor promptly corrects and resubmits the Time and Material Records and District approves the re-submittal.

F. The District Project Manager will compare the District Project Manager's records with the daily report sheets furnished by the Contractor, make any necessary adjustment, and adjust the costs of work paid for on a Time and Material basis on the Time and Material Work forms.

When these daily reports are agreed upon and signed by both parties, they shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit.

G. Payment as provided in this Article shall constitute full compensation to the Contractor for performance of work paid for on a Time and Material basis and no additional compensation will be allowed therefore.

H. The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work paid for or required to be paid for on a Time and Material basis and the costs of other operations.

9.10 PROVISIONAL SUM WORK

A. No Provisional Sum Work will be performed, or paid for, without prior issuance of a Provisional Sum Authorization (PSA).

B. District may, without request from the Contractor, issue a PSA for work to be performed under a Provisional Sum Contract Pay Item.

C. If the Contractor believes that a PSA is required, the Contractor shall notify District. District will:

1. Issue a PSA; or
2. Request additional information; or
3. Make a written determination that the event or condition does not justify a PSA.

D. The Contractor shall maintain records and invoices for all costs associated with the Provisional Sum Work in accordance with the requirements specified in Section 9.09 Payment on Time and Material Basis.

E. Any potential time impacts arising from Provisional Sum Work shall be resolved in accordance with Article 4, Changes and Change Order Process, and Article 10, Delays and Claims.

ARTICLE 10 DELAYS AND CLAIMS

10.01 CLAIMS

A. Notice of Intent to Claim

1. In order to receive any recovery or relief in connection with the Contract, the Contractor must submit a written Notice of Intent to Claim to District through the District Project Manager in accordance with the provisions of this Article. Written Notice as provided herein shall be a condition precedent to the Contractor's right to recover on a claim, and failure to comply with these requirements shall constitute a waiver by the Contractor on any right, equitable or otherwise, to bring any such claim against District.

2. The written Notice of Intent to Claim shall set forth:

- a. Detailed description of the facts and/or conditions giving rise to the Contractor's demand for additional compensation;
- b. nature of the costs involved;
- c. the Contractor's plan for mitigating such costs; and
- d. the Contractor's best estimate of the amount of the potential claim, and
- e. the Contractor's best estimate of Critical Path(s) impacts.

3. The Notice shall be submitted within ten (10) days after the event or occurrence giving rise to the potential claim, or the denial of a Request for Change or the issuance of a Unilateral Change Order by District. However, if the event or occurrence is claimed to be an act or omission of District, a Notice of Intent to Claim shall be given by the Contractor within ten (10) days after the Contractor discovers the act or omission and prior to the time for performance of that portion of the Work to which such alleged act or omission relates.
4. The notice requirements of this Article are in addition to any other notice requirements set forth in the Contract.

B. Claims

1. General

- a. The Contractor shall file all claims within sixty (60) days of the submission of the Notice of Intent to Claim, with a detailed factual statement of the Claim providing at minimum (i) all necessary details, locations and items of Work affected, (ii) the specific causes(s) of the Claim or alleged damages sustained, (iii) an explanation as to how Contractor diligently attempted to mitigate its damages for the Claim, (iv) copies of documents Contractor believes support the Claim, (v) all cost records meeting the requirements of Article 3.03, and (vi) if the claim seeks an extension of the Contract Time, the specific days and dates sought and Contractor's analysis of the Contract Schedule demonstrating entitlement to the time extension. When requested by District, the Contractor shall submit such further information and details as may be required to determine the facts and contentions involved in said claim. The Contractor shall give District access to its books, records, and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that District can investigate said claims. The Contractor shall provide District, on request, with copies of all such books, records, and other material determined to be pertinent to the claim.
- b. Failure to submit the detailed factual statement described above will result in rejection of the Claim.
- c. Each claim the Contractor submits for an adjustment that is related to a delay for any cause shall be accompanied by:
 - (1) a revised construction schedule reflecting the effects of the delay; and
 - (2) proposals to minimize these effects.
- d. If the Contractor fails to submit any Claim in writing in the time and manner specified herein, it shall waive any relief that might otherwise be due with respect to such claim. Depending upon the grounds for the relief and the nature of the relief sought, additional information and/or conditions of submittal may be specified elsewhere in this Contract.
- e. At all times during the course of claim evaluation or dispute resolution, the Contractor agrees to continue to perform the Work with due diligence and in accordance with the Contract, unless a Stop Work Order has been issued by District. In the event the disputed matter impedes continuing performance, the Contractor shall inform District in writing of the impediment and seek direction

as to how to proceed. If the Contractor fails to provide such notice to District, it shall be assumed that the Contractor is proceeding with performance of the Contract.

f. Compliance with the cost record requirements is a condition precedent to making of any Claim for recovery of any costs or damages related to or arising from performance of the Contract or the Work. In the event Contractor or any Subcontractor or Supplier seeks to make a Claim without complying with such requirements (inclusive of Article 3.03), such Claim is deemed waived and no adjustment shall be made to the Contract Price or Contract Time with respect to such Claim.

g. Both parties have a duty to take all reasonable steps necessary to mitigate losses resulting from the dispute whether those losses are their own or another party's losses.

h. All claims filed by Contractor shall be verified under penalty of perjury by an officer or principal authorized to act for Contractor (or, in the case of claims made by or for the benefit of any Subcontractors, by an authorized officer or principal of both Contractor and Subcontractor) containing a sworn certification that the Claim is made in good faith after the exercise of reasonable diligence and investigation, that the supporting cost and pricing data are true and accurate based upon reasonable investigation, that the Claim is fully supported by accompanying data and accurately reflects the adjustment in the Contract Price and/or Contract Time for which Contractor believes District is liable, and that in the event the Claim proceeds to alternate dispute resolution or litigation that the Claim amount will not exceed the amount set forth in the Claim.

2. Claims Processing

a. The Contractor shall submit its claim in writing to the District Project Manager for evaluation and resolution. District shall respond within sixty (60) days after receipt of the claim. District may request in writing, within thirty (30) days of receipt of the claim, that the Contractor provide any additional documentation that may be required to support the Contractor's claim or documentation that may relate to defenses or claims District may have against the Contractor. District shall respond in writing to the Contractor's claim including any additional documentation as requested by District, within either thirty (30) days of receipt of said additional documentation, if the Contractor responds during the initial sixty (60) day period, or within a period no longer than that taken by the Contractor in producing the additional documentation, whichever is greater. In no event shall the extension of the response time resulting from District's request for additional documentation and the Contractor's response time be deemed to waive any statutory limits or rights to District.

b. If the claim is found to have merit, the settlement will be negotiated in compliance with Article 4, Changes and Change Order Process.

3. Claims Two Hundred Fifty-Thousand Dollars (\$250,000) and Less If District finds the claim not to have merit, the Contractor may, within ten (10) calendar days of receipt of the finding, submit written appeal to District. The finding on the appeal will be provided

in writing within sixty (60) calendar days unless a longer review period is deemed necessary, in which case the Contractor will be notified of the response period within the initial 60 days after the appeal.

4. Claims Over Two Hundred Fifty-Thousand Dollars (\$250,000)

- a. If District finds the claim not to have merit the Contractor may, within ten (10) calendar days of receipt of the finding, submit the claim for dispute resolution in accordance with Article 11, Dispute Resolution.
- b. If the Dispute Resolution process finds the claim to have merit and if both parties accept the finding, District and the Contractor will negotiate the terms and value of a Change Order in accordance with Article 4, Changes and Change Order Process.

5. In no event shall any claims be made after Final Acceptance is issued. Failure by the Contractor to submit claims in a timely manner shall result in a waiver by the Contractor as to such claims.

6. Failure to comply strictly with the notice and other procedures set forth in the Contract Documents shall bar the Contractor from asserting any claim or right to compensation, damages, schedule extension, or any other relief.

10.02 DELAYS

A. Liquidated Damages

1. For each and every day that Contractor fails to achieve a designated Contract Milestone, as specified in the IFB Documents or Standards, damage will be sustained by District. These

damages may include, but are not necessarily limited to the following:

- a. Delays in completion and operation of school buildings;
- b. Increased costs of Contract administration, engineering, inspection, and other District functions related to the design and construction of the Project;
- c. Costs resulting from delays to interfacing Contractors;
- d. Costs resulting from impacts to public utilities; and
- e. Costs of maintaining temporary facilities.

2. Because of the difficulty in computing the actual material loss and damages to District, it is determined in advance and agreed by the parties hereto that the Contractor will pay District the amount(s) set forth in the below:

In the event the project is delayed, beyond the scheduled final completion date, due to Contractor actions. The LD's will be assessed at \$250/day for the first seven (7) calendar days past the final completion date, and \$500/day thereafter. The schedule will be adjusted to compensate for acts of God delays (fires, floods, earthquakes, etc.) that directly affect the installation of the fiber cable in that area. Liquidated damages will not apply for the length of the acts of God delay. Liquidated damages will not be assessed due to engineering delays that result in a schedule adjustment.

The execution of this Contract shall constitute acknowledgement by the Contractor that it has ascertained and agreed that District will actually suffer damages in the amount

herein fixed for each and every day during which the completion of the Work or portions thereof is avoidably delayed beyond the specified time(s).

3. District may deduct assessed liquidated damages from any monies due or that may become due to the Contractor under the Contract. If such deducted monies are insufficient to recover the liquidated damages owing, the Contractor or the Contractor's surety or sureties shall pay to District any deficiency within thirty (30) days after completion of the Work.

4. Where liquidated damages for contractor-caused delays are applicable, District shall not seek actual damages for delay; however, to the extent liquidated damages are not applicable, District reserves all other rights and remedies provided by law or under this Contract.

B. Extension of Time for Certain Delays

1. Notice of Delay or Potential Delay. Immediately, but in any event no more than five (5) days, after the Contractor foresees or should foresee a delay or a potential delay in the prosecution of the Work or upon the occurrence of a delay or potential delay that the Contractor regards as Unavoidable or compensable, the Contractor shall provide notice to District of such delay or potential delay. Within five (5) days of such notice the Contractor shall provide in writing the extent of the delay, the specific impacts and effects of the delay on critical path activities and the Construction Schedule, and its cause. The notice requirement in this Paragraph 10.02B.1 is in addition to notice required by other parts of this Contract, inclusive of Article 4.02. At a minimum the written notice under this Paragraph shall include:

- a. The facts underlying the potential delay;
- b. The nature of any additional costs which may be caused by the potential delay;
- c. The nature of any additional time which may be needed;
- d. The Contractor's plan for mitigating such costs and delay; and
- e. An estimate of the cost impacts due to the delay or the potential delay and an estimate of the time extension required for mitigation, along with all substantiating facts and supporting data.

2. The Contractor shall take immediate steps to prevent, if possible, the occurrence or continuance of the delay. If this cannot be done, the Contractor and District will determine how long the delay will continue and to what extent the prosecution and completion of the Work are being or will be delayed thereby. District will also determine whether the delay is to be considered Avoidable or Unavoidable and notify the Contractor of District's determination.

3. Compliance with the notice requirements of this Article shall be a condition precedent to the Contractor's claim for delay. The Contractor agrees that no claim shall be made for delays for which timely written notice, as specified above, is not made to District.

C. Avoidable Delays

1. Avoidable Delays in the prosecution of the Work shall include delays to the critical path of the Work that could have been avoided by the exercise of due care, prudence,

coordination, foresight and diligence on the part of the Contractor, its Subcontractors, or its Suppliers at any tier. Examples of Avoidable Delays include, but are not limited to:

- a. Delays that may in themselves be unavoidable but do not necessarily prevent or delay the prosecution of parts of the Work or the completion of the Work within the Contract Time (e.g., fit within the Float time shown on the Construction Schedule(s).)
- b. Time associated with the reasonable activities of District, third party stakeholders or other contractors employed by District that do not necessarily prevent the completion of the Contract within the Contract Time.
- c. Individualized labor actions or strikes within Contractor's control, normal weather conditions, mechanical breakdown, equipment failure, and acts of negligence by the Contractor's forces, including Subcontractors and Suppliers.
- d. Delays in the prosecution of the Work due to:
 - (1) The Contractor's failure to provide sufficient resources, including, but not limited to: personnel, equipment, material, or plant;
 - (2) The Contractor's failure to submit required work products in a timely manner;
 - (3) The Contractor's failure to procure and/or deliver materials and/or equipment in a timely manner.

2. Contractor shall not be entitled to any time extension or additional compensation for any Avoidable Delay. However, District may in its sole discretion grant an extension of time for Avoidable Delay, if District determines that an extension is in District's best interest. Any such discretionary time extension shall be issued through a Change Order.

D. Unavoidable Delay

1. An Unavoidable Delay means a delay to the critical path of the prosecution of the Work that results from causes beyond the control of the Contractor and that could not have been avoided by the exercise of care, prudence, coordination, foresight, and diligence on the part of the Contractor, its Subcontractors or its Suppliers at any tier, and for which no provision is specifically provided in the Contract Documents for managing or mitigating such delay.

2. Examples of Unavoidable Delays include, but are not limited to:

- a. Acts of God.
- b. Fire or other casualty for which Contractor is not responsible.
- c. War.
- d. Riot.
- e. Unusually Severe Weather. Weather conditions shall not be deemed unusually severe if they fall within two (2) standard deviations from the mean of data recorded by the U.S. Weather bureau for the Seattle and Tacoma metropolitan area over the past twenty (20) years. Impacts of on-going weather conditions shall be updated weekly by the Contractor and provided to District. To preclude the difficulties of actual measurement the parties hereto agree that weather data at the Site shall be expressly deemed to be the same as that measured at the Seattle-Tacoma International Airport by the Environmental Data and

Information Service of the National Oceanic and Atmospheric Administration ("NOAA") of the U.S. Department of Commerce.

f. Epidemic.

g. Earthquake.

h. Terrorism.

i. General industry strikes or labor disputes beyond the reasonable control of the Contractor.

3. Extension of Time - For delays that the Contractor has given notice as required by the Contract, and considers to be Unavoidable Delay, the Contractor shall submit to District complete written information demonstrating the effect of the delay on the critical path on the accepted Construction Schedule. The submission shall be made within ten (10) days after the end of the occurrence that is claimed to be responsible for the Unavoidable Delay. District will review the Contractor's submission and determine the number of days of Unavoidable Delay and the effect of such Unavoidable Delay on such critical path. District may grant an extension of time to the extent that Unavoidable Delays necessarily affect the critical path(s) in the Construction Schedule. During such extension of time, liquidated damages will not be charged to the Contractor. It is understood and agreed by the Contractor and District that time extensions due to Unavoidable Delays necessarily involve critical path operations that would prevent completion of the Work, or portion thereof, within the Contract Time. Time extensions shall be issued via a Change Order. Contractor shall not be entitled to any additional compensation or Equitable Adjustment for any Unavoidable Delay.

E. Concurrent Delay

If District determines that there are delays to the project as a result of concurrent delays, District may grant a time extension. However, no compensation will be due to the Contractor for this time extension due to the concurrent nature of delays. Concurrent delay means a situation where both Contractor and District are responsible for delays affecting the critical path where none of the delay events are utilizing available project float. If a delay for which Contractor seeks compensation under Article 10.02F is caused concurrently with either Avoidable Delay or Unavoidable Delay, then District is only responsible for that portion of any compensable delay which it caused in excess of such Avoidable Delay or Unavoidable Delay, provided Contractor is able to prove such apportionment.

F. Compensation for Certain Delays

To the extent that the Contractor proves (a) that the Contractor has been delayed in completion of the Work by reason of changes made by District under these General Conditions, or a Stop Work Order, or a failure by District to comply with its obligations under the Contract; (b) that the Contractor was not concurrently responsible for the delay; (c) that the Contractor has suffered actual losses as a result of the delay; (d) that but for District's actions, the Contractor could not have suffered such actual losses; (e) that the Contractor could not have mitigated such actual losses despite taking all precautionary and remedial actions; and (f) that the delay was not within the contemplation of the Contract; then District shall pay to the Contractor as full compensation for any such delay, and for any actual and real disruption which may have been associated with any such delay which the Contractor can clearly quantify and calculate, the amount of the actual loss as computed in accordance with the Contract

Documents, provided that the Contractor shall strictly comply with the notice and other claims procedures set forth in Article 10.01, Claims. Unless the Contractor satisfies the provisions of this Article, the Contractor's sole remedy for District-caused delay shall be an extension of time under Paragraph 10.02B, Extension of Time for Certain Delays. In no event may Contractor or any of its Subcontractors at any tier recover compensation for unabsorbed home office overhead unless (1) District directs a suspension of indefinite duration due to District-caused circumstances and (2) Contractor and/or its Subcontractors were unable, in the exercise of reasonable care, to reallocate resources so as to mitigate losses or damages.

ARTICLE 11 DISPUTE RESOLUTION

11.01 PURPOSE OF DISPUTE RESOLUTION

The purpose of this Dispute Resolution Article is to provide a structured approach for the parties to resolve disputes fairly at the lowest level possible without incurring significant administrative costs. It is agreed by the parties that the parties shall enter into the dispute resolution process in good faith and that use of the dispute resolution processes for purposes other than resolving a legitimate dispute (e.g. as a delay tactic) shall be evidence of bad faith in the performance of this Contract.

11.02 CONTINUATION OF WORK WHILE DISPUTE RESOLVED

At all times during the course of the Claim, conflict or dispute resolution, the Contractor agrees to continue to perform the Work with due diligence, unless a Stop Work Order under Article 12.01 has been issued by District.

11.03 DUTY TO MITIGATE

Both parties have a duty to take all reasonable steps necessary to mitigate losses resulting from the Claim or dispute whether those losses are their own or another party's losses

11.04 PARTNERING

A. Preventing Conflict

1. The parties agree to use the principles of Project Partnering, collaboration and cooperation to identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes, claims, or legal actions. Such measures should extend to all levels of the Work, including lower-tiered Subcontractors, and may include the following:
 - a. Conducting a one-day workshop to "kick-off" the performance of the Work by introducing the concepts of Project Partnering and holding follow-up workshops at least annually.
 - b. Developing and implementing a Partnering Action Plan devoted to developing and maintaining a collaborative atmosphere on the project at all levels.
 - c. Developing and implementing a Dispute Escalation Process.
 - d. Conducting facilitated, Executive Partnering Sessions among the senior managers of each party to discuss issues related to potential conflicts and to engage in collaborative problem solving.

- e. Conducting training for all parties in teambuilding, collaborative problem solving and conflict resolution skills.
- f. Conducting evaluations of the Project's partnering efforts.
- g. Including language from this Article in contracts for Subcontractors who become involved in the performance of the Work.

2. District will provide the Partnering Facilitator and Facilities. All other costs associated with the Contractor's participation in the partnering program shall be included in the Contract Price.

B. Resolving Conflicts

1. District and the Contractor agree to use their best efforts to resolve disputes arising out of or related to this Contract using good faith negotiations and the principles of Project Partnering by developing and implementing a Dispute Escalation Process that provides for the timely resolution of disputes as close to their point of origin as possible. It is agreed that the foregoing will not negate any of the Contract requirements for providing timely notice and the timely submission of documents that are required elsewhere in the Contract Documents.

2. In the event the parties are unable to resolve their dispute using the Dispute Escalation Process, if a Dispute Review Board (DRB) has been established for this Contract and if the claim is over \$250,000, the dispute shall be referred to a DRB as a condition precedent to mediation. If the claim is \$250,000 or less or, if no DRB has been established for this Contract or, if the dispute remains unresolved after a hearing by and recommendation from the DRB, the dispute shall be referred to mediation as a condition precedent to the commencement of a civil action. For mediation, a mediator shall be chosen that is agreeable to all parties involved in the dispute and such agreement shall not be unreasonably withheld. All statements made by parties involved in the dispute to the mediator shall remain confidential and shall not be disclosed by the mediator in any litigation or other claim proceedings. All parties hereby agree to such terms and signature of the Contract provides written confirmation of these terms.

11.05 DISPUTES REVIEW BOARD

A. A Disputes Review Board (DRB) may be established to assist in resolving claims arising out of this Contract. Disputed claims may be heard by the DRB only after the claims process detailed in Article 10.01, Claims, has been exhausted.

B. The provisions for establishing a DRB, if a DRB is to be utilized in this Contract, will be provided. The form of the Three Party Agreement to be used in establishing a DRB will also be provided.

C. Where no approved DRB is currently established or currently operating, the parties will utilize their best efforts to negotiate resolution of claims in good faith.

11.06 EXHAUSTION OF ADMINISTRATIVE REMEDIES/TIME LIMITATION FOR SUIT

It is the intention of this Article that differences between the parties arising under and by virtue of the Contract shall be brought to the attention of District at the earliest possible time in order that such matters may be settled without a claim being filed, if possible, or other appropriate action promptly taken. The Contractor agrees to defer, in the absence of special written notice

given by District, the commencement of any legal action against District on a matter required to be covered by written Notice of Intent to Claim pursuant to Paragraph 10.01A, Notice of Intent to Claim, until all of the administrative and dispute resolution processes have been exhausted. Contractor may not sue, cross-claim or bring any action of any kind whatsoever against District after the expiration of one hundred eighty (180) days from overall Acceptance, provided, however, that the proper pendency of contract-required dispute resolution procedures shall toll this deadline until thirty (30) days after such contract-required dispute resolution procedure is concluded.

ARTICLE 12 SUSPENSION AND TERMINATION

12.01 STOP WORK ORDER

A. District may at any time and for any reason within its sole discretion issue a written order to the Contractor thereby suspending, delaying, or interrupting all or any part of the Work for a specified period of time ("Stop Work Order"). A Stop Work Order must be in the form of an explicit written Notice and will not be inferred from any oral statement, course of conduct or informal field communication, except in the case of an emergency or exigent safety concern.

B. In the event that it becomes necessary for District to suspend all, or a part, of the Work, District will deliver a written Stop Work Order to the Contractor, which shall describe the following:

1. Identification of the work to be suspended;
2. The date and time upon which the Stop Work Order shall be effective;
3. The period of time during which Work will be suspended, if known;
4. Directions to be taken regarding subcontracts; and
5. Other instructions required to safeguard the Work and to prevent property damage and personal injury.

C. The Contractor shall comply immediately with any written order it receives from District suspending the Work and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of Work stoppage. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction of District.

D. Within the period specified by the Stop Work Order, or within any extension of that period, District may:

1. Terminate the work covered by the Stop Work Order;
2. Cancel the Stop Work Order; or
3. Allow the period of the Stop Work Order to expire.

E. Costs Associated with a Stop Work Order

1. If a Stop Work Order is canceled or the period of the Stop Work Order expires, the Contractor shall resume work.
2. The Contractor may be allowed an increase in the Total Contract Price or an extension of time, or both, directly attributable to any suspension, provided that:
 - a. The Contractor submits a Request for Change in accordance with the requirements of the Contract Documents;

- b. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - c. The Stop Work Order was not caused by Contractor's default or other act or omission within the control or responsibility of Contractor.
 - 3. No adjustment shall be made under this Paragraph for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment or extension of time is provided or excluded under any other term or condition of this Contract.
 - 4. The provisions of this Paragraph shall only apply if a written Stop Work Order is issued by District.
- F. During a suspension of work, Contractor shall take appropriate action to prevent damage to or deterioration of the Work. Contractor shall repair or replace, at no additional cost to District Work that is damaged or deteriorated during a Work stoppage due to Contractor's failure to comply with this Paragraph. If District finds that the Contractor is not taking appropriate action and the Contractor fails to take the appropriate action within the time frame specified by District in written notice to the Contractor, District may take appropriate action and recover from the Contractor the reasonable costs of such action.
- G. In the event that a suspension of the work is ordered, the Contractor shall do all the work necessary to provide any safe, smooth, and unobstructed passageway through construction as deemed necessary by the District Project Manager for use by District, other District contractors, public agencies or their contractors, and/or public traffic during the period of such suspension as specified in the Contract Documents. In the event that the Contractor fails to perform the work above specified, District will perform such work and the cost thereof shall be deducted from payments due the Contractor. If the suspension is due to some failure on the part of the Contractor, all costs and delays shall be at no additional expense to District.
- H. In the event of a suspension of the Work, the Contractor shall not be relieved of the Contractor's responsibilities as set forth in Article 7, Legal Requirements.

12.02 TERMINATION FOR DEFAULT

- A. District will have the right to terminate the Contract in whole or in part, for default, under any of the following circumstances:
- 1. If the Contractor refuses or fails to prosecute the Work with such diligence as will ensure its completion within the Contract Time and any extension thereof;
 - 2. Material failure of the Contractor to perform any obligation required under the Contract or violation of any duty required of the Contractor, including but not limited to the following:
 - a. Violation of an authorized order or requirement of District by the Contractor;
 - b. Abandonment of the Contract;
 - c. Failure of the Contractor to pay its debts owing to any parties performing Work on the Contract, provided that such failure continues for a period of fourteen (14) days after written notice to the Contractor by District;

- d. Failure to comply with any law, ordinance, rule, regulation, or order of a legal authority applicable to the Contractor, the Work, the Contract, or the Project;
- e. Failure to indemnify any party that the Contractor is obligated to indemnify under the General Conditions and other provisions of the Contract;
- f. Failure to replace rejected Work or correct rejected workmanship when directed by District;
- g. Failure to provide required insurance and/or bonds, or proceeds thereof;
- h. Submittal of false or misleading information or Claims to District; or
- i. Disregard of laws, ordinances, rules, codes, regulations, orders, or similar requirements of any public entity having jurisdiction.

3. If the Contractor is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Contractor, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract within fifteen (15) days of receipt of a request for assurance from District.

B. If, in the opinion of District, the Contractor is in default of the Contract, District will issue a Notice of Default to the Contractor and its Surety. If the Contractor fails to remedy or provide assurance acceptable to District of its specific plan and timetable to remedy the default within fourteen (14) days after receipt of such notice, District may terminate the Contractor's right to proceed under all or such part of the Contract as District deems to be in its best interest. District shall furnish written Notice of Termination for Default to the Contractor, upon which date the Termination for Default shall be effective. The Contractor and its Surety shall be liable for any damage to District resulting from the Contractor's refusal or failure to complete the Work in the specified time.

C. Upon receipt of a Notice of Termination for Default from District, the Contractor shall, except as otherwise directed by District:

- 1. Stop all Work under the Contract on the date and to the extent specified in the Notice of Termination for Default.
- 2. Place no further orders or Subcontracts for materials, equipment, or services except as may be necessary for completion of such portions of the Work expressly excluded from the Notice of Termination.
- 3. Communicate any Notice of Termination to the affected Subcontractors and Suppliers, and any other parties at any tier, and take reasonable steps to minimize cancellation charges and other costs arising from termination.
- 4. Terminate all orders and Subcontracts to the extent that they relate to the performance of Work covered by the Notice of Termination or, at the option of District, assign to the Surety or any replacement contractor all such Subcontracts and purchase orders.
- 5. Comply with all other requirements of District as may be specified in the Notice of Termination.

D. Upon District's termination of the Contractor's right to proceed with the Work because of the Contractor's default under the Contract, District shall have the right to complete the Work by whatever means and methods it deems advisable, including transfer of performance of the work from the Contractor to the Surety. District shall have the right to take possession of and use any or all the Contractor's design, goods, plant, tools, equipment, and property of any kind, at the Project, or related thereto, provided by or on behalf of the Contractor to complete the Work or any portion thereof, without being responsible to the Contractor for fair wear and tear. The Contractor shall have no rights in such property during its use by District. District may complete the Work by obtaining the services of another Contractor, or by any other means that District deems in its best interest. District shall have the right to exercise its sole discretion as to the manner, method and reasonableness of the costs of completing the work subject to a reasonable duty to mitigate costs. Materials and equipment for which District has paid any amount to the Contractor may be incorporated in the Work regardless of whether they are stored at the site or elsewhere.

E. The expense of completing the Work together with a reasonable charge for engineering, managerial, and administrative services arising from the default shall be charged to the Contractor. District shall deduct said amount out of any monies that may be due or may at any time thereafter become due the Contractor. In case such expense is in excess of the sum that would otherwise have been payable to the Contractor under the Contract, the Contractor or its Surety shall promptly pay the amount of said excess to District upon notice thereof. District may, at its sole discretion, withhold all or any part of any progress payments or other monies otherwise due the Contractor until completion and final settlement of the Work covered by the Notice of Termination for Default.

F. If District terminates the Contractor for default, the resulting damage shall include, but not be limited to, actual and liquidated damages, any increased costs incurred by District in completing the Work, and amounts paid to third parties by District on account of any claims made against District relating to the Work.

G. If the Contract is terminated for default, District may require that the Contractor transfer title to and deliver the following items to District as directed: any goods, work in progress, tools, dies, jigs, fixtures, plans, drawings, information, contract rights, and other items that the Contractor has specifically produced or acquired for the terminated portion of the Contract and that would have been required to be furnished to District if the Contract had been completed. The Contractor shall also protect and preserve property in its possession at its sole expense in which District has an interest.

H. If, after Notice of Termination for Default, it is determined for any reason that the Contractor was not in default under the provisions of the Contract, or that the Contractor was properly entitled to an extension of time under the provisions of the Contract, the rights, obligations, and remedies of the parties shall be the same as if the Notice of Termination for Default had been issued pursuant to the Article entitled Termination for Convenience.

12.03 TERMINATION FOR CONVENIENCE

A. Upon written notice to Contractor District may terminate the Work under this Contract, in whole or in part, at any time, for the convenience of District.

B. After receipt of a Notice of Termination for Convenience, and unless directed otherwise by District, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

1. Stop performance of Work and meet with District to develop a Termination Work Plan, including a scope, schedule and budget to safely terminate the Contractor's progress of Work.
2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
3. Terminate all Subcontracts or orders to the extent they relate to the work terminated or, at the option of District, assign to the Surety or any replacement contractor all such Subcontracts and purchase orders. Assign to District, as directed by District, all right, title, and interest of the Contractor under the Subcontract(s) terminated, in which case District shall have the right to settle or to pay any termination settlements proposal arising out of those terminations.
4. With approval or ratification to the extent required by District, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontract; the approval or ratification will be final for purposes of this clause.
5. As directed by District, transfer title and deliver to District (1) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (2) the completed or partially completed plans, drawings, information and other property that, if the Contract had been completed, would be required to be furnished to District.
6. Complete performance of any Work not terminated.
7. Take any action that may be necessary, or that District may direct, for the protection and preservation of the property related to this Contract that is in possession of the Contractor and in which District has or may acquire an interest.
8. Use its best efforts to sell, as directed or authorized by District, any property of the types referred to in Sub-paragraph 12.03B.5 above; provided, however, that the Contractor (1) is not required to extend credit to any purchaser and (2) may acquire the property under the conditions prescribed by, and at prices approved by, District. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by District under this Contract, credited to the price or cost of the work, or paid in any other manner directed by District.

C. Payment

In the event of a Termination for Convenience, if such termination occurs after the effective date of the Notice to Proceed, District will pay the reasonable, verifiable direct costs incurred by the Contractor and a reasonable percentage of overhead and profit equal to the percentage of Work performed and accepted before the termination. Reimbursable costs incurred by the Contractor will be determined by taking into consideration the following facts, circumstances and limitations:

1. The budget established for the Termination Work Plan,
2. The physical progress of the Work satisfactorily completed to the effective date of the termination, evaluated against the approved Schedule of Values,

3. Costs of removing equipment and materials and otherwise demobilizing,
4. Costs reasonably incurred in anticipation of performing the Work; provided, said amounts are reasonable, verifiable and directly attributed to the Contractor's performance of the Work,
5. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory,
6. An allowance for profit on Work not executed in a sum (i) not to exceed three percent (3%) of the value of the Work remaining, as determined by the Contract Price Schedule, if the termination occurs prior to the time ten percent or less of the Work is completed, (ii) not to exceed two percent (2%) of the value of the Work remaining, as determined by the Contract Price Schedule, if the termination occurs after ten percent of the Work but less than fifty percent of the Work has been completed or (iii) not to exceed one percent (1%) of the value of the Work remaining, as determined by the Contract Price Schedule, if the termination occurs after fifty percent of the Work has been completed. The payment by District shall constitute full and complete satisfaction and settlement for the Contractor's overhead, anticipated profits, and all other inconvenience, expenses, damages, costs and lost profits whatsoever. Termination for Convenience notwithstanding anything to the contrary set forth herein, the Contractor shall not be entitled to, and District shall not be liable for, any consequential losses or damages incurred by the Contractor including, but not limited to: loss of profits, business opportunity, reputation or financing.

12.04 DISTRICT'S RIGHTS UPON TERMINATION

Upon any termination contemplated herein, District may take over the Work and prosecute the same to completion by agreement with another party or otherwise complete the Work.

12.05 CONTRACTOR'S OBLIGATIONS UPON TERMINATION

Upon receipt of Notice of Termination, the Contractor shall immediately discontinue Work, but shall do such Extra Work as may be ordered by District to safeguard the Work then completed, to safeguard the materials and equipment then delivered to the site and to leave the Work in a safe and useful condition. The Contractor shall promptly deliver, or otherwise make available to District, all Contract Records reasonably necessary for District to complete the Work with its own forces, including but not limited to data, drawings, specifications, as-built drawings, calculations, reports, estimates, summaries, and other such information as the Contractor or Subcontractors may have accumulated in performing this Contract, whether completed or in progress, and all materials and equipment purchased specifically for the Contract where District has reimbursed the Contractor for such costs. The Contractor shall also take all reasonable steps with its Suppliers and Subcontractors to minimize cancellation charges and other costs.

12.06 OWNERSHIP OF EQUIPMENT, MATERIALS AND SUPPLIES UPON TERMINATION

As of the date of termination, all the Contractor's right, title and interest in and to equipment, materials, and supplies ordered by the Contractor prior to the termination (including placement or priority in production runs of materials, equipment, or supplies), whether or not they have been delivered to the site, shall be vested in District and the Contractor shall, upon demand of

District, execute and deliver to District all requisite bills of sale, assignments, and other documents of transfer that may be necessary to give effect to the intention of the termination procedures set forth in this Article.