GENERAL CONDITIONS

for

CONTRACT OF CONSTRUCTION

FOR OHS BASEBALL AND SOFTBALL FIELDS RENOVATIONS PROJECT

OAKDALE JOINT UNIFIED SCHOOL DISTRICT

AUGUST 20, 2026

SUMMARY OF CONTENTS

ARTICLE 1: GENERAL CONDITIONS	1
ARTICLE 2: OWNER	7
ARTICLE 3: THE CONTRACTOR	10
ARTICLE 4: ADMINISTRATION OF THE CONTRACT	30
ARTICLE 5: SUBCONTRACTORS	47
ARTICLE 6: CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS	53
ARTICLE 7: CHANGES IN THE WORK	55
ARTICLE 8: TIME	63
ARTICLE 9: PAYMENTS AND COMPLETION	68
ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY	79
ARTICLE 11: INSURANCE AND BONDS	85
ARTICLE 12: UNCOVERING AND CORRECTION OF WORK	91
ARTICLE 13: MISCELLEOUS PROVISIONS	93
ARTICLE 14: TERMINATION OR SUSPENSION OF THE CONTRACT	105

TABLE OF CONTENTS

ARTICLE 1 1
GENERAL CONDITIONS 1
1.1 BASIC DEFINITIONS 1
1.1.1 The Contract Documents 1
1.1.2 The Contract 1
1.1.3 The Work 1
1.1.4 The Project 2
1.1.5 The Drawings 2
1.1.6 The Specifications 2
1.1.7 The Project Manual 2
1.1.8 Or 2
1.1.9 Completion 2
1.1.10 Completion 3
1.2 EXECUTION, CORRELATION AND INTENT 3
1.2.1 Correlation and Intent 3
1.2.1.1 *Documents Complementary and Inclusive* 3
1.2.1.2 *Coverage of the Drawings and Specifications* 3
1.2.1.3 *Conflicts* 3
1.2.1.4 *Conformance With Laws* 3
1.2.1.5 *Ambiguity* 4
1.2.1.6 *Execution* 4
1.2.2 Addenda and Deferred Approvals 5
1.2.2.1 *Addenda* 5
1.2.2.2 *Deferred Approvals* 5
1.2.3 Specification Interpretation 5
1.2.3.1 *Titles* 5
1.2.3.2 *As Shown, Etc* 5
1.2.3.3 *Provide* 5
1.2.3.4 *General Conditions* 5
1.2.3.5 *Abbreviations* 5
1.2.3.6 *Plural* 5
1.2.3.7 *Metric* 5
1.2.3.8 *Standard Specifications* 6
1.2.3.9 *Absence of Modifiers* 6
1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS 6
ARTICLE 2 7
OWNER 7
2.1 DEFINITION 7
2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER 7
2.2.1 Intentionally Left Blank 7
2.2.2 Site Survey 7
2.2.3 Soils 7
2.2.3.1 *Owner Furnished Services* 7
2.2.3.2 *Contractor Reliance* 7
2.2.4 Utility Survey 8
2.2.5 Information 8
2.2.6 Existing Utility Lines; Removal, Relocation 8
2.2.6.1 *Removal, Relocation* 8
2.2.6.2 *Assessment* 8
2.2.6.3 *Notification* 8
2.2.6.4 *Underground Utility Clearance* 9
2.2.7 Easements 9
2.2.8 Reasonable Promptness 9
2.2.9 Copies Furnished 9
2.2.10 Duties Cumulative 9
2.3 OWNER'S RIGHT TO STOP THE WORK 9
2.4 OWNER'S RIGHT TO CARRY OUT THE WORK 9
ARTICLE 3 10
THE CONTRACTOR 10
3.1 DEFINITION 10
3.2 SUPERVISION AND CONSTRUCTION PROCEDURES 10
3.2.1 Contractor 10
3.2.2 Contractor Responsibility 11
3.2.3 Obligations not Changed by Other's Actions 11
3.2.4 Contractor Responsibility for Readiness for Work 11
3.2.5 Project Meetings 11
3.3 SUPERINTENDENT 11
3.3.1 Full Time Superintendent 11
3.3.2 Staff 11
3.3.3 Right to Remove 12
3.4 LABOR AND MATERIALS 12
3.4.1 Contractor to Provide 12
3.4.2 Quality 12
3.4.3 Replacement 12

3.4.4 Discipline 12
3.5 WARRANTY 13
3.6 TAXES 13
3.7 PERMITS, FEES AND NOTICES 13
3.7.1 Payment 13
3.7.2 Compliance 13
3.7.3 Contract Documents 13
3.7.4 Responsibility 14
3.8 ALLOWANCES 14
3.8.1 Contract 14
3.8.2 Scope 14
3.8.2.1 *Prompt Selection* 14
3.8.2.2 *Cost* 14
3.8.2.3 *Cost Included in Contract Sum* 14
3.8.2.4 *Contract Sum Adjustment* 14
3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES 14
3.9.1 Requirements 14
3.9.2 DSA Oversight Process 17
3.9.3 Failure to Meet Requirements 17
3.10 DOCUMENTS AND SAMPLES AT THE SITE 17
3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES 18
3.11.1 Submittals Defined 18
3.11.1.1 *Shop Drawings* 18
3.11.1.2 *Samples* 18
3.11.1.3 *Contractor's Responsibility* 18
3.11.1.4 *Extent of Review* 19
3.11.2 Drawing Submission Procedure 19
3.11.2.1 *Transmittal Letter and Other Requirements* 19
3.11.2.2 *Copies Required* 19
3.11.2.3 *Corrections* 20
3.11.2.4 *Approval Prior to Commencement of Work* 20
3.11.3 Sample Submissions Procedure 20
3.11.3.1 *Samples Required* 20
3.11.3.2 *Labels and Instructions* 20
3.11.3.3 *Architect's Review* 20
3.11.3.4 *Record Drawings and Annotated Specifications* 21
3.11.3.5 *Equipment Manuals* 21
3.11.3.6 *Owner's Property* 21
3.11.4 Substitutions 21
3.11.4.1 *One Product Specified* 21
3.11.4.2 *Two or More Products Specified* 22
3.11.4.3 *Substitution Request Form* 22
3.11.4.4 *List of Manufacturers and Products Required* 22
3.11.5 Deferred Approvals 22
3.12 CUTTING AND PATCHING 23
3.12.1 Scope 23
3.12.2 Consent 23
3.12.3 Structural Members 23
3.12.4 Subsequent Removal 23
3.13 CLEANING UP 23
3.13.1 Contractor's Responsibility 23
3.13.2 Failure to Cleanup 24
3.13.3 Construction Buildings 24
3.14 ACCESS TO WORK 24
3.15 ROYALTIES AND PATENTS 24
3.15.1 Payment and Indemnity 24
3.15.2 Review 24
3.16 INDEMNIFICATION 24
3.16.1 Scope: Contractor 25
3.16.2 Scope: Subcontractors 25
3.16.2.1 *Indemnity* 25
3.16.2.2 *Joint and Several Liability* 26
3.16.3 No Limitation 26
3.17 OWNER AS INTENDED BENEFICIARY 26
3.18 NOTICE OF EXCUSE FOR NONPERFORMANCE 26
3.19 RECOVERY OF COSTS, DAMAGES, OR TIME EXTENSIONS FROM OWNER 27
3.20 USE OF FEDERAL FUNDS 27
ARTICLE 4 30
ADMINISTRATION OF THE CONTRACT 30
4.1 ARCHITECT 30
4.1.1 Definition 30
4.1.2 Modification 30
4.1.3 Termination 30
4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT 30
4.2.1 Status 30
4.2.2 Site Visits 30
4.2.3 Limitations of Construction Responsibility 31
4.2.4 Communications Facilitating Contract Administration 31

4.2.5 Payment Applications 31
4.2.6 Rejection of Work 31
4.2.7 Change Orders 31
4.2.8 Warranties Upon Completion 31
4.2.9 Interpretation 32
4.2.10 Additional Instructions 32
4.2.10.1 *Architect's Interpretations and Decisions* 32
4.2.10.2 *Typical Parts and Sections* 32
4.2.10.3 *Dimensions* 32
4.3 INSPECTOR OF RECORD 32
4.3.1 General 32
4.3.2 Inspector's of Record's Duties 33
4.3.3 Inspector of Record's Authority to Reject or Stop Work 33
4.3.4 Inspector of Record's Facilities 33
4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES 33
4.5 NOTICES OF POTENTIAL CHANGE, CHANGE ORDER REQUESTS, AND CLAIMS 34
4.5.1 Notice of Potential Change 34
4.5.2 Change Orders Requests 35
4.5.3 Definition of Claim 37
4.5.4 Time for Submitting Claim; Waiver 37
4.5.5 Content of Claim 38
4.5.5.1 *Claim Format; Waiver* 38
4.5.5.2 *Claims for Additional Money* 40
4.5.5.3 *Claims for Additional Time* 40
4.5.5.3.1 *Notice of Extent of Claim* 40
4.5.5.3.2 *Unusual and Uncommon Weather Claims* 41
4.5.5.4 *Subcontractor Requests for Money or Time* 41
4.5.6 Procedures for Claims (Public Contract Code section 9204) 42
4.5.6.1 *Claims* 42
4.5.6.2 *Meet and Confer* 42
4.5.6.3 *Government Code Claim* 43
4.5.7 Continuing Contract Performance 44
4.5.8 Claims for Concealed or Unknown Conditions 44
4.5.8.1 *Trenches or Excavations Less Than Four Feet Below the Surface* 44
4.5.8.2 *Trenches or Excavations Greater Than Four Feet Below the Surface* 44
4.5.9 Injury or Damage to Person or Property 45
ARTICLE 5 45
SUBCONTRACTORS 45
5.1 DEFINITIONS 45
5.1.1 Subcontractor 45
5.1.2 Sub-Subcontractor 46
5.1.3 Specialty Contractors 46
5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK 46
5.2.1 Assignment or Substitution - Consent of Owner 46
5.2.2 Grounds for Substitution 46
5.2.2.1 *No Change in Contract* 47
5.2.2.2 *Substitution Due to Clerical Error* 47
5.3 SUBCONTRACTUAL RELATIONS 48
5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS 48
5.5 SUBCONTRACTOR'S RESPONSIBILITIES 49
5.5.1 Supervision by Subcontractors 49
5.5.2 Discipline and Order 49
5.5.3 Defects Discovered 49
5.5.4 Subcontractor Information 49
5.5.5 Temporary Structures 50
5.5.6 Charges to Subcontractor 50
5.5.7 Fines Imposed 50
5.5.8 Project Signs 50
5.5.9 Remedies for Failure to Perform 50
5.5.10 Disputes Not to Affect Work 51
5.5.11 Application for Payment 51
5.5.12 Compliance with Procedures 51
5.5.13 On-Site Record Keeping 51
5.5.14 Non-Exclusive Obligations 51
ARTICLE 6 52
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS 52
6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS 52
6.1.1 Owner's Rights 52
6.1.2 Designation as Contractor 52

6.1.3 Contractor Duties 52
6.1.4 Owner Obligations 52
6.2 MUTUAL RESPONSIBILITY 52
6.2.1 Delivery and Storage 52
6.2.2 Notice by Contractor 53
6.2.3 Costs Incurred 53
6.2.4 Correction of Damage 53
6.3 OWNER'S RIGHT TO CLEAN UP 53
ARTICLE 7 53
CHANGES IN THE WORK 53
7.1 CHANGES 53
7.1.1 No Changes Without Authorization 53
7.1.2 Authority to Order Minor Changes 54
7.2 CHANGE ORDERS 54
7.3 CONSTRUCTION CHANGE DIRECTIVES ("CCD") 55
7.3.1 Definition 55
7.3.2 Use to Direct Change 55
7.4 REQUEST FOR INFORMATION ("RFI") 55
7.4.1 Definition 55
7.4.2 Scope 56
7.4.3 Response Time 56
7.4.4 Costs Incurred 56
7.5 REQUEST FOR PROPOSAL ("RFP") 56
7.5.1 Definition 56
7.5.2 Scope 57
7.6 CHANGE ORDER REQUEST ("COR") 57
7.6.1 Definition 57
7.6.2 Changes in Price 57
7.6.3 Changes in Time 57
7.7 PRICE OF CHANGE ORDERS 57
7.7.1 Scope 57
7.7.2 Determination of Cost 57
7.7.3 Format for Proposed Cost Change 60
7.7.4 Discounts, Rebates, and Refunds 61
7.7.5 Accounting Records 61
7.7.6 Notice Required 61
7.7.7 Applicability to Subcontractors 61
7.8 Waiver of Right to Claim Money or Time 61
ARTICLE 8 62
TIME 62
8.1 DEFINITIONS 62
8.1.1 Contract Time 62
8.1.2 Notice to Proceed 62
8.1.3 Days 62
8.2 HOURS OF WORK 62
8.2.1 Sufficient Forces 62
8.2.2 Performance During Working Hours 62
8.2.3 Labor Code Application 62
8.2.4 Costs for After Hours Inspections 63
8.2.5 Time for Commencement By Subcontractors 63
8.3 PROGRESS AND COMPLETION 63
8.3.1 Time of the Essence 63
8.3.2 No Commencement Without Insurance 64
8.3.3 Expeditious Completion 64
8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES 64
8.4.1 Conditions Allowing for Extensions of Time to Complete the Work Only (Excusable Delay) 64
8.4.2 Compensable Delay (Time and Money) 65
8.4.3 Notice by Contractor Required; Procedures for Demanding Additional Time or Money 65
8.4.4 Early Completion 65
8.4.5 Liquidated Damages 65
8.5 Government Approvals 66
ARTICLE 9 66
PAYMENTS AND COMPLETION 66
9.1 CONTRACT SUM 66
9.2 COST BREAKDOWN 66
9.2.1 Required Information 66
9.2.2 Owner Acceptance Required 67
9.3 APPLICATIONS FOR PAYMENT 67
9.3.1 Procedure 67
9.3.2 Purchase of Materials and Equipment 68
9.3.3 Warranty of Title 68
9.4 REVIEW OF PROGRESS PAYMENT 69
9.4.1 Owner Acceptance 69
9.4.2 Owner's Review 69
9.5 DECISIONS TO WITHHOLD PAYMENT 70
9.5.1 Reasons to Withhold Payment 70
9.5.2 Payment After Cure 72

9.5.3 Overpayment and/or Failure to Withhold 72
9.6 PROGRESS PAYMENTS 72
9.6.1 Payments to Contractor 72
9.6.2 Payments to Subcontractors 73
9.6.3 Percentage of Completion or Payment Information 73
9.6.4 No Obligation of Owner for Subcontractor Payment 73
9.6.5 Payment to Suppliers 73
9.6.6 Payment Not Constituting Approval or Acceptance 73
9.6.7 Joint Checks 73
9.7 COMPLETION OF THE WORK 74
9.7.1 Close-Out Procedures 74
9.7.2 Costs of Multiple Inspections 74
9.8 PARTIAL OCCUPANCY OR USE 74
9.9 FINAL PROGRESS PAYMENT AND RELEASE OF RETENTION 75
9.9.1 Final Application for Progress Payment 75
9.9.2 Procedures for Application for Final Progress Payment 75
9.9.3 Release of Retainage 76
9.10 SUBSTITUTION OF SECURITIES 76
ARTICLE 10 77
PROTECTION OF PERSONS AND PROPERTY 77
10.1 SAFETY PRECAUTIONS AND PROGRAMS 77
10.1.1 Contractor Responsibility 77
10.1.2 Subcontractor Responsibility 77
10.1.3 Cooperation 78
10.1.4 Accident Reports 78
10.1.5 First-Aid Supplies at Site 78
10.2 SAFETY OF PERSONS AND PROPERTY 78
10.2.1 The Contractor 78
10.2.2 Contractor Notices 78
10.2.3 Safety Barriers and Safeguards 78
10.2.4 Use or Storage of Hazardous Material 79
10.2.5 Fingerprinting 79
10.3 PROTECTION OF WORK AND PROPERTY 79
10.3.1 Protection of Work 79
10.3.2 Protection for Elements 79
10.3.3 Shoring and Structural Loading 79
10.3.4 Conformance Within Established Limits 80
10.3.5 Subcontractor Enforcement of Rules 80
10.3.6 Site Access 80
10.3.7 Protection of Materials 80
10.4 EMERGENCIES 80
10.4.1 Emergency Action 80
10.4.2 Accident Reports 81
10.5 HAZARDOUS MATERIALS 81
10.5.1 Discovery of Hazardous Materials 81
10.5.2 Hazardous Material Work Limitations 81
10.5.3 Indemnification By Owner for Hazardous Material Not Caused by Contractor 81
10.5.4 Naturally Occuring Asbestos 82
10.5.4 Indemnification by Contractor for Hazardous Material Caused by Contractor 82
10.5.5 Terms of Hazardous Material Provision 82
10.5.6 Archeological Materials 82
ARTICLE 11 83
INSURANCE AND BONDS 83
11.1 CONTRACTOR'S LIABILITY INSURANCE 83
11.1.1 Liability Insurance Requirements 83
11.1.2 Subcontractor Insurance Requirements 84
11.1.3 Owner's Insurance 84
11.1.4 Additional Insured Endorsement Requirements 84
11.1.5 Workers' Compensation Insurance 84
11.1.6 Builder's Risk/ 85
11.1.6.1 Course-of-Construction Insurance Requirements 85
11.1.7 Consent of Insurer for Partial Occupancy or Use 86
11.1.8 Fire Insurance 86
11.1.9 Other Insurance 86
11.1.10 Proof of Carriage of Insurance 87
11.1.11 Compliance 87

11.2 PERFORMANCE AND PAYMENT BONDS 87
11.2.1 Bond Requirements 87
11.2.2 Surety Qualification 88
ARTICLE 12 88
UNCOVERING AND CORRECTION OF WORK 88
12.1 UNCOVERING OF WORK 88
12.1.1 Uncovering Work for Required Inspections 88
12.1.2 Costs for Inspections not Required 88
12.2 CORRECTION OF WORK; WARRANTY 89
12.2.1 Correction of Rejected Work 89
12.2.2 Removal of Nonconforming Work 89
12.2.3 Owner's Rights if Contractor Fails to Correct 89
12.2.4 Cost of Correcting the Work 89
12.2.5 Warranty Corrections 89
12.2.6 No Time Limitation 90
12.3 NONCONFORMING WORK 90
ARTICLE 13 90
MISCELLANEOUS PROVISIONS 90
13.1 GOVERNING LAW 90
13.2 SUCCESSORS AND ASSIGNS 90
13.3 WRITTEN NOTICE 91
13.4 RIGHTS AND REMEDIES 91
13.4.1 Duties and Obligations Cumulative 91
13.4.2 No Waiver 91
13.5 TESTS AND INSPECTIONS 91
13.5.1 Compliance 91
13.5.2 Independent Testing Laboratory 91
13.5.3 Advance Notice to Inspector of Record 92
13.5.4 Testing Off-Site 92
13.5.5 Additional Testing or Inspection 92
13.5.6 Costs for Retesting 92
13.5.7 Costs for Premature Test 92
13.5.8 Tests or Inspections Not to Delay Work 92
13.6 [INTENTIONALLY LEFT BLANK] 93
13.7 TRENCH EXCAVATION 93
13.7.1 Trenches Greater Than Five Feet 93
13.7.2 Excavation Safety 93
13.7.3 No Tort Liability of Owner 93
13.7.4 No Excavation Without Permits 93
13.8 WAGE RATES 93
13.8.1 Wage Rates 93
13.8.2 Holiday and Overtime Pay 94
13.8.3 Wage Rates Not Affected by Subcontracts 94
13.8.4 Change in Prevailing Wage During Bid or Construction 94
13.8.5 Forfeiture and Payments 94
13.8.6 Minimum Wage Rates 94
13.8.7 Per Diem Wages 95
13.8.8 **Posting of Wage Rates** 95
13.9 RECORD OF WAGES PAID: INSPECTION 95
13.9.1 Application of Labor Code 95
13.10 APPRENTICES 97
13.10.1 Apprentice Wages and Definitions 97
13.10.2 Apprentice Labor Pool 97
13.10.3 Journeyman/Apprentice Ratio; Computation of Hours 98
13.10.4 Journeyman/Apprentice Ratio 98
13.10.4.1 *Apprenticeable Craft or Trade* 99
13.10.5 Ratio Exemption 99
13.10.6 Apprentice Fund 99
13.10.7 Prime Contractor Compliance 100
13.10.8 Decisions of Joint Apprenticeship Committee 100
13.10.9 No Bias 100
13.10.10 Violation of Labor Code 100
13.11 ASSIGNMENT OF ANTITRUST CLAIMS 101
13.11.1 Application 101
13.11.2 Assignment of Claim 101
13.12 AUDIT 101
13.13 STORM WATER DISCHARGE PERMIT 102
ARTICLE 14 102
TERMINATION OR SUSPENSION OF THE CONTRACT 102
14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE 102
14.2 TERMINATION BY THE OWNER FOR CAUSE 102
14.2.1 Grounds for Termination 102
14.2.2 Notification of Termination 103
14.2.3 Payments 103

14.2.4 Wrongful Termination 104
14.2.5 Inclusion of Termination for Convenience 104
14.3 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE 104
14.3.1 Suspension by Owner 104
14.3.1.1 *Adjustments* 104
14.3.1.2 *Adjustments for Fixed Cost* 104
14.3.2 Termination by the Owner for Convenience 104
14.4 NOT A WAIVER 105
14.5 MUTUAL TERMINATION FOR CONVENIENCE 105
14.6 EARLY TERMINATION 105

ARTICLE 1

GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The "Contract Documents" consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to bid, Instructions to Bidders, Notice to Bidders, the Bid Form as prepared and submitted by Contractor, Payment Bond, Performance Bond, required insurance certificates, additional insured endorsement and declarations page, Designation of Subcontractors, Noncollusion Declaration, Roof Project Certification (where applicable), Sufficient Funds Declaration (Labor Code section 2810), the Fingerprinting Notice and Acknowledgment and Independent Contractor Student Contact Form, other documents referred to in the Agreement, and Modifications issued after execution of the Agreement. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Owner. The Contract Documents are complementary, and each obligation of the Contractor, Subcontractors, material or equipment suppliers in any one shall be binding as if specified in all.

1.1.2 THE CONTRACT

The Contract Documents form the Contract. The "Contract" represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Contractor. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Owner's governing board.

1.1.3 THE WORK

The "Work" shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents, including but not limited to punch list items and submission of documents. It shall include the initial obligation of any Contractor or Subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work with Owner's representatives, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or

Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated bid documents. The "Site" refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.

1.1.4 THE PROJECT

The "Project" is the total construction of the Work performed in accordance with the Contract Documents, but "Project" may also include construction by the Owner or by separate contractors of improvements related to, but not included in, the Work. The Project shall constitute a "work of improvement" under Civil Code section 8050 and Public Contract Code section 7107.

1.1.5 THE DRAWINGS

The "Drawings" are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

1.1.6 THE SPECIFICATIONS

The "Specifications" are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

1.1.7 THE PROJECT MANUAL

The "Project Manual" is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Agreement, Conditions of the Contract, and Specifications.

1.1.8 OR

"Or" shall include "and/or."

1.1.9 COMPLETION

Statutory definitions of "Completion" and "Complete" shall apply for those statutory purposes. For all other purposes, including accrual of liquidated damages, Claims, and warranties, "Completion" and "Complete" mean the point in the Work where (1) Contractor has fully and correctly performed all Work in all parts and requirements, including corrective and punch list work, and (2) Owner's representatives have conducted a final inspection that confirmed this performance. Substantial, or any other form of partial or non-compliant, performance shall not constitute "Completion" or "Complete" under the Contract Documents, except to the extent that substantial completion is required for a milestone deadline.

1.1.10 COMPLETION OF THE PROJECT

For purposes of accrual of liquidated damages for delay to the Project, *completion* shall mean the point in the Project where (1) all contractors and Owner have fully and correctly performed all work of the entire Project in all parts and requirements, including corrective and punch list work, and (2) Owner's representatives have conducted a final inspection of the entire Project that confirmed this performance. Substantial, or any other form of partial or non-compliant, performance shall not constitute *completion* or *complete*.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 CORRELATION AND INTENT

1.2.1.1 ***Documents Complementary and Inclusive.*** The Contract Documents are complementary and are intended to include all items required for the proper execution and Completion of the Work. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both.

1.2.1.2 ***Coverage of the Drawings and Specifications.*** The Drawings and Specifications generally describe the work to be performed by Contractor. Generally, the Specifications describe work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to Complete the Work), shall be provided by the Contractor whether or not the Work is expressly covered in the Drawings or the Specifications. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by Contractor.

1.2.1.3 ***Conflicts.*** Without limiting Contractor's obligation to identify conflicts for resolution by the Owner, in the event of a conflict between provisions of the Contract Documents, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply; except that in the event of a conflict between a Division 01 specification and a provision in a Division 00 Contract Document (such as the agreement, general conditions, notice to bidders, instructions to bidders, bid form, etc.), the Division 00 provision shall control.

1.2.1.4 ***Conformance With Laws.*** Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any

such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. In the event Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract Documents, Contractor shall promptly notify Architect and Owner in writing of same and shall ensure that any such violation or inconsistency shall be corrected in the manner provided hereunder prior to the construction of that portion of the Work. Where requirements of the Contract Documents exceed those of the applicable building codes and ordinances, the Contract Documents shall govern. Contractor shall comply with all applicable Federal, State and local laws.

If, as and to the extent that Public Contract Code section 1104 is deemed to apply after the award of the Contract, Contractor shall not be required to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications, notwithstanding any other provision in the Contract Documents, except to the extent that Contractor discovered or should have discovered and reported any errors and omissions to the Architect and Owner, including but not limited to as the result of any review of the plans and specifications by Contractor required by the Instructions to Bidders or other Contract Documents, whether or not actually performed by Contractor.

1.2.1.5 ***Ambiguity.*** Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify Architect and Owner in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Sum or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Contract Sum or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.

1.2.1.6 ***Execution.*** Execution of the Agreement Between Owner and Contractor by the Contractor is a representation that the Contractor has visited the Site, become familiar with the local conditions under which the Work is to be performed and has correlated personal observations with the requirements of the Contract Documents.

1.2.2 Addenda and Deferred Approvals

1.2.2.1 ***Addenda.*** Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with Title 24, California Code of Regulations, addenda shall be approved by the Division of the State Architect ("DSA").

1.2.2.2 ***Deferred Approvals.*** The requirements approved by the DSA on any item submitted as a deferred approval in accordance with Title 24, California Code of Regulations, shall take precedence over any previously issued addenda, drawing or specification.

1.2.3 Specification Interpretation

1.2.3.1 ***Titles.*** The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.2.3.2 ***As Shown, Etc.*** Where "as shown," "as indicated," "as detailed," or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as accepted," "as selected," or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.2.3.3 ***Provide.*** "Provide" means "provided complete in place," that is, furnished, installed, tested, and ready for operation and use.

1.2.3.4 ***General Conditions.*** The General Conditions and any supplementary general conditions are a part of each and every section of the Specifications.

1.2.3.5 ***Abbreviations.*** In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as "Contractor shall," "shall be," etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings.

1.2.3.6 ***Plural.*** Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.7 ***Metric.*** The Specifications may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1" (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the "International System of Units" (SI) and generally follow ASTM E 380, "Standard for Metric Practice."

1.2.3.8 ***Standard Specifications.*** Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization's standard specifications, which are in effect as of the date the Notice to Bidders is first published. If applicable specifications are revised prior to completion of any part of the Work, the Contractor may, if acceptable to Owner and Architect, perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications. Architect will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

1.2.3.9 ***Absence of Modifiers.*** In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

The Drawings, Specifications, and other documents prepared on behalf of the Owner are instruments of the services of the Architect and its consultants and are the property of the Owner. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, upon request upon Completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Contract. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other contracts or projects or for additions to this Contract or Project outside the scope of the Work without the specific written consent of the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's property interest or other reserved right. All copies made under this license shall bear appropriate attribution and the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect.

ARTICLE 2

OWNER

2.1 DEFINITION

The term "Owner" means the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner and/or the Owner's authorized representatives, including but not limited to architects and construction managers. To the extent the Contract Documents indicate that Owner has assigned duties to particular representatives of the Owner (such as the Architect, or any construction manager), Owner reserves the right at all times to reassign such duties to different Owner representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 Intentionally Left Blank

2.2.2 Site Survey

When required by the scope of the Work, the Owner will furnish, at its expense, a legal description or a land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site. Surveys to determine locations of construction, grading, and Site work shall be provided by the Contractor.

2.2.3 Soils

2.2.3.1 ***Owner Furnished Services.*** When required by the scope of the Project, the Owner will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required or as required by local or state codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

2.2.3.2 ***Contractor Reliance.*** Test borings and soils reports for the Project have been made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner has made these documents available to the Contractor and the Contractor has studied the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the Site of the Project, or any part thereof, or that

unforeseen developments may not occur. At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor of any of its agents. Nothing herein contained shall be deemed a waiver by the Contractor to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Contractor.

2.2.4 UTILITY SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, all information regarding known existing utilities on or adjacent to the Site, including location, size, inverts, and depths.

2.2.5 INFORMATION

Upon the request of the Contractor, Owner will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from Owner's records. The Contractor may not rely upon the accuracy of any such information, other than that provided under Sections 2.2.2 and 2.2.4 (except that the Contractor may not rely upon, and must question in writing to the Owner and the Architect, any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Work and Project, and prior experience with similar projects), unless specifically stated in writing that the Contractor may rely upon the designated information.

2.2.6 EXISTING UTILITY LINES; REMOVAL, RELOCATION

2.2.6.1 ***Removal, Relocation.*** Pursuant to Government Code section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Contract with respect to any such utility facilities which are not identified in the drawings and specifications made part of the invitation to bid. The Contractor shall not be assessed for liquidated damages for delay in Completion of the Work caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.

2.2.6.2 ***Assessment.*** These subparagraphs shall not be construed to preclude assessment against the Contractor for any other delays in Completion of the Work. Nothing in these subparagraphs shall be deemed to require the Owner to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, or meter junction boxes on or adjacent to the Site.

2.2.6.3 ***Notification.*** If the Contractor, while performing work under this Contract, discovers utility facilities not identified by the Owner in the Contract plans or specifications, Contractor shall immediately notify the Owner and the utility in writing.

2.2.6.4 ***Underground Utility Clearance.*** It shall be Contractor's sole responsibility to timely notify all public and private utilities serving the Site prior to commencing work. The Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code section 4216, et seq. Contractor shall promptly provide a copy of all such notifications to the Owner.

2.2.7 EASEMENTS

Owner shall secure and pay for easements for permanent structures or permanent changes in existing facilities, if any, unless otherwise specified in the Contract or Contract Documents.

2.2.8 REASONABLE PROMPTNESS

Information or services under Owner's control will be furnished by the Owner with reasonable promptness.

2.2.9 COPIES FURNISHED

The Contractor will be furnished such copies of Drawings and Project Manuals as are stated in the Contract Documents.

2.2.10 DUTIES CUMULATIVE

The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein, and especially those in Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may order the Contractor to stop the Work or any portion thereof, until the Contractor corrects the deficiencies. Contractor shall not be entitled to a time extension for any delays caused by such order. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Article 6.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor fails or refuses to carry out the Work in accordance with the Contract Documents, Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, including but not limited to having another contractor perform some or all of the Work without terminating the Contract with Contractor. Owner may exercise this right at any time during the Contractor's Work.

Owner shall first provide written notice to Contractor of Contractor's failure or refusal to perform. The notice will provide the time period within which Contractor must begin correction of the failure or refusal to perform. If the Contractor fails to begin correction within the stated time, or fails to continue correction, the Owner may proceed to correct the deficiencies. In the event the Owner bids the work, Contractor shall not be eligible for the award of the contract. The Contractor may be invoiced the cost to Owner of the work, including compensation for additional professional and internally generated services and expenses made necessary by Contractor's failure or refusal to perform. Owner may withhold that amount from the retention, or progress payments due the Contractor, pursuant to Section 9.5. If retention and payments withheld then or thereafter due the Contractor are not sufficient to cover that amount, the Contractor shall pay the difference to the Owner.

ARTICLE 3

THE CONTRACTOR

3.1 DEFINITION

The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors shall be equally applicable to the Contractor.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 CONTRACTOR

The Contractor shall supervise and direct the Work using the Contractor's best skill and attention, which shall meet or exceed the standards in the industry. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. The Contractor shall perform the Work in a workmanlike manner, in compliance with the Contract Documents, and in compliance with all applicable local, state, and federal codes, regulations, and other law.

If part of the Project is performed by other contractors that Owner directly retains, Owner shall

schedule and coordinate the activities of Contractor with the other contractors. Contractor agrees to accept the Owner's construction schedules, schedule updates, overall sequence and coordination of construction for the Project.

Contractor realizes that work by other contractors or Owner may occur simultaneously with Contractor's Work in any given area. Contractor is responsible for its own sequences that may occur within a given activity or set of activities. Contractor shall not commit or permit any act which will adversely affect the work of any other contractor or Owner. Contractor shall provide layout of its Work at the request of any other contractor or Owner.

Specific duties of the Contractor shall be in accordance with Title 24 of the California Code of Regulations. Contractor shall fully comply with any and all reporting requirements of Education Code sections 17309 and 81141 in the manner prescribed by Title 24.

3.2.2 CONTRACTOR RESPONSIBILITY

The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

3.2.3 OBLIGATIONS NOT CHANGED BY OTHERS' ACTIONS

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by the activities or duties of the Owner's representatives, including but not limited to any construction manager and the Architect, or the Inspector of Record; or by tests, inspections, or approvals required or performed by persons other than the Contractor.

3.2.4 CONTRACTOR RESPONSIBILITY FOR READINESS FOR WORK

The Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

3.2.5 PROJECT MEETINGS

During its Work, Contractor shall attend Owner's Project meetings as scheduled by the Contract Documents, or as otherwise instructed by Owner, to discuss the current status of the Work and Project, and the future progress of the Work and the Project. Contractor shall have five (5) days after receipt of Owner's Project meeting minutes to provide written objections and suggested corrections. Either party may audio record any meeting related to the Contract.

3.3 SUPERINTENDENT

3.3.1 FULL TIME SUPERINTENDENT

The Contractor shall provide a competent superintendent and assistants as necessary, all of whom

shall be reasonably proficient in speaking, reading and writing English and, who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

3.3.2 STAFF

The Contractor and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to Complete the Work in accordance with all requirements of the Contract Documents.

3.3.3 RIGHT TO REMOVE

Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

3.4 LABOR AND MATERIALS

3.4.1 CONTRACTOR TO PROVIDE

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Completion of the Work whether temporary or permanent, and such facilities, labor, equipment, material, and services are included in the Work. Owner shall not be liable for, and Contractor shall bear the burden of, any post-bid escalation in the cost of materials; but Contractor will retain the benefit of any post-bid material cost decreases. Owner shall have no responsibility for security of, or repair or replacement costs of, such facilities, labor, equipment, material, and services provided by Contractor pursuant to this subsection.

3.4.2 QUALITY

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The Contractor shall, if requested, promptly furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and the quality of their work shall meet whichever is the higher standard for their work: the standard in the industry or the standard in the Contract Documents.

3.4.3 REPLACEMENT

Any work, materials, or equipment, which does not conform to these standards may be

disapproved and rejected by the Owner, in which case, they shall be removed and replaced by the Contractor at no cost to the Owner.

3.4.4 **DISCIPLINE**

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract in accordance with paragraph 5.5.1 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project.

3.5 **WARRANTY**

For the period of one (1) year after Completion of the Work (see Sections 9.7.1, 12.2.5, and 12.2.6), the Contractor warrants to the Owner that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty does not cover damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 **TAXES**

Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

3.7 **PERMITS, FEES AND NOTICES**

3.7.1 **PAYMENT**

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and Completion of the Work which are customarily secured, or required by the Contract or law to be secured, after execution of the Contract, and which are legally required from any authority having jurisdiction over the Project, except those required from the Division of the State Architect (DSA). Owner shall be responsible for all testing and inspection as required by the DSA on-Site or within the distance limitations set forth in paragraph 13.5.2, unless a different mileage range is specified in the Contract Documents.

3.7.2 COMPLIANCE

The Contractor shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work.

3.7.3 CONTRACT DOCUMENTS

It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with any applicable law, statute, ordinance, building codes, rule, or regulation. However, if the Contractor knew, or should have known, or observes that portions of the Contract Document are at variance therewith, the Contractor shall promptly notify the Architect, any construction manager, and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

3.7.4 RESPONSIBILITY

If the Contractor performs any work that it knows, or should have known, is contrary to any law, statute, ordinance, building code, rule or regulation, the Contractor shall assume full responsibility for such work, and shall bear the attributable cost of correction and delays to the Work, other contractors' work, and the Project.

3.8 ALLOWANCES

3.8.1 CONTRACT

The Contractor shall include in the Contract Sum all allowances, including any general contingency allowance, stated in the Contract Documents. Items covered by specific allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable and timely objection.

3.8.2 SCOPE

3.8.2.1 ***Prompt Selection.*** Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay to the Work.

3.8.2.2 ***Cost.*** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, etc., as delineated in paragraph 7.7.4.

3.8.2.3 ***Cost Included in Contract Sum.*** Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances.

3.8.2.4 ***Contract Sum Adjustment.*** Whenever Contractor seeks payment from an allowance and the requested costs are approved by Owner as compliant with the Contract

Documents (including Sections 3.8.2.2 and 3.8.2.3, above), Owner may elect to pay the approved costs from the allowance, or pay the costs via Change Order. Any such allowance payment shall conform to the requirements of the Agreement and other Contract Documents.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.9.1 REQUIREMENTS

Before the Contractor's commencement of Work or within two (2) weeks of award of the Contract, whichever is earlier, Contractor shall prepare and submit for the Owner's, and any construction manager's, information the baseline construction schedule for the Work, which shall conform to the Contract Documents' requirements ("Baseline Schedule").

Contractor shall submit an updated schedule for the Work by the first day of every month, and whenever else requested by the Owner ("Schedule Update"). Each Schedule Update must include accurate as-built dates and the current as-planned schedule, both of which shall conform to the Contract Documents' requirements. Contractor shall submit its daily logs for the prior month with each Schedule Update. The Schedule Update shall be submitted regardless of whether other Schedule Updates have previously been submitted. Submission of a short-term schedule (such as a "three-week look-ahead" schedule) is not a valid substitute for submitting a Schedule Update.

The Baseline Schedule and all Schedule Updates shall conform, at a minimum, to industry standards for (a) critical path method scheduling and (b) facilitation of Owner's Project management and evaluation of Contractor Claims for additional money or time.

The Baseline Schedule and all Schedule Updates shall not exceed time limits (including milestone deadlines) under the Contract Documents and shall comply with the Contract Documents scheduling requirements and with any scheduling requirements the Owner provides to the Contractor at the beginning of the Work. The Baseline Schedule and all Schedule Updates shall accurately reflect Work performed to date; reasonable dates for future Work; all construction activities (including procurement); the critical path for Completion of the remainder of the Work; the logic, sequencing, and relationship between the construction activities, including each activity's predecessor and successor activities; and the percentage of the Work completed.

The Baseline Schedule and all Schedule Updates shall include a reasonable number of days for weather that is usual or common for each month, as time extensions are not available for such days (see Sections 4.5.5.3.2 and 8.4.1, below); and any failure by Contractor to include a reasonable number of such days, or by Owner to require Contractor to include a reasonable number of such days, shall not affect the reasonable number of such days to be used when determining time extensions under Sections 4.5.5.3.2 and 8.4.1, below.

The Baseline Schedule and all Schedule Updates shall include a reasonable number of days for usual or common delays by utility companies, and for usual or common delays by other government agencies.

The Baseline Schedule and all Schedule Updates shall be in the form of either a tabulation, chart, or graph, and shall be in sufficient detail to show the chronological relationship of all activities of the Work including, but not limited to, estimated starting and completion dates of various activities, (including early and late dates and reasonable float for each activity), procurement of materials, the critical path, and scheduling of equipment. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall be apportioned for the benefit of the Work.

Whenever in the Contract Documents Contractor is required to provide a Baseline Schedule and/or a Schedule Update, the Contractor shall provide it in native electronic format as well as hard copy.

Contractor shall be solely responsible for the accuracy, utility and reasonableness of the Baseline Schedule and all Schedule Updates. Owner's acceptance, approval or non-rejection of Contractor's schedules shall not affect Contractor's responsibility for its schedules.

The Contractor and Owner shall use any float on a "first come, first served" basis. The Baseline Schedule and all Schedule Updates shall reflect Contractor's and Owner's use of float. Float is not for the exclusive use or benefit of either Owner or Contractor, but it is a jointly owned expiring Work resource available to both parties as needed to meet schedule milestones. For the Baseline Schedule and all Schedule Updates, Contractor shall use a critical path network format with the critical paths clearly indicated. Contractor shall use an MS Project, Primavera, or an equivalent or better program. Contractor shall include reports that sort and list the activities in order of increasing float and by early and late start dates. Contractor shall endeavor to label ten to thirty percent (10-30%) of the tasks as critical, but shall not label less than five (5%) or more than fifty (50%) as critical. Contractor shall use calendar days.

If any change in Contractor's method of operations will cause a change in the Baseline Schedule or most recent Schedule Update, Contractor shall submit to Owner, Architect, and any construction manager, another Schedule Update within seven (7) days of the change.

If in the Owner's opinion the Contractor is not prosecuting the Work at a rate sufficient to meet the Baseline Schedule, a Schedule Update, or a contractual milestone, or sufficient to Complete the Work within the Contract Time as adjusted by change orders, or if in the Owner's opinion the Contractor's actual progress falls behind the Baseline Schedule or a Schedule Update, Contractor will not meet a contractual milestone, or Contractor will not Complete the Work within the Contract Time as adjusted by change orders, then the Owner may require that the Contractor prepare and submit a recovery plan (including but not limited to any necessary acceleration). Contractor must submit a recovery plan within seven (7) days of a demand for the recovery plan. At a minimum, the recovery plan must include a proposed schedule that shows Completion of the Work by the contractual milestones and within the Contract Time, as adjusted by change orders, or Completion by other dates Owner specifies in the demand for a recovery plan. The

recovery plan shall state the corrective actions Contractor will undertake to implement it. The recovery plan shall also list any additional money that Contractor believes it should receive if Owner orders Contractor to fully or partially implement the recovery plan. If the Owner specifically orders Contractor in writing to implement the recovery plan (including but not limited to acceleration), Contractor shall do so, but the order shall not act constitute an admission by Owner that Contractor is entitled to additional money for implementing the recovery plan. To recover additional money for implementing the recovery plan, Contractor must comply with Section 4.5 and Articles 7 and 8 below. If Contractor elects to implement a recovery plan or otherwise accelerate the Work without a specific written order from the Owner to do so, then Contractor waives all rights to recover additional money for implementing that recovery plan or accelerating.

The Baseline Schedule and all Schedules Updates shall be certified by Contractor as true and correct, as follows:

> I, _____ *[name of declarant]*, declare the following:
>
> _____ *[Contractor company name]* has contracted with _____ *[public entity name]* for the _____ Contract ("Contract"). _____ *[Contractor company name]* authorized me to prepare schedules for _____ *[public entity name]* for this Project, and I prepared the attached schedule. I am the most knowledgeable person at _____ *[Contractor company name]* regarding the scheduling of the Work for this Contract.
>
> The attached schedule complies with the Contract Documents (including but not limited to General Conditions section 3.9.1), and is submitted in compliance with all laws applicable to submission of a Claim, including but not limited to California Penal Code section 72 (Fraudulent Claims), Government Code sections 12650 et seq. (False Claims Act; for example, Government Code section 12651(a)(7)), and Business and Professions Code sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other Claims that violate law or the Contract, may lead to fines, imprisonment, and/or other serious legal consequences for myself and/or _____ *[Contractor company name]*.
>
> While preparing this declaration and schedule I consulted with others (including attorneys, consultants, or others who work for _____ *[Contractor company name]*) when necessary to ensure that the statements were true and correct.
>
> I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____, 20__, at _____, California.
>
> _____ *[signature]*

_____ *[name of declarant]*

3.9.2 DSA Oversight Process

In connection with the DSA Construction Oversight Process which includes inspection cards and review of changes to the DSA-approved construction documents, the Contractor must (a) include specific tasks in its baseline schedule to take into account these procedures since they are critical path issues; and (b) include a reasonable amount of float in the baseline schedule to accommodate the additional time required by these DSA procedures.

3.9.3 Failure to Meet Requirements

Failure of the Contractor to provide proper schedules may, at the sole discretion of Owner, constitute either grounds to withhold, in whole or in part, progress payments to the Contractor, or a breach of contract allowing Owner to terminate the Contract.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the Site for the Owner one applicable copy of Titles 19 and 24 and record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings,

Product Data, Samples, and similar required submittals. These documents shall be available to the Owner and shall be delivered to the Owner, or the Architect for delivery to the Owner, upon Completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.11.1 Submittals Defined

3.11.1.1 ***Shop Drawings.*** The term "shop drawings" as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents. The Contractor shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. "Product data" as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work. As used herein, the term "manufactured" applies to standard units usually mass-produced, and "fabricated" means items specifically assembled or made out of selected materials to meet

individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

3.11.1.2 ***Samples.*** The term "samples" as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Owner to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

3.11.1.3 ***Contractor's Responsibility.*** Contractor shall obtain and shall submit to Architect all required shop drawings and samples in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" provisions in Division 1 of the Specifications and in accordance with the Contractor's original and updated schedules, and with such promptness as to cause no delay in its own Work or in that of any other contractor, Owner or subcontractor but in no event later than ninety (90) days after the execution of the Agreement. Contractor may be assessed $100 a day for each day it is late in submitting a shop drawing or sample. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have shop drawings and samples submitted in accordance with the Schedule. Each Subcontractor shall submit all shop drawings, samples, and manufacturer's descriptive data for the review of the Owner, the Contractor, and the Architect through the Contractor. By submitting shop drawings, product data, and samples, the Contractor or submitting party (if other than Contractor) represents that it has determined and verified all materials, field measurements, field conditions, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. At the time of submission, any deviation in the shop drawings, product data, or samples from the requirements of the Contract Documents shall be narratively described in a transmittal accompanying the submittal. However, submittals shall not be used as a means of requesting a substitution, the procedure for which is defined in paragraph 3.11.4, "Substitutions." Review by Owner and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. Contractor shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract Documents. Any submission, which in Owner's or Architect's opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor will be returned unreviewed for resubmission by the Contractor.

3.11.1.4 ***Extent of Review.*** In reviewing shop drawings, the Owner will not verify dimensions and field conditions. The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Architect's review shall neither be

construed as a complete check nor relieve the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission and the Architect has given specific written approval. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the Work, or from the necessity of furnishing any Work required by the Contract Documents, which may not be indicated on shop drawings when reviewed. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

3.11.2 **Drawing Submission Procedure**

3.11.2.1 ***Transmittal Letter and Other Requirements.*** All shop drawings must be properly identified with the name of the Contract and Contractor's name and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Contract and Contractor and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents, if any. Shop drawings, for each section of the Work, shall be numbered consecutively, and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. Only shop drawings required to be submitted by the Contract Documents shall be reviewed.

3.11.2.2 ***Copies Required.*** Each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints of each drawing, including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; wiring diagrams and controls; schedules; all seismic calculations and other calculations; and other pertinent information as required.

3.11.2.3 ***Corrections.*** The Contractor shall make any corrections required by Architect and shall resubmit as required by Architect the required number of corrected copies of shop drawings or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted shop drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required submittals of shop drawings, product data, or samples are subject to charge to the Contractor pursuant to paragraph 4.4.

3.11.2.4 ***Approval Prior to Commencement of Work.*** No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been reviewed by Owner and approved by Architect unless specifically directed in writing by the Owner. All such portions of the Work shall be in accordance with approved shop drawings and samples.

3.11.3 SAMPLE SUBMISSIONS PROCEDURE

3.11.3.1 ***Samples Required.*** In case a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics, which will be present in the finished products; and products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Contract, the purpose for which the samples are submitted, and the date and shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number for identification of each item. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.

3.11.3.2 ***Labels and Instructions.*** Samples of materials, which are generally furnished in containers bearing the manufacturers' descriptive labels and printed application instructions, shall, if not submitted in standard containers, be supplied with such labels and application instructions.

3.11.3.3 ***Architect's Review.*** The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the appropriate action in compliance with the Architect's standard procedures.

3.11.3.4 ***Record Drawings and Annotated Specifications.*** The Contractor will prepare and maintain on a current basis an accurate and complete set of Record Drawings showing clearly all changes, revisions, and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features, and Annotated Specifications showing clearly all changes, revisions, and substitutions during construction. All Record Drawings shall include accurate and complete dimensioning sufficient to precisely locate every installed element in the field, including without limitation, horizontal and vertical dimensions, offsets from permanent reference points or grid lines, and elevations (where applicable) for all buried, concealed, or otherwise inaccessible work such as underground utilities, piping, conduits, footings, and other below-grade or in-wall installations. A copy of such Record Drawings and Annotated Specifications will be delivered to Owner in accordance with the schedule prepared by Contractor. In the event of a specification that allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the Record Drawings and Annotated Specifications as often as necessary to keep them current but no less often than weekly. The Record Drawings and Annotated Specifications shall be kept at the Site and available for inspection by the Owner, Inspector of Record and the Architect. On Completion of the Contractor's Work and prior to Application for Final Progress Payment, the Contractor will provide one complete set of Record Drawings and Annotated Specifications to

the Owner, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

3.11.3.5 ***Equipment Manuals.*** Contractor shall obtain and furnish to the Owner three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work. The manuals shall be arranged in proper order, indexed, and placed in three-ring binders. At the Completion of its Work, the Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to submittal of Contractor's Application for Final Progress Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the Contractor, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the Owner through the Architect.

3.11.3.6 ***Owner's Property.*** All shop drawings and samples submitted shall become the Owner's property.

3.11.4 **SUBSTITUTIONS**

3.11.4.1 ***One Product Specified.*** Unless the Specifications state that no substitution is permitted, whenever in the Contract Documents any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction is indicated or specified by name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article, which shall be substantially equal or better in every respect to that so indicated or specified and will completely accomplish the purpose of the Contract Documents.

3.11.4.2 ***Two or More Products Specified.*** When two or more acceptable products are specified for an item of the Work, the choice will be up to the Contractor. Contractor shall utilize the same product throughout the Project. If a timely substitution request as set forth in Section 3.11.4.3 is not provided and an "or equal" substitution is requested, the Owner may consider the substitution if the product specified is no longer commercially available. If the Owner allows the substitution to be proposed pursuant to such an untimely request, the Contractor will be responsible for the professional fees incurred by the Architect or Architect's consultants in reviewing the proposed substitution which fees may be withheld from progress payments and/or retention.

3.11.4.3 ***Substitution Request Form.*** Requests for substitutions of products, materials, or processes other than those specified must be made on the Substitution Request form available from the Owner. Any Requests submitted after the deadline specified in the Instructions to Bidders will not be considered, except as noted in paragraph 3.11.4.2. A Substitution Request must be accompanied by evidence as to whether or not the proposed

substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to Owner; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the Contractor. The Contractor shall furnish with its request sufficient information to determine whether the proposed substitution is equivalent including but not limited to all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the Owner in determining whether the proposed substitution is acceptable. The final decision shall be the Owner's. The written approval of the Owner, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. Owner may condition its approval of the substitution upon delivery to Owner of an extended warranty or other assurances of adequate performance of the substitution. All risks of delay due to the Division of the State Architect's approval, or the approval of any other governmental agency having jurisdiction, of a requested substitution shall be on the requesting party.

3.11.4.4 ***List of Manufacturers and Products Required.*** The Subcontractor shall prepare and submit to the Contractor within thirty (30) days of execution of the Subcontract comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for Contractor's or Architect's preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data, and samples, which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the final review of the Contractor and the Architect.

3.11.5 Deferred Approvals

Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the Specifications. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction, approval of a deferred approval shall be on the requesting party.

3.12 CUTTING AND PATCHING

3.12.1 Scope

The Contractor shall be responsible for cutting, fitting, or patching required to Complete the Work or to make its parts fit together properly.

3.12.2 Consent

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or a separate contractor by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and

of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. All cutting shall be done promptly, and all repairs shall be made as necessary.

3.12.3 Structural Members

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Contractor's risk, subject to replacement at its own expense and without reimbursement under the Contract. Agency approvals shall be obtained by the Architect, not by the Contractor.

3.12.4 Subsequent Removal

Permission to patch any areas or items of the Work shall not constitute a waiver of the Owner's or the Architect's right to require complete removal and replacement of the areas of items of the Work if, in the opinion of the Architect or the Owner, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents. Any costs caused by defective or ill-timed cutting or patching shall be borne by the person or entity responsible.

3.13 CLEANING UP

3.13.1 Contractor's Responsibility

The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a neat and orderly condition. All crates, cartons, paper, and other flammable waste materials shall be removed from Work areas and properly disposed of at the end of each day. The Contractor shall continuously remove from and about the Site the waste materials, rubbish, tools, construction equipment, machinery, and materials no longer required for the Work.

3.13.2 Failure to Cleanup

If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, without prior notice to the Contractor and the cost thereof shall be invoiced to the Contractor and withheld from progress payments and/or retention. Each Subcontractor shall have the responsibility for the cleanup of its own Work. If the Subcontractor fails to clean up, the Contractor must do so.

3.13.3 Construction Buildings

When directed by the Owner or the Architect, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor

or Subcontractor. If the Contractor does not remove the tools, equipment, machinery, and materials within fifteen (15) days after Completion of its Work, then they shall be deemed abandoned, and the Owner can dispose of them for its own benefit in whatever way it deems appropriate. Contractor shall pay for any costs to dispose of the items.

3.14 ACCESS TO WORK

The Contractor shall provide the Owner, the Architect, and the Inspector of Record, access to the Work in preparation and progress wherever located.

3.15 ROYALTIES AND PATENTS

3.15.1 Payment and Indemnity

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims of infringement of patent rights and shall hold the Owner and the Architect harmless and indemnify them, to the extent not caused by the Owner's active negligence, sole negligence or willful misconduct, from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents. However, if the Contractor has reason to believe the required design, process, or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner and Architect.

3.15.2 Review

The review by the Owner or Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by the Contractor in violation of any patent or other rights of any person or entity.

3.16 INDEMNIFICATION

3.16.1 Scope: Contractor

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, any construction manager, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, volunteers, Boards of Trustees, members of the Boards of Trustees, and directors ("Indemnitees"), from and against claims, actions, damages, liabilities, losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Contractor's, its Subcontractors', or its suppliers' performance of the Work, including but not limited to the Contractor's or its Subcontractors' use of the Site; the Contractor's or its Subcontractors' construction of the Work, or failure to construct the Work, or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment including,

but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Contractor or its Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Contractor, its Subcontractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Contractor shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Contractor.

3.16.2 **SCOPE: SUBCONTRACTORS**

3.16.2.1 ***Indemnity.*** The Subcontractors shall defend, indemnify, and hold harmless the Indemnitees from and against claims, actions, damages, liabilities, and losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Subcontractors' performance of the Work, including but not limited to the Subcontractors' use of the Site; the Subcontractors' construction of the Work or failure to construct the Work or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. This obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Subcontractors shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Subcontractors.

3.16.2.2 ***Joint and Several Liability.*** In the event more than one Subcontractor is connected with an accident or occurrence covered by this indemnification, then all such Subcontractors shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying Subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnitee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity.

3.16.3 **No Limitation**

The Contractor's and the Subcontractor's obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property (including loss of use), and sickness, disease or death of any person; for breach of any warranty, express or implied; for failure of the Contractor or the Subcontractor to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work.

3.17 OWNER AS INTENDED BENEFICIARY

The Owner is an intended beneficiary of any architectural or engineering work secured by, or performed by, the Contractor to fulfill its obligations under the Contract. Contractor shall state in its contracts with architectural or engineering consultants that their work is for the intended benefit of the Owner.

3.18 NOTICE OF EXCUSE FOR NONPERFORMANCE

If Contractor believes that acts or omissions of Owner (including but not limited to Owner caused delay) have prevented Contractor from performing the Work as required by the Contract Documents and Contractor intends to rely on Owner's acts or omissions and Civil Code section 1511(1) as reasons to excuse Contractor's nonperformance or to support, among other things, Contractor's requests for time extensions under Section 4.5, below, Contractor shall provide written notice of the excuse within five (5) days of the Owner's acts or omissions. If Contractor fails to timely submit the written notice, Contractor shall have waived any right to later rely on the acts or omissions as a defense to Contractor's nonperformance or as the basis for a time extension, regardless of the merits of the defense or time extension. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Contractor acknowledges that these written notices are of critical importance to the Owner's management of the Work and Project and the mitigation of costs and delays to the Work and Project.

3.19 RECOVERY OF COSTS, DAMAGES, OR TIME EXTENSIONS FROM OWNER

Notwithstanding any other provisions of the Contract Documents, Contractor expressly waives its right to recover any special, consequential, or indirect damages from Owner in relation to this Contract or the Project. Contractor may only recover general (also known as direct) damages from Owner to the extent allowed by the Contract Documents.

A Notice of Potential Change, Change Order Request and, if necessary, a Claim (see Sections 4.5, 7.2, and 7.6, below) are the exclusive means for Contractor to preserve its rights to recover any costs, damages, or time extensions related to the Contract or the Project from Owner, including but not limited to alleged breaches of contract based on extra work, delay, wrongful withholding, or wrongful termination. Contractor's failure to comply with the Contract Documents' procedures for a COR, CO, and Claim (including but not limited to Sections 4.5, 7.2, 7.6, and 7.7, below) may completely waive Contractor's rights to recovery any such costs or damages.

3.20 USE OF FEDERAL FUNDS

If federal funds are being used either in whole or in part for this Project (see the Instructions to Bidders), then the Project is subject to, and Contractor must comply with, all applicable federal laws including but not limited to the federal regulations set forth in CFR Title 2, Part 200. Accordingly, Contractor agrees to comply with all such federal requirements, including but not limited to the following:

A. EQUAL EMPLOYMENT OPPORTUNITY. Contractor agrees to comply with and be bound by Title 14, CFR, Section 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," the terms of which are incorporated by reference as though set forth in full herein.

B. DAVIS-BACON ACT. If the Contract Price exceeds $2,000, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Davis-Bacon Act, as applicable and comply with the requirements and wage determinations. (40 U.S.C. §§ 3141-3144; 3146-3148 as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").) Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, Contractor is required to pay wages not less than once a week. Furthermore, pursuant to the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Any contract in excess of $2,000 is subject to the following:

(1) *Minimum Wages*

a. ***Wage rates and fringe benefits.*** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (a)(4) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage

determination (including any additional classifications and wage rates conformed under paragraph (a)(1)(iii) of this section) and the Davis-Bacon poster (WH–1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. ***Frequently reoccurring classifications.***
   i. In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:
      1. The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
      2. The classification is used in the area by the construction industry; and
      3. The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.
   ii. The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(*3*) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. **Conformance.**
   i. The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:
      1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
      2. The classification is used in the area by the construction industry; and
      3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
   ii. The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.
   iii. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to *DBAconformance@dol.gov*. The Administrator, or an authorized

representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

iv. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to *DBAconformance@dol.gov*, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

v. The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. **Fringe benefits not expressed as an hourly rate.** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. ***Unfunded plans.*** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. ***Interest.*** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) *Withholding*

a. ***Withholding requirements.*** Owner may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and

monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, Owner may on its own initiative and after written notice to the contractor take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. ***Priority to withheld funds.*** The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:
    i. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
    ii. A contracting agency for its reprocurement costs;
    iii. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
    iv. A contractor's assignee(s);
    v. A contractor's successor(s); or
    vi. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(3) *Records and certified payrolls*

a. **Basic record requirements**
    i. *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.
    ii. *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

iii. *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph (a)(1)(v) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

iv. *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

v. *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. **Certified payroll requirements**

i. *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the appropriate Federal agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to Owner, or other entity, as the case may be, that maintains such records, for transmission to the appropriate agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

ii. *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a)(3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.,* the last four digits of the worker's Social Security number). The required weekly certified payroll information may be

submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to Owner, or other entity, as the case may be, that maintains such records).

iii. *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

1. That the certified payroll for the payroll period contains the information required to be provided under paragraph (a)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (a)(3)(i) of this section, and such information and records are correct and complete;
2. That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

iv. *Use of Optional Form WH–347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(C) of this section.

v. *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

vi. *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

vii. *Length of certified payroll retention. The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.*

viii. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments,

modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. **Required disclosures and access**

i. *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents that the Owner or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by Owner's authorized representatives or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

ii. *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, Owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

iii. *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the appropriate Federal agency if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to Owner, or other entity, as the case may be, that maintains such records, for transmission to the appropriate agency, the contractor, or the Wage and Hour Division of

the Department of Labor for purposes of an investigation or other compliance action.

(4) *Apprentices and equal employment opportunity*

a. **Apprentices**

i. *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

ii. *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

iii. *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

iv. *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and

wage rate specified in the contractor's registered program must be observed.

b. ***Equal employment opportunity.*** The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the appropriate agency and/or Owner may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.*

a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

(11) ***Anti-retaliation.*** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or
d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

(12) *Copies of Wage Determinations.* Copies of applicable wage determinations are included in the bid package for this contract, and are incorporated by reference as Contract Documents.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. If the Contract Price exceeds $100,000 that involve the employment of mechanics or laborers, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Contract Work Hours and Safety Standards Act, as applicable. (40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).) Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

In addition to the above, any contract in excess of $100,000 is subject to the following:

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1).

(3) Withholding for unpaid wages and liquidated damages

a. ***Withholding process.*** Owner may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. ***Priority to withheld funds.*** The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

   i. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
   ii. A contracting agency for its reprocurement costs;
   iii. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
   iv. A contractor's assignee(s);
   v. A contractor's successor(s); or
   vi. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

c. ***Subcontracts.*** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

d. ***Anti-retaliation.*** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

   i. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

ii. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
iii. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
iv. Informing any other person about their rights under CWHSSA or this part.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT AGREEMENT. For all contracts that meet the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," the provisions of which are incorporated herein by this reference, and any implementing regulations issued by the awarding agency, as applicable.

E. CLEAN AIR AND FEDERAL WATER POLLUTION ACT CONTROL. If the Contract Price exceeds $150,000, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Any violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

F. DEBARMENT AND SUSPENSION. Contractor represents and warrants that it is not listed on the government-wide exclusions in the System for Award Management (SAM), and Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

G. BYRD ANTI-LOBBYING AMENDMENT. If the Contract Price exceeds $100,000, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractor shall file the declaration and certification required by 31 U.S.C. § 1352(b).

H. PROCUREMENT OF RECOVERED MATERIALS. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.323, as applicable.

I. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.216, as applicable.

J. DOMESTIC PREFERENCES FOR PROCUREMENT. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.322, as applicable. 2 CFR Section 200.322 requires Contractor to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products), to the greatest extent practicable.

K. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.321, as applicable. 2 CFR Section 200.321 requires Contractor to take the affirmative steps listed in 2 CFR Section 200.321 paragraphs (b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

L. SAFETY AND HEALTH STANDARDS. As required by 34 CFR 75.609, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the standards under the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Section 651 et seq.) and State and local codes to the extent that they are more stringent.

M. ENERGY CONSERVATION. As required by 34 CFR 75.616, Contractor agrees to construct facilities to maximize the efficient use of energy and to comply with and be bound by, and assist OWNER in ensuring compliance with, the following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) set forth in 34 CFR 75.616. Contractor shall also comply with and be bound by, and assist Owner in ensuring compliance with, the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871).

N. If any provision is required by federal law, or by the federal grant program funding such project, to be included in the Contract Documents, such provisions shall be deemed by the parties to have been included.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 DEFINITION

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative, and shall also refer to all consultants under the Architect's direction and control.

4.1.2 MODIFICATION

To the extent the Contract Documents indicate that Owner has assigned duties or responsibilities to the Architect, Owner reserves the right at all times to reassign such duties or responsibilities to different Owner representatives.

4.1.3 TERMINATION

In the case of the termination of the Architect, the Owner may appoint an architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract Documents shall be that of the former architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 STATUS

The Architect will provide administration of the Contract and may be one of several Owner's representatives during construction, through release of all retention, and during the one (1) year period following the commencement of any warranties. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent set forth in the Owner/Architect agreement. The Architect will have all responsibilities and power established by law, including California Code of Regulations, Title 24, to the extent set forth in the Owner/Architect agreement.

4.2.2 Site Visits

The Architect will visit the Site at intervals necessary in the judgment of the Architect or as otherwise agreed by the Owner and the Architect in writing to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when Completed, will be in accordance with the Contract Documents.

4.2.3 Limitations of Construction Responsibility

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

4.2.4 Communications Facilitating Contract Administration

The Owner and the Contractor shall communicate through the Architect, unless there is a construction manager for the Project or the Owner directs otherwise. Communications between Owner and Subcontractors or material or equipment suppliers shall be through the Contractor.

4.2.5 Payment Applications

The Contractor shall submit payment applications to the Architect, unless there is a construction manager for the Project or the Owner directs otherwise.

4.2.6 Rejection of Work

The Architect, Inspector of Record, any construction manager and others may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents or that the Owner require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not the Work is fabricated, installed, or completed. However, no recommendation shall create a duty or responsibility to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 Change Orders

The Architect may prepare change orders and construction change directives and may authorize minor changes in the Work.

4.2.8 Warranties Upon Completion

The Architect in conjunction with the Inspector of Record, or as otherwise directed by Owner, will conduct field reviews of the Work to determine the date of Completion, shall receive and forward to the Owner for the Owner's review and records, written warranties and related

documents required by the Contract and assembled by the Contractor. The handling by the Architect of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of the Contractor or other entities, parties, or persons performing or supplying the Work.

Except as may be otherwise directed by Owner, the Architect will conduct a field review of the Contractor's work pursuant to Section 9.7.1, below, for development of a punch list and one (1) follow-up field review if required. The cost incurred by the Owner for further field reviews or the preparation of further punch lists by the Architect shall be invoiced to the Contractor and withheld from payment and/or retention.

4.2.9 INTERPRETATION

The Architect, Inspector of Record, any construction manager, the Owner or any independent consultant of Owner, as Owner deems appropriate, will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Contractor. The Owner's response to such requests will be made with reasonable promptness, while allowing sufficient time to permit adequate review and evaluation of the request.

4.2.10 ADDITIONAL INSTRUCTIONS

4.2.10.1 ***Architect's Interpretations and Decisions.*** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations of and decisions regarding the Contract Documents, the Architect will endeavor to secure faithful performance under the Contract Documents by both the Owner and the Contractor and will not show partiality to either. The Work shall be executed in conformity with, and the Contractor shall do no work without, approved drawings, Architect's clarifying instructions, and/or submittals.

4.2.10.2 ***Typical Parts and Sections.*** Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections which are essentially of the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.

4.2.10.3 ***Dimensions.*** Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on Drawings, Architect shall supply them on request. The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the Contract Documents.

4.3 INSPECTOR OF RECORD

4.3.1 GENERAL

One or more Project inspectors ("Inspector of Record") employed by the Owner and approved by the Division of the State Architect will be assigned to the Work in accordance with the

requirements of Title 24 of the California Code of Regulations. The Inspector of Record's duties will be as specifically defined in Title 24.

4.3.2 Inspector of Record's Duties

All Work shall be under the observation of or with the knowledge of the Inspector of Record. The Inspector of Record shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector of Record such information as may be necessary to keep the Inspector of Record fully informed regarding progress and manner of work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector of Record is not authorized to make changes in the drawings or specifications nor shall the Inspector of Record's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

4.3.3 Inspector of Record's Authority to Reject or Stop Work

The Inspector of Record shall have the authority to reject work that does not comply with the provisions of the Contract Documents. In addition, the Inspector of Record may stop any work which poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.

4.3.4 Inspector of Record's Facilities

Within seven (7) days after notice to proceed, the Contractor shall provide the Inspector of Record with temporary facilities.

4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES

If at any time prior to the Completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act or omission of the Contractor, the Contractor shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the progress payments and/or retention. Such invoicing shall be independent from any other Owner remedies, including but not limited to liquidated damages; ***except that*** to the extent that such additional services constitute Owner's delay damages under Public Contract Code section 7203, Owner may not recover them or invoice Contractor for them. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Additional services shall include, but shall not be limited to, the following:

A. Services made necessary by the default of the Contractor.

B. Services made necessary due to the defects or deficiencies in the Work of the Contractor.

C. Services required by failure of the Contractor to perform according to any provision of the Contract Documents.

D. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by the Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).

E. Services for evaluating and processing Claims submitted by the Contractor in connection with the Work outside the established Change Order process.

F. Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time for Completion.

G. Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.

H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

4.5 NOTICES OF POTENTIAL CHANGE, CHANGE ORDER REQUESTS, AND CLAIMS

If the Contractor identifies the potential for extra work, delay in the critical path schedule, or the need for additional money or time, or if the Contractor requests additional money or time on any grounds (including but not limited to an alleged breach of an implied warranty of the correctness of the plans and specifications [*Souza & McCue Construction Co. v. Superior Court* (1962) 57 Cal.2d 508]), or if the Contractor believes that Owner has failed to pay amounts due or otherwise breached the Contract, or otherwise believes that it is entitled to a modification of the Contract terms and conditions, then Contractor shall follow the procedures in this Section 4.5 and Article 7, otherwise Contractor shall have waived its rights to pursue those issues and any later attempts to recover money or obtain a modification shall be barred. Contractor specifically acknowledges the Owner's and public's interest in, and need to know of, potential changes and disputes as early as possible so Owner can investigate, mitigate and resolve adverse cost and time impacts, if any. It is Contractor's obligation to know and comply with the requirements of the Contract Documents, including but not limited to Section 4.5 and Articles 7 and 8, and Owner has no obligation to notify Contractor of any failure to comply with those requirements.

4.5.1 NOTICE OF POTENTIAL CHANGE

Contractor shall submit a written Notice of Potential Change to the Owner for extra work (including acceleration or disruption), critical path delay, or additional money or time, including any money or time based on a request submitted to Contractor by one of Contractor's Subcontractors or suppliers (see Section 4.5.5.4, below). Contractor shall submit such Notices of Potential Change to Owner within five (5) days of the earlier of (a) Contractor becoming aware of the issue creating a potential change, or (b) the date by which Contractor should have become aware of the issue creating a potential change; unless the issues are, or may soon be, adversely affecting the costs or critical path of the Work, in which case the Contractor must submit the written notice without delay so the Owner may take immediate action to mitigate cost and schedule impacts of the change, if any. The written notice shall explain the nature of the potential change and its potential impact (including any extra money or extra time that may be owed under the Contract) so the Owner may take action to mitigate costs and schedule impacts, if necessary.

When submitting a written Notice of Potential Change based on extra work (including acceleration or disruption), Contractor shall not perform the extra work until directed in writing to do so by Owner. When submitting a written Notice of Potential Change for an issue of critical path delay, Contractor shall proactively mitigate the effects of the alleged delay as much as reasonably possible so as to minimize any impact to the schedule, until otherwise directed by Owner. If Contractor intends to rely on Owner's acts or omissions in support of a request for a time extension, then Contractor must also provide the notice set forth in section 3.18, above.

If Contractor wants to accelerate its work to minimize or avoid delay, Contractor must submit a Notice of Potential Change for the delay, any delay damages, the need for any time extensions, and the cost impact of the desired acceleration. If Contractor's Work is disrupted and thus creates extra work or delay, Contractor must submit a Notice of Potential Change for the delay, any delay damages, the need for any time extensions, and the cost impact of the disruption.

Failure to timely submit a written Notice of Potential Change shall constitute a complete waiver by Contractor of any right to later submit a change order request or pursue a Claim on that issue, or to later pursue any additional money or time extensions in any manner related to that issue, regardless of the merits. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Contractor acknowledges that these written notices are of critical importance to the Owner's Work and Project management and the mitigation of Work and Project costs and delays.

4.5.2 CHANGE ORDER REQUESTS

If, after submitting a written Notice of Potential Change pursuant to Section 4.5.1, Contractor continues to believe that it is entitled to additional money or time (including but not limited to grant of a time extension) based on an issue (including but not limited to money or time based on a request by a Subcontractor or supplier; see Section 4.5.5.4, below), then Contractor shall submit a Change Order Request ("COR"; see Section 7.6.1) to Owner within twenty (20) days of the earlier of (i) Contractor becoming aware of the issue creating a potential change, or (ii) the

date by which Contractor should have become aware of the issue creating a potential change. A rejection at any time, or a lack of a rejection, by Owner of a Notice of Potential Change does not affect the timeline for submitting a COR.

Failure to timely submit a COR related to an issue, or failure to include any information in a timely COR for that issue as specifically required by the Contract, shall constitute a complete waiver by Contractor of any right to later submit a COR or Claim on that issue, or to later pursue any additional money or time in any manner related to that issue, regardless of the merits. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

The COR shall state the grounds for the additional money or time requested and the amount of money or time requested, and Contractor shall include all information and documentation supporting the COR, including but not limited to calculations and analysis that demonstrate that the requested money or time is allowed by the applicable contract provisions and law. For any money or time other than the money and time specifically requested in the COR, Contractor will have completely waived its rights to recover such additional money or time (Contractor will not have satisfied a condition precedent or exhausted administrative remedies). If the COR requests money, then the COR must explain how the requested amounts were calculated. If the COR requests time, then the COR must identify the number of days of time being requested, establish that the days of delay are excusable (see Section 8.4.1), and include some critical path schedule analysis to support the number of days requested. Contractor may not reserve its rights, whether in a COR or other document, to submit a COR at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a COR shall be grounds for rejection of the COR.

In the event that costs or delay are continuing to accrue at the time that a COR is required to be submitted, Contractor must still timely submit the COR with all available information and documentation supporting the COR as described above, and Contractor shall identify the costs or delay that are continuing. For continuing costs, the COR must include an estimate of when the extra work is expected to conclude and the total costs that will be incurred by the time that the extra work is expected to conclude. For continuing delay, the COR must include a schedule and delay analysis of when Contractor estimates that the delay will cease, what the final time extension request is estimated to be, and an estimate of the total of delay damages, if any, that will be requested. When the continuing cost or delay ends, within ten (10) days Contractor shall submit an updated COR that states the final dollar amount and/or time extension requested and that includes all required information and documentation. Failure to submit such final COR shall act as a waiver as described above.

Contractor shall certify each COR that it submits, including the initial COR and final COR for a continuing cost or delay, using the form set forth in Section 4.5.5.1, except that every reference to "Claim" shall be changed to "COR." If a COR is submitted without certification, a certification can still be submitted within the timelines set forth in the first paragraph of Section 4.5.2. If the COR is not timely certified, Contractor will have completely waived its rights to any money or time for that issue. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. A certification of an initial COR for a continuing cost or delay shall include a statement that "Any estimates in the attached initial COR for a continuing

cost or delay are based on true and correct facts and reasonable assumptions, as explained in the initial COR."

The Owner may accept the entire COR, accept part of the COR and reject the remainder, reject the entire COR, or request additional information. If the Owner does not respond within thirty (30) days of submission of the COR by accepting the entire COR, accepting part of the COR and rejecting the remainder, or requesting additional information, the entire COR shall be deemed rejected as of the thirtieth (30th) day. In the case of continuing costs or delay, the 30-day deadline in the previous sentence shall not apply to the initial COR; it will only apply to the final COR (see above). If the Owner requests additional information within thirty (30) days of submission, then the Contractor shall submit the information within fifteen (15) days of the date of the request and the Owner shall have fifteen (15) days after the receipt of the additional information to accept or reject (in whole or in part) the COR. If the Contractor fails to submit the information within fifteen (15) days, then the COR shall be deemed rejected. If the Owner fails to respond within fifteen (15) days after the submission of additional information, the entire COR shall be deemed rejected as of the fifteenth (15th) day.

4.5.3 DEFINITION OF CLAIM

A "Claim" is a separate demand by the Contractor sent by registered or certified mail, return receipt requested, for (a) a time extension, including, without limitation, a request for relief from damages or penalties for delay assessed by Owner under the Contract Documents; (b) payment by Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract Documents, and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to (including but not limited to a claim for damages based on misleading or incomplete plans or specifications); or (c) an amount the payment of which is disputed by the Owner. A Claim includes any claim within the scope of Public Contract Code sections 9204 or 20104 et seq., and any alleged violation of a prompt payment statute. A Claim includes any dispute Contractor may have with the Owner, including one which does not require a Notice of Potential Change or COR under Sections 4.5.1 and 4.5.2, and including any alleged breach of contract or violation of law by the Owner (such as wrongful withholding of a payment by the Owner or wrongful termination by the Owner). A Claim under this Article 4.5 shall also constitute a claim for purposes of the California False Claims Act. However, resubmittal of a COR which was previously rejected under Section 4.5.2 (whether rejected expressly [in whole or in part] or deemed rejected by Owner inaction), including but not limited to a request for reconsideration, does not constitute a Claim. In the event of a conflict between a Claims provision in Division 1 of the Specifications and Section 4.5, Section 4.5 shall take precedence.

The Notice of Potential Change and COR procedures above are less formal procedures which precede the more formal Claim. A Notice of Potential Change does not constitute a Claim. A COR does not constitute a Claim; **except that** if insufficient time remains before the Claim deadline (see Article 4.5.4) for Contractor to submit a COR and for Owner to process and reject the COR under Article 4.5.2, then either (1) Contractor may submit a COR which Owner shall treat as a Claim, but only if the COR complies with all requirements in this Article 4.5 and

Article 7 for COR's and Claims, or (2) a COR is not required so long as a Claim complying with this Article 4.5 is timely submitted.

A Claim does not include vouchers, invoices, progress payment applications, or other routine or authorized forms of requests for progress payments on the Contract; however, those documents remain "claims" for purposes of the California False Claims Act. A Claim does not include a Government Code Claim. ("Government Code Claim" means a claim under Government Code sections 900 et seq. and 910 et seq.)

4.5.4 TIME FOR SUBMITTING CLAIM; WAIVER

Contractor shall submit a Claim to the Owner's construction manager (or in the absence of a construction manager, to Architect) and Owner within the earlier of (a) fifteen (15) days after Owner's rejection of a COR in whole or in part, or (b) fifteen (15) days after a COR being deemed rejected, pursuant to Section 4.5.2 above. If the Claim is not based on an issue for which a COR would be required (such as wrongful withholding by the Owner), then Contractor shall submit the Claim within fifteen (15) days after the date on which Contractor knew, or should have known, about the issue on which the Claim is based. If a Claim has not been submitted as of the date that the Contractor Completes the Work and submittal of the Claim was not yet required under the Contract Documents, then the Claim shall be submitted within seven (7) days of Completion of the Work; and such Claim shall not be barred due to lack of a Notice of Potential Change or COR if the deadline for the Notice of Potential Change or COR was after Completion of the Work.

In addition, within seven (7) days of Completion of the Work, Contractor shall submit to Owner, in writing, a list and summary of all Claims for money or time extensions under or arising out of this Contract which were timely filed, which were fully compliant with the Contract's requirements for Claims, and which the Contractor wishes to pursue in whole or in part. This Claim summary requirement shall not extend the time for submitting a Claim.

Failure to timely submit a Claim or Claim summary, failure to specifically identify a Claim in the Claim summary, or failure to include any information in a timely Claim as specifically required by the Contract, including but not limited to this Article 4, will act as a complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim for the money or time (see Section 4.5.6), and (c) initiate any action, proceeding or litigation for the money or time, regardless of the merits; Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Owner does not have an obligation to reject the Claim for a failure to comply with any of the Claim requirements in the Contract, including the lack of certification, and any failure by Owner to reject, or any delay in rejecting, a Claim on that basis does not waive the Owner's right to reject the Claim on that basis at a later time. In no event may the Contractor reserve its rights to assert a Claim for a time extension or additional money beyond the timelines set forth in this provision unless the Owner agrees in writing to allow the reservation.

4.5.5 CONTENT OF CLAIM

4.5.5.1 *Claim Format; Waiver*

Every Claim shall be in writing. All money or time extensions sought must be stated and itemized in the Claim at the time submitted. The responsibility to substantiate Claims shall rest with the Contractor, and the Contractor shall furnish reasonable documentation to support each Claim, including as applicable, that documentation set forth in sections 4.5.5.2 through 4.5.5.4. In addition, the Contractor shall include a certification with each and every Claim at the time of submission, as follows:

> I, _____ *[name of declarant]*, declare the following:
>
> _____ *[Contractor company name]* has contracted with ____ *[public entity name]* for the _____ Contract ("Contract"). _____ *[Contractor company name]* authorized me to prepare the attached Claim for money and/or time extension for _____ *[public entity name]* regarding this Contract (such Claim being dated _____, 20__, and entitled _____, and requesting $_____ and/or ___ additional days), and I prepared the attached Claim. I am the most knowledgeable person at _____ *[Contractor company name]* regarding this Claim.
>
> The attached Claim complies with all laws applicable to submission of a Claim, including but not limited to California Penal Code section 72, Government Code sections 12650 et seq. (False Claims Act), and Business and Professions Code sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other claims that violate law or the Contract, may lead to fines, imprisonment, and/or other serious legal consequences for myself or _____ *[Contractor company name]*.
>
> The attached Claim does not breach the Contract, is not a false claim, does not violate any applicable law, satisfies all provisions of the Contract applicable to submission of the Claim, only contains truthful and accurate supporting data, and only requests money and/or time extensions that accurately reflect the adjustments to money and time for which I believe that _____ *[public entity name]* is responsible under its Contract with _____ *[Contractor company name]*.
>
> While preparing this declaration and Claim I consulted with others (including attorneys, consultants, or others who work for _____ *[Contractor company name]*) when necessary to ensure that the statements were true and correct.
>
> Contractor understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents; that Owner,

or Owner's representatives, may reject the Claim on that basis; and that unless Contractor properly and timely files the Claim with the certification, Contractor cannot further pursue the Claim in any forum and all rights to additional money or time for the issues covered by the Claim are waived due to a condition precedent not having been satisfied.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____, 20__, at _____, California.

_____ *[signature]*
_____ *[name of declarant]*

Contractor's failure to timely submit a certification will constitute a complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6.3) for the money or time, and (c) initiate any action, proceeding or litigation for the money or time. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.5.2 ***Claims for Additional Money***

Each Claim for additional money (including but not limited to those described in (b) and (c) of the first paragraph of Section 4.5.3) must include all facts supporting the Claim, including but not limited to all supporting documentation plus a written analysis as to (a) why the claimed cost was incurred, (b) why Contractor could not mitigate its costs, (c) why the claimed cost is the responsibility of the Owner, and (d) why the claimed cost is a reasonable amount. In no event will the Contractor be allowed to reserve its rights, whether in a Claim or other document, to assert a Claim for money at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a Claim shall be grounds for rejection of the Claim. Any costs, direct or indirect, not timely asserted in a certified Claim shall be waived. A Claim may not include any costs incurred in preparation of the Claim or in preparation of any underlying COR, including but not limited to costs of delay analysis.

Failure to strictly comply with these content requirements will act as a complete waiver of Contractor's rights to (i) recover money based on the issues addressed by the Claim, (ii) submit a Government Code Claim for the requested money or time (see Section 4.5.6.3), and (iii) initiate any action, proceeding or litigation for the requested money or time, regardless of the merits; Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.5.3 ***Claims for Additional Time***

4.5.5.3.1 ***Notice of Extent of Claim***

If the Contractor wishes to make a Claim for an extension of the Contract Time (including but not limited to Section 4.5.3(a)), the Claim shall include, but not be limited to, the following: All

facts supporting the Claim; all documentation of such facts (including but not limited to daily reports, photographs, and correspondence); all information required by the Contract Documents, all information establishing entitlement to a time extension pursuant to Section 8.4.1 below; a current and certified schedule (see Section 3.9.1, above) clearly showing the impact of the delay on logic ties, predecessors, successors, float, and the planned date of Completion; and a delay analysis explaining in detail (a) the nature of the delay, including the exact dates it started and ended (or is expected to end), (b) the Contractor's lack of responsibility for the claimed delay, (c) the claimed delay's impact on the as-built critical path, specifically identifying which activities were delayed and explaining why those activities were critical to the date of Completion, (d) the claimed delay's impact on the date of Completion (including an analysis of any float still remaining and whether the alleged delay in work exceeds such remaining float), (e) all concurrent delays, and (f) the steps taken by Contractor to mitigate the impact of the delay and why Contractor could not further mitigate the delay impact.

If Contractor also seeks delay damages associated with a requested time extension, then Contractor shall also state all facts, provide all documentation, and analyze in detail the basis for such damages, including but not limited to the legal and contractual entitlement to such damages (see Section 8.4.2) and the calculation of the damages actually incurred.

Failure to strictly comply with these content requirements will act as a complete waiver of Contractor's rights to (i) recover money or time based on the issues addressed by the Claim, (ii) submit a Government Code Claim for the requested money or time (see Section 4.5.6.3), and (iii) initiate any action, proceeding or litigation for the requested money or time, regardless of the merits; Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

In no event will the Contractor be allowed to reserve its rights, whether in a Claim or other document, to assert a Claim for a time extension at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a Claim shall be grounds for rejection of the Claim. Any time extension not timely asserted in a certified Claim shall be waived.

4.5.5.3.2 *Unusual and Uncommon Weather Claims*

If unusual and uncommon weather is the basis for a Claim for additional time, Contractor's delay analysis (see Section 4.5.5.3.1, above) must also provide Owner data and facts showing that the weather conditions were unusual and uncommon for the period of time, could not have been reasonably anticipated or mitigated, had an adverse effect on the critical path of the scheduled construction, and meet all other Contract requirements for a time extension (including but not limited to Section 8.4.1, below).

4.5.5.4 *Subcontractor Requests for Money or Time*

A Subcontractor or supplier to Contractor may not submit a request for additional time or money directly to the Owner due to its lack of contractual privity with Owner. If a Subcontractor or supplier submits to Contractor a request for additional money or time based on an alleged breach

of the subcontract or supplier contract by Contractor, then the Subcontractor or supplier must comply with the same procedures that would apply to any Contractor request to Owner for additional money or time.

For any Contractor request to Owner for additional money or time based on a Subcontractor's or supplier's request to Contractor for additional money or time (see previous paragraph), Contractor must comply with the requirements and prerequisites in the Contract Documents for requests to the Owner for additional money or time (including but not limited to this Section 4.5 of the General Conditions) and with Public Contract Code section 9204(d)(5).

Any Claim by Contractor pursuant to the previous paragraph must include Contractor's certification (see General Conditions §4.5.5.1), a complete copy of the Subcontractor's or supplier's request for money or time (including all documents submitted by the Subcontractor or supplier), and any other necessary supporting documentation. Any such Claim by Contractor must include (a) Contractor's detailed analysis of the merit of Subcontractor's or supplier's request to the Contractor, including (i) detailed analysis of Contractor's alleged breaches of the subcontract or supplier contract that allegedly caused the Subcontractor or supplier to incur damages or delay, and (ii) detailed analysis of all of Contractor's defenses to the request for money or time by the Subcontractor or supplier; and (b) detailed analysis of the Owner's liability to Contractor for any money or time that Contractor owes, or may later be determined to owe, to Subcontractor or supplier (including but not limited to how Owner's alleged breaches of the Contract Documents caused Contractor to breach the subcontract or supplier contract). In any such Claim, Contractor may deny that it is liable to the Subcontractor or supplier for some or all of the requested money or time, or it may assert that it is merely submitting the Claim to Owner on behalf of the Subcontractor or supplier; but doing one or the other would not excuse Contractor from complying with the above requirements for its request to the Owner.

Any failure by Contractor to timely comply with this Section 4.5.5.4 (including a failure to timely submit a Notice of Potential Change, COR, Claim, certification, or detailed analysis) shall act as a complete waiver of Contractor's rights to (a) recover money or time from Owner based on any money or time that Contractor owes, or may later be determined to owe, to the Subcontractor or supplier, (b) submit a Government Code Claim to Owner for the money or time requested by the Subcontractor or supplier (see Section 4.5.6.3), and (c) initiate any action, proceeding or litigation against Owner for any money or time that Contractor owes, or may later be determined to owe, to the Subcontractor or supplier. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.6 PROCEDURES FOR CLAIMS (PUBLIC CONTRACT CODE SECTION 9204)

Claims are subject to this section 4.5.6 and Public Contract Code section 9204, as well as the separate procedures and substantive provisions of Sections 4.5.1 through 4.5.5 and the rest of the Contract Documents. Claims of $375,000 or less are also subject to Public Contract Code sections 20104 et seq., but to the extent that one of the procedures in Sections 20104 et seq. conflicts with the procedures in Section 9204, the requirements of Section 9204 shall control.

4.5.6.1 ***Claims***

The Owner shall conduct a reasonable review of the Claim and shall respond in writing to any written Claim within 45 days of receipt of the Claim. During that 45-day period, plus any extension, Owner may request, in writing, additional documentation supporting the Claim or relating to defenses to the Claim the Owner may have against the Contractor. Owner shall review any additional documentation Contractor supplies in response to that request within the 45 day, plus any extension, timeline.

After receipt of a Claim, the 45-day period may be extended by Owner and Contractor. The written response shall identify which portion of the Claim is disputed and what portion is undisputed. If Owner needs approval from its governing board to provide the written response, and the governing board does not meet within the 45 days or any extended period of time, then the Owner shall have up to three days after the next publicly noticed meeting of the governing board to provide the written response. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues the written response. Owner's failure to respond to a Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

4.5.6.2 ***Meet and Confer***

If the Contractor disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the Contractor may so notify the Owner, in writing, either within 15 days of receipt of the Owner's response or within 15 days of the Owner's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a written demand sent by registered or certified mail return receipt requested, the Owner shall schedule an informal conference for settlement of the dispute, which shall take place within 30 days of the demand. Upon written agreement of the Owner and Contractor, the informal conference may take place during regularly scheduled Project meetings. The informal conference is not a mediation since there is no neutral person facilitating communication to assist the parties to reach agreement; therefore, the provisions of Evidence Code sections 1115-1128 shall not apply to any portion of the informal conference (including but not limited to any documents provided or shown, or statements of fact or opinion made, by a party) unless the parties expressly agree in writing to their application. Any offer of compromise at an informal conference shall not be admissible to prove liability, as provided in Evidence Code section 1152, but this statute's prohibition of admissibility shall not apply to other statements before or at the informal conference, or in any document prepared for or exchanged at the informal conference.

If Contractor fails to timely demand an informal conference pursuant to the previous paragraph, then Contractor will have waived all rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6) for such money or time, and (c) initiate any action, proceeding or litigation for such money or time. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

Within ten (10) business days after the conclusion of the informal conference, the Owner shall give a written statement to the Contractor identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues the written statement. Within ten (10) business days of issuance of Owner's written statement, Contractor shall identify in writing the disputed portion of the Claim that shall be submitted to non-binding mediation (which may consist of any nonbinding process, including but not limited to neutral evaluation or a dispute review board), with the Owner and Contractor sharing the costs equally. The Owner and Contractor shall mutually agree to a mediator within ten (10) business days after the Contractor has identified in writing the disputed portion of the Claim. If they cannot agree upon a mediator, then each shall select a mediator and those two mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim. (Each party shall bear the fees and costs its respective mediator charged in connection with the selection of the neutral mediator). The parties may mutually waive in writing the requirement for mediation. If Contractor fails to timely notify the Owner in writing that it wishes to mediate pursuant to this paragraph, Contractor will have waived all right to further pursue the Claim pursuant to section 4.5.4. The Contractor and Owner shall reasonably cooperate to schedule and attend a mediation as soon as reasonably possible; or they may agree to postpone mediation until the Work is Complete. Owner's failure to respond to the Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

4.5.6.3 ***Government Code Claim***

If a Claim or any portion of it remains in dispute after the mediation and Contractor wishes to pursue it, the Contractor **must** file a timely and proper Government Code Claim. The filing of a Government Code Claim is specifically required in addition to all contractual procedures described in Sections 4.5 through 4.5.6.2. The above contractual procedures do not act as a substitute for the Government Code Claim process, and the two sets of procedures shall be sequential with the contractual procedures occurring first.

Failure to timely file a Government Code Claim shall act as complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Government Code Claim was required, and (b) initiate any action, proceeding or litigation for such money or time. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

Owner and Contractor shall proceed with the Government Code Claim according to Government Code, Section 900 et seq., and as otherwise permitted by law. For purposes of the applicable Government Code provisions, and as provided in Public Contract Code section 20104.2(e), the running of the time period within which a Contractor must file a Government Code Claim shall commence upon accrual of a cause of action, and shall be tolled from the time the Contractor submits a written Claim under Section 4.5 until the time that the Claim is denied, in whole or in part, as a result of the meet and confer process in Section 4.5.6.2, including any period of time utilized by the meet and confer process. For these purposes, a cause of action based on a Contractor request for additional compensation or a time extension shall accrue when the Change Order Request is rejected, or deemed rejected, by the Owner (see Section 4.5.2, above); and all other causes of action shall accrue when the alleged wrongful conduct (e.g., wrongful

withholding, or wrongful termination) occurred. Owner's rejection of a Claim under Sections 4.5.3-4.5.6.2, above, would not give rise to a cause of action against Owner since the Claim addressed causes of action that already had accrued before the submission of the Claim.

4.5.7 CONTINUING CONTRACT PERFORMANCE

Despite Contractor's submission of, or Owner's rejection of, a Notice of Potential Change, COR, Claim, or Government Code Claim based on alleged breaches of the Contract by Owner, the Contractor shall proceed diligently and expeditiously with performance of the Contract as directed by Owner, and the Owner shall continue to make any undisputed payments in accordance with the Contract. Contractor acknowledges that Completion of the Work is a high priority for both Owner and Contractor as failure to Complete the Work would most likely cause each of them to incur much greater costs and damages than would be incurred if the Work were Completed. If Contractor believes that Owner has breached the Contract and that such breach is preventing or delaying Contractor's performance as directed by Owner, then Contractor must submit notice as required by Section 3.18, above.

4.5.8 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

4.5.8.1 *Trenches or Excavations Less Than Four Feet Below the Surface*

If Contractor encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall give notice to the Owner promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. If Contractor believes that such conditions differ materially and will cause an increase in the Contractor's cost of, time required for, or performance of any part of the Work, Contractor must comply with the Contract provisions for Notice of Potential Change, Change Order Request, and Claims (including but not limited to Section 4.5 of these General Conditions).

4.5.8.2 *Trenches or Excavations Greater Than Four Feet Below the Surface*

Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:

> 4.5.8.2.1 The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:
>
> (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

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

4.5.8.2.2 The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract.

4.5.8.2.3 In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any deadline for Completion provided by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.5.9 Injury or Damage to Person or Property

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, any of the other party's employees or agents, or others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. For a Notice of Potential Change, COR and Claim for additional cost or time related to this injury or damage, Contractor shall follow Section 4.5.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 Subcontractor

A Subcontractor is a person or entity, who has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. To the extent that the term Trade Contractor is utilized in

the Contract Documents, it shall have the same meaning as the term "Subcontractor."

5.1.2 Sub-Subcontractor

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.1.3 Specialty Contractors

If a Subcontractor is designated as a "Specialty Contractor" as defined in section 7058 of the Business and Professions Code, all of the Work outside of that Subcontractor's specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100, et seq.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Assignment or Substitution - Consent of Owner

In accordance with Public Contract Code sections 4107 and 4107.5, no Contractor whose bid is accepted shall, without the written consent of the Owner: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the original bid; permit any such Subcontract to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the original bid; sublet or subcontract any portion of the Work in excess of one-half of one percent (0.5%) of the Contractor's total bid as to which its original bid did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve Contractor or its Subcontractors from their obligations under the terms of the Contract Documents.

5.2.2 Grounds for Substitution

Pursuant to Public Contract Code section 4107 and the procedure set forth therein, no Contractor whose bid is accepted may request to substitute any person or entity as a Subcontractor in place of a Subcontractor listed in the original bid except in the following instances:

A. When the Subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans and specifications for the Project involved or the terms of that Subcontractor's written bid, is presented to the Subcontractor by the Contractor;

B. When the listed Subcontractor becomes insolvent or the subject of an order for relief in bankruptcy;

C. When the listed Subcontractor fails or refuses to perform his or her Subcontract;

D. When the listed Subcontractor fails or refuses to meet the bond requirements of the prime contractor set forth in Public Contract Code section 4108.

E. When the Contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions of Public Contract Code section 4107.5, that the name of the Subcontractor was listed as the result of inadvertent clerical error;

F. When the listed Subcontractor is not licensed pursuant to the Contractors License Law; or

G. When the awarding authority, or its duly authorized officer, determines that the Work being performed by the listed Subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or the Subcontractor is substantially delaying or disrupting the progress of the Work.

H. When the listed Subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 of the Labor Code.

I. When the awarding authority determines that a listed Subcontractor is not a responsible contractor.

5.2.2.1 ***No Change in Contract.*** Any substitutions of Subcontractors shall not result in any increase in the Contract Sum or result in the granting of any extension of time for a Milestone Deadline or the Completion of the Work.

5.2.2.2 ***Substitution Due to Clerical Error.*** The Contractor, as a condition of asserting a claim of inadvertent clerical error in the listing of a Subcontractor, shall, pursuant to Public Contract Code section 4107.5, within two (2) working days after the time of the prime bid opening by the awarding authority, give written notice to the awarding authority and copies of such notice to both the Subcontractor it claims to have listed in error, and the intended Subcontractor who had bid to the Contractor prior to bid opening. Any listed Subcontractor who has been notified by the Contractor in accordance with the provisions of this section as to an inadvertent clerical error, shall be allowed six (6) working days from the time of the prime bid opening within which to submit to the awarding authority and to the Contractor written objection to the Contractor's claim of inadvertent clerical error.

In all other cases, the Contractor must make a request in writing to the awarding authority for the substitution of a subcontractor, giving reasons therefore. The awarding authority shall mail a written notice to the listed Subcontractor giving reasons for the proposed substitution.

The listed Subcontractor shall have five (5) working days from the date of such notice within which to file with the awarding authority written objections to the substitution.

Failure to file written objections pursuant to the provisions of this section within the times specified herein shall constitute a complete waiver of objection to the substitution by the listed Subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed Subcontractor that an inadvertent clerical error was made.

If written objections are filed, the awarding authority shall give five (5) days notice to the Contractor and to the listed Subcontractor of a hearing by the awarding authority on the Contractor's request for substitution as provided in Public Contract Code section 4107. The determination by the awarding authority shall be final.

5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

A. Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

5.5 SUBCONTRACTOR'S RESPONSIBILITIES

Every Subcontractor is bound to the following provisions, unless specifically noted to the contrary in the Subcontractor's contract subject to the limitations of section 5.3.

5.5.1 Supervision by Subcontractors

Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Specifications, and other instructions, shall at once report to Contractor any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Contractor concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

5.5.2 Discipline and Order

Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Site. The Contractor shall have the right to remove from the Work any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

5.5.3 Defects Discovered

Should the proper and accurate performance of the Work depend upon the proper and accurate performance of other work not included in its Contract, each Subcontractor shall use all necessary means to discover any defect in such other work and shall allow the Contractor, the Owner and Architect, or other Subcontractors as Contractor elects, a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Contractor over its written objection.

5.5.4 Subcontractor Information

Each Subcontractor shall submit to the Owner, the Contractor, or the Architect, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Contractor in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Contractor with respect thereto.

5.5.5 Temporary Structures

Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Contractor in the Subcontract Agreement. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Contractor. When it becomes necessary due to the progress of the Work for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Contractor or Owner. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

5.5.6 Charges to Subcontractor

Each Subcontractor may be subject to the Contractor's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

5.5.7 Fines Imposed

Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

5.5.8 Project Signs

Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement. The Owner will permit a single Project sign, which shall be subject to the Owner's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

5.5.9 Remedies for Failure to Perform

Without limitation of any other right or remedy available to Contractor under the Contract Documents or at law, should: the Subcontractor fail to perform its portion of the Work in a skilled and expeditious manner in accordance with the terms of the Contract Documents with sufficient labor, materials, equipment, and facilities; delays the progress of the job or otherwise fail in any of its obligations; or either a receiver is appointed for the Subcontractor or the Subcontractor is declared to be bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceedings or declaration is not set aside within thirty (30) days, then the Contractor, upon three (3) days notice to the Subcontractor (subject to the requirements of Pub. Contracts Code, § 4107), may provide such labor, materials, or perform such work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Contractor may terminate the employment of the Subcontractor, taking possession of its tools,

materials, and equipment related to the Work and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Contractor's own forces.

5.5.10 Disputes Not to Affect Work

In the event of any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a Change Order for any Work requested of it or entitled to payment, the Subcontractor shall continue to proceed diligently with the performance of the Work. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. The Contractor shall continue to pay the undisputed amounts called for under the Subcontract Agreement during the existence of the dispute. Any party stopping or delaying the progress of the Work because of a dispute shall be responsible in damages to the Owner, the Architect, and the Contractor for any losses suffered as a result of the delay.

5.5.11 Application for Payment

Contractor agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.

5.5.12 Compliance with Procedures

Each Subcontractor shall comply with all procedures established by the Contractor for coordination among the Owner, the Owner's consultants, Architect, Contractor, and the various Subcontractors for coordination of the Work with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

5.5.13 On-Site Record Keeping

Subcontractor shall comply with all on-Site record keeping systems established by the Contractor and shall, upon the request of the Contractor, provide the Contractor with such information and reports as the Contractor may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Site.

5.5.14 Non-Exclusive Obligations

The specific requirements of Article 5 are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the other Contract Documents which are relevant to the proper performance of its portion of the Work.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 Owner's Rights

As permitted by law, the Owner reserves the right to perform Project work related to the Contract with the Owner's own forces, or to award separate contracts in connection with such other work or other construction or operations on the Site under conditions of the Contract identical or substantially similar to these including those portions related to insurance. Upon the election to perform such work with its own forces or by separate contracts, the Owner shall notify the Contractor. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall proceed pursuant to Section 4.5 in the Contract Documents.

6.1.2 Designation as Contractor

When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each of those contracts shall mean the contractor who executes each separate Owner/Contractor agreement.

6.1.3 Contractor Duties

Although the Owner shall have overall responsibility for coordination and scheduling of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, Contractor shall cooperate with Owner. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor until subsequently revised.

6.1.4 Owner Obligations

Unless otherwise provided in the Contract Documents, when the Owner performs work related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Contractor under the General Conditions, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 Delivery and Storage

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

6.2.2 Notice by Contractor

If part of the Contractor's Work depends upon proper execution or results from work by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner patent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Costs Incurred

Costs, expenses, and damages caused by delays, improperly timed activities, defective construction, or damages to another's work/Work or property shall be borne by the party responsible. Should Contractor cause damage to the work or property of any other contractor on the Project, or to the Project or the property of a third party, or cause any delay to any such contractor or third party, the Contractor shall defend, indemnify and hold Owner harmless for such damage or delay under Section 3.16, above. Owner may withhold from progress payments and/or retention for the cost of such damage or delay.

6.2.4 Correction of Damage

The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.13, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 No Changes Without Authorization

The Owner reserves the right to change the Work by making such alterations, deviations, additions to, or deletions from the plans and specifications, as may be deemed by the Owner to be necessary or advisable for the proper Completion or construction of the Work contemplated, and Owner reserves the right to require Contractor to perform such work. No adjustment will be made in the Contract unit price of any Contract item regardless of the quantity ultimately required.

Owner shall compensate Contractor with additional money or additional time, or both, as warranted under the Contract Documents for any extra work ordered by the Owner to be performed by Contractor; but such "extra work" shall not include any work or expense (a) that was known by, should have been known by, or was reasonably foreseeable to Contractor at the time of bidding, or (b) for which Contractor is responsible under the Contract Documents. Contractor shall follow the provisions of the Contract Documents, including General Conditions sections 4.5, 7.6, 7.7, and 8.4, when requesting additional money or additional time for such extra work. Contractor shall diligently and expeditiously perform all extra work upon direction, even if no agreement has been reached on extra time or money. For all such changes resulting in a credit to Owner, Contractor shall follow Sections 7.5 and 7.7 in providing the credit to Owner. Contractor shall bring all potential credits to the Owner's attention.

There shall be no change whatsoever in the drawings, specifications, or in the Work under the Contract Documents without an executed Change Order, Construction Change Directive, or order by the Owner pursuant to Section 7.1.2. Owner shall not be liable for the cost or time of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been properly requested under the Contract Documents.

Owner shall not be liable for, and Contractor shall bear the burden of, any post-proposal escalation in the costs of construction, whether foreseeable or not; but Contractor will retain the benefit of any post-proposal cost decreases, whether foreseeable or not, and retain the right to request additional compensation for cost increases incurred due to Owner delay.

The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

7.1.2 Authority to Order Minor Changes

The Owner has authority to order minor changes in the Work not involving any adjustment in the Contract Sum, an extension of the Contract Time, or a change which is inconsistent with the

intent of the Contract Documents. Such changes shall be effected by written Construction Change Directive and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly.

7.2 CHANGE ORDERS ("CO")

A CO is a written instrument signed by the Owner and the Contractor, stamped (or sealed) and signed by Architect, and approved by the Owner's Governing Board and DSA, stating the agreement of Owner and Contractor upon all of the following:

A. A change in the Work;

B. The amount of the adjustment in the Contract Sum, if any; and

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

Unless expressly stated otherwise in the CO, any CO executed by Owner and Contractor constitutes and includes full and complete money and time (including but not limited to, adjustments to money and time) for all costs and effects caused by any of the changes described within it. Unless expressly stated otherwise in the CO, in consideration for the money received for the changes described in the CO, Contractor waives all Claims for all costs and effects caused by any of the changes, including but not limited to labor, equipment, materials, delay, extra work, overhead (home and field), profit, direct costs, indirect costs, acceleration, disruption, impaired productivity, time extensions, and any of the costs and effects on Subcontractors and suppliers of any tier.

7.3 CONSTRUCTION CHANGE DIRECTIVES ("CCD")

7.3.1 DEFINITION

A CCD is a written unilateral order to Contractor signed by the Owner and directing performance of the Work or directing a change in the Work. Any adjustment of the Contract Sum, Contract Time, or Milestone Deadline stated in the CCD is not binding on the Owner without a valid CO or an executed approval of allowance expenditure. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions pursuant to Section 7.1.1.

7.3.2 USE TO DIRECT CHANGE

A CCD may be used by Owner in the absence of agreement on the terms of a CO. If Contractor disagrees with the terms of a CCD, it shall nevertheless perform the work directed by the CCD; and if Contractor believes it is entitled to changes in the Contract Sum or Contract Time, it must comply with the Notice of Potential Change, COR and Claim procedures of Section 4.5.

7.4 REQUEST FOR INFORMATION ("RFI")

7.4.1 DEFINITION

An RFI is a written request prepared by the Contractor asking the Owner to provide additional information necessary to clarify an item which the Contractor feels is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions.

7.4.2 SCOPE

The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Sum, Contract Time, or the Contract Documents.

7.4.3 RESPONSE TIME

Unless Owner expressly directs otherwise in writing, Contractor shall submit RFIs directly to the Architect, with copies forwarded to the Owner. Contractor shall submit a revised and updated priority schedule with each RFI. The Architect shall endeavor to follow the Contractor's requested order of priorities. The Owner and Contractor agree that an adequate time period for the Architect (or other designated recipient of the RFI) to respond to an RFI is generally fourteen (14) calendar days after the Architect's receipt of an RFI, unless the Owner and Contractor agree otherwise in writing. However, in all cases, the Architect shall take such time, whether more or less than 14 days, as is necessary in the Architect's professional judgment to permit adequate review and evaluation of the RFI. If Contractor informs the Architect that it needs a response to an RFI expedited to avoid delay to the critical path, the Architect shall provide a response as quickly as reasonably possible. The total time required for the Architect to respond is subject to the complexity of the RFI, the number of RFI's submitted concurrently and the reprioritization of pending RFI's submitted by the Contractor, among other things. If Contractor believes that the Architect's response results in a change in the Work that warrants additional money or time, or that Architect's response was unreasonably delayed and caused delay to the Work's critical path, Contractor shall follow the procedures for additional money or time under Section 4.5. No presumption shall arise as to the timeliness of the response if the response is more than fourteen (14) days after the Architect's receipt of the RFI. Contractor shall review the Contract Documents before submitting an RFI to ensure that the information is not already in the Contract Documents. To compensate the Owner for time and costs incurred for each time the information was already in the Contract Documents, Owner may withhold $100 from progress payments or retention in addition to any other remedies which Owner may have the right to pursue.

7.4.4 COSTS INCURRED

The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be withheld from progress payments or retention, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making

such request.

7.5 REQUEST FOR PROPOSAL ("RFP")

7.5.1 DEFINITION

An RFP is Owner's written request asking the Contractor to submit to the Owner an estimate of the effect, including credits, of a proposed change on the Contract Sum and the Contract Time.

7.5.2 SCOPE

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by section 7.7. The Contractor shall not be entitled to any additional money for preparing a response to an RFP, whether ultimately accepted or not.

7.6 CHANGE ORDER REQUEST ("COR")

7.6.1 DEFINITION

A COR (including but not limited to a "proposed change order" or "PCO") is any written request submitted by the Contractor asking the Owner for a change in the Contract Documents, including a request for additional money or time. However, a Claim (see Sections 4.5.3-4.5.6) is not a COR. See Section 4.5.2 for additional COR requirements. The COR shall include all information necessary to establish the Contractor's entitlement to the requested change.

7.6.2 CHANGES IN PRICE

Where a COR requests a change in the Contract Sum, the COR shall also include all information required by the Contract Documents, including but not limited to Sections 4.5.5.2 and 7.7 of these General Conditions. A COR shall include breakdowns per Section 7.7 to validate any proposed change in Contract Sum.

7.6.3 CHANGES IN TIME

Where a COR requests a time extension in order to change a Milestone Deadline or the Contract Time, the COR shall also include delay analysis to validate any proposed change, and shall meet all requirements in the Contract Documents, including but not limited to Sections 4.5.5.3 and 8.4 of these General Conditions. Any additional time requested shall not be based on the number of days to perform changed Work, but must be based on the impact to the Work schedule as defined in Sections 3.9 and 8.4.1.

7.7 PRICE OF CHANGE ORDERS

7.7.1 SCOPE

Any COR shall provide in writing to the Owner, the Architect and any construction manager, the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO.

7.7.2 DETERMINATION OF COST

The amount of the increase or decrease in the Contract Sum resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

A. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

B. Unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor;

C. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

D. By cost of material and labor and percentage of overhead and profit. If the value is determined by this method the following requirements shall apply:

1. **Daily Reports by Contractor**.

a) General: At the close of each working day, the Contractor shall submit a daily report to the Inspector of Record and any construction manager, on forms approved by the Owner, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the work, and for other services and expenditures when authorized concerning extra work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Inspector of Record and the Contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the Contractor.

b) Labor: Show names of workers, classifications, and hours worked.

c) Materials: Describe and list quantities of materials used.

d) Equipment: Show type of equipment, size, identification number,

and hours of operation, including, if applicable, loading and transportation.

e) Other Services and Expenditures: Describe in such detail as the Owner may require.

2. **Basis for Establishing Costs**.

a) Labor will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the extra work cost, will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

The Owner reserves the right to approve materials and sources of supply or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the Owner.

c) Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of $100 or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the work is performed.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the extra work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Owner than holding it at the work Site, it shall be returned unless the Contractor elects to keep it at the work Site at no expense to the Owner.

All equipment shall be acceptable to the Inspector of Record, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment,

and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

d) Other Items. The Owner may authorize other items which may be required on the extra work. Such items include labor, services, material, and equipment which are different in their nature from those required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the Application for Payment.

e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the Application for Payment is not substantiated by invoices or other documentation, the Owner may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.

f) Overhead and profit. For overhead, including direct and indirect costs, submit documentation with the COR for all such costs. Overhead costs include, but are not limited to, job site or field overhead costs (including job site or field office), home office overhead costs, insurance costs, administrative costs, Site superintendent costs, general foreman costs, vehicle costs, cleaning costs, off-Site supervision, COR and CO preparation, negotiation, and research costs for Owner-initiated changes, delay costs, project interference and disruption costs, additional guaranty and warranty duration costs, additional temporary protection costs, additional temporary utilities costs, additional material handling costs, additional safety equipment costs, and any other costs for supplies, equipment, facilities or services not physically incorporated into the extra work or Work to be performed but necessary for completion of the extra work or Work. For extra work performed by the Contractor, the maximum markup for overhead and profit is 15% of the total of its materials, labor, and equipment costs (see above). For extra work performed by a subcontractor, that subcontractor's maximum markup for overhead and profit is 15% of the total of its materials, labor, and equipment costs (see above); and the maximum markup for overhead and profit that may be applied by the Contractor (or applied by any subcontractor in a tier higher than the subcontractor that performed the extra work) is 5% of the total submitted to the Contractor (or the total submitted to any higher tier subcontractor).

7.7.3 FORMAT FOR PROPOSED COST CHANGE

The following format shall be used as applicable by the Owner and the Contractor to communicate proposed additions and deductions to the Contract.

	EXTRA	**CREDIT**

A. Material (attach itemized quantity and unit cost plus sales tax, invoices, receipts, truck tags, etc., for force account work)	_____	_____
B. Labor (attach itemized hours and rates, daily logs, certified payroll, etc.)	_____	_____
C. Equipment (attach any invoices)	_____	_____
D. Subtotal	_____	_____
E. If Subcontractor performed Work, then add Subcontractor's overhead and profit to portions performed by Subcontractor, not to exceed fifteen percent (15%) of Subcontractor's portions.	_____	_____
F. Worker's Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed twenty-five percent (25%) of Item B.	_____	_____
G. Subtotal	_____	_____
H. General Contractor's Overhead and Profit for the portion of the Work in Item G performed by subcontractors, not to exceed five percent (5%).	_____	_____
I. General Contractor's Overhead and Profit for the portion of the Work in Item G performed by Contractor, not to exceed fifteen percent (15%).	_____	_____
J. Subtotal	_____	_____
K. Bond premium increase (not to exceed one percent (1%) of Item J).	_____	_____
L. TOTAL	_____	_____

For any claimed overhead costs (whether field overhead (i.e., general conditions costs) or home office overhead) pursuant to Section 8.4.2 below, Contractor may not recover any mark ups for overhead or profit.

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes (1) any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project, and (2) any costs of preparing a COR, including but not limited to delay analysis. Any costs or expenses not included are deemed waived.

7.7.4 Discounts, Rebates, and Refunds

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein.

7.7.5 Accounting Records

With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

7.7.6 Notice Required

Contractor shall submit a written Notice of Potential Change for additional money or time pursuant to section 4.5.1.

7.7.7 Applicability to Subcontractors

Any requirements under this Article 7 shall be equally applicable to COs or CCDs issued to Subcontractors by the Contractor to the same extent required of the Contractor.

7.8 Waiver of Right to Claim Money or Time

Failure to demand money based on costs, or time extensions, as part of a COR constitutes a complete waiver of Contractor's right to claim the omitted money or time. All money or time for an issue must be included in the COR at the time submitted.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Contract Time

Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work.

8.1.2 Notice to Proceed

Contractor shall not commence the Work until it receives a Notice to Proceed from Owner. The date of commencement of the Work is the date established in the Notice to Proceed. The date of commencement shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 Days

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 HOURS OF WORK

8.2.1 Sufficient Forces

Contractors and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work in accordance with the Baseline Schedule, including Work directed pursuant to a CCD (see Section 7.3, above).

8.2.2 Performance During Working Hours

Work shall be performed during regular working hours (see Agreement) except that in the event of an emergency or when required to perform the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the Owner.

8.2.3 Labor Code Application

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the Work or upon any part of the Work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision

hereinabove set forth, Work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work with compensation provided for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor or subcontractor shall pay to the Owner a penalty of Twenty-five Dollars ($25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8.2.4 Costs for After Hours Inspections

If the work done after hours is required by the Contract Documents to be done outside the Contractor's or the Inspector of Record's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the Owner.

If the Owner allows the Contractor to do work outside regular working hours for the Contractor's own convenience, the costs of any inspections required outside regular working hours, among other remedies, shall be invoiced to the Contractor by the Owner and withheld from progress payments and/or retention. Contractor shall give Owner at least 48 hours notice prior to working outside regular working hours.

If the Contractor elects to perform work outside the Inspector of Record's regular working hours, costs of any inspections required outside regular working hours, among other remedies, may be invoiced to the Contractor by the Owner and withheld from progress payments and/or retention.

8.2.5 Time for Commencement By Subcontractors

Unless otherwise provided in the Contract Documents, all Subcontractors shall commence their Work within two (2) consecutive business days after notice to them by the Contractor and shall prosecute their Work in accordance with the progress of the Work.

8.3 PROGRESS AND COMPLETION

8.3.1 Time of the Essence

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Milestone Deadlines and Contract Time are reasonable periods for performing the Work.

8.3.2 No Commencement Without Insurance

The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

8.3.3 Expeditious Completion

The Contractor shall perform the Work diligently and expeditiously, including Work directed pursuant to a CCD (see Section 7.3, above), with adequate forces, labor, materials, equipment, services and management, shall achieve all Milestone Deadlines, and shall achieve Completion within the Contract Time.

8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES

Contractor waives all rights and remedies as to any delay experienced during the Work (including any right to rescind the Contract and any right to refuse to perform the Contract) except for the rights and remedies expressly allowed by the Contract (including but not limited to time extensions and delay damages pursuant to this Section 8.4.1 and Section 8.4.2 below, and termination pursuant to Section 14.1 below).

8.4.1 Conditions Allowing for Extensions of Time to Complete the Work Only (Excusable Delay)

The Contractor shall be granted a reasonable time extension under the Contract Documents, including but not limited to Sections 3.18 and 4.5 and Article 7, for excusable delays, which are those delays that meet each and every of the following conditions:

(a) The delay was beyond the control of Contractor and its subcontractors and material suppliers;

(b) The delay was caused by events that were not reasonably foreseeable to Contractor at the time of bidding;

(c) All float in the schedule had been used, and the delay impacted and delayed the controlling items of Work (i.e., the as-built critical path, as determined from a comparison of the Baseline Schedule and the actual progress of the Work), thus delaying the achievement of a Milestone Deadline or the Completion of the whole Work within the Contract Time;

(d) The delay was not caused by Contractor or its subcontractors or suppliers, including but not limited to their breaches of contract or the standard of care;

(e) The delay was not associated with loss of time resulting from untimely submittals to Owner for approval, and was not associated with surveys, measurements, inspections, or testing caused by Contractor's acts or omissions;

(f) The delay was not caused by usual or common weather for the time of year, including usual or common severe weather; and

(g) The delay could not have been prevented or mitigated by the exercise of care, prudence, foresight, and diligence by Contractor.

Excusable delays may include acts of God, acts of public enemy, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, labor disputes, unusual and uncommon weather for the time of year, unusual and uncommon delays by utility companies, unusual and uncommon delays by other government agencies, unforeseen site conditions, or delays of subcontractors due to such causes. Owner shall take into consideration other relevant factors such as concurrent delays. Contractor has the burden of proving that any delay was excusable.

Information or services under Owner's control will be furnished by the Owner with reasonable promptness. The Owner shall not be liable for any time extensions caused by factors that Contractor knew, or reasonably should have known, at the time of bidding (such as usual or common weather, usual or common delays by utility companies, or usual or common delays by other government agencies, which Contractor should have included in its Baseline Schedule; see Section 3.9.1, above).

8.4.2 Compensable Delay (Time and Money)

Compensable delays are those excusable delays for which Contractor is also entitled to money. To be compensable, an excusable delay must be one for which the Owner is responsible, where the delay was unreasonable under the circumstances involved, and where the delay was not within the contemplation of the parties; ***however***, Contractor shall not be entitled to monetary compensation when (a) Contractor could have reasonably anticipated the delay and avoided or minimized the cost impacts of it, (b) there was a concurrent delay which does not qualify for monetary compensation under this paragraph, (c) the cause of the delay was reasonably unforeseen by the Owner, including but not limited to differing site conditions that were not known to Owner at the time of bidding; (d) the delay was caused by factors beyond the control of the Owner, including but not limited to a delay caused by a utility company's failure to perform despite Owner's reasonable arrangements for such performance, or a delay caused by another government agency; or (e) any other defense available to Owner under law or equity applies. Contractor has the burden of proving that any delay was excusable and compensable, including an analysis that establishes non-concurrency. Compensation shall be limited to field overhead (i.e., general conditions) and home office overhead, as may be allowed by law.

8.4.3 Notice by Contractor Required; Procedures for Demanding Additional time or money

For notice and other required procedures related to requests by Contractor for additional time or money related to delay, Contractor shall comply with the Contract Documents, including but not limited to Sections 3.18 and 4.5, and Article 7, above.

8.4.4 Early Completion

Regardless of the cause therefore, the Contractor may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to Complete its Work

on the Project in a shorter period than established in the Contract Documents, the parties stipulating that the period set forth in the Contract Documents is a reasonable time within which to perform the Work on the Project.

8.4.5 LIQUIDATED DAMAGES

Failure to Complete the Work within the Contract Time and in the manner provided for by the Contract Documents, or failure to complete any specified portion of the Work by a milestone deadline, shall subject the Contractor to liquidated damages as described in Article III of the Agreement and the Contract Documents. Accordingly, the parties agree that the amount set forth in the Agreement shall be presumed to be the amount of damages which the Owner shall directly incur as a result of each calendar day by which Completion of the Work is delayed beyond the Contract Time as adjusted by Change Orders.

In addition, delaying another contractor's work on the Project or causing delay to the *completion* of the Project shall subject the Contractor to liquidated damages as described in Article III of the Agreement and the Contract Documents. Accordingly, the parties agree that the amount set forth in the Agreement shall be presumed to be the amount of damages which the Owner shall directly incur as a result of each calendar day by which Contractor delays the work of others on the Project or *completion* of the Project itself.

If liquidated damages accrue as described above, the Owner, in addition to all other remedies provided by law, shall have the right to assess and withhold as provided in Article III of the Agreement and the Contract Documents.

8.5 GOVERNMENT APPROVALS

Owner shall not be liable for any damages or time extensions related to the time required to obtain government approvals, except as may be allowed above.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement, later adjusted by Change Orders and Construction Change Directives, and is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 COST BREAKDOWN

9.2.1 REQUIRED INFORMATION

On forms approved by the Owner, the Contractor shall furnish the following:

A. Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, a detailed breakdown of the Contract Sum (Schedule of Values) for the Work. Each item in the schedule of values shall include its proper share of the overhead and profit.

B. Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, a schedule of estimated monthly payment requests (cash flow) due the Contractor showing the values and construction time of the various portions of the Work to be performed by it and by its Subcontractors or material and equipment suppliers containing such supporting evidence as to its correctness as the Owner may require;

C. Five (5) days prior to the submission of a pay request, an itemized breakdown of work done for the purpose of requesting partial payments;

D. Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, the name, address, telephone number, fax number, license number and classification, and (for all projects over Twenty-Five Thousand Dollars ($25,000)) the public works contractor registration number of all of its Subcontractors and of all other parties furnishing labor, material, or equipment for its Contract, along with the amount of each such subcontract or the price of such labor, material, and equipment needed for its entire portion of the Work.

9.2.2 **Owner Acceptance Required**

The Owner shall review all submissions received pursuant to paragraph 9.2.1 in a timely manner. All submissions must be accepted by the Owner before becoming the basis of any payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 **Procedure**

On or before the fifth (5th) day of each calendar month during the progress of the portion of the Work for which payment is being requested, the Contractor shall submit to the Architect, unless there is a construction manager for the Project or the Owner directs otherwise, an itemized application for payment for operations completed in accordance with the Schedule of Values through the end of the previous calendar month ("Application for Payment"). Such application shall be notarized, if required, and supported by the following:

A. The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;

B. The amount being requested with the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under

the Contract;

C. The balance that will be due to each of such entities after said payment is made;

D. A certification that the Record Drawings and Annotated Specifications are current;

E. The Owner approved additions to and subtractions from the Contract Sum and Time;

F. A summary of the retentions (each Application shall provide for retention, as set out in Article 9.6);

G. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Owner may require from time to time;

H. The percentage of Completion of the Contractor's Work by line item;

I. A statement showing all payments made by the Contractor for labor and materials on account of the Work covered in the preceding Application for Payment. Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to subcontractors or others because of a dispute or other reason;

J. Conditional and unconditional waivers and releases in exchange for progress payments, including final progress payments, in compliance with Civil Code sections 8132-8138; and

K. Contractor's Schedule Updates, daily reports, and monthly reports for all months of Work prior to the Application for Payment that Contractor has not previously submitted.

9.3.2 Purchase of Materials and Equipment

As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Architect specifically recommends, and Owner specifically approves the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site or at some other location agreed upon in writing by the Owner, the payments shall be conditioned upon submission by the Contractor, Subcontractor, or vendor of bills of sale and such other documents satisfactory to the Owner to establish the Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to the Owner by sureties

of the Contractor and the Subcontractor and, if stored off-Site, stored only in a bonded warehouse.

9.3.3 WARRANTY OF TITLE

The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Transfer of title to Work does not constitute a waiver by Owner of any defects in the Work.

9.4 REVIEW OF PROGRESS PAYMENT

9.4.1 OWNER ACCEPTANCE

The Owner will, within seven (7) days after receipt of an Application for Payment, review the Application to determine whether it is a proper payment request. If the Owner determines that the Application is not a proper payment request, then the Owner shall return the Application within seven (7) days after receipt of it accompanied by a document setting forth the reasons why the payment request is not proper (including but not limited to inclusion of change orders that have not been finalized, incorrect calculations of the amount to be paid, incorrect percentages of completion in the schedule of values, and failure to submit all documents required by Section 9.3 above). The Owner may return an improper Application more than seven (7) days after receipt, but it may affect the accrual of interest pursuant to Public Contract Code section 20104.50. If the Owner accepts an Application as a proper payment request, the Owner may still withhold payment as allowed by Section 9.5.1 below.

9.4.2 OWNER'S REVIEW

The review of the Contractor's Application for Payment by the Owner will be based, at least in part, on the Owner's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated. The review is also subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Completion, and to specific qualifications expressed by the Owner. The Owner may reject the Application for Payment if the Application is not complete under Section 9.3, including all supporting documents required by Section 9.3. The issuance of a Certificate for Payment will constitute a representation that the Contractor is entitled to payment in the amount certified, subject to any withholdings under Section 9.5.1 or any specific qualifications Owner expresses in the Certificate for Payment. However, Contractor's entitlement to payment may be affected by subsequent evaluations of the Work for conformance with the Contract Documents, test and inspections and discovery of minor deviations from the Contract Documents correctable prior to

Completion. The issuance of a Certificate for Payment will not be a waiver by the Owner of any defects in the Work covered by the Application for Payment, nor will it be a representation that the Owner has:

A. Made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work;

B. Reviewed construction means, methods, techniques, sequences, or procedures;

C. Reviewed copies of requisitions received from Subcontractors, material and equipment suppliers, and other data requested by the Owner to substantiate the Contractor's right to payment; or

D. Made an examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD PAYMENT

9.5.1 Reasons to Withhold Payment

The Owner may withhold from a progress payment, in whole or in part, to such extent as may be necessary to protect the Owner due to any of the following:

A. Defective or incomplete Work not yet remedied, including but not limited to Punch List corrective work pursuant to Section 9.7.1 below and warranty corrective work pursuant to Section 12.2.5 below;

B. Stop Payment Notices. For any stop payment notice, the Owner shall withhold the amount stated in the stop payment notice, the stop notice claimant's anticipated interest and court costs and an amount to provide for the Owner's reasonable cost of any litigation pursuant to the stop payment notice. For any stop payment notice action the parties resolve before judgment is entered, Owner has the right to permanently withhold for any reasonable cost of litigation for that stop payment notice, even if it exceeds the amount originally withheld by Owner for the estimated reasonable cost of litigation. However, if (1) the Contractor at its sole expense provides a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, which protects the Owner against such claim, and (2) the Owner chooses to accept the bond, then Owner would release the withheld stop payment notice funds to the Contractor, except that Owner may permanently withhold for any reasonable cost of litigation. Any stop payment notice release bond shall be executed by a California admitted, fiscally solvent surety, completely unaffiliated with and separate from the surety on the payment and performance bonds, that does not have any assets pooled with the payment and performance bond sureties.

C. Liquidated damages against the Contractor, whether already accrued or estimated to accrue in the future;

D. Reasonable doubt that the Work can be Completed for the unpaid balance of any Contract Sum or within the Contract Time;

E. Damage to the property or work of the Owner, another contractor, or subcontractor;

F. Unsatisfactory prosecution of the Work by the Contractor;

G. Failure to store and properly secure materials;

H. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;

I. Failure of the Contractor to maintain record drawings;

J. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;

K. Unauthorized deviations from the Contract Documents;

L. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and Completion deadlines;

M. Subsequently discovered evidence or observations nullifying the whole or part of a previously issued Certificate for Payment;

N. Failure by Contractor to pay Subcontractors or material suppliers as required by Contract or law, which includes but is not limited to Contractor's failure to pay prevailing wage and any assessment of statutory penalties;

O. Overpayment to Contractor on a previous payment;

P. Credits owed to Owner for reduced scope of work or work that Contractor will not perform, including credits for any unspent allowance;

Q. The estimated cost of performing work pursuant to Section 2.4;

R. Actual damages related to false claims by Contractor;

S. Breach of any provision of the Contract Documents;

T. Owner's potential or actual loss, liability or damages caused by the Contractor, including defense costs and attorneys' fees incurred due to Contractor's failure to defend an action pursuant to the indemnity provisions in the Contract Documents; and

U. As permitted by other provisions in the Contract or as otherwise allowed by law, including statutory penalties Owner or other entities assessed against Contractor. (See e.g., Labor Code section 1813 (working hours) or Public Contract Code section 4110 (subcontractor listings and substitutions))

Owner may, but is not required to, provide to Contractor written notice of the items for which Owner is withholding amounts from a progress payment.

If Contractor claims a breach of contract or violation of law based on wrongful withholding by the Owner from a progress payment or based on a late progress payment, or if Contractor otherwise disputes any progress payment or lack thereof, then within fifteen (15) days of the alleged breach of contract, violation of law, or late or disputed progress payment Contractor shall submit a Claim pursuant and subject to Sections 4.5.3-4.5.6. The Contractor need not submit a Notice of Potential Change or a Change Order Request.

For any withhold amount based on an estimate where the actual amount later becomes known and certain, no later than the final accounting for the Contract the Owner will release any amount withheld over that certain and known amount. If the certain and known amount exceeds the amount previously withheld, Owner may withhold additional amounts from Contractor to cover the excess amount. If available funds are not sufficient, Contractor shall pay Owner the difference.

Despite any withholding from a progress payment, or any other dispute about a progress payment, Contractor shall continue to expeditiously perform the Work pursuant to the Contract Documents, including but not limited to General Conditions sections 4.5.7, 7.1.1, 8.3.1, and 8.3.3.

9.5.2 **Payment After Cure**

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

9.5.3 Overpayment and/or Failure to Withhold

Neither Owner's overpayment to Contractor, nor Owner's failure to withhold an amount from payment that Owner had the right to withhold, shall constitute a waiver by Owner of its rights to withhold those amounts from future payments to Contractor or to otherwise pursue recovery of those amounts from Contractor.

9.6 PROGRESS PAYMENTS

9.6.1 Payments to Contractor

Progress payments shall be made in accordance with Public Contract Code sections 7201, 9203, and 20104.50. Unless otherwise stated in the Contract Documents, within thirty (30) days after receipt of an undisputed and properly submitted Application for Payment ("properly submitted" means in compliance with the law and the Contract Documents, including submittal of all documents required to accompany the Application [see Section 9.3.1, above]), Contractor shall be paid a sum equal to ninety-five percent (95%) of the undisputed value of the Work performed up to the last day of the previous month, less the aggregate of previous payments; and Owner shall withhold the other five percent (5%) of the undisputed value of the Work as retainage (or "retention"). The value of the Work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the Contractor, or any bondsman, from damages arising from such Work or from enforcing each and every provision of this Contract, and the Owner shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall base an Application for Payment only on the original Contract Sum plus any fully executed and Board-approved Change Orders. Contractor shall not include Notices of Potential Claims, CORs, Claims or disputed amounts.

The Contractor shall not be entitled to have any payment requests processed, or be entitled to have any payment made for work performed, so long as any lawful or proper direction given by the Owner concerning the Work, or any portion thereof, remains uncomplied with. Payment shall not be a waiver of any such direction.

9.6.2 Payments to Subcontractors

No later than ten (10) days after receipt of payment from Owner, pursuant to Business and Professions Code section 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 Percentage of Completion or Payment Information

The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of Completion or amounts applied for by the Contractor, and action taken thereon by

the Owner, on account of portions of the Work done by such Subcontractor.

9.6.4 No Obligation of Owner for Subcontractor Payment

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

9.6.5 Payment to Suppliers

Payment to material or equipment suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 Payment Not Constituting Approval or Acceptance

An accepted Application for Payment, issuance of a Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance or approval of any portion of the Work, especially any Work not in accordance with the Contract Documents.

9.6.7 Joint Checks

Owner shall have the right, if necessary for the protection of the Owner, to issue joint checks made payable to the Contractor and Subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. However, Owner has no duty to issue joint checks. In no event shall any joint check payment be construed to create any contract between the Owner and a Subcontractor of any tier, any obligation from the Owner to such Subcontractor, or rights in such Subcontractor against the Owner.

9.7 COMPLETION OF THE WORK

9.7.1 Close-Out Procedures

When the Contractor considers that the Work is Complete and submits a written notice to Owner requesting an inspection of the Work, the Owner shall review the Work and prepare and submit to the Contractor one or more comprehensive lists of items to be Completed or corrected (the "Punch List"). The Punch List shall include all outstanding obligations of Contractor, including training, start-up, testing, and submission to Owner of all required documentation (e.g., written guarantees, warranties, invoices, as-built drawings, manuals, bonds, and the documents described in Sections 9.3 and 9.9). The Contractor and/or its Subcontractors shall proceed promptly to Complete and correct items on the Punch List. Failure to include an item on the Punch List does not alter the responsibility of the Contractor to Complete all Work (including the omitted item) in accordance with the Contract Documents, and to Complete or correct the Work so long as the statute of limitations (or repose) has not run.

When the Contractor believes the Punch List Work is Complete and in accordance with the

Contract Documents, it shall then submit a request for an additional inspection by the Owner to determine Completion. Owner shall again inspect the Work and inform the Contractor of any items that are not complete or correct. Contractor shall promptly Complete or correct items until no items remain.

After the Work, including all Punch List Work, is inspected and informally deemed by the Owner to be Complete, the Owner's governing body may formally accept the Work as Complete at a meeting of the governing body. Warranties required by the Contract Documents shall commence on the date of Contractor's Completion of the Work (see Sections 3.5, 12.2.5, and 12.2.6).

Owner may record a Notice of Completion as allowed by Civil Code section 9200 *et seq*.

9.7.2 COSTS OF MULTIPLE INSPECTIONS

More than two (2) requests by Contractor to make inspections to confirm Completion as required under paragraph 9.7.1 shall be considered an additional service of Owner, and all subsequent costs will be invoiced to Contractor and withheld from remaining payments.

9.8 PARTIAL OCCUPANCY OR USE

The Owner may occupy or use any completed, or partially completed, portion of the Work at any stage prior to acceptance, or prior to Completion if there is no formal acceptance. Occupancy or use of any portion of the Work, or the whole Work, shall not constitute approval or acceptance of it, nor shall such occupancy or use relieve Contractor of any of its obligations under the Contract Documents regarding that portion of, or the whole, Work.

Upon taking partial occupancy, the Owner may direct Contractor to perform Work as the Owner deems necessary; and if the Contractor believes that the partial occupancy or any directed Work requires additional compensation or time, then Contractor may seek an adjustment of compensation or time pursuant to Section 4.5, above.

When the Contractor considers a portion complete, the Contractor may request an inspection of that portion and preparation of a Punch List by the Owner for that portion, as set forth for the entire Work under paragraph 9.7.1; however, such inspection and Punch List shall not act as any form of approval or acceptance of that portion of the Work, or of any Work not complying with the requirements of the Contract, and that portion shall be subject to subsequent inspections and Punch Lists.

Immediately prior to such partial occupancy or use, the Owner, the Architect and the Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9 FINAL PROGRESS PAYMENT AND RELEASE OF RETENTION

9.9.1 Final Application for Progress Payment

When, pursuant to Section 9.7.1, the Owner finds all of the Work is Completed in accordance with the Contract Documents, it shall so notify Contractor, who shall then submit to the Owner its final Application for Payment.

Upon receipt and approval of such final Application for Payment, the Owner shall issue a final Certificate of Payment, based on its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Owner in connection with the Work, that such Work has been Completed in accordance with the Contract Documents. If required to do so under Labor Code section 1773.3(d), Owner shall withhold final payment.

9.9.2 Procedures for Application for Final Progress Payment

The Application for Final Progress Payment pursuant to Section 9.9.1 shall be accompanied by the same details as set forth in Section 9.3, and in addition, the following conditions must be fulfilled:

A. The Work shall be Complete, and the Contractor shall have made, or caused to have been made, all corrections to the Work which are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of Owner required under the Contract.

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

C. The Contractor shall deliver to the Owner (i) reproducible final Record Drawings and Annotated Specifications showing the Contractor's Work "as built," with the Contractor's certification of the accuracy of the Record Drawings and Annotated Specifications, (ii) all warranties and guarantees, (iii) operation and maintenance instructions, manuals and materials for equipment and apparatus, and (iv) all other documents required by the Contract Documents.

D. Contractor shall provide extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

Acceptance of Final Progress Payment shall constitute a complete waiver of Claims except for those previously identified in writing and identified by that payee as unsettled at the time of Final Progress Payment.

9.9.3 RELEASE OF RETAINAGE

Owner shall withhold not less than 5% of the Contract Sum ("retainage," or "retention") until Completion and acceptance of the Project, per Public Contract Code section 9203.

Owner may withhold from release or payment of retainage up to 150% of disputed amounts, including but not limited to the issues listed in Section 9.5. If retainage is held in an escrow account pursuant to an escrow agreement under Public Contract Code section 22300 (see Section 9.10) and Owner withholds from release of retainage based on a breach of the Contract, or other default, by Contractor, Owner may withdraw the withheld retainage from the escrow account.

Owner shall release the undisputed retainage within sixty (60) days after Completion of the Project. For this purpose, "Completion" is defined in Public Contract Code section 7107(c). No interest shall be paid on any retainage, or on any amounts withheld, except as provided to the contrary in any Escrow Agreement and General Conditions between the Owner and the Contractor under Public Contract Code section 22300.

To claim a breach of contract or violation of law based on wrongful withholding by the Owner from retention or based on a late payment or late release of retention, or if Contractor otherwise disputes any payment or release of retention or lack thereof, within fifteen (15) days of the alleged breach of contract, violation of law, or late or disputed payment/release of retention Contractor shall submit a Claim pursuant and subject to Sections 4.5.3-4.5.6. The Contractor need not submit a Notice of Potential Change or a Change Order Request.

9.10 SUBSTITUTION OF SECURITIES

In accordance with section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any retention monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such retention monies to the Contractor. Upon Completion of the Contract, the securities shall be returned to the Contractor if Owner has no basis to withhold under the Contract Documents.

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

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

Any escrow agreement entered by Owner and Contractor pursuant to Public Contract Code section 22300, shall be substantially similar to the form set forth in Public Contract Code section 22300.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Contractor Responsibility

The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Each Contractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs. Contractor will ensure that his employees and Subcontractors cooperate and coordinate safety matters with any other contractors on the Project to form a joint safety effort.

10.1.2 Subcontractor Responsibility

Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

10.1.3 Cooperation

All Subcontractors and material or equipment suppliers, shall cooperate fully with Contractor, the Owner, and all insurance carriers and loss prevention engineers.

10.1.4 Accident Reports

Subcontractors shall promptly report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. Contractor shall thereafter promptly report the facts in writing to the Owner giving full details of the accident.

10.1.5 First-Aid Supplies at Site

The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor

The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

A. Employees on the Work and other persons who may be affected thereby;

B. The Work, material, equipment, tools, construction equipment, and machinery to be incorporated therein or necessary for the proper execution and Completion of the Work, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

C. Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

10.2.2 Contractor Notices

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

10.2.3 Safety Barriers and Safeguards

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.2.4 Use or Storage of Hazardous Material

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

10.2.5 FINGERPRINTING

At its own expense, Contractor shall comply with all fingerprinting requirements under law and Contract, including but not limited to the requirements of Education Code section 45125.2 and the Independent Contractor Student Contact Form which is a part of the Contract. Contractor shall hold harmless, defend and indemnify the Owner under section 3.16, for any costs, including attorneys' fees, Owner incurs from Contractor's failure to comply.

10.3 PROTECTION OF WORK AND PROPERTY

10.3.1 PROTECTION OF WORK

The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss until the earlier of formal acceptance of the Work or Completion of the Work. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner; except that for projects not solely funded through revenue bonds, (a) Contractor shall not be responsible for damages caused by a tidal wave to the extent that the damages exceed 5% of the Contract Sum, and (b) Contractor shall not be responsible for damages caused by an earthquake above 3.5 on the Richter Scale in magnitude to the extent that the damages exceed 5% of the Contract Sum, per Public Contract Code §7105(a).

10.3.2 PROTECTION FOR ELEMENTS

The Contractor will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The Contractor shall at all times provide labor, services, equipment, materials, heat, coverings, enclosures, and other services and materials necessary to maintain adequate protection against weather (including unusual or uncommon weather) so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury or damage.

10.3.3 SHORING AND STRUCTURAL LOADING

The Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the Contractor. All such items shall conform to the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Contractor shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage or cause damage to the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Contractor at no cost to the Owner.

10.3.4 Conformance Within Established Limits

The Contractor and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the Owner, and shall not unreasonably encumber the premises with construction equipment or materials.

10.3.5 Subcontractor Enforcement of Rules

Subcontractors shall enforce the Owner's and the Contractor's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, the presence of liquor, and the presence of firearms by any person at the Site.

10.3.6 Site Access

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

10.3.7 Protection of Materials

The Contractor and the Subcontractors shall receive, count, inspect for damage, record, store, and protect construction materials for the Work and Subcontractors shall promptly send to the Contractor evidence of receipt of such materials, indicating thereon any shortage, change, or damage (failure to so note shall constitute acceptance by the Subcontractor of financial responsibility for any shortage).

10.4 EMERGENCIES

10.4.1 Emergency Action

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional money or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.5 and Article 7.

10.4.2 Accident Reports

The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

10.5 HAZARDOUS MATERIALS

10.5.1 Discovery of Hazardous Materials

In the event the Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by section 25249.5 of the California Health and Safety Code, which (a) has not been rendered harmless, and (b) the handling or removal of which is not within the scope of the Work, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether such material was generated by the Contractor, another contractor, or the Owner. The Work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Contractor.

10.5.2 Hazardous Material Work Limitations

In the event that the presence of hazardous materials is suspected or discovered on the Site, the Owner shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required pursuant to Article 7 to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by Owner, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

10.5.3 Indemnification By Owner for Hazardous Material Not Caused by Contractor

In the event the presence of hazardous materials on the Site is not caused by the Contractor, Owner shall pay for all costs of testing and remediation, if any, and shall compensate Contractor for any delay or additional costs incurred in accordance with the applicable provisions of Articles 7 and 8 herein. Owner shall defend, indemnify and hold harmless the Contractor and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with or arising out of, or relating to, the performance of the Work in the area affected by the hazardous material, except to the extent the claims, damages, losses, costs, or expenses were caused by Contractor's active negligence, sole negligence or willful misconduct. By providing this indemnification, Owner does not waive any immunities.

10.5.4 Naturally Occurring Asbestos

If the Site is found to contain naturally occurring asbestos (asbestos naturally contained in rocks which can become airborne when released "NOA"), in addition to complying with applicable provisions in sections 10.5.1-10.5.3 above, Contractor shall comply with, and be solely responsible for, all applicable NOA requirements of the California Air Resources Board

(CARB), California Department of Industrial Relations, California Division of Occupational Safety and Health (Cal/OSHA), any local air quality management district with jurisdiction over the Site, the County, and all other applicable federal, State and local governmental entities. This compliance and responsibility includes, but is not limited to, dust control mitigation measures and a monitoring plan.

10.5.5 Indemnification by Contractor for Hazardous Material Caused by Contractor

In the event the presence of hazardous materials on the Site is caused by Contractor, Subcontractors, materialmen or suppliers, the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of the generation of hazardous material on the Project Site. In addition, the Contractor shall defend, indemnify and hold harmless Owner and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Site, except to the extent the claims, damages, losses, costs, or expenses were caused by Owner's active negligence, sole negligence or willful misconduct.

10.5.6 Terms of Hazardous Material Provision

The terms of this Hazardous Material provision shall survive the Completion of the Work and/or any termination of this Contract.

10.5.7 Archeological Materials

In the event the Contractor encounters or reasonably suspects the presence on the Site of archeological materials, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing. The Work in the affected area shall not thereafter be resumed, except after Contractor's receipt of written notice from the Owner.

ARTICLE 11

INSURANCE AND BONDS

11.1. CONTRACTOR'S LIABILITY INSURANCE

11.1.1 Liability Insurance Requirements

11.1.1 By the earlier of the deadline set forth in the Instructions to Bidders or the commencement of the Work and within limits acceptable to the Owner, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports such commercial general liability insurance per occurrence for bodily injury, personal injury and property damage as set forth in the Agreement and automobile liability insurance per accident for bodily injury and property damage

combined single limit as set forth in the Agreement as will protect the Contractor from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

11.1.1.1 claims for damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than the Contractor's employees. This coverage shall be provided in a form at least as broad as Insurance Services Office (ISO) Form CG 0001 11188;

11.1.1.2 claims for damages arising from personal or advertising injury in a form at least as broad as ISO Form CG 0001 11188;

11.1.1.3 claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents; and

11.1.1.4 claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work; and

11.1.1.5 claims involving blanket contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and

11.1.1.6 claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)

If commercial general liability insurance or another insurance form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project location (with the ISO CG 2501 or insurer's equivalent endorsement provided to the Owner) or the general aggregate limit shall be twice the required occurrence limit.

Any deductible or self-insured retention must be declared to and approved by the Owner. At the option of the Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its Board of Trustees, members of its Board of Trustees, officers, employees, agents and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

11.1.2 Subcontractor Insurance Requirements

The Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance, in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports, in like amounts and scope of coverage.

11.1.3 Owner's Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.1.4 Additional Insured Endorsement Requirements

The Contractor shall name, on any policy of insurance (except worker's compensation or professional liability policies), the Owner (including its authorized representatives; see Section 2.1, above) as additional insureds. Subcontractors shall name the Contractor and the Owner as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be excess to any policy of insurance required herein. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

11.1.5 Workers' Compensation Insurance

During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's work is sublet, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the Owner certificates of insurance as required under this Article and in compliance with Labor Code section 3700.

If the contractor fails to maintain such insurance, the Owner may take out compensation insurance which the Owner might be liable to pay under the provisions of the Act by reason of an employee of the Contractor being injured or killed, and withhold from progress payments and/or retention the amount of the premium for such insurance.

11.1.6 **Builder's Risk/"All Risk" Insurance**

11.1.6.1 **Course-of-Construction Insurance Requirements**

Unless provided by Owner at Owner's sole discretion, Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, shall maintain Builder's Risk/Course-of-Construction insurance satisfactory to the Owner, issued on a completed value basis on all insurable Work included under the Contract Documents. This insurance shall insure against all risks, including but not limited to the following perils: Vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood including tidal wave (however, for projects not solely funded through revenue bonds, Contractor is only required to provide insurance for damages caused by a tidal wave up to 5% of the Contract Sum [except as provided in Section 11.1.6.2, below; see Public Contract Code §7105(a)]), earthquake (however, for projects not solely funded through revenue bonds, Contractor is only required to provide insurance for damages caused by a large earthquake [i.e., one above 3.5 magnitude on the Richter Scale] up to 5% of the Contract Sum [except as provided in Section 11.1.6.3, below; see Public Contract Code §7105(a)]), wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Architect's services and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work. Such insurance shall include the Owner, the Architect, and any other person or entity with an insurable interest in the Work as an additional named insured.

The Contractor shall submit to the Owner for its approval all items deemed to be uninsurable under the Builder's Risk/Course-of Construction insurance. The risk of the damage to the Work due to the perils covered by the Builder's Risk/Course-of-Construction insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the Owner, nor will such loss or damage excuse the Complete and satisfactory performance of the Contract by the Contractor.

11.1.6.2 TIDAL WAVE INSURANCE

If the Contract is not solely funded through revenue bonds and Owner accepts and awards an alternate bid by Contractor for insurance coverage for a tidal wave, Contractor shall maintain, in effect during the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, insurance providing coverage for loss, destruction or damage arising out of or caused by tidal wave and other similar acts of God. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work.

11.1.6.3 EARTHQUAKE INSURANCE

If the Contract is not solely funded through revenue bonds and Owner accepts and awards an alternate bid by Contractor for insurance coverage for an earthquake over 3.5 on the Richter Scale, Contractor shall maintain, in effect during the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, insurance providing coverage for loss,

destruction or damage arising out of or caused by earthquake and/or other earth movement, whether seismic or volcanic in origin, over 3.5 on the Richter Scale in magnitude. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work**.**

11.1.7 Insurance for Partial Occupancy or Use

Before partial occupancy or use of the Work in accordance with the Contract Documents commences, Owner shall ensure that it has property insurance for such partial occupancy or use. Such insurance shall not relieve Contractor of its obligation to provide property insurance for such partial occupancy or use.

11.1.8 Fire Insurance

Unless provided by Owner at Owner's sole discretion, before the commencement of the Work the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work included under the Contract Documents, insuring the full replacement value of such Work as well as the cost of any removal and demolition necessary to replace or repair all Work damaged by fire. The amount of fire insurance shall be subject to approval by the Owner and shall be sufficient to protect the Work against loss or damage in full until the Work is accepted by the Owner. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense to the Owner.

11.1.9 Other Insurance

The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

11.1.10 Proof of Carriage of Insurance

The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance, certificates, and an Additional Insured Endorsement and Declarations Page have been obtained and delivered in duplicate to the Owner for approval subject to the following requirements:

(a) Certificates and insurance policies shall include the following clause:

> This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice.

(b) Certificates of insurance shall state in particular those insured, the extent of

insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.

(c) Certificates of insurance shall clearly state that the Owner and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner and any other insurance carried by the Owner with respect to the matters covered by such policy shall be excess and non-contributing.

(d) The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the Owner.

11.1.11 COMPLIANCE

In the event of the failure of any contractor to furnish and maintain any insurance required by this Article, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Owner and the Architect.

11.2 PERFORMANCE AND PAYMENT BONDS

11.2.1 BOND REQUIREMENTS

Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Contractor shall apply for and furnish Owner separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California. All bonds shall be submitted on the Owner's approved form.

To the extent, if any, that the Contract Sum is increased in accordance with the Contract Documents, the Contractor shall cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Sum, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bond, the Owner may terminate the Contract for cause.

11.2.2 SURETY QUALIFICATION

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by

Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 Uncovering Work for Required Inspections

If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, Contractor must, if required in writing by the Owner, uncover it for the Owner's observation and replace the removed work at the Contractor's expense without change in the Contract Sum or Time.

12.1.2 Costs for Inspections not Required

If a portion of the Work has been covered which the Owner has not specifically requested to observe prior to its being covered, the Owner may request to see such work, and it shall be uncovered by the Contractor. If such work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order, be paid by the Owner. If such work is not in accordance with Contract Documents, the Contractor shall pay such costs, unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs to the Contractor.

12.2 CORRECTION OF WORK; WARRANTY

12.2.1 Correction of Rejected Work

The Contractor shall promptly correct Work rejected by the Owner prior to Completion for failure to conform to the requirements of the Contract Documents. The Contractor shall bear costs of correcting the rejected work, including additional testing, inspections, and compensation for the Owner's expenses and costs incurred.

12.2.2 Removal of Nonconforming Work

The Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted or approved by the Owner.

12.2.3 Owner's Rights if Contractor Fails to Correct

If the Contractor fails to correct nonconforming work within a reasonable time, the Owner may

correct it in accordance with Section 2.4. As part of Owner's correction of the work, the Owner may remove any portion of the nonconforming Work and store any salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days written notice sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's and other professionals and representatives' services and expenses, made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contractor shall be invoiced for the deficiency or Owner may withhold such costs from payment pursuant to Section 9.5. If progress payments or retention then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.4 Cost of Correcting the Work

The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of the nonconforming work.

12.2.5 Warranty Corrections (includes replacement)

Pursuant to the warranty in Sections 3.5 and 9.7.1, if within one (1) year after the Completion of the Work (or within a longer time period for an applicable special warranty or guarantee required by the Contract Documents) any of the Work does not comply with the Contract Documents, the Contractor shall correct it after receipt of Owner's written notice to do so. Contractor shall correct the Work promptly, and passage of the applicable warranty period shall not release Contractor from its obligation to correct the Work if Owner provided the written notice within the applicable warranty period. Contractor's obligation to correct the warranty item continues until the correction is made. After the correction is made to Owner's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected work. The obligations under this paragraph 12.2.5 shall survive acceptance of the Work under the Contract and termination of the Contract.

12.2.6 No Time Limitation

Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in Sections 3.5, 9.7.1, and 12.2.5 relates only to the specific warranty obligation of the Contractor to correct the Work after the date of commencement of warranties, and has, for example, no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations under the Contract Documents (including but not limited to a patent or latent deficiency).

12.3 NONCONFORMING WORK AND WITHHOLDING THE VALUE OF IT

If it is found at any time before Completion of the Work that the Contractor has varied from the Contract Documents in materials, quality, form, finish, or in the amount or value of the materials or labor used, the Owner may, in addition to other remedies in the Contract Documents or under law and as allowed by law, accept the improper Work. The Owner may withhold from any amount due or to become due Contractor that sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. The Owner shall determine such difference in value. No structural-related Work shall be accepted that is not in conformance with the Contract Documents.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

In the absence of specific notice requirements in the Contract Documents, any written notice required by the Contract Documents shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the party giving notice. Owner shall, at Contractor's cost, timely notify Contractor of Owner's receipt of any third party claims relating to the Contract pursuant to Public Contract Code section 9201.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and Obligations Cumulative

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.4.2 No Waiver

No action or failure to act by the Owner, Inspector of Record, Architect or any construction manager shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in a written amendment to the Contract.

13.5 TESTS AND INSPECTIONS

13.5.1 Compliance

Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

13.5.2 Independent Testing Laboratory

The Owner will select and pay an independent testing laboratory to conduct all tests and inspections, including shipping or transportation costs or expenses (mileage and hours). Selection of the materials required to be tested shall be made by the laboratory and not by the Contractor. However, if Contractor requests that the Owner use a different testing laboratory and Owner chooses to approve such request, Contractor shall reimburse the Owner for any additional shipping or transportation costs or expenses (mileage and hours). Owner may invoice such costs or expenses to the Contractor or withhold such costs or expenses from progress payments and/or retention.

13.5.3 Advance Notice to Inspector of Record

The Contractor shall notify the Inspector of Record a sufficient time in advance of its readiness for required observation or inspection so that the Inspector of Record may arrange for same. The Contractor shall notify the Inspector of Record a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector of Record may arrange for the testing of the material at the source of supply.

13.5.4 Testing Off-Site

Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector of Record that such testing and inspection will not be required, shall not be incorporated in the Work.

13.5.5 Additional Testing or Inspection

If the Inspector of Record, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under section 13.5.1, the Inspector of Record will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in section 13.5.6.

13.5.6 Costs for Retesting

If such procedures for testing, inspection, or approval under sections 13.5.1, 13.5.2 and 13.5.5 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and, among other remedies, can be withheld from progress payments and/or retention.

13.5.7 Costs for Premature Test

In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice can among other remedies, be withheld from progress payments and/or retention.

13.5.8 Tests or Inspections Not to Delay Work

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 [INTENTIONALLY LEFT BLANK]

13.7 TRENCH EXCAVATION

13.7.1 Trenches Greater Than Five Feet

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

13.7.2 Excavation Safety

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

13.7.3 No Tort Liability of Owner

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

13.7.4 No Excavation Without Permits

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

13.8 WAGE RATES

13.8.1 Wage Rates

Pursuant to the provisions of Article 2 (commencing at § 1770), Chapter 1, Part 7, Division 2, of the Labor Code, the governing board of the Owner has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed for this Project from the Director of Industrial Relations ("Director"). These rates are on file with the Clerk of the Owner's governing board, and copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at the Site.

13.8.2 Holiday and Overtime Pay

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and

one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed.

13.8.3 Wage Rates Not Affected by Subcontracts

The Contractor shall pay and shall cause to be paid each worker engaged in the Work not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

13.8.4 Change in Prevailing Wage During Bid or Construction

If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public work is to be performed, such change shall not alter the wage rates discussed in the Notice to Bidders or the Contract subsequently awarded.

13.8.5 Forfeiture and Payments

Pursuant to Labor Code section 1775, the Contractor and any subcontractor under the Contractor shall as a penalty to the Owner, forfeit not more than Two Hundred Dollars ($200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Agreement by the Contractor or by any Subcontractor under it. Minimum penalties shall apply, as also provided in Civil Code section 1775. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on both of the following: (1) whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected upon being brought to the attention of the contractor or subcontractor; and (2) whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each work by the Contractor or subcontractor. Labor Code section 1777.1 shall also apply.

13.8.6 Minimum Wage Rates

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

13.8.7 Per Diem Wages

Pursuant to Labor Code section 1773.1, per diem wages includes employer payments for health and welfare, pension, and vacation pay.

13.8.8 Posting of Wage Rates and Other Required Job Site Notices

The Contractor shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned and all other required job site notices as prescribed by regulation.

13.9 RECORD OF WAGES PAID: INSPECTION

13.9.1 Application of Labor Code

Pursuant to section 1776 of the Labor Code:

(a) Each Contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the Owner and the Division of Labor Standards Enforcement of the Department of Industrial Relations ("DIR") and as may be required by the Labor Commissioner under Labor Code section 1771.4. The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner monthly or more frequently, if so specified in the Agreement and in a format the Labor Commissioner prescribes.

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

(c) Unless required as of January 1, 2015, to be furnished directly to the Labor Commissioner under Labor Code section 1771.4(a)(3), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement of the DIR or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in (a) above.

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

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement of the DIR shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the subcontractor performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent

disclosure of an individual's name, address, and social security number. An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subsection.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (a). In the event that the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit One Hundred Dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement of the DIR, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of the subcontractor to comply with this section.

13.10 APPRENTICES

13.10.1 Apprentice Wages and Definitions

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing with § 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training. Contractor shall pay apprentices for any preemployment activities, as set forth in Labor Code section 1777.5.

13.10.2 Apprentice Labor Pool

When the Contractor to whom the Contract is awarded by the Owner, or any Subcontractor under him or her, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the Project, for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in

order to comply with this section. Every Contractor and Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

13.10.3 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the Contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

13.10.4 JOURNEYMAN/APPRENTICE RATIO

The Contractor or Subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars ($30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

13.10.4.1 ***Apprenticeable Craft or Trade.*** "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).

B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.

C. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.

D. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

13.10.5 RATIO EXEMPTION

When exemptions are granted to an organization which represents Contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member Contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

13.10.6 Apprentice Fund

A Contractor to whom the Contract is awarded or any Subcontractor under him or her, who, in performing any of the work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the Site of the Project, to which fund or funds other contractors in the area of the Site of the Project are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Contractor or Subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code section 227.

13.10.7 Prime Contractor Compliance

The responsibility of compliance with section 13.10 and section 1777.5 of the Labor Code for all apprenticeable occupations is with the Contractor.

13.10.8 Decisions of Joint Apprenticeship Committee

All decisions of the joint apprenticeship committee under this section13.10 and Labor Code section 1777.5 are subject to Labor Code section 3081.

13.10.9 No Bias

It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in the Labor Code section 3077.

13.10.10 Violation of Labor Code

Pursuant to Labor Code sections 1777.1 and 1777.7, in the event a Contractor or Subcontractor fails to comply with the provisions of this section 13.10 and Labor Code section 1777.5, penalties shall apply, including among other things:

> (a) If a Contractor or Subcontractor willfully fails to comply, the Labor Commissioner may deny to the contractor or subcontractor, and to its responsible officers, the right to bid on, or be awarded or perform work as a subcontractor on, any public works project for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.

(b) A contractor or subcontractor who violates section 1777.5 shall forfeit as a civil penalty an amount not exceeding the sum of One Hundred Dollars ($100) for each full calendar day of noncompliance. Upon receipt of a determination that a civil penalty has been imposed, the awarding body shall enforce the penalty, which includes withholding the amount of the civil penalty from the contract progress payments or retention then due or to become due.

(c) In lieu of the penalty provided, the Labor Commissioner may for a first time violation and with the concurrence of an applicable apprenticeship program, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(d) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund.

(e) The interpretation and enforcement of section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council.

Pursuant to Public Contract Code section 6109, no contractor or subcontractor may bid on, be awarded, or perform work as a subcontractor on a public works project if ineligible to bid or work on, or be awarded, a public works project pursuant to section 1777.1 of the Labor Code.

13.11 ASSIGNMENT OF ANTITRUST CLAIMS

13.11.1 APPLICATION

Pursuant to Public Contract Code section 7103.5 and Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Bus. & Prof. Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders Final Progress Payment to the Contractor, without further acknowledgment by the parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, the assignor may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

13.11.2 ASSIGNMENT OF CLAIM

Upon demand in writing by the assignor, the Owner shall, within one (1) year from such demand,

reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the Owner has not been injured thereby or the Owner declines to file a court action for the cause of action.

13.12 **AUDIT**

Pursuant to and in accordance with the provisions of Government Code section 8546.7, or any amendments thereto, all books, records, and files of the Owner, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars ($10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after release of all retention under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period.

During the progress of the Work and for three (3) years after Completion of the Work, Owner shall also have the right to an audit of all of Contractor's books, records, subcontracts, material and equipment contracts, files, and information related to the Contract, and Contractor must cooperate by producing all requested items within seven (7) days for inspection or copying by Owner.

13.13 **STORM WATER DISCHARGE PERMIT**

If applicable, the Contractor shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity (WQ Order No. 920-08-DWQ). The Notice of Intent must be sent to the following address along with the appropriate payment (warrant to be furnished by the Owner upon request by the Contractor, allow warrant processing time.): California State Water Resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, CA 95812-1977. The Contractor may also call the State Water Board's Construction Activity Storm Water Hotline at (916) 657-1146. The Notice of Intent shall be filed prior to the start of any construction activity.

13.14 **USE OF LEAD PAINT, PLUMBING, ETC. PROHIBITED** {TC "13.14 USE OF LEAD PAINT, PLUMBING, ETC. PROHIBITED"}

New school facilities under construction, or school facilities undergoing a modernization or renovation program, shall not utilize lead-based paint, lead plumbing or solders, or other potential sources of lead contamination (added by stats. 1992, c. 1317 (A.B. 1659) of General Education Code Provisions).

The California Health and Safety Code, Section 116875, effective January 1, 2010, states in part and requires that, no person shall use any pipe, pipe or plumbing fitting or fixture, or solder or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing for human consumption.

Water from new, contractor-installed drinking water fixtures shall meet current EPA

requirements for drinking water. Drinking water fixtures will be considered non-compliant items subject to correction at no additional cost to the Owner. Drinking water fixtures include all fixtures that are likely sources of drinking water including but not limited to; drinking fountains, classroom sinks and bubblers, kitchen sinks, faculty sinks and nurse sinks.

Contractor shall adequately flush all newly installed drinking water fixtures prior to testing. Drinking water fixtures shall be flushed multiple times daily for a minimum of two weeks prior to testing.

Where drinking water fixtures have been installed but not tested, or where drinking water fixtures have not met the requirements specified herein, Contractor shall flush each fixture multiple times per day and maintain a detailed and accurate flushing log until such time acceptable testing results are achieved. At a minimum, Contractor shall be required to flush each drinking water fixture prior to the start of school each day.

Flushing logs must include dates, times and duration for each flushing event at each fixture. Contractor must sign and certify flushing logs are true and accurate and submit to the Owner on a weekly basis.

Upon completion of final cleaning, Contractor shall request final test and acceptance of dust wipe sampling for lead. Contractor shall give the Owner and Owner's Environmental Consultant forty-eight (48) hours written notice, excluding weekends and Owner holidays, of when and where testing is required. All test and acceptance dust wipe samples shall be below 10 micrograms of lead per square foot prior to occupancy.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE

Contractor may not terminate performance for convenience. Contractor may only terminate performance for cause if the Work is stopped by others for a period of one hundred eighty (180) consecutive days through no act or fault of the Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, **and** the Work was stopped by others for one of the following reasons: (A) Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If such grounds exist, the Contractor may serve written notice of such grounds on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of Owner's receipt of such notice. If such conference does not lead to resolution and the grounds for termination still exist, Contractor may terminate the Contract and recover from the Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable

overhead, profit, and damages for the Work executed, but excluding overhead (field and home office) and profit for (i) Work not performed and (ii) the period of time that the Work was stopped.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 Grounds for Termination

The Owner may terminate performance of the Contract for cause if the Contractor:

A. Refuses or fails to supply enough properly skilled workers or proper materials, or refuses or fails to take steps to adequately prosecute the Work to meet a Milestone Deadline or to Complete within the Contract Time;

B. Fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable;

C. Violates Labor Code section 1771.1(a), subject to the provisions of Labor Code section 1771.1(f);

D. Disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or

E. Otherwise is in breach of the Contract Documents.

14.2.2 Notification of Termination

When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, give notice to Contractor of the grounds for termination and demand cure of the grounds within seven (7) days (a "Notice of Intent to Terminate"). Owner has the discretion to include in its Notice of Intent to Terminate an option for the Contractor to reasonably commence cure of the grounds for termination within seven (7) days and reasonably continue to cure the grounds for termination until such cure is complete.

Owner may terminate the performance of the Contract for cause if (a) Contractor fails to completely cure the grounds for termination within seven (7) days, and (b) Contractor fails to reasonably commence cure of the grounds for termination within seven (7) days and reasonably continue to cure the grounds for termination until such cure is complete (if Owner had offered this alternative to Contractor in its Notice of Intent to Terminate). If the Contractor attempts to cure the grounds for termination but the attempted cure causes additional breaches of the Contract, then Owner may still terminate performance of the Contract for cause since the attempted cure would not be reasonable.

Such termination shall be effective immediately upon service of a written Notice of Termination, and Owner may, subject to any prior rights of Contractor's surety on the performance bond

("Surety"), do the following:

A. Take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

B. Accept assignment of subcontracts pursuant to section 5.4; and

C. Complete the Work by whatever reasonable method the Owner may deem expedient, including the tender of Completion to the Surety or the hire of another contractor to Complete the Work.

14.2.3 **Payments**

If the Owner terminates performance of the Contract for one of the reasons stated in section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is Complete.

If the unpaid balance of the Contract Sum exceeds costs of Completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor and its Surety shall pay the difference to the Owner. This payment obligation shall survive Completion of the Work.

14.2.4 **Wrongful Termination**

To claim a breach of contract or violation of law based on alleged wrongful termination for cause by the Owner, or if Contractor otherwise seeks any payment or damages related to a termination, within fifteen (15) days of the alleged breach of contract, violation of law, or wrongful termination Contractor shall submit a Claim pursuant and subject to Sections 4.5.3-4.5.6. The Contractor need not submit a Notice of Potential Change or a Change Order Request.

14.2.5 **Inclusion of Termination for Convenience**

Any purported termination by Owner for cause under this section 14.2, which is revoked or determined to not have been for cause, shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

14.3 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE

14.3.1 **Suspension by Owner**

The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.1.1 ***Adjustments.*** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

A. That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or

B. That an equitable adjustment is made or denied under another provision of this Contract.

14.3.1.2 ***Adjustments for Fixed Cost.*** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

14.3.2 **Termination by the Owner for Convenience**

14.3.2.1 The Owner may, at any time, terminate performance of the Contract for the Owner's convenience and without cause.

14.3.2.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

1. Cease operations as directed by the Owner in the notice;

2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.3.2.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

14.4 NOT A WAIVER

Any suspension or termination by Owner of performance by Contractor for convenience or cause under this Article 14 shall not act as a waiver of any claims by Owner against Contractor or others for damages based on breach of contract, negligence or other grounds.

14.5 MUTUAL TERMINATION FOR CONVENIENCE

The Contractor and the Owner may mutually agree in writing to terminate performance of this Contract for convenience. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

14.6 EARLY TERMINATION

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the

governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, the Owner may upon thirty (30) days' notice, order Work on the Project to cease. The Owner will remain obligated to pay for the Work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the Work has not been done.