



Using the Authority Granted by California Education Code 17406

## **REQUEST FOR PROPOSALS FOR LEASE-LEASEBACK SERVICES**

### **Measure E Project**

### **CABLING INFRASTRUCTURE**

#### **Phase 1C**

#### **RFP # 2014-E101**

At

**Emma Wilson – Neal Dow - Shasta Elementary Schools**

**Job Walk: October 9, 2014, 8:30am**

**Emma Wilson Elementary School, 1530 West 8th Avenue,  
Chico, CA**

**Request for Proposals Issued: September 30, 2014**

**Deadline for Submittal of Proposals: October 17, 2014**

**Before 2:00pm**

**Attention: IT Department**

# **REQUEST FOR PROPOSALS FOR LEASE-LEASEBACK SERVICES**

## **INTRODUCTION**

The Chico Unified School District is issuing this Request for Proposals (RFP) to lease-leaseback entities ("LLB Entity" or LLB Entities") qualified to provide cabling infrastructure services to the District for the development and construction of a facilities project pursuant to the lease-leaseback provisions of Educational Code Section 17406: **Cabling Infrastructure Phase 1c RFP #2014-E101 to be located at Emma Wilson, Neal Dow and Shasta Elementary Schools** ("Project"). This RFP describes the Project, the required scope of work, the selection process and the minimum information that must be included in any proposal submitted by an LLB Entity in response to this RFP.

## **SUMMARY**

The purpose of the RFP is to upgrade to the current data network cabling standards at Emma Wilson, Neal Dow, and Shasta Elementary Schools. CUSD cabling standards include CAT6 copper data drops, 10 GIG Fiber backbone infrastructure, and replacing outdated telecom (phone) cables where necessary.

Please see **Appendix A** for list of school sites.

Please see **Appendix B** for scope of work and school diagrams

### **In Addition, Please provide the following information:**

1. Length of time business has provided this type of service.
2. Manufacturer's warranty information for equipment
3. Indicate any options available.
4. Indicate how charges will be incurred as services are implemented.
5. Evidence of Certifications
6. Vendors must include 3 reference sites using your service 3 years or more. References from school districts or county offices of education in California are preferred.
  - Job Location
  - Contact name and telephone number
  - Date of contract
  - Project Description
  - Equipment/Service Installed

### **Special Conditions:**

1. Prices to remain firm through CUSD approval, execution, and duration of the proposed contract. In the event of a price decrease for service or from the

manufacturer, said decrease shall be passed on to the Chico Unified School District and documented with new price sheet sent to Chico Unified School District.

2. All equipment costs must be included and identified separately.
3. All equipment and material must be new. Used, refurbished or repurposed equipment or material is not acceptable.
4. The Board of Education reserves the right to reject any and all bids/proposals, or any or all items of any bid/proposal.
5. This RFP will be posted to the Chico Unified School District website (<http://www.chicousd.org/Departments/Information-Technology/Measure-E-Projects/index.html>). Any additions or corrections will be addressed in the form of addenda posted to the same location on the website.

All questions regarding this RFP should be directed to John Sclare, [jsclare@chicousd.org](mailto:jsclare@chicousd.org), with the subject of “**RFP # 2014-E101 question**”.

6. The Deadline for questions will be 10/14/2013 4:00pm.
7. Responses to all questions will be made by 10/15/2014 and will be posted on the district website.
8. It is the responsibility of the prospective bidder to check the website for updates or addenda.
9. You must provide one original and two copies of your proposal (3 total). You must also provide one digital copy (CD or flash drive) of your proposal.
10. All service providers bidding on this RFP must maintain an office within 100 miles of district. In order to provide and maintain a quick response time and support for the district.
11. All service providers must be **PanGen Certified** installers.
12. The District will **ONLY** accept bids that have District Specified Parts and Materials. See District Specifications: **Appendix C**
13. No Bid form is provided for this bid.
14. Bill of Materials must be submitted with bid.
15. Only **CUSD Staff** and **Qualified Bidders** may attend the Job Walk on October 9<sup>th</sup>, 2014.

## **VENDOR REQUIREMENTS**

The vendor must meet or exceed minimum qualification requirements.

All submitted proposals must provide at a minimum, all requested information in the proposal document. **Any portion not included will be cause for elimination from the quote process.** The information should be organized as indicated in the proposal requirements. The District reserves the right to eliminate from further consideration any response, which is deemed to be substantially or materially unresponsive to the RFP.

All information submitted is to be considered public knowledge and will be subject to The Public Records Act or any other applicable laws.

## **QUOTE EVALUATION**

Each response will be reviewed prior to the selection process for completeness and adherence to format. A response will be considered complete if all requested sections are included in the proper order and properly completed. Vendors may also provide any and all recommendations for consideration such as installation, maintenance, support and design that is relevant to the total solution of the District's technology needs.

### **Evaluation Criteria**

- Costs, including unit prices, labor rates, travel/trip charges, etc.
- Extent to which specifications are met if equivalent equipment is proposed
- Extent of experience with the district
- Client references and/or citations from prior installations where equal services have been provided for projects of similar size and complexities
- Quote preparation, thoroughness, and responsiveness to the RFP requirement

The successful bidder will be chosen based upon best value. The district reserves the right to reject any or all bids.

## **RFP SCHEDULE**

Proposal offered	<b>September 30, 2014</b>
Walk Through	<b>8:30 a.m., October 9, 2014</b>
RFP/BID question deadline	<b>4:00 p.m., October 14, 2014</b>
RFP/BID question response	<b>4:00 p.m., October 15, 2014</b>
Proposal closing	<b>2:00 p.m., October 17, 2014</b>
Proposal opening	<b>Date of Proposal closing</b>
Selection	approximately <b>October 24, 2014)</b>
Award of Proposal	Contingent on District Funding

## **SPECIFIC INSTRUCTIONS & INFORMATION TO BIDDERS**

1. **PROPOSALS:** Each proposal shall conform and be responsive to District specifications. Bidder shall furnish complete specifications and rates for all services requested. Additional pricing schedules detailing items listed on the proposal shall be attached to the proposal form. Proposals shall include completed Exhibits 1&2.
2. **DEADLINE FOR RECEIPT OF PROPOSAL:** One signed original, two hard copies and one digital copy of the proposal must be submitted in sealed envelopes and should be properly identified with the proposal number and **Proposals must arrive in the IT Department, 1163 East Seventh Street, Chico, CA 95928 October 17, 2014 before 2:00 PM, local time.** Telephone, telegraphic, facsimile, emailed, and late proposals will not be accepted or considered.
3. **PROPOSAL SUBMISSION REQUIREMENT:** Proposals shall be submitted to the address above and labeled as follows:

### **RFP # 2014-E101 - Cabling Infrastructure**

It is the sole responsibility of the bidder so see that the proposal is received in proper time as stated in the Notice to Bidders. Any proposal received after the scheduled closing time for receipt of proposals will be rejected and returned to the bidder.

4. **TYPEWRITTEN/WRITTEN IN INK:** All prices or notations must be typed or written in ink. Proposals written with pencil will not be accepted.
5. **ERASURES:** The proposal submitted must not contain erasures, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or person signing the proposal.
6. **QUOTE SEPARATELY:** Quote each School Site separately.
7. **ALL COSTS INCLUDED:** All costs must be included in the bidder's proposal, including bonds and insurance. The bidder shall deliver, install, and complete an integrated system, which may include use of the District's own existing equipment referenced herein. These specifications are meant to outline the District's functional requirements and are not meant to be an exhaustive list of services required to accomplish these requirement.

8. **GUARANTEED MAXIMUM PRICE (GMP):** The successful LLB Entity for the Project chosen by the District as a result of this RFP process will be responsible for providing a GMP for the Project to the District that includes the entire scope of work, products (or equivalents if acceptable by District) and quantities specified in this RFP.
9. **TAXES:** The District is not exempt from California State sales and use taxes. The District is exempt from paying Federal Excise Taxes. California sales tax shall be included in the bid response quotations as a separate line item.
10. **INSURANCE:** All insurance that may be required shall be included in all bid response quotations.

Commercial General Liability Insurance: Commercial General Liability Insurance shall be at least as broad as Insurance Services Office General Liability Coverage (Occurrence Form CG 0001), naming the District as an additional insured. One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. Two Million Dollars (\$2,000,000) aggregate.

Automobile Liability Insurance: Automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). One Million Dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Worker's Compensation and Employer's Liability Insurance: The LLB Entity and all subcontractors shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof. The LLB Entity shall provide employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000) per accident for bodily injury and disease. Contractor's General Liability and Worker's Compensation Policies shall provide a Waiver of Subrogation in favor of Chico Unified School District.

11. **SIGNATURE:** The proposal must be signed in the name of the bidder and must bear the signature in longhand of the person or persons duly authorized to sign the proposal. In case a proposal is submitted by a corporation, it must be signed in the name of such corporation by a duly authorized officer or agent thereof.
12. **MODIFICATIONS:** Changes in or additions to the proposal form, recapitulations of the work proposal upon, alternative proposals, or any

modifications of the proposal form which is not specifically called for in the contract documents may result in the District's rejection of the proposal as not being responsive to the invitation to proposal. No oral or telephonic (facsimile machine, FAX, inclusive) modifications of any proposal submitted will be considered.

13. **EXAMINATION OF CONTRACT DOCUMENTS:** Bidders shall thoroughly examine and be familiar with the Drawing and Specifications. The failure or omission of any bidder to receive or examine any contract documents, forms, instruments, addenda or other documents or to visit the site and acquaint himself with conditions there existing shall in no way relieve any bidder from obligations with respect to his proposal or the contract. The submission of a proposal shall be taken as "Prime Facie" evidence of compliance with this section.
14. **ERROR IN PROPOSAL:** Any claim by bidder of error in his proposal must be made before proposals are opened, or the claim shall be deemed waived. Any bidder may withdraw his proposal at any time before the time at which proposals are due and the Request for Proposals is closed and, having done so, no bidder will be permitted to resubmit a proposal.
15. **WITHDRAWAL OF PROPOSAL:** Any bidder may withdraw his proposal by written request. All proposals received by the District shall remain subject to the acceptance for a period of ninety (90) calendar days after the date of the proposal opening.
16. **AWARD OF CONTRACT LIMITATION:** No proposal will be accepted from or contract awarded to any party or firm in arrears to the District, or who is a defaulter as surety, contractor or otherwise.
17. **EVIDENCE OF RESPONSIBILITY:** Upon the request of the District, a bidder whose proposal is under consideration for the award of the Contract shall submit promptly to the District satisfactory evidence showing the bidder's financial resources, his experience and organization available for the performance of the contract.
18. **ACCEPTANCE OR REJECTION OF PROPOSALS:** The Board of Education reserves the right to reject any and all proposals, or any or all items of any proposal, or waive any irregularity of any proposal. No proposal may be withdrawn for a period of ninety (90) days without written approval of the District.
19. **PREVAILING WAGES:** LLB Entities are advised that this Project is a public work for purposes of the California Labor Code, which requires payment of prevailing wages pursuant to California Labor Code Section 1770 *et seq.* and Education Code Section 17424. These rates are set forth

in a schedule that may be found on the California Department of Industrial Relations home page ([www.dir.ca.gov](http://www.dir.ca.gov)). Any LLB Entity to which a contract is awarded and its subcontractors must pay the prevailing rates, post copies thereof at the job site, and otherwise comply with applicable provisions of state law. It is the further duty of the LLB Entity and its subcontractors to employ registered apprentices on the Project pursuant to Labor Code Section 1777.5, if the LLB Entity and its subcontractors employ workers in any apprenticeable craft or trade, as those terms are defined in Labor Code Section 1777.5.

20. SECURITIES: LLB Entities are advised that if awarded the contract they will be permitted, at their request and expense and in accordance with California Public Contract Code Section 22300, to substitute securities equivalent to retention monies withheld by the District to ensure performance under the contract.
21. BONDING: Contractor, before beginning the work, shall file a Performance Bond and a Payment Bond with the District, each made payable to the District. These bonds shall be issued by a surety company authorized to do business in the State of California and shall be maintained during the entire life of the Contract at the expense of the Contractor. Each bond shall guarantee the faithful performance of the Contract. The District does not provide bond forms. All bond forms will be provided by the Contractor's surety company.
22. Pricing Valid. All pricing quoted within the Statements shall be valid for a period of not less than ninety (90) days from the date Statements are received.
23. District Rights. The District may investigate the qualifications of any individual or LLB Entity under consideration, require confirmation of information furnished and require additional evidence of qualifications to perform the services described in this RFP. The District also reserves certain rights, including, but not limited to, the following:
  - Reject any or all of the Proposals.
  - Issue subsequent RFPs.
  - Cancel the entire RFP.
  - Remedy technical errors in the RFP process.
  - Appoint evaluation committees to review qualifications or Proposals.
  - Seek the assistance of outside technical experts in Proposals evaluation.
  - Approve or disapprove the use of particular subcontractors.
  - Establish a short list of LLB Entities eligible for discussions after review of the Proposals.
  - Interview any, all, or none of the LLB Entities.
  - Negotiate with any, all, or none of the LLB Entities.
  - Cancel negotiations at any time.



- Solicit best and final offers from any, all, or none of the LLB Entities.
  - Waive informalities and irregularities in any of the responses to this RFP.
  - Award a contract to one or more or none of the LLB Entities.
  - Award without discussion.
  - Cancel Project.
24. **BRANDS.** When a particular brand or brand and number are named in connection with any item, it is named as a standard of quality and utility only. A Bidder may submit a bid to furnish an item other than that named, but the item offered by the Bidder must state in the Bid Form the brand with its number, if any, which he will furnish. The District shall be the sole judge of whether an offered item is the equal of the named item. If the Bidder fails to write in the brand and number of the item to be furnished, it is understood the bidder will furnish the item named by the District as the standard of quality and utility.
25. **SAMPLES.** Where the Bidder quotes on a brand named as a standard of the quality and utility desired, a sample of the item will not be required unless specifically requested. If the bid submitted is on any other brand or make than that so named, a sample thereof must be furnished, if requested, or the bid on the item will not be considered. The sample submitted shall be the exact item the Bidder proposes to furnish. Samples of items, when requested, must be furnished free of expense to the District.
26. **FEDERAL OR STATE REGULATIONS.** The Bidder's proposal and any contract entered into are subject to all applicable statutes of the United States or of the State and all applicable regulations and orders of the Federal or State governments now in effect or which shall be in effect during the period of such contract.
27. **ASSIGNMENT PROHIBITED.** No contract awarded under this proposal shall be assigned without the approval of the Board of Education. Any attempted assignment in violation of the provision shall be voidable at the option of the Board.
28. **PATENT RIGHTS, COPYRIGHTS, AND TRADEMARKS.** The Bidder shall save, keep, bear harmless, and fully indemnify the District and any of its officers or agents from all damages, or claims for damages, costs, or expenses in law or equity that may at any time arise or be set up for any infringement of the patent rights, copyrights, or trademarks of any person in consequence of the use by the District, or by any of its officers or agents of items to be supplied by the Bidder.
29. **DELIVERY.** All items shall be delivered in quantities specified in the contract F.O.B., at the points within the District as specified in the

contract. Deliveries in advance of the time specified in the contract shall not be accepted unless the Bidder has obtained prior approval from the District. Unless otherwise specified, if an item is not delivered as specified in the contract or if the Bidder delivers an item which does not conform to the Specifications, the Board of Trustees may, at its option, annul and set aside the contract, either in whole or in part, and may enter into a new contract in accordance with law for furnishing such item. Any additional cost or expense incurred by the District in the making of such contract or any additional cost of supplying an item by reason of the failure of the Bidder, as described in this paragraph, shall be paid by the Bidder or his surety.

30. **INSPECTION OF ITEMS FURNISHED.** All items furnished shall be subject to inspection and rejection by the District for defects or non-compliance with the specifications. The cost of inspection on deliveries or offers for delivery which do not meet specifications may be deducted from the contract price.
31. **INABILITY TO PERFORM.** In the event that Bidder is prevented from making delivery or otherwise performing on time as specified in the contract by fire, flood, earthquake, labor or transportation problems, war, acts of government, or any other similar cause commonly known as an act of God, which is not the fault of the Bidder, the Bidder shall not be required to deliver or perform, subject to the following requirements:
  - a. The Bidder shall send written notice to the District of the Bidder's inability to perform in accordance with the contract. The notice shall contain all facts which show the condition which prevents performance. The Bidder shall send such notice as soon as possible but in no event later than the fifth (5th) day following the date of issuance of a purchase order by the District or no later than the date specified in the contract for delivery or other performance, whichever is applicable.
  - b. The District may cancel the contract or purchase order, entirely or in part.
  - c. The Bidder shall not make any delivery or otherwise attempt to perform under the contract except on the basis of issuance by the District of a new purchase order or other written instruction.
32. **WARRANTY-PRODUCT.** Seller warrants that all articles furnished shall be free from all defects of material and workmanship, that all articles shall be fit and sufficient for the purposes intended, and shall save, keep, bear harmless and fully indemnify the District and any of its officers, employees or agents from all damages, or claims for damages, costs or expenses in law or equity that may at any time arise from Buyers normal use.
33. **EQUAL OPPORTUNITY EMPLOYMENT.** Bidder, in submitting his proposal certifies that he is an Equal Opportunity Employer, and certifies

that he is in compliance with the Civil Rights Act of 1964, the State Fair Employment Practice Act, and all other applicable Federal and State laws and regulations relating to equal opportunity employment, including Executive Order No. 11246 of September 24, 1965.

34. **GOVERNING LAW AND VENUE:** In the event of litigation, the bid documents and related matters shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate state or federal court located in Sacramento County.
35. **CONTACT WITH BOARD OF EDUCATION:** No business entity, including any agent of such entity, shall directly or indirectly contact any board member immediately before or during the bidding process of any project on which the business entity intends to or has submitted a bid. Any vendor violating this policy shall be deemed disqualified from bidding. Should such contact come to light after the bid is awarded and the entity was deemed the successful bidder, the Board reserves the right to cancel any contract awarded.
36. **ARBITRATION:** All claims of \$375,000 or less which arise between the bidder and the District shall be subject to the settlement and arbitration provisions set forth in the public Contract Code Sections 20104 through 20104.8, which provisions are incorporated hereby by this reference.
37. **BID PROTEST.** Any bid protest by any Bidder must be submitted in writing to the District before 5:00 p.m. of the **third (3<sup>rd</sup>)** business day following bid opening.
  - a. The protest must contain a complete statement of any and all bases for the protest.
  - b. The protest must refer to the specific portions of all documents that form the bases for the protest.
  - c. The party filing the protest must have actually submitted a bid. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue his or her own protest.
  - d. The protest must include the name, address and telephone number of the person representing the protesting party.
  - e. The party filing the protest must concurrently transmit a copy of the protest and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other bidders or proposers who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

f. The bidder whose bid has been protested may submit a written response to the bid protest. Such response shall be submitted to the District no later than 5:00 p.m., no later than three (3) working days after the deadline for submission of the bid protest, as set forth above, and shall include all supporting documentation. Such response shall also be transmitted concurrently to the protesting bidder and to all other bidders who appear to have a reasonable prospect of receiving and award depending upon the outcome of the protest.

g. The procedure and time limits set forth in this paragraph are mandatory and are each bidder's sole and exclusive remedy in the event of bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.

h. A "business day", for purposes of this section, means a weekday during which the District's office is open and conducting business.

38. **RIGHT TO TERMINATE:** District reserves the right to terminate this Request for Proposal and all documents associated with the Request for Proposal, including but not limited to a Letter of Intent/Letter of Agreement, in its sole discretion at any time, with or without cause, upon written notice to the other party. In the event of termination, notice shall be deemed served on the date of mailing and shall be effective immediately. The District shall not be responsible for any costs to Bidder/Contractor prior to termination.

\*NOTE: Incomplete proposals, incorrect information, or late proposals may be cause for immediate disqualification. Issuance of the RFP does not commit the District to award a contract, or to pay any costs incurred in the preparation of a response to this request. The District reserves the right to request additional information or clarification during the RFP evaluation process. The District retains the right to reject any or all proposals or to cancel this RFP process at any time. All LLB Entities should note that the execution of any contracts pursuant to this RFP is dependent upon the approval of the governing board of the Chico Unified School District in its sole discretion.

## Appendix A - school sites and address

Emma Wilson Elementary	1530 West 8th Avenue	Chico, CA 95926	891-3297
Neal Dow Elementary	1420 Neal Dow Avenue	Chico, CA 95926	891-3110
Shasta Elementary	169 Leora Court	Chico, CA 95973	891-3141

### NOTES:

Any other location within the Greater Chico area designated by the District

## Appendix B - Scope of Work - Emma Wilson

Room	MDF/IDF Location	Voice Feeds to MPOE	Fiber Strands	Exterior AP/Cam Locations	New Cat 6 Cabling	New Fiber	Data Cabinet
916	MDF	50 Pair	108				new 7'
918			12		8		
922	IDF	12 Pair	12		8	Install 50u	new 4'
11	IDF	12 Pair	12		14	Install 50u	new 2'
933	IDF	12 Pair	12		8	upgrade 50u	new 2'
16	IDF	12 Pair	12	2	14	Install 50u	new 2'
938	IDF	12 Pair	12		8	Install 50u	new 4'
941			12		8		
942	IDF	12 Pair	12		8	upgrade 50u	new 2'
MPR (924)	IDF	12 Pair	12	2	16	Install 50u	new 2'
1					14		
2					14		
3				2	14		
4					14		
5				2	14		
6					14		
7					14		
8					14		
9					14		
10				2	14		
12					14		
13					14		
14					14		
15					14		
admin					64		
17					14		
18					14		
19				2	14		
20				2	14		
21					14		
22					14		
23				2	14		
24					14		
25					14		
26					14		
27					14		
28					14		
29					10		
30					10		
library					48		
920					4		
936					4		
939					8		
932					4		
940					8		
923					8		
917					8		
943					8		
				16	640		

### Notes:

8 Outdoor Wireless Locations will require outdoor enclosure (Rooms 10, 17, 20, 18, 3, 926,5, 23)

Replace backboards as necessary

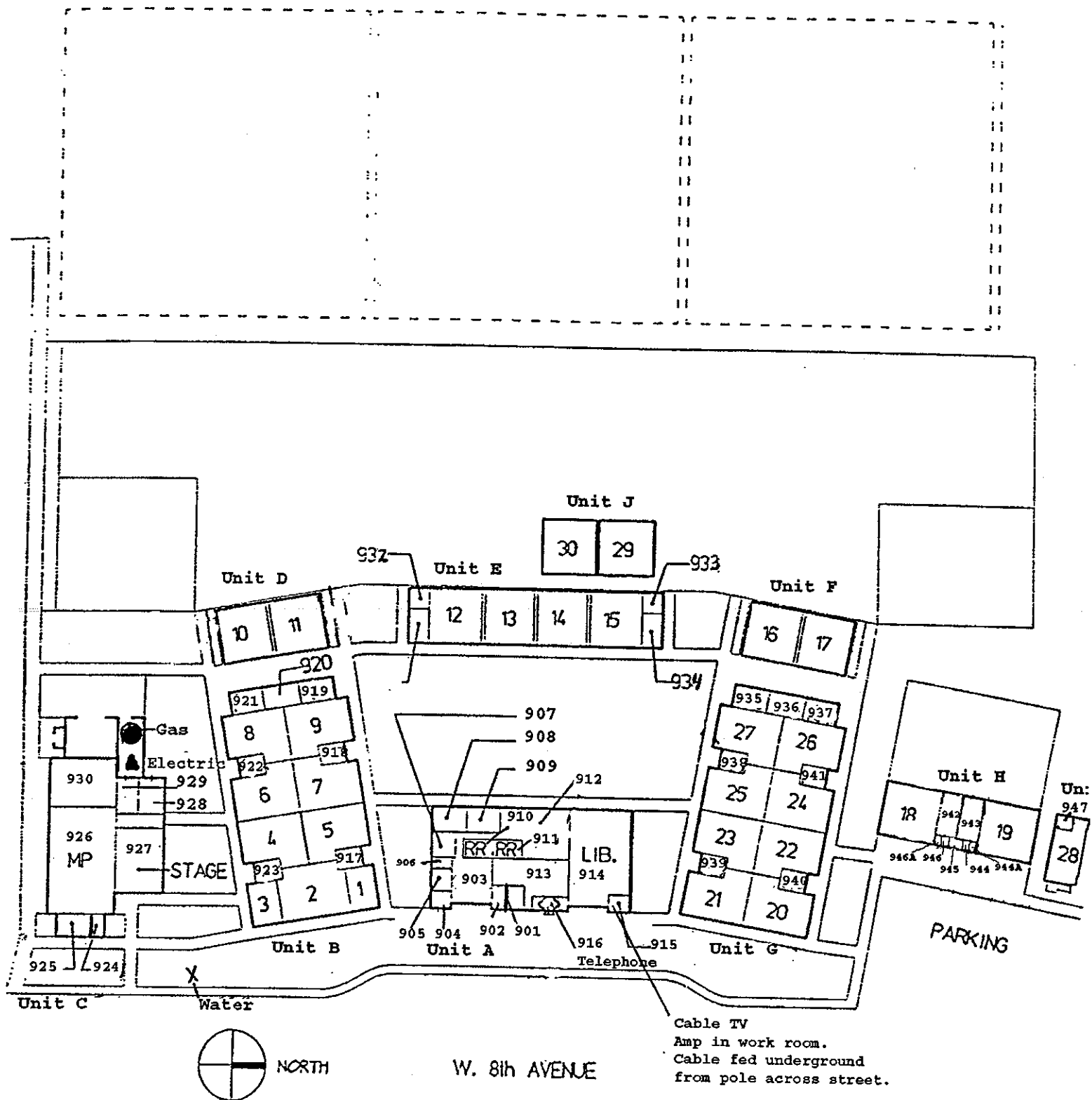
Asbestos related work: abatement, drilling, etc. will be by the district

10 Gig backbone fiber optic backbones will be required. OM3-300 meter at a minimum. OM4-550 meter at a maximum

All existing cabling is to be removed by the contractor.

All voice feed cables will be terminated on rack-mount patch panels

All exterior Access Points must be grounded to new or existing ground legs



# EMMA WILSON ELEMENTARY SCHOOL

Updated 9/2006

## Appendix B Scope of Work - Neal Dow

Room	MDF/IDF Location	Voice Feeds to MPOE	Fiber Strands	Exterior Wireless AP Locations	New Cat 6 Cabling	New Fiber	Data Cabinet
924	MDF	50 Pair	36		16		existing 7'
K2	IDF	12 Pair	12		14	upgrade 50u	existing 2'
910	IDF	12 Pair	12		16	upgrade 50u	new 2'
9	IDF	12 pair	12		24	install new 50u	new 2'
904	IDF	12 pair	12		8	upgrade 50u	new 2'
1					14		
2					14		
3					14		
4					14		
5					14		
6					14		
7					14		
8					14		
10					10		
11					14		
12					14		
13					14		
14					14		
15					14		
16					14		
17					14		
18					14		
MPR					16		
Library					24		
admin					24		
915					8		
K1				2	14		
925				2			
922				2			
913				2			
909				2			
918					8		
919					8		
				10	414		



Notes:

5 Outdoor Wireless Locations will require Outdoor Enclosure (Rooms 922, 925, K1, 913, 909)

Replace backboards as necessary

Asbestos related work: abatement, drilling, etc. will be by the district

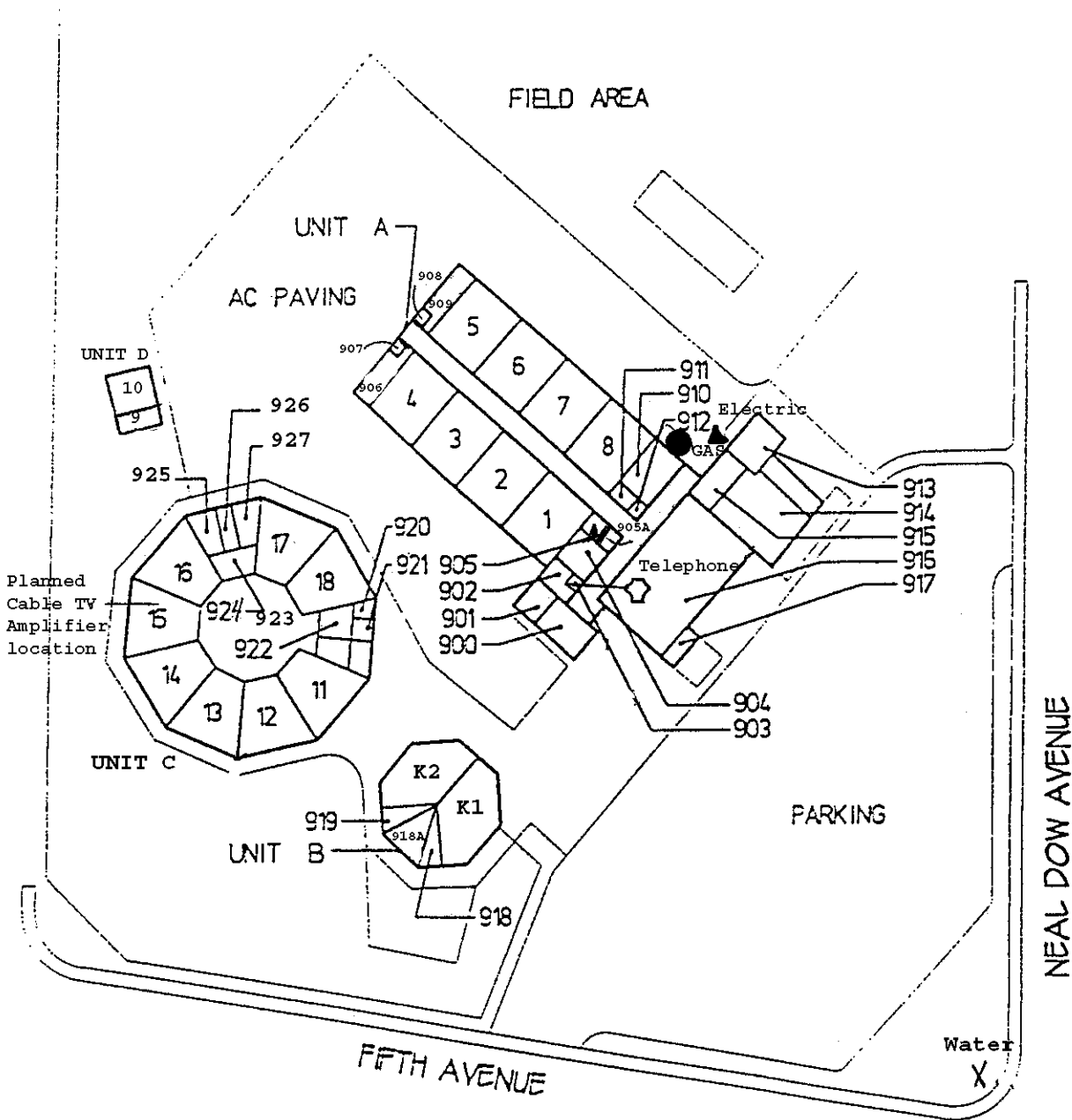
10 Gig backbone fiber optic backbones will be required. OM3-300 meter at a minimum. OM4-550 meter at a ma

All existing cabling is to be removed by the contractor.

All voice feed cables will be terminated on rack-mount patch panels

All exterior Access Points must be grounded to new or existing ground legs

New Conduit pathway from room 18 to Admin



# NEAL DOW ELEMENTARY SCHOOL

Updated 9/2006

## Appendix B- Scope of Work - Shasta

Room	MDF/IDF Location	Voice Feeds to MPOE	Fiber Strands	Exterior Wireless AP Locations	New Cat 6 Cabling	New Fiber	Data Cabinet
913	MDF	50 Pair	72		8		new 7'
907	IDF	12 Pair	12		16	upgrade 50u	new 3'
22	IDF	12 Pair	12		8	upgrade 50u	new 3'
MPR (902)	IDF	12 Pair	12	2	16	upgrade 50u	new 3'
12 (912)	IDF	12 Pair	12		8	upgrade 50u	existing 2'
14	IDF	12 Pair	12		14	Install 50u	new 2'
16	IDF	12 Pair	12		14	Install 50u	new 2'
1					14		
2					14		
3 Media					40		
4					14		
915					24		
5				2	14		
6					14		
3					14		
7				2	14		
8					14		
9				2	14		
10					14		
11					8		
13					8		
15					8		
17				2	8		
18					8		
19					8		
20					8		
21					8		
23					8		
24				2	8		
25					14		
901a					8		
922 (13A)				2	8		
				14	398		

Notes:

7 Outdoor Wireless Locations will require Outdoor Enclosure (Rooms 17, 902,922,24,9,5,7)

Replace backboards as necessary

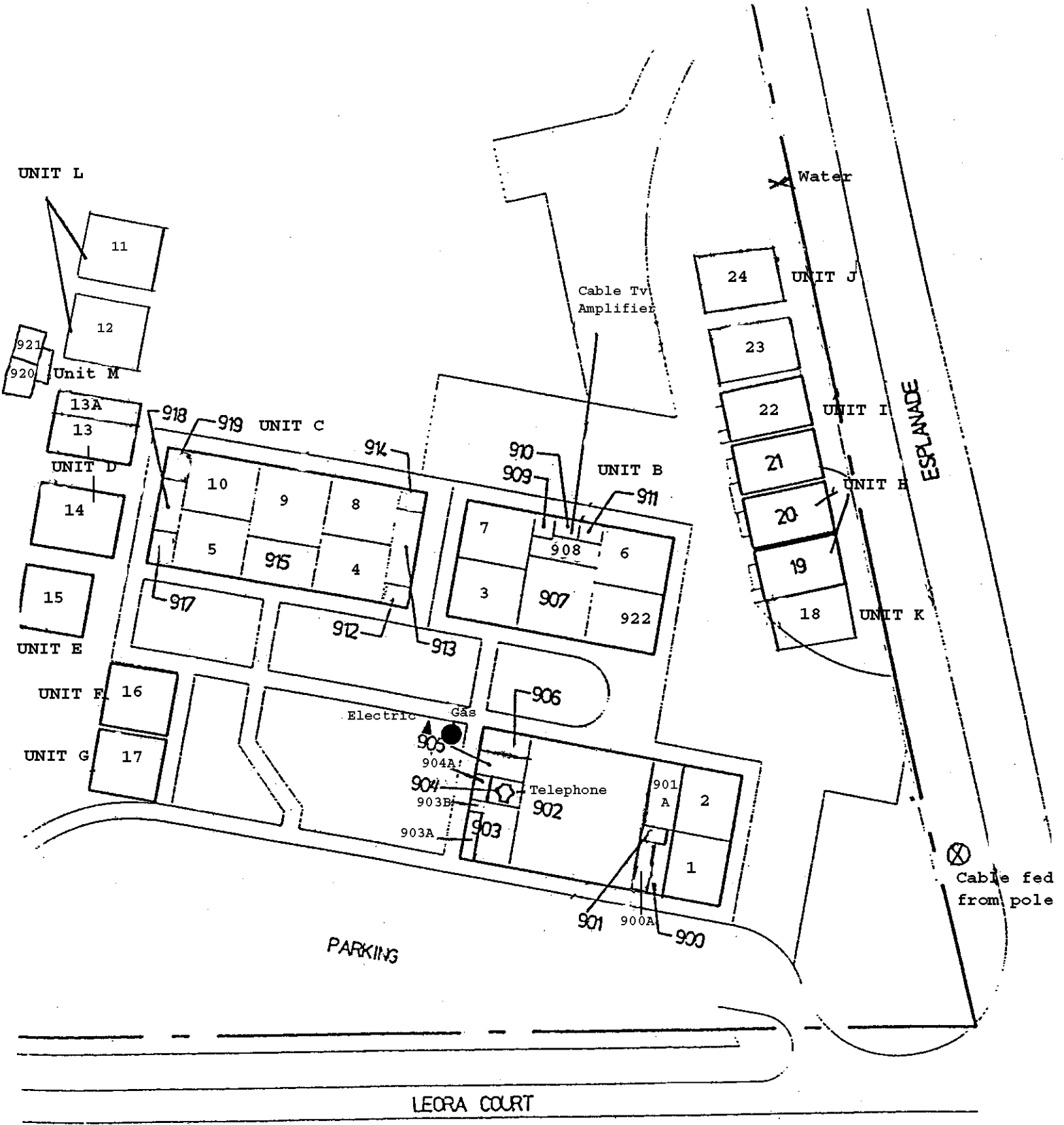
Asbestos related work: abatement, drilling, etc. will be by the district

10 Gig backbone fiber optic backbones will be required. OM3-300 meter at a minimum. OM4-550 meter at a ma

All existing cabling is to be removed by the contractor.

All voice feed cables will be terminated on rack-mount patch panels

All exterior Access Points must be grounded to new or existing ground legs



# SHASTA ELEMENTARY SCHOOL

Updated 9/2006

## Appendix C - Measure E Projects - CUSD DATA CABLING SPECIFICATIONS

Part Number	Manufacturer	Description	Standard or Equal
BCH 21	B-Line	J - hooks with retaining clips or Equal	
BCH 32	B-Line	J - hooks with retaining clips or Equal	
BCH 64	B-Line	J - hooks with retaining clips or Equal	
CJ688TG** (BLACK)	Panduit	Cat 6 Mini-Com Jack	District Standard- Meets 25-year warranty requirement
CFPL*** (WHITE)	Panduit	Mini-com Faceplates (Color TBD)	District Standard - Meets 25-year warranty requirement
CBX4**-AY (WHITE)	Panduit	Mini-com 4-Port Surface Mt. Boxes (Color TBD)	District Standard - Meets 25-year warranty requirement
CMB** (WHITE)	Panduit	Mini-com Blanks	District Standard - Meets 25-year warranty requirement
DP48688TGY	Panduit	Cat 6 Mini-Com Patch Panels 2RU	District Standard - Meets 25-year warranty requirement
WMP1E	Panduit	Wire Management 2RU	District Standard - Meets 25-year warranty requirement
UTPSP3**	Panduit	Cat 6 Patch Cords 3' (Color TBD) MDF/IDF	District Standard - Meets 25-year warranty requirement
UTPSP5* *	Panduit	Cat 6 Patch Cords 5' (ColorTBD) MDF/IDF	District Standard - Meets 25-year warranty requirement
UTPSP10**	Panduit	Cat 6 Patch Cords 10' (Color TBD) Station	District Standard- Meets 25-year warranty requirement
FRMEIU	Panduit	1RU Fiber LIU	District Standard - Meets 25-year warranty requirement
FRME4	Panduit	4RU Fiber LIU	District Standard - Meets 25-year warranty requirement
FAP6WAQSCZ (10 Gig OM3)	Panduit	Fiber Adapter Panel SC	District Standard- Meets 25-year warranty requirement
FZE3-10M1 (1 METER / OM4)	Panduit	Fiber Jumper Cables SC-LC	District Standard- Meets 25-year warranty requirement
FZB3-NM1 (Simplex / OM4)	Panduit	Fiber Pigtails SC	District Standard- Meets 25-year warranty requirement
LD10**6-A	Panduit	LD-10 Surface-Mount Raceway (Color TBD)	or Equal
JB1 **-A	Panduit	LD-10 Surface-Mount Raceway Box (ColorTBD)	or Equal
CFIO**-X ((oupler)	Panduit	LD-10 Surface-Mount Raceway Fitting (Color TBD)	or Equal
RAF101W**-X (Right Angle)	Panduit	LD-10 Surface-Mount Raceway Fitting (Color TBD)	or Equal
ICFIOIW-X (Inside Corner)	Panduit	LD-10 Surface-Mount Raceway Fitting (Color TBD)	or Equal
OCF10**-X (Ouside Corner)	Panduit	LD-10 Surface-Mount Raceway Fitting (Color TBD)	or Equal
DCF10**-X (Drop Ceeiling)	Panduit	LD-10 Surface-Mount Raceway Fitting (Color TBD)	or Equal
T702B**8	Panduit	Twin-70 Surface-Mt Raceway (Color TBD)	District Standard
T70C**8 (Cover Order x2ft of base)	Panduit	Twin-70 Surface-Mt Raceway Fitting (Color TBD)	District Standard
T70CC / T702BC (Couplers)	Panduit	Twin-70 Surface-Mt Raceway Fitting (Color TBD)	District Standard
T702RA** (Right Angle)	Panduit	Twin-70 Surface-Mt Raceway Fitting (Color TBD)	District Standard
T7021C** (Inside Corner)	Panduit	Twin-70 Surface-Mt Raceway Fitting (Color TBD)	District Standard
T7020C** (Outside Corner)	Panduit	Twin-70 Surface-Mt Raceway Fitting (Color TBD)	District Standard
T702EE (Entrance End)	Panduit	Twin-70 Surface-Mt Raceway Fitting (Color TBD)	District Standard
Blue P/N: 7133900	General	GenSpeed 6000E	District Standard- Meets 25-year warranty requirement
BL0121ANU.BK	General	10 Gig Indoor/Outdoor 550m (OM4 - PLENUM)	District Standard - Meets 25-year warranty requirement
A6D2S1JNNB1000	Carlon	11/4" innerduct OSP- HOPE	or Equal
DG4X1C-500R	Carlon	11/4" innerduct Riser	or Equal
11900-724	Chatsworth	2' Cube-It Dual-Hinged Wall-Mount Cabinets	District Standard
12804-701	Chatsworth	Fan Kit	District Standard
12805-701	Chatsworth	Filter Kit	District Standard
LMR-600-UF	Microwave Systems	Short Wireless Antenna Feeder Cable - up to 150 Feet	District Standard
NF1U-113C-C42	Chatsworth	N-SERIES TERAFRAME 78" Data Rack (Round Hole Rails)	District Standard
30530-719	Chatsworth	N-Series Double-Sided, 2U, Black Cable Management	District Standard
34538-000	Chatsworth	N-Series 19"W x 2U Panel, Black	District Standard
RE4XB	HUBBELL	REM EQUIP -4HUB 42 H BK - Slim Line Wall Data Cabinet	District Standard
11900-736	CHATSWORTH	36X24X24 CHATSWORTH	District Standard
11900-748	CHATSWORTH	48X24X24 CHATSWORTH	District Standard
7136100	General	Cat 6 OSP Genspeed 6000	District Standard
DP245E88TGY	Panduit	24 STA PATCH PNL PAN CAT 5e for voice feeds at IDF's	District Standard
5133714	Cantex	Exterior Box for Wireless and Security Cams	District Standard
7526577	General	25 Pair/22Gauge PE-89	or Equal

**Additional District Cabling Specifications:**

1. All Cat6 and 5e cabling will be terminated to new Panduit patch panels as required
2. One New 10', Black, Cat 6 Patch Cable must be provided for each Computer Station.
3. New backboards for new or additional IDF locations with appropriate mounting.
4. Minimum 2" sleeves where sleeves are required.
5. Physical Fiber must support 10 Gbit backbone.
6. Data Cabinets must not exceed 60% fill unless otherwise specified by the District
7. All Raceway and Faceplates must be White

**Vendor to sign as acknowledgment of receipt and return with bid.**

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**Signature**

**Date**

**Company Name (please print)**

## PART 1 - GENERAL

## 1.01 DESCRIPTION

A. GENERAL: This Noncollusion Affidavit shall be executed by the Bidder and shall be submitted with his Bid Form.

## 1.02 NONCOLLUSION AFFIDAVIT FORM

STATE OF CALIFORNIA            )  
  ) ss.  
County of \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn, deposes and says that he or she is \_\_\_\_\_ of \_\_\_\_\_ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Bidder

END OF SECTION

State of California

County of \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.  
by \_\_\_\_\_, proved to me on the basis of satisfactory evidence, to be the person(s) who appeared before me.

(Seal)

Signature \_\_\_\_\_



**Certification Pursuant to Education Code Section 45125.1**

Send To (School Dist./Office of Education): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Contract Description: \_\_\_\_\_

Certification Pursuant to Education Code Section 45125.1

I, \_\_\_\_\_ am an officer and agent for  
(please print or type)

\_\_\_\_\_, ("contractor"), an entity as defined in Education Code section 41302.5, with the above School District/Department of Education, and have express authority to make the following statements and representations.

Pursuant to this contract, the following persons, employees of contractor ("employees"), may have contact with pupils.

LAST NAME	FIRST NAME	MIDDLE INITIAL

(Attach additional sheets as necessary.)

I certify as follows:

1. The employees have been fingerprinted and have submitted their fingerprints to the Department of Justice for review.
2. The Department of Justice has ascertained that none of the employees have either a pending criminal proceeding for a felony as defined in Education Code section 45122.1 or have been convicted of a felony as defined in Education Code section 45122.1. I understand that Education Code section 45122.1 incorporates portions of Penal Code sections 667.5 and 1192.7.
3. Attached to this Certification are true and correct copies of the fingerprint analyses prepared and provided by the Department of Justice with respect to each of the employees listed above.
4. None of the employees listed above has been convicted of a felony as defined in Education Code section 45122.1.
5. Upon receipt of notification from the Department of Justice that a previously cleared employee has committed a felony as defined in Education Code section 45122.1, said employee will immediately be removed from the job site and School District/Department of Education will be notified of same.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at California on \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Contracting Agency Representative)

Education Code Section 44237 (g) which references Penal Code Section 667.5 (c): A "violent felony" for these purposes includes:

1. Murder or voluntary manslaughter;
2. Mayhem;
3. Rape or spousal rape by force, violence, duress, or fear of bodily injury or by threat to retaliate;
4. Sodomy by force violence, duress, menace or fear of bodily injury;
5. Oral copulation by force, violence, duress, menace or fear of bodily injury;
6. Lewd acts on a child under age fourteen;
7. Any felony punished by death or by life imprisonment;
8. Any felony in which great bodily injury is inflicted or in which the defendant personally uses a firearm;
9. Robbery in an inhabited dwelling where the defendant personally uses a dangerous weapon;
10. Arson when willful and malicious;
11. Rape with a foreign object by force, violence, duress, menace or fear of bodily injury;
12. Attempted murder;
13. Exploding or attempting to explode a destructive device with intent to murder;
14. Kidnap of a child under age fourteen for the purpose of child molestation;
15. Forcible rape of a child under age fourteen;
16. Continuous sexual abuse of a child;
17. Carjacking when the defendant personally uses a dangerous deadly weapon.

Education Code Section 44237 (g) which references Penal Code Section 1192.7 (c): A "serious felony" for these purposes includes:

1. Non-forcible rape;
2. Assault with intent to commit rape or robbery;
3. Assault with a deadly weapon on a peace officer;
4. Assault by a life prisoner on a non-inmate;
5. Assault with a deadly weapon by an inmate;
6. Arson, when not willful or malicious;
7. Exploding a destructive device or explosive with intent to injury;
8. Explosion causing great bodily injury or mayhem;
9. Burglary of inhabited dwelling;
10. Robbery, except of an inhabited dwelling and except with personal use of a dangerous or deadly weapon;
11. Kidnapping a person fourteen years or older;
12. Prison inmate taking a hostage;
13. Attempt to commit any felony punishable by death or life imprisonment;
14. Any felony in which the defendant personally uses a dangerous or deadly weapon, except robbery or carjacking;
15. Sale or furnishing heroin, cocaine, PCP, or methamphetamine to a minor;
16. Grand theft involving a firearm;
17. Carjacking, except with personal use of a dangerous or deadly weapon;
18. Conspiracy to sell specified quantities of heroin, cocaine, PCP, or methamphetamine to a minor;
19. An attempt to commit any violent or serious offenses, except assault.

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**DEVELOPMENT AND LEASE AGREEMENT**

by and between

---

as Lessor

and

**CHICO UNIFIED SCHOOL DISTRICT**

as Lessee

Dated as of \_\_\_\_\_

**Cabling Infrastructure – Phase 1c**

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## DEVELOPMENT AND LEASE AGREEMENT

This development and lease agreement (the "Development Lease") is dated and entered into as of \_\_\_\_\_ and is made by and between \_\_\_\_\_ ("General Contractor"), a California corporation, as lessor, and the Chico Unified School District ("District"), a school district duly organized and validly existing under the Constitution and laws of said State of California, as lessee.

### RECITALS

WHEREAS, the District desires to provide for cabling infrastructure at three school sites and development of upgrading to the current data network cabling standards at Emma Wilson, Neal Dow and Shasta Elementary Schools located in the City of Chico, State of California, on the District's Site, as defined below, in accordance with the Plans and Specifications, as also defined below;

WHEREAS, the District has prepared Plans and Specifications in form of the RFP #2014-E101, as more particularly described in Exhibit A and are on file at the District and incorporated herein by this reference. The parties acknowledge that the Plans and Specifications may be amended subject to mutual agreement between the parties;

WHEREAS, General Contractor has reviewed the General Conditions of the Contract for the Project set forth in Exhibit D attached hereto and incorporated herein;

WHEREAS, the District and General Contractor agree that the Plans and Specifications attached hereto as Exhibit A, and all other supporting documents, and the General Conditions of the Contract attached hereto as Exhibit D, and all other supporting documents shall govern the construction of the Project, and are supplementary to the terms and conditions set forth in this Development Lease;

WHEREAS, on the date hereof, the District has leased to General Contractor, for the development and construction of the Project, the Site (the "Site") located in Chico, California as more particularly described in Exhibit B attached hereto pursuant to the terms of a Site Lease, dated \_\_\_\_, 2014 as defined herein, by and between the District and General Contractor;

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Site to General Contractor and to direct General Contractor to develop and construct the Project on the Site and to lease the Site and the improvements back to the District, and has duly authorized the execution and delivery of this Development Lease;

WHEREAS, General Contractor has agreed to and is authorized to lease the Site as lessee and to develop and construct the Project at the Site and to lease the Site back to the District, as provided for herein and in the Site Lease, and has duly authorized the execution and delivery of this Development Lease;

WHEREAS, the Board of Education of the District (the "Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to develop and construct the Project by leasing the Site to General Contractor and by immediately entering into this Development Lease under which the District will lease back the Site from General Contractor and make Lease Payments, as defined herein, to General Contractor on the dates and in the amounts set forth in the payment schedule attached hereto as Exhibit C (the "Lease Payment Schedule");

WHEREAS, the parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Development Lease and all those conditions precedent do exist, have happened, and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Development Lease;

WHEREAS, the District has a substantial need for the construction of the Project at the Site and has entered into the Site Lease and the Development Lease under the authority granted to the District by Section 17406 of the Education Code of the State of California in order to fill that need; and

WHEREAS, the District and General Contractor further acknowledge and agree that they have entered into the Site Lease and this Development Lease pursuant to Education Code Section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the development and construction of the project at the Site and to accommodate and educate students served by the District.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, the parties hereto do hereby agree as follows:

## **ARTICLE 1**

### **DEFINITIONS AND EXHIBITS**

1.1 Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Development Lease, have the meanings herein specified.

1.1.1 “Construction Contract” or “Contract Documents” means the Plans and Specifications attached hereto as Exhibit A, the General Conditions attached hereto as Exhibit D and all other design and development documents pertaining to the Project, as more particularly described in Exhibit D attached hereto.

1.1.2 “Development Lease” means this Development Lease and all attached exhibits together with any duly authorized and executed amendment hereto.

1.1.3 “District” means the Chico Unified School District, a school district duly organized and existing under the laws of the State of California.

1.1.4 “District Representative” means the Director of Facilities and Construction of the District, or any other person authorized by the Board of Education of the District to act on behalf of the District under or with respect to this Development Lease. The person or persons so designated to act as District Representative(s) shall be authorized in writing with notice served to General Contractor Representatives.

1.1.5 “Event of Default” or “Default” means one or more events as defined in Section 9.1 and Section 9.6 of this Development Lease.

1.1.6 “Guaranteed Maximum Price” means the price for which General Contractor will cause the Project to be constructed as further described herein and by way of Exhibit A attached hereto.

1.1.7 “Lease Payment” means any payment required to be made by the District pursuant to Section 4.5 of this Development Lease and as set forth in Exhibit C attached to this Development Lease.

1.1.8 “Lease Payment Schedule” shall mean the payment schedule attached hereto as Exhibit C.

1.1.9 “General Contractor” means \_\_\_\_\_, organized and existing under the laws of the State of California, and its District-approved successors and assigns and which is the party responsible for construction of the Project and related work as provided for in Exhibit A.

1.1.10 “General Contractor’s Representative” means any officer of General Contractor, or any person authorized to act on behalf of General Contractor under or with respect to this Development Lease as evidenced by a resolution conferring that representative with such authorization adopted by the board of directors of General Contractor.

1.1.11 “Notice to Proceed” shall mean a written communication signed by an authorized representative of the District, directing General Contractor to cause commencement of the Project, as provided for in this Development Lease and which is delivered to General Contractor at the address provided herein by registered or certified mail, return receipt requested.

1.1.12 “Permitted Encumbrances” means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may, pursuant to the provisions of Section 5.3 hereof, permit to remain unpaid; (ii) the Site lease; (iii) this Development Lease, (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Development Lease; (v) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following of this Development Lease and to which General Contractor and the District consent in writing which will not impair or impede the operation of the Site or the construction of the Project.

1.1.13 “Plans and Specifications” means the plans and specifications for the Project as further defined in the General Conditions of the Contract, and as more particularly described in Exhibit A and in Exhibit D attached hereto.

1.1.14 “Project” or “Work” means the site development work, and any related construction and installation of improvements (as set forth in the Plans and Specifications), to be performed by General Contractor, as more particularly described in Exhibit A and in Exhibit D attached hereto.

1.1.15 “Project Manual” means the Project Manual(s) assembled for the Work, if applicable.

1.1.16 “Site” means that certain parcel of real property and improvements thereon more particularly described in Exhibit B attached hereto.

1.1.17 “Site Lease” means the Site Lease dated as of \_\_\_\_\_, 2014 by and between the District and General Contractor together with any duly authorized and executed amendments thereto under which the District leased the Site to General Contractor.

1.1.18 “Term of this Development Lease” or “Term” means the time, commencing with the District issuing to General Contractor a Notice to Proceed for the project, during which the District’s obligation to make the Lease Payments under this Development Lease is in effect, as provided for in Section 4.2 of this Development Lease.

1.2 Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Development Lease and are binding upon the District and General Contractor hereto:

Exhibit A – THE PROJECT: The description of the Project, including Plans and Specifications for the Project as outlined in the Cabling Infrastructure RFP #2014-E101 issued September 30, 2014.

Exhibit B – DESCRIPTION OF THE SITE: The description of the real property constituting the Site.

Exhibit C – LEASE PAYMENT SCHEDULE: The schedule of Lease Payments to be paid by the District hereunder.

Exhibit D – GENERAL CONDITIONS OF THE CONTRACT: The provisions, including the General Conditions of the Contract, generally describing the Project's construction.

Exhibit E – MEMORANDUM OF COMMENCEMENT DATE: The Memorandum which will memorialize the commencement and expiration dates of the Term.

Exhibit F – RESERVED

Exhibit G – GUARANTEE: The form which General Contractor shall execute and deliver to District upon completion of the Work, warranting and guaranteeing that all work and materials provided and installed by General Contractor was performed in strict conformity with the Contract Documents for the Work.

Exhibit H – SITE VERIFICATION CERTIFICATE: The Certificate to be executed and delivered by General Contractor upon completion of a site review within twenty-one (21) days of the date for commencement of the Work as set forth in the Notice to Proceed.

Exhibit I – PERFORMANCE BOND: The form of Performance Bond to serve as security for General Contractor faithful performance of the Work under the Contract Documents.

Exhibit J – PAYMENT BOND: The form of Payment Bond to serve as security for payment of persons or entities performing work, labor or furnishing materials in connection with General Contractor performance of the Work under the Contract Documents.

Exhibit K – SUBCONTRACTORS LIST: A list of the name of each subcontractor, contact address, and portion of the Work to be completed by that subcontractor.

Exhibit L – NON-COLLUSION DECLARATION: Declaration to be signed by General Contractor declaring that it's Guaranteed Maximum Price is genuine, and General Contractor did not collude with any subcontractors to offer a false Guaranteed Maximum Price.

Exhibit M – CERTIFICATE OF WORKERS' COMPENSATION INSURANCE: The form of certificate declaring that General Contractor understands that it must maintain workers' compensation insurance or self-insurance.

Exhibit N – DRUG-FREE WORKPLACE CERTIFICATION: The form of certificate declaring that General Contractor shall comply with the requirements of the Drug Free Workplace Act of 1990, California Government Code §§ 8350 et seq.

Exhibit O – FINGERPRINT CERTIFICATE: The form of certificate declaring that General Contractor shall comply with the requirements of the California Education Code § 45125.1, regarding fingerprinting of persons providing services to school districts.

Exhibit P – DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION GOAL PROGRAM POLICY: The District's policy regarding its commitment to achieving the Participation Goal for Disabled Veteran Business Enterprises.

Exhibit Q – DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION WORKSHEETS: Worksheets documenting General Contractor's efforts to satisfy the DVBE Participation Goal.

## **ARTICLE 2**

### **REPRESENTATIONS, COVENANTS AND WARRANTIES**

2.1 Representations, Covenants and Warranties of the District. The District represents, covenants and warrants to General Contractor as follows:

2.1.1 Due Organization and Existence. The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

2.1.2 Authorization. The District has the full power and authority to enter into, to execute and to deliver this Development Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Development Lease. The representatives of District executing this Development Lease and the Site Lease are fully authorized to execute the same.

2.2 Representations, Covenants and Warranties of General Contractor. General Contractor represents covenants and warrants to the District as follows:

2.2.1 Due Organization and Existence. General Contractor is a California corporation duly organized and existing under the laws of the State of California, has the power to enter into this Development Lease and the Site Lease; is possessed of full power to own, rent and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

2.2.2 Authorization. General Contractor has the full power and authority to enter into, to execute and to deliver this Development Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Development Lease.

2.2.3 No Litigation. There is no pending or, to the knowledge of General Contractor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of General Contractor to perform its obligations under this Development Lease.

2.2.4 No Encumbrances. General Contractor shall not mortgage or encumber the Site, to finance construction of the project.



2.2.5 Continued Existence. For up to six months following the term of this Lease, General Contractor shall not voluntarily commence any act intended to dissolve or terminate the legal existence of General Contractor, provided the District is not in uncured Default under this Development Lease. General Contractor shall give the District sixty (60) days written notice prior to dissolving or terminating the legal existence of General Contractor.

## ARTICLE 3

### CONSTRUCTION OF PROJECT

3.1 Site Conditions and Plans and Specifications. General Contractor acknowledges that it has, to the extent necessary to complete the Project, visually investigated the Site, including, without limitation, a review of the soils reports for the Site as provided by the District, and concluded that there are no currently known problems with respect to the site conditions. General Contractor further acknowledges that it will have performed value engineering and a constructability review of the Plans and Specifications which were prepared by the Architect hired by the District and will have determined that prior to commencement of construction, the documents are adequate for the Project's construction and General Contractor has not identified any deficiencies in the Plans and Specifications that need to be cured. Provided, however, that the parties understand that General Contractor has not conducted an architectural, engineering, or code compliance review of the Plans and Specifications.

3.2 Development and Construction of Project. General Contractor agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the Plans and Specifications on file with the District and as described in Exhibit A, the General Conditions of the Contract set forth in Exhibit D including those things reasonably inferable from the Plans and Specifications as being within the scope of the Project and necessary to produce the stated result even though no mention of them is made in the Plans and Specifications. General Contractor further agrees that it will cause the development, construction, and installation of the Project to be diligently performed pursuant to the terms of the Construction Contract. General Contractor shall provide the District a complete copy of the executed Construction Contract documents within ten (10) days after execution of the Construction Contract. Provided, however, that General Contractor shall be allowed to remove all financial information from the Construction Contract with the exception of the total Guaranteed Maximum Price. The District and General Contractor may also approve additional changes in the Plans and Specifications for the Project as provided in Exhibit D. The District and General Contractor will cooperate at all times in bringing about the timely completion of the Project. General Contractor shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested by District, including, without limitation sections 1859.104 to 1859.106 of Title 2 of the California Code of Regulations; however, the District shall be responsible for reimbursing General Contractor as applicable, for any costs reasonably incurred by General Contractor associated with meeting those State funding requirements.

3.3 Guaranteed Maximum Price. General Contractor will cause the Project to be constructed within the Guaranteed Maximum Price, as set forth and defined herein and in Exhibit A hereto, but in no event shall General Contractor be entitled to compensation beyond the total Guaranteed Maximum Price for the Project, except as set forth in this Development Lease. General Contractor may seek additional compensation from the District only to the extent of the change orders approved by the parties (as defined in Exhibit D attached hereto) or Lease Payments and Additional Payments (as defined in Section 4.9 herein) pursuant to this Development Lease or costs attributable to errors, defects or omissions in connection with architectural or engineering plans and specifications, as determined by the District and Architect, notwithstanding any cost overruns incurred by or identified by General Contractor following issuance of the Notice to Proceed for the Project. Costs which would cause the Guaranteed Maximum

Price to be exceeded shall be paid pursuant to Section 3.3.1 (Construction Contingency). Any Work not authorized by the Plans and Specifications, the General Conditions or by change order pursuant to Exhibit D shall be considered unauthorized and at the sole expense of General Contractor.

3.3.1 Construction Contingency. A “Construction Contingency,” in an amount in addition to the Guaranteed Maximum Price, shall be available to offset the costs of unforeseen circumstances. For the purposes of this Development Lease, “unforeseen circumstances” are limited to circumstances that neither the District nor General Contractor could have been expected to foresee such as design changes required by governmental agencies, change orders approved by parties, major design errors attributable to the Architect, and unforeseen underground conditions including unforeseen utilities. The Construction Contingency amount shall be 5% of the Guaranteed Maximum Price for the Project.

All proposed Construction Contingency draws must be approved by the District prior to work being performed, and shall be supported by detailed records, including full documentation of the labor, material, equipment and subcontractor costs involved. The timing and processing of requested Construction Contingency draws shall be the same as General Contractor application for Lease Payments. Should the amount of the Construction Contingency be exceeded, any unfunded project costs (other than those unfunded project costs relating to material changes in the scope of the Project that are requested by the District, i.e., change orders initiated by the District, which costs shall be borne by the District) shall be borne by General Contractor without increase to the Guaranteed Maximum Price. Any balance remaining in the Construction Contingency at the end of the Project after payment of all final costs shall be returned to the District.

## **ARTICLE 4**

### **AGREEMENT TO LEASE; TERMINATION OF LEASE; LEASE PAYMENTS; TITLE TO THE SITE**

4.1 Lease of Project and Site; No Merger. General Contractor hereby leases the Site to the District, and the District hereby leases said Site from General Contractor upon the terms and conditions set forth in this Development Lease. The leasing by General Contractor to the District of the Site shall not affect or result in a merger of the District’s leasehold estate pursuant to this Development Lease and its fee estate as lessor under the Site Lease, and General Contractor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Development Lease. As to the Site, this Development Lease shall be deemed and constitute a sublease.

4.2 Term of Development Lease. The Term of this Development Lease, for the purposes of the District’s obligation to make Lease Payments, shall commence when the District issues a Notice to Proceed for the Project, and shall terminate six months after the District files a notice of completion for the Project (the “Term”) at which time the District shall have the absolute right to exercise its purchase option pursuant to Section 10.1 (District’s Option). The District and General Contractor shall execute the Memorandum of Commencement Date attached hereto as Exhibit E to memorialize the commencement and expiration dates of the Term.

4.3a Termination of Lease Prior to Commencement of Term. Prior to the commencement of the Term and up to and including the moment the Guaranteed Maximum Price is known to the District and General Contractor, this Development Lease shall terminate with respect to the work to be performed upon a determination by the District not to proceed with the lease and construction of the Project in accordance

with Section 17406 of the Education Code of the State of California. In such event, sole compensation to General Contractor shall be pursuant to Section 3.4.

4.3b Termination of Lease at or After Commencement of Term. Notwithstanding Section 4.2, this Development Lease shall terminate upon the earliest of any of the following events:

4.3b.1 An Event of Default by District followed by General Contractor election to terminate this Development Lease pursuant to Section 9.2 hereof; or

4.3b.2 Exercise of the District's purchase option pursuant to Section 10.1 below.

4.3b.3 Failure to reach agreement on costs pursuant to Section 3.4.

4.3b.4 An Event of Default by General Contractor, and the District's election to terminate this Development Lease pursuant to Section 9.6 hereof.

4.3b.5 The District may terminate this Development Lease and the Site Lease, consistent with the General Conditions attached hereto as Exhibit D, upon ten (10) days' written notice to General Contractor and its surety concerning the reasons for the District's intention to terminate.

4.4 Project Completion. Completion of the Project shall be evidenced by a separate notice of completion that shall be filed with the County Clerk.

4.5 Lease Payments.

4.5.1 Obligation to Pay. Subject to the provisions of Articles 3, 6 and 10 hereof, the District agrees to pay to General Contractor, or its District-approved successors and assigns, as rental for the use and occupancy of the Site, without deduction or setoff, except as provided for in Section 6.2.5 of this Development Lease, the Lease Payments for the project during the Term in the amounts specified in the Lease Payment Schedules attached hereto as Exhibit C, and incorporated herein by reference. Lease Payments shall be payable in arrears on the last day of each calendar month.

4.5.2 Lease Payments to Constitute Current Expense of the District. The District and General Contractor understand and intend that the obligation of the District to pay Lease Payments and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for such purpose. This Development Lease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. The District covenants to take all necessary actions to include the estimated Lease Payments and estimated Additional Payments due hereunder (as hereinafter defined) in each of its final approved annual budgets. The District shall notify General Contractor not later than December 1 in each year during the Term of this Development Lease of the amount of Lease Payments and Additional Payments which are to be included in the final budget of the District. The District further covenants to make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments and Additional Payments which come due and payable during the period covered by each such budget. General Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments or any other payments due hereunder. The covenants on the part of the District

contained in this Development Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Development Lease agreed to be carried out and performed by the District.

4.6 Quiet Enjoyment. General Contractor shall provide the District with quiet use and enjoyment of the Site, and the District shall during such Term peaceably and quietly have and hold and enjoy the site subject to General Contractor construction of the Project, without suit, trouble or hindrance from General Contractor, except as otherwise may be set forth in this Development Lease. General Contractor will, at the request of the District and at General Contractor cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent General Contractor may lawfully do so. Notwithstanding the foregoing, General Contractor shall have the right to inspect the Project and the Site as provided in Section 7.1 hereof.

4.7 Title. During the Term of this Development Lease, the District shall hold fee title to the Site. During the Term of this Development Lease, General Contractor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District exercises its purchase option to accelerate the termination of this Development Lease pursuant to Article 10 hereof or if it pays all Lease Payments during the Term of this Development Lease as the same become due and payable, all right, title and interest of General Contractor, its assigns and successors in interest in and to the Project and the Site shall be transferred to and vested in the District at the expiration of the Term or upon the payment by the District of the final Lease Payment, whichever shall come first. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument or transfer, provided, however, that General Contractor agrees to execute any instrument requested by District to memorialize such termination of this Development Lease and transfer title to the District.

4.8 Fair Rental Value. The Lease Payments and Additional Payments coming due and payable during each month of the Term constitute the total rental for the Site and shall be paid by the District in arrears on the last day of each month for and in consideration of the right to use and occupy, and the continued quiet use and enjoyment of, the Site during each month. The District and General Contractor have agreed and determined that the total Lease Payments and Additional Payments do not exceed the fair rental value of the Site. In making such determination, consideration has been given to the obligations of the parties under the Development Lease and Site Lease, the uses and purposes which may be served by the Site, and the benefits therefrom which will accrue to the District and the general public.

4.9 Additional Payments. In consideration of the lease of the Site by General Contractor to the District hereunder, the District shall pay the Lease Payments and shall also pay the following without deduction or offset, except as provided for in Section 6.2.5 of this Development Lease, all of which shall constitute additional rent (collectively the "Additional Payments") owing under this Development Lease:

- (a) Fees, expenses and other amounts, if any, which may be payable by District to General Contractor under any of the provisions of this Development Lease; and
- (b) Any costs, fees and expenses, if any, incurred by General Contractor in connection with Section 5.3 of this Development Lease.

4.10 Lease Terminable Only As Set Forth Herein.

4.10.1 Except as otherwise expressly provided in this Development Lease, this Development Lease shall not terminate, nor shall the District have any right to terminate this Development Lease or be

entitled to the abatement of any Lease Payments or Additional Payments or any reduction thereof, nor shall the obligations hereunder of the District be otherwise affected by reason of any damage to or destruction of all or any part of the Project from whatever cause, the taking of the Site or any portion thereof by condemnation or otherwise, the prohibition, limitation or restriction of the District's use of the Site, interference with such use by any private person or corporation, or the District's acquisition of the ownership of the Site (other than pursuant to an express provision of this Development Lease), or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the Lease Payments and Additional Payments and all other charges payable hereunder to or on behalf of General Contractor shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected so long as General Contractor is not in Default of any provision of this Development Lease or its accompanying documents, or unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Development Lease.

4.10.2 Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any Default by General Contractor hereunder or under any other agreement to recover the costs and expenses, including attorneys' fees if the District is the prevailing party, associated with such separate action.

## **ARTICLE 5**

### **MAINTENANCE; TAXES; INSURANCE AND OTHER MATTERS**

5.1 Maintenance. Following delivery of possession of the Project to the District, the repair, improvement, replacement and maintenance of the Project and the Site shall be at the sole cost and expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship provided in Exhibit D hereto, and the District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear.

5.2 Utilities. Prior to completion of the Project by General Contractor, General Contractor shall pay all utility costs as they relate to the specific portion of the work General Contractor is performing under the General Conditions of the Contract. Following completion of the Project, the costs and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, security, heating, water, internet service and all other utilities of any type shall be paid by the District.

5.3 Taxes and Other Impositions. Except as provided in Exhibit D, all ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Site and the improvements thereon, charged to or imposed upon either General Contractor or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on General Contractor, its successors and assigns, by virtue of this Development Lease, the Site Lease, or General Conditions, the District shall pay such possessory interest tax directly, if possible, or shall reimburse General Contractor, and its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by General Contractor.

5.4 Reserved.

5.5 Insurance. Following completion and acceptance of the Project by the District, and prior to taking occupancy, the District shall provide evidence that it has in full force and will maintain for the duration of this Development Lease, a standard commercial comprehensive, general public liability and property damage insurance policy or policies concerning the Project. Such policy or policies shall provide coverage in the minimum liability limits of \$ 2,000,000 per occurrence with a \$ 4,000,000 general aggregate. Said policy or policies shall pay on behalf of the District and any additional insureds any amounts up to the limits of said policy for which the District becomes liable for bodily and personal injury, death or property damage occasioned by reason of the use or operation of any District property or portion thereof arising out of the District's negligence. The District shall also maintain property insurance insuring its interest in the Project and all furniture, fixtures and equipment used by the District in conjunction with its occupancy.

The District's insurance under this section may be maintained as part of or in conjunction with any other insurance carried or required to be carried by the District. The District shall cause to be delivered to General Contractor a certificate stating that the insurance policies required by this Lease are in full force and effect and that General Contractor is named as an additional insured.

General Contractor insurance as required under the terms of the General Conditions shall continue to be primary and non-contributory for all injuries arising out of its operations or completed operations, except as stated above.

5.6 Reserved.

5.7 Cancellation or Change of Coverage. The District agrees that the insurance coverage's required above in Section 5.5 shall be in effect at all times after acceptance of the Project by the District. After the District's acceptance or occupancy of the Project, all insurance required to be carried by the District shall be primary except as provided herein and that of General Contractor shall be non-contributory. Insurance required in Section 5.5 shall not be canceled or changed so as to no longer meet the specified insurance requirements without thirty (30) days' prior written notice of such cancellation or change being delivered to General Contractor.

5.8 Reserved.

5.9 Indemnification. Subsequent to completion and acceptance of the Project by the District, the District shall indemnify, defend and hold harmless General Contractor and its successors and assigns, its officers, members, agents and employees from and against any claims, damages, costs, expenses, including reasonable attorneys' fees, and liabilities arising from all negligent or intentional acts or omissions of the District or its officers, agents, consultants, or employees, with respect to the District's use, operation, repair, alteration and occupancy of the Site and the performance of the District's obligations under this Development Lease. Subsequent to completion and acceptance of the Project by the District, General Contractor shall indemnify, defend and hold harmless the District, its officers, consultants, agents and employees from and against any claims, damages, costs, expenses, including reasonable attorneys' fees, and liabilities arising from the negligent or intentional acts or omissions of General Contractor or its officers, agents, employees, contractors or subcontractors with respect to General Contractor use, alteration and occupation of the Site and its obligations under this Development Lease.

5.10 Insurance Proceeds; Form of Policies. The District shall pay or cause to be paid when due the premiums for all insurance policies required to be maintained by the District pursuant to this Development Lease. General Contractor shall pay or cause to be paid when due the premiums for all

insurance policies required to be maintained by General Contractor pursuant to this Development Lease and all Exhibits hereto. All such policies must provide that the other party (i.e., the District or General Contractor, as appropriate) will be given thirty (30) days' prior written notice of expiration, any intended cancellation or reduction of the coverage provided. General Contractor is not responsible for the sufficiency of any insurance herein required.

5.11 Modification of Project. The District has the right, at its expense, to make additions, modifications and improvements to the Project and the Site, provided, however, that during the two (2) year warranty period (as set forth in Section 7.3 below and in the General Conditions) which will be provided by General Contractor on any defects in materials and workmanship for the Project following the Project's completion, the District shall first provide Plans and Specifications and obtain General Contractor prior written consent to any additions, modifications and improvements to the Project which are not minor modifications. For the purposes of this Section, a minor modification, addition or improvement has a cost less than \$20,000.00. General Contractor agrees not to unreasonably withhold, delay or condition approval of the District's plans for any proposed additions, modifications and improvements to the Project. All additions, modifications and improvements to the Project will thereafter comprise part of the Project and be subject to the provisions of this Development Lease. Such additions, modifications and improvements may not in any way damage the Project or cause the Project to be used for purposes other than those authorized under the provisions of State and federal law, and the District must file with General Contractor a written certificate stating that the Project, upon the completion of any additions, modifications and improvements made thereto has a value which is not substantially less than the value of the Project immediately prior to the making of any such additions, improvements and modifications. Notwithstanding anything to the contrary contained herein, District shall have the right, without General Contractor consent, to place relocatables or portables upon the Site, along with incidental site work, and such relocatables and portables shall not become part of the Project and shall remain the personal property of the District.

5.12 Compliance with Laws, Regulations.

5.12.1 The District has no actual knowledge and has not given or received any written notice indicating that the Site or the past or present use thereof or any practice, procedure or policy employed by it in the conduct of its business materially violates any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the handicapped, or restrictive covenants or other agreements affecting title to the Site (collectively "Laws and Regulations"). Without limiting the generality of the foregoing, neither the District nor to its actual knowledge, any prior or present owner, tenant or subtenant of the Site has, other than as set forth in this Section or as may have been remediated in accordance with Laws and Regulations; (i) used, treated, stored, transported or disposed of any material amount of flammable explosives, heavy metals, chlorinated solvents, cyanide, radon, petroleum products, methane, radioactive materials, pollutants, hazardous materials, hazardous wastes, hazardous, toxic or regulated substances or related materials, hazardous wastes, hazardous, toxic, or regulated substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), the Clean Water Act of 1971 ("CWA"), the Clean Air Act of 1977 ("CAA"), the Toxic Substances Control Act of 1976 ("TSCA"), as they all have been or may be amended, and the regulations promulgated pursuant thereto, and in all other environmental regulations applicable to the District, the Site, or the operations conducted by the District thereon (collectively "Hazardous Materials") on, from or beneath the Site; (ii) pumped, spilled, leaked, disposed of, emptied, discharged or released (hereinafter collectively referred to as "Release") any material amount of

Hazardous Materials on, from or beneath the Site; or (iii) stored any material amount of petroleum products at the Site in underground storage tanks.

5.12.2 Excluded from the representations and warranties in subsection 5.12.1 above with respect to Hazardous Materials are those Hazardous Materials in those amounts ordinarily found in the inventory of, or used in the maintenance of, school buildings and facilities, the use, treatment, storage, transportation and disposal of which has been and shall be in compliance with all Laws and Regulations.

5.12.3 The District has no actual knowledge as to whether any portion of the Site is located in an area of high potential incidence of radon, nor will Project have an unventilated basement or subsurface portion which is or will be occupied or used for any purpose other than the foundation or support of the improvements at the Project.

#### 5.13 Environmental Compliance by District.

5.13.1 Subject to General Contractor construction of the Project, the District shall not use or permit the Site or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary to maintain the improvements at the Project and then, only in compliance with all environmental regulations, and any state equivalent laws and regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the Release or threat of Release of Hazardous Materials on, from or beneath the Project or onto any other property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of schools and school facilities, the use, storage, treatment, transportation and disposal of which shall be in compliance with all environmental regulations. Upon the occurrence of any Release or threat of Release of Hazardous Materials through no fault of General Contractor, the District shall promptly commence and perform, or cause to be promptly commenced and performed, without cost to General Contractor, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so released, on, from or beneath the Site and Project or other property, in compliance with all environmental regulations. Notwithstanding the above, to the extent permitted by Law, the District's environmental responsibility under this Section 5.13 shall begin subsequent to the District filing a notice of completion.

## **ARTICLE 6**

### **EMINENT DOMAIN; DAMAGE AND DESTRUCTION**

#### 6.1 Eminent Domain.

6.1.1 Total Taking. If the Site shall be taken permanently under the power of eminent domain, the Term of this Development Lease shall cease as of the day possession shall be so taken. General Contractor shall receive an amount from the eminent domain award equal to the present value of the total of all remaining Lease Payments, Additional Payments for the remainder of the original term of this Development Lease, and value of work completed by General Contractor, as determined by the Architect, and District shall be entitled to the remaining proceeds, if any.

6.1.2 Partial Taking. If less than all of the Site shall be taken permanently, or if all of the Site or any part thereof shall be taken temporarily, under the power of eminent domain, (1) this Development Lease shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (2) there shall be a pro rata abatement of Lease



Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, and General Contractor shall receive an amount from the proceeds equal to the value of the work completed by General Contractor, as determined by the Architect. General Contractor shall reconfigure the Project so that any buildings on the Project affected by the partial permanent taking are useable by the District.

6.2 Damage and Destruction. If the Site is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Lease Payments shall abate during the time that the Site or a portion of the Site is unusable for the District's use as a school. General Contractor and the District agree that the obligation to repair or replace the Site shall be in accordance with the following provisions:

6.2.1 Escrow. Any proceeds payable to General Contractor or the District from property insurance policies shall be immediately deposited in an escrow (the "Escrow").

6.2.2 Total Destruction. In the event that ninety percent (90%) or more of the Site is destroyed or damaged (a "Total Destruction") through no fault of General Contractor, then the District, at the District's option, may elect to terminate this Development Lease and the Site Lease, and shall use the insurance proceeds to pay an amount to General Contractor equal to the Lease Payments due as of the date of destruction and the value of all work completed by General Contractor, pursuant to the provisions found in Exhibit D, with any remaining insurance proceeds to be retained by District. In the alternative, the District may elect to continue with the Development Lease in effect and have the Site rebuilt utilizing the insurance proceeds, which shall be exclusively used for that purpose. General Contractor shall have no obligation to contribute funds for the rebuilding of the Site should the cost of rebuilding exceed the insurance proceeds. Anything less than a Total Destruction of the Site shall be deemed a "Partial Damage or Destruction," in accordance with Section 6.2.3 of this Development Lease.

6.2.3 Partial Damage or Destruction. In the event that the Site is partially damaged or destroyed through no fault of General Contractor, the District shall repair or have repaired the Site utilizing the proceeds from insurance which were deposited into the Escrow.

6.2.4 Deductibles; Self Insurance. Where any loss is covered by insurance required by this Development Lease which contains provisions for any deductible amount, the District shall contribute to the cost of rebuilding any such deductible amount or the amount of any self-insurance maintained by the District.

6.2.5 Rent Abatement. If damage or destruction results in a loss of use of the Site, the Lease Payments shall abate to the extent such damage or destruction has resulted in a loss of use. The amount of abatement shall be a pro rata portion of the Lease Payment based upon the percentage of the square footage unavailable for occupancy in proportion to the total square footage of the Site. Notwithstanding the foregoing, to the extent that the proceeds of rental interruption insurance are available to pay the amount of any Lease Payments which would otherwise be due, it is hereby agreed that such proceeds constitute special funds for the payment of such Lease Payments.

6.2.6 Personal Property. Any insurance proceeds payable to the District for losses to personal property contents within the Site shall be for the exclusive use of the District, and may be utilized in whatever manner the District, in its sole discretion, may designate.

## **ARTICLE 7**

### **ACCESS; DISCLAIMER OF WARRANTIES**

7.1 By General Contractor. General Contractor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to this Development Lease. Following the acceptance of the Project by the District, General Contractor may enter the Project at reasonable times with advance notice and permission from the District for purposes of making any repairs required to be made by General Contractor and for purposes of inspection to ascertain whether the District is satisfying its obligation to maintain and repair the Project as required by this Development Lease.

7.2 By District. Prior to the acceptance of the Project by the District, the District shall have the right to enter upon the Site at all times for the purposes of inspection of the progress of the work on the Project and the District shall comply with all safety precautions required by General Contractor and its contractors. Following the acceptance of the Project by the District, the District shall thereafter have the right at all times to enter upon the Site for the purposes of this Development Lease.

7.3 Disclaimer of Warranties. The District acknowledges that General Contractor makes no warranties except as specifically set forth in this Development Lease or in exhibits attached hereto, including the General Conditions. General Contractor agrees to provide an express warranty against defects in materials and workmanship for a two (2) year period, or as otherwise provided in the Contract Documents, following acceptance of the Project by the District, and shall assign all rights under all product warranties to District upon expiration of the warranty period. In addition, General Contractor agrees to use its best efforts to assist the District in enforcing any such product warranty. In the event that the assignment of the warranty is not effective or valid or General Contractor fails to honor the warranty, General Contractor shall indemnify and hold the District harmless for all costs incurred in replacing such defective product.

## **ARTICLE 8**

### **ASSIGNMENT, SUBLEASING; AMENDMENT**

8.1 Assignment and Subleasing by the District. This Development Lease may not be assigned by the District. Any sublease by the District shall be subject to all of the following conditions:

8.1.1 This Development Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District; and

8.1.2 The District shall, within thirty (30) days after the execution thereof, furnish or cause to be furnished to General Contractor a true and complete copy of such sublease; and

8.1.3 No such sublease by the District shall cause the Project or the Site to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State of California.

8.2 Amendment of this Development Lease. Without the written agreement of the parties, neither party shall alter or modify this Development Lease.

8.3 Assignment by General Contractor. General Contractor may assign its right, title and interest in this Development Lease, in whole or in part, to one or more assignees with the written consent of District. No assignment shall be effective against the District unless and until the District has consented in writing.

## ARTICLE 9

### EVENTS OF DEFAULT AND REMEDIES

9.1 Events of Default by District Defined. The following shall be “Events of Default” under this Development Lease and the terms “Event of Default” and “Default” shall mean, whenever they are used in this Development Lease, any one or more of the following events:

9.1.1 Failure by the District to pay any Lease Payment required to be paid hereunder at the time specified herein (unless properly withheld pursuant to provisions found in Exhibit D) when due and payable hereunder, and the continuation of such failure for a period of ten (10) days after the District’s receipt of written notice from General Contractor.

9.1.2 Failure by the District to pay any Additional Payment or other payment (unless properly withheld pursuant to provisions found in Exhibit D) when due and payable hereunder, and the continuation of such failure for a period of fifteen (15) days after the District’s receipt of written notice from General Contractor.

9.1.3 Failure by the District to observe and perform any covenant, condition or agreement in this Development Lease on its part to be observed or performed, other than as referred to in Sections 9.1.1 or 9.1.2, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by General Contractor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the District shall not be in Default if it commences cure within such thirty (30) day period and diligently pursues such cure until the Default is corrected.

9.1.4 The filing by the District of a voluntary petition in bankruptcy, or failure by the District promptly to lift any execution, garnishment or attachment, or adjudication of the District as a bankrupt, or an assignment by the District for the benefit of creditors, or the entry by the District into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

9.2 Remedies on Default. Upon an Event of Default referred to in Section 9.1 hereof, it shall be lawful for General Contractor to exercise any and all remedies available pursuant to law or granted pursuant to this Development Lease; provided, however, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in Default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the District is expressly made a condition hereof and upon the breach thereof, General Contractor may exercise any and all rights of entry and re-entry upon the Project and the Site, and also, at its option, with or without such entry, may terminate this Development Lease; provided, that no such termination shall be affected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. In the event of such Default and notwithstanding any re-entry by General Contractor, the District shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Development Lease and the performance of all conditions herein contained and, in any event such rent and/or damages shall be payable to General Contractor, as appropriate, at the time and in the manner as herein provided. Notwithstanding the foregoing, General Contractor shall use commercially reasonable efforts to mitigate its damages.

9.3 Agreement to Pay Attorneys' Fees and Expenses. In the event any party to this Development Lease should Default under any of the provisions hereof, and the non-defaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefore pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party, including attorneys' fees and expenses incurred for any appeals.

9.4 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Development Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

9.5 Application of Proceeds. All amounts derived by General Contractor as a result of an Event of Default hereunder, shall be applied to the Lease Payments and Additional Payments in order of payment date to be applied to the prepayment of the Lease Payments and Additional Payments.

9.6 Event of Default by General Contractor. The following shall be considered an Event of Default by General Contractor under the Development Lease: (1) General Contractor, or any member of General Contractor, fails to adequately perform or refuses or fails to prosecute the work on the Project pursuant to the terms and conditions found in Exhibit D with such reasonable diligence as will accomplish its completion within the time specified or any extension thereof, or unreasonably fails to complete said work within such time; (2) prior to completion of the Project, General Contractor should be adjudged a bankrupt, or file for bankruptcy or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency; (3) General Contractor, or any member of General Contractor, persistently disregards all law, or otherwise be in violation of the General Conditions of the Contract found in Exhibit D; (4) General Contractor Defaults in any of its obligations under the Site Lease. In the event of such a Default which remains uncured for a period of thirty (30) days after the District has given written notice specifying the failure and requesting that it be remedied, and solely with respect to the party that is then in Default, the District may, without prejudice to any other right or remedy, terminate the Site Lease, Development Lease, and all exhibits attached hereto upon ten (10) days' written notice to General Contractor and its surety, pursuant to Section 7.4 of the Site Lease and the General Conditions found in Exhibit D.

## **ARTICLE 10**

### **PURCHASE OPTION**

10.1 District's Option. If the District is not then in Default hereunder, the District shall have the option to purchase not less than all of General Contractor interests under this Development Lease in its "as-is, where-is" condition and terminate this Development Lease and Site Lease, and shall pay General Contractor a purchase price consisting of the Guaranteed Maximum Price (for work performed) as that term is defined in the Exhibit A, less any Lease Payments paid or owed by the District. Upon payment as aforesaid and payment of all other amounts owed, General Contractor shall deliver to the District all reasonably necessary documents in recordable form to terminate this Development Lease and the Site Lease and transfer title to the District. The District may record all such documents at the District's cost and expense.

Notwithstanding the above, the warranty and indemnification provisions found in Section 5.9 and 7.3 shall survive the termination of the Development Lease under this Section.

## ARTICLE 11

### MISCELLANEOUS

11.1 Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person, or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, or by delivering any notice by nationally recognized overnight delivery service (such as Federal Express) for next business day delivery, to the following addresses:

If to the District: CHICO UNIFIED SCHOOL DISTRICT  
2455 Carmichael Drive  
Chico, CA 95928  
Attn: Julia Kistle

With a copy to: Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27<sup>th</sup> floor  
Sacramento, CA 95814  
Attn: Addison Covert

If to General Contractor:

Any party may change its mailing address at any time by giving written notice of such change to the other party in the manner provided therein. All notices under this Development Lease shall be deemed given, received, made or communicated on the date personal delivery is affected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown in the return receipt. No party shall refuse or evade delivery of any notice.

11.2 Binding Effect. This Development Lease shall inure to the benefit of and shall be binding upon General Contractor and the District and their respective successors, transferees and assigns.

11.3 Severability. In the event any provision of this Development Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Development Lease or the Site Lease.

11.4 Reserved.

11.5 Further Assurances and Corrective Instruments. General Contractor and the District agree that they will, from time to time, execute, acknowledge and deliver such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site or the Project hereby leased or intended to be leased.

11.6 Execution in Counterparts. This Development Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11.7 Applicable Law. This Development Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action of proceeding brought to

enforce the terms and conditions of this Development Lease shall be maintained in Butte County, California.

11.8 General Contractor and District Representatives. Whenever under the provisions of this Development Lease the approval of General Contractor or the District is required, or General Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for General Contractor by General Contractor Representative and for the District by the District's Representative, and any party hereto shall be authorized to rely upon any such approval or request.

11.9 Captions. The captions or headings in this Development Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Development Lease.

11.10 Interpretation. It is agreed and acknowledged by District and General Contractor that the provisions of this Development Lease and its exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Development Lease and its exhibits and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Development Lease and its exhibits.

11.11 Time. Time is of the essence of each and all of the terms and provisions of this Development Lease and its exhibits.

11.12 Force Majeure. A party shall be excused from the performance of any obligation imposed in this Development Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an Act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a Default hereunder or a grounds for termination of this Development Lease.

11.13 Recitals Incorporated. The Recitals set forth at the beginning of this Development Lease are hereby incorporated into its terms and provisions by this reference.

11.14 Reserved.

**IN WITNESS WHEREOF**, the parties hereto have caused this Development Lease to be executed by their respective duly authorized officers, to be effective as of the day and year first written above.

**CHICO UNIFIED SCHOOL DISTRICT**,  
a school district organized and existing under the laws  
of the State of California

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By: Kevin Bultema  
Title: Assistant-Superintendent, Business Services

---

a California corporation

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By:  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **THE PROJECT**

The Project shall constitute that Work identified in the Plans and Specifications (RFP #2014-E101),

The Guaranteed Maximum Price for the Project is \$ \_\_\_\_\_.



## **EXHIBIT B**

### **DESCRIPTION OF THE SITE**

## **EXHIBIT C**

### **LEASE PAYMENT SCHEDULE**

COMMENCEMENT DATE: Upon issuance of the Notice to Proceed for the Project by the District to General Contractor. In no event shall this Development Lease commence prior to the District issuing a Notice to Proceed for the Project.

#### **PAYMENT SCHEDULE:**

<b>Payment</b>	<b>Amount*</b>	<b>Due Date*</b>
Payment No. 1		Payable on the 10 <sup>th</sup> day of the month following issuance of the Notice to Proceed.
Payment No. 2		Payable on the 10 <sup>th</sup> day of month.
Payment No. 3		Payable on the 10 <sup>th</sup> day of month.
Payment No. 4		Payable on the 10 <sup>th</sup> day of month.
Payment No. 5		Payable on the 10 <sup>th</sup> day of month.
Payment No. 6		Payable on the 10 <sup>th</sup> day of month.

\*Actual amount and payment date may vary based upon level of work completed and accepted by District.

## **EXHIBIT D**

### **GENERAL CONDITIONS OF THE CONTRACT**

The General Conditions of the Contract for the Project are hereby incorporated by reference.

## **EXHIBIT E**

### **MEMORANDUM OF COMMENCEMENT DATE**

This MEMORANDUM OF COMMENCEMENT DATE for the Project is dated \_\_\_\_, 2014 and is made by and between \_\_\_\_\_. ("General Contractor"), as Lessor, and the Chico Unified School District ("District"), as Lessee.

1. General Contractor and the District have previously entered into a Development and Lease Agreement dated as of General Contractor (the "Lease") for the leasing by General Contractor to the District of the Site and the Project in Chico, California, referenced in the Lease.
2. District hereby confirms the following:
  - A. That the term of the Lease commenced the day the Notice to Proceed for the Project was issued and will expire six (6) months after District files a notice of completion for the Project.

IN WITNESS WHEREOF, General Contractor and the District have signed this Memorandum of Commencement Date as set forth below to confirm the foregoing.

#### **CHICO UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Kevin Bultema, Assistant-Superintendent, Business Services

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

**EXHIBIT F**

**RESERVED**

**EXHIBIT G**  
**GUARANTEE**

The Guarantee for the Project is set forth in the General Conditions and incorporated herein by reference.

# SITE VERIFICATION CERTIFICATE

1. I have personal knowledge of and/or have made due and diligent inquiry with respect to the following, and based on said knowledge and/or inquiry I certify that:
2. The Contractor has completed a review at the Site to determine if the Construction Documents are adequate, feasible and complete for providing, performing and constructing the Work in a sound and suitable manner for the use specified and intended by the Contract Documents.
3. The Contractor has inspected, measured, surveyed, photographed, tested and/or sampled such objects and operations at the Site as the Contractor deemed necessary to complete its review of the Site.
4. The Contractor has maintained a written log or other documentation of comments or other notations generated in the course of its review, and all such documentation shall be made available to the District for review or reproduction upon the District's reasonable request.
5. The Contractor has determined that the Construction Documents are adequate, feasible and complete for providing, performing and constructing the Work in a sound and suitable manner for the use specified and intended by the Contract Documents, with the sole exception of those items set forth in the Site Verification Exceptions, attached to this Site Verification Certificate as Attachment A.
6. All of the statements set forth above and all of the information provided in Attachment A is correct, complete, and accurate
7. I am authorized to execute this Site Verification Certificate on behalf of the Contractor.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

(Signature)

(Handwritten or Typed Name)

**ATTACHMENT A**  
**SITE VERIFICATION EXCEPTIONS**



**EXHIBIT I**

**PERFORMANCE BOND**

The Performance Bond is attached hereto and incorporated herein by reference.

**EXHIBIT J**

**PAYMENT BOND**

The Payment Bond is attached hereto and incorporated herein by reference.

## **EXHIBIT K**

### **SUBCONTRACTORS LIST**

The Subcontractors List is attached hereto and incorporated herein by reference.

## EXHIBIT L

### NON-COLLUSION AFFIDAVIT

The undersigned declares:

1. I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid.

Title

2. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation.

3. The bid is genuine and not collusive or sham.

4. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding.

5. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder.

6. All statements contained in the bid are true.

7. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_

Date

at \_\_\_\_\_, \_\_\_\_\_.  
City State

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

## EXHIBIT M

### CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

I, \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_  
(Name) (Title)  
declare, state and certify that:

1. I am aware that California Labor Code § 3700(a) and (b) provides:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees."

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

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or printed name)

## EXHIBIT N

### DRUG-FREE WORKPLACE CERTIFICATION

I, \_\_\_\_\_, am the \_\_\_\_\_ of  
(Print Name) (Title)  
Name. ("General Contractor"). I declare, state and certify to all of the following:

1. I am aware of the provisions and requirements of California Government Code §§ 8350 and following, the Drug Free Workplace Act of 1990.

2. I am authorized to certify, and do certify, on behalf of Contractor that a drug free workplace will be provided by Contractor by doing all of the following:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying actions which will be taken against employees for violation of the prohibition;

B. Establishing a drug-free awareness program to inform employees about all of the following:

(i) The dangers of drug abuse in the workplace;

(ii) Contractor's policy of maintaining a drug-free workplace;

(iii) The availability of drug counseling, rehabilitation and employee-assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations;

C. Requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.

3. Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code § 8355 by, among other things, publishing a statement notifying employees concerning: (a) the prohibition of any controlled substance in the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code § 8355(a) and requiring that the employee agree to abide by the terms of that statement.

4. Contractor and I understand that if the District determines that Contractor has either: (a) made a false certification herein, or (b) violated this certification by failing to carry out and to implement the requirements of California Government Code §§ 8355 and following, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code §§ 8350 and following.

5. Contractor and I acknowledge that Contractor and I are aware of the provisions of California Government Code §§ 8350 and following and hereby certify that Contractor and I will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
(City and State)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Handwritten or Typed Name)

## EXHIBIT O

### FINGERPRINT CERTIFICATE

I, \_\_\_\_\_, am the \_\_\_\_\_ of  
(Print Name) (Title)  
Name ("General Contractor"). I declare, state, and certify all of the following:

1. I am aware of the provisions and requirements of California Education Code § 45125.1, regarding fingerprinting of persons providing services to school districts.

2. I have personal knowledge of and/or have made due and diligent inquiry with respect to the following, and based on said knowledge and/or inquiry I certify that:

A. The fingerprints of each person identified on Attachment A have been submitted to the California Department of Justice pursuant to Education Code § 45125.1; and,

B. The California Department of Justice has issued written or electronic verification that each person identified on Attachment A has not been convicted of a felony, as defined in Education Code § 45122.1, and has no criminal felony proceedings, as defined in Education Code § 45122.1, pending against him or her.

3. The Contractor shall provide additional Fingerprint Certificates for each and every person who is not identified on Attachment A prior to permitting such person(s) access to the Site or to perform any Work at the Site.

4. Contractor and I understand that if the District determines that Contractor has either: (a) made a false certification herein, or (b) violates this certification by failing to carry out and to implement the requirements of California Education Code § 45125.1, the Contract awarded herein is subject to termination, suspension of payments, or both.

5. I am authorized to execute this Fingerprint Certificate on behalf of the Contractor. All of the statements set forth above and all of the information provided in Attachment A are true, correct, complete, and accurate. Further, there are no omissions or misstatements of material fact in the foregoing statements or in the information set forth in Attachment A which would render such statements and/or information to be false or misleading.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
(City and State)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Handwritten or Typed Name)



**FINGERPRINT CERTIFICATE  
ATTACHMENT A**

**EXHIBIT P**

**DISABLED VETERAN BUSINESS ENTERPRISE ("DVBE")  
PARTICIPATION GOAL PROGRAM POLICY**

Not applicable to this project

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**SITE LEASE**

by and between

**CHICO UNIFIED SCHOOL DISTRICT**

as Lessor

and

\_\_\_\_\_  
as Lessee

Dated as of \_\_\_\_\_, 2014

**Cabling Infrastructure – Phase 1C**

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## **SITE LEASE**

This site lease (the "Site Lease") is dated as of \_\_\_\_\_, 2014 for reference purposes only, and is made by and between the Chico Unified School District (the "District"), a school district duly organized and validly existing under the laws of the State of California, as lessor, and NAME ("General Contractor"), a California corporation, as lessee.

## **RECITALS**

WHEREAS, the District currently owns a site in Chico, California, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Site"), which Site the District has determined to cause to be the addition of portable classroom buildings located at the District's Chico High School (the "Project");

WHEREAS, the District, by way of this Site Lease, desires to lease the Site to General Contractor, who in turn seeks to construct and install certain cabling infrastructure site improvements on the Site, and to lease it back to the District, as more particularly described in the Development Lease (as defined below) and incorporated herein by reference;

WHEREAS, the Board of Education of the District (the "Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to develop the Project by leasing the Site to General Contractor and by simultaneously entering into the Development Lease (as defined below) under which the District will lease back the Site and improvements from General Contractor;

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to (i) lease the Site to General Contractor, (ii) direct General Contractor to develop and cause the construction of the Project thereon, and (iii) lease the Site back to the District by way of the Development Lease;

WHEREAS, the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so;

WHEREAS, General Contractor is authorized to lease the Site from the District as lessee and to develop and cause the construction of the Project on the Site, and has duly authorized the execution and delivery of this Site Lease;

WHEREAS, the District has performed all acts, conditions and things required by law to exist, have happened and to have been performed precedent to and in connection with the execution and entering into of this Site Lease, and those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Site Lease;

WHEREAS, the District has a substantial need for the construction of the Project at the Site and has entered into this Site Lease and the Development Lease under the authority granted to the District by Section 17406 of the Education Code of the State of California in order to fill that need; and

WHEREAS, the District and General Contractor further acknowledge and agree that they have entered into this Site Lease pursuant to Education Code section 17406 as the best available and most

expeditious means for the District to satisfy its substantial need for the construction of Development at the Site and to accommodate and educate students served by the District.

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

- 1.1 Unless the context clearly requires otherwise, all words and phrases defined in Section 1.1 of that certain Development Lease Agreement dated as of \_\_\_\_\_, 2014 by and between the District and General Contractor (the "Development Lease") shall have the same meanings when used in this Site Lease.

## **ARTICLE 2**

### **DEMISING CLAUSES**

- 2.1 Lease of the Site. The District hereby leases to General Contractor and General Contractor hereby leases from the District, the Site, and subject only to the Permitted Encumbrances, in accordance with the terms and provisions of this Site Lease, to have and to hold for the term of this Site Lease. The effectiveness of this Site Lease depends upon the execution of the Development Lease. If the Development Lease is not executed by the District and General Contractor within three (3) days after execution of this Site Lease, this Site Lease shall terminate and shall be of no further force or effect and no party shall have any obligation to the other hereunder except for those obligations that expressly survive termination of this Site Lease.
- 2.2 Rental. In consideration for the leasing of the Site by the District to General Contractor, and for other good and valuable consideration, General Contractor shall pay District rent of One Dollar (\$1.00) per year.
- 2.3 Merger. The leasing of the Site by General Contractor to the District pursuant to the Development Lease shall not effect or result in a merger of the estates of the District in the Site, and General Contractor shall continue to have a leasehold estate in the Site pursuant to this Site Lease throughout the term, as described below.

## ARTICLE 3

### QUIET ENJOYMENT

- 3.1 Possession. The parties intend that the Site will be leased back to the District pursuant to the Development Lease for the term thereof. Subject to any rights the District may have under the Development Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent General Contractor from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of General Contractor, to the extent that it may lawfully do so, join in any legal action in which General Contractor asserts its right to such possession and enjoyment.
- 3.2 Access to Site. Prior to the acceptance of the Project by the District, the District shall have the right to enter upon the Site at reasonable times for the purposes of inspection of the progress of the Work on the Project and the District shall comply with all reasonable safety precautions required by General Contractor and General Contractor's contractors.
- 3.3 District's Title. In the event the District's fee title to the Site is ever challenged so as to interfere with General Contractor's rights to occupy, use and enjoy the Site under this Site Lease, the District will use all reasonable efforts at its disposal to obtain fee title to the Site and to defend General Contractor's rights to occupy, use and enjoy the Site.

In the event the challenge to District's fee title is successful and thereby interferes with General Contractor's rights under the Lease, this Lease shall terminate as of the date of judgment quieting title by the challenger, and the District shall compensate General Contractor for Lease Payments then due to General Contractor and monies for Work performed by General Contractor, subject to any rights of offset, under the terms of the General and Special Construction Conditions set forth in the Development Lease.

## ARTICLE 4

### SPECIAL COVENANTS AND PROVISIONS

- 4.1 Waste. General Contractor agrees that at all times that it is in possession of the Site, it will not willfully or knowingly use or permit use of the Site for any illegal purpose or act.
- 4.2 Further Assurances and Corrective Instruments. The District and General Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any such further instruments as may be reasonably required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be leased or for carrying out the expressed intention of this Site Lease and the Development Lease.
- 4.3 Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same, subject to all reasonable safety precautions required by General Contractor.
- 4.4 Representations of the District. The District represents and warrants to General Contractor that the District is a school district, duly organized and existing under the Constitution and laws of the State of California.

4.4.1 Due Organization and Existence. The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

4.5 Representations of KS Telecom, Inc. General Contractor represents and warrants to the District that General Contractor is a California corporation, duly organized and validly existing under the laws of the State of California.

## **ARTICLE 5**

### **ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

5.1 Assignment and Subleasing. This Site Lease may not be assigned nor the Site subleased, mortgaged or sold as a whole or in part, by General Contractor without the prior written consent of the District to such assignment or sublease.

5.2 Liens. The General Contractor agrees to keep the Sites and every part thereof free and clear of any and all liens occurring after the dated date of this Site Lease, including without limitation, pledges, charges, encumbrances, claims, material men liens, mechanic liens and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Sites or the Project. The General Contractor further agrees to pay promptly and fully discharge any and all claims on which any such lien may or could be based, and to save and hold harmless the District from any and all such liens, mortgages, judgments and claims of liens and suits or other proceedings pertaining thereto.

## **ARTICLE 6**

### **IMPROVEMENTS**

6.1 Improvements. Title to all improvements made on the Site by General Contractor during the term of this Site Lease shall vest in General Contractor until conveyance to the District at the end of the Development Lease's Term pursuant to Section 7.1, 7.2, 7.3, 7.4, or 7.5 below.

## **ARTICLE 7**

### **TERM AND TERMINATION**

7.1 Term. The term of this Site Lease shall commence on June 11, 2014 and shall terminate upon the expiration or earlier termination of the Development Lease. Whereupon title to all improvements made on the Site during the term of this Site Lease shall vest in the District. Notwithstanding the foregoing, if on the date scheduled for the expiration or termination of this Site Lease the Lease Payments subject to the District's right to offset, owing under the Development Lease have not been fully paid to General Contractor by the District, then the term of this Site Lease shall be extended until the date upon which all such Lease Payments shall be fully paid, and General Contractor shall continue to have the right of possession of the Site during such time period.

- 7.1.1 Termination Prior to Issuance of Notice to Proceed. This Site Lease shall terminate upon the termination of the Development Lease pursuant to Section 4.3a of the Development Lease.
- 7.2 Agreement on Costs. Notwithstanding anything contained in this Site Lease to the contrary, if the District and General Contractor fail to agree on the Project's Guaranteed Maximum Price, Lease Payments, and Lease Payment Schedule as contemplated under the Development Lease by the time the District is prepared to issue the Notice to Proceed, then this Site Lease shall terminate and General Contractor's sole liability to the District, notwithstanding anything contained in this Site Lease, shall be the amount of \$1.00 previously paid to the District and title to all improvements made on the Site during the term of this Site Lease shall immediately vest in the District.
- 7.3 Termination Upon Purchase of Project. If the District exercises its option to purchase the Project, pursuant to the Development Lease, then this Site Lease shall terminate concurrently with the close of escrow for the District's purchase of the Project. Upon the District's request, General Contractor shall execute a lease termination agreement upon the close of escrow.
- 7.4 Termination Due to Default by General Contractor. If there is a Default under Section 9.6 of the Development Lease, the District may terminate the Site Lease and the Development Lease, including, but not limited to, the General Conditions of the Contract as found in Exhibit D of the Development Lease upon ten (10) days' written notice to General Contractor. If the District terminates this Site Lease and the Development Lease pursuant to this section, title to the Site and any improvements built upon the Site shall vest in District upon the date of termination. The District shall pay Lease Payments then due and any outstanding amounts owed to General Contractor based upon the percentage of completion of the Project at the time of termination plus costs incurred in securing the Project for termination, as approved by the District. If there is any credit owing to the District by General Contractor based upon the percentage of completion of the Project and sums received by General Contractor from the District by virtue of payments made for tenant improvements, General Contractor shall pay the amount of such credit to the District within thirty (30) days of the District's demand for payment. In no event shall the District be obligated to pay General Contractor any amount in excess of the Lease Payments then due and reasonable cost of the work performed by General Contractor in furtherance of the Project.

## **ARTICLE 8**

### **MISCELLANEOUS**

- 8.1 Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the District, General Contractor and their respective successors, transferees and assigns.
- 8.2 Severability. In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Site Lease or the Development Lease.
- 8.3 Amendments, Changes and Modifications. This Site Lease shall not be effectively amended, changed, modified, or altered without the written agreement of all parties hereto.



- 8.4 Execution in Counterparts. This Site Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 8.5 Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Site Lease shall be maintained in Butte County, California.
- 8.6 Recitals. The recitals set forth at the beginning of this Site Lease are hereby incorporated herein by reference and each party stipulates and agrees that such recitals are true and correct.
- 8.7 Captions. The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.
- 8.8 Time of Essence. Time is of the essence of this Site Lease and each of its provisions.
- 8.9 Remedies. The parties shall have any and all legal and equitable remedies available under applicable California law, except that the District shall have no right to terminate this Site Lease as a remedy for Default by General Contractor or any assignee of General Contractor separate and apart from a concurrent termination of the Development Lease due to a Default by General Contractor or its assignee. The remedies of the parties under this Site Lease are cumulative and shall not exclude any other remedies to which either party may be lawfully entitled.
- 8.10 Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending it by nationally recognized overnight delivery service for next business day delivery, such as Federal Express, or by mailing the same by certified mail, return receipt requested, with postage fully prepaid, to the following addresses:

If to District: CHICO UNIFIED SCHOOL DISTRICT  
2455 Carmichael Drive  
Chico, CA 95928  
Attn: Julia Kistle

With a copy to: Kronick Moskovitz Tiedemann & Girard  
400 Capitol Mall, 27<sup>th</sup> floor  
Sacramento, CA 95814  
Attn: Addison Covert

If to General Contractor:

Any party may change its mailing address at any time by giving written notice of such change to the other party in the manner provided herein for notices. All notices under this Site Lease shall be deemed given, received, made or communicated on the date personal delivery is affected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown on the return receipt or delivery record. No party shall evade or refuse delivery of any notice.

- 8.11 Eminent Domain. In the event the whole or any part of the Site or the improvements thereon is taken by eminent domain, the financial interests of General Contractor shall be recognized and is hereby determined to be the amount of all Lease Payments then due or past due, together with all remaining and succeeding installments of Lease Payments for the remainder of the original Term of this Site Lease. The balance of the award, if any, shall be paid to the District.
- 8.12 Indemnification by the District. The District covenants and agrees to indemnify and hold the General Contractor harmless from and against any and all losses, claims, suits, damages and expenses (including reasonable attorneys' fees) arising out of the condition of the Sites (except for those Site conditions assumed by the General Contractor as provided in the General Construction Provisions attached as Exhibit D to the Facilities Lease), whether or not known to the District; provided, however, that the District shall not be required to indemnify the General Contractor in the event that such liability or damage is caused by the negligent or intentional act or omission of the General Contractor.
- 8.13 Indemnification by the General Contractor. The General Contractor covenants and agrees to indemnify and hold the District harmless from and against any and all losses, claims, suits, damages, and expenses (including reasonable attorneys' fees) arising out of the condition of the Sites if caused by the General Contractor; provided, however, that the General Contractor shall not be required to indemnify the District in the event such liability or damage is caused by the District's sole negligence, active negligence or intentional misconduct.
- 8.14 Further Assurances and Corrective Instruments. To the extent permissible under California law and as long as there are no additional costs to the District, the District agrees that it will execute and deliver estoppel certificates, financing statements or other assurances as may be reasonably necessary or requested by General Contractor to carry out assignments of this Site Lease and the Development Lease, including without limitation, to perfect and continue any security interests herein intended to be created or to correct any inadequate or incorrect description of the Site being leased or intended to be leased.
- 8.15 Interpretation. It is agreed and acknowledged by the parties hereto that the provisions of its Site Lease and its exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Site Lease and its exhibits and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction of documents that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Site Lease and its exhibits.
- 8.16 Reserved.

*[Remainder of This Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Site Lease by their authorized officers as of the date so indicated above.

**DISTRICT:**

**CHICO UNIFIED SCHOOL DISTRICT**,  
a school district organized and existing under the laws  
of the State of California

\_\_\_\_\_  
**By:** Kevin Bultema  
**Title:** Assistant-Superintendent, Business Services

\_\_\_\_\_  
a California corporation

\_\_\_\_\_  
**By:**  
**Title:** \_\_\_\_\_

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**DESCRIPTION OF THE SITE**

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## **GENERAL CONDITIONS**

### **0.1**

#### **BASIC DEFINITIONS**

##### **0.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Development and Lease Agreement and the Site Lease Agreement between Owner and Contractor (hereinafter the "Agreement"), Conditions of the Contract (General Conditions and Supplementary and other Conditions, if applicable), Drawings, Specifications, Request for Proposals and any addenda, documents required to be submitted in response to the Request for Proposals, Performance Bond, Labor and Material Bond, other documents listed in the Agreement, all addenda instructions, modifications, and clarifications issued prior to signing the Contract, and Modifications issued after execution of the Contract. 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 Architect. 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.

##### **0.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. 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 Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

##### **0.1.3 THE WORK**

The Work shall include all labor, materials and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract 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, 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 any associated 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.

##### **0.1.4 THE PROJECT**

The Project is the total construction of the Work performed in accordance with the Contract Documents in whole or in part and which may include construction by the Owner or by separate Contractors.

##### **0.1.5 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.

#### 0.1.6 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.

#### 0.1.7 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include, without limitation, sample forms, Conditions of the Contract, and Specifications. The Project Manual shall be made available at the Pre-Submittal Conference pursuant to the requirements of the Requests for Proposals.

### 0.2 EXECUTION, CORRELATION AND INTENT

#### 0.2.1 CORRELATION AND INTENT

0.2.1.1 ***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.

0.2.1.2 ***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 either 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 either the Drawings and/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 them.

0.2.1.3 ***Conflicts.*** In the event there is a discrepancy between the various Contract Documents, the Owner/Contractor Agreement shall control. Without limiting Contractor's obligation to identify conflicts for resolution by the Architect in accordance with paragraph 0.2.1.5, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply.

0.2.1.4 ***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 Project.

All Work and material shall be in full accordance with the latest rules and regulations of Title 24, Parts 1, 2, 3, 4, 5 and 9 of the California Code of Regulations; the State Fire Marshal, the safety order of the Division of Industrial Safety; the California Electrical Code, the California Plumbing Code, the California Mechanical Code, published by the International Association of Plumbing and Mechanical Officials, and other applicable State laws and regulations. Nothing in the plans or Specifications is to be construed to permit Work not conforming to these codes. A copy of Title 24, Parts 1 through 5 and 9 of the California Code of Regulations shall be kept on the Site, available for reference at all times.

0.2.1.5 **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 Guaranteed Maximum Price or Construction Contingency 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 to the Guaranteed Maximum Price or Construction Contingency 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.

## 0.2.2 **ADDENDA AND DEFERRED APPROVALS**

0.2.2.1 **Addenda.** Addenda shall govern over all other Contract Documents. 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 State Architect (hereinafter the "DSA").

0.2.2.2 **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.

## 0.2.3 **SPECIFICATION INTERPRETATION**

0.2.3.1 **Titles.** The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved.

0.2.3.2 **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.

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

0.2.3.4 **General Conditions.** The General Conditions and Supplementary General

Conditions, if any, are a part of each and every section of the Specifications.

0.2.3.5 **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.

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

0.2.3.7 **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."

0.2.3.8 **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 at the date of the Contractor's proposal. If applicable specifications are revised prior to completion of any part of the Work, the Contractor may, if acceptable to 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.

0.2.3.9 **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.

#### 0.2.4 RULES OF DOCUMENT INTERPRETATION

A. In the event of conflict within the Drawings, the following rules shall apply:

1. General Notes, when identified as such, shall be incorporated into other portions of Drawings.
2. Schedules, when identified as such, are complementary with other notes and other portions of Drawings including those identified as General Notes.
3. Larger scale drawings shall take precedence over smaller scale drawings.
4. Figured, derived, or numerical dimensions shall govern. At no time shall the Contractor base construction on scaled drawings.

B. Specifications shall govern as to materials, workmanship, and installation procedures.

C. In the case of disagreement or conflict between or within standards, specifications, and drawings, the more stringent, higher quality, and greater quantity of Work shall apply.

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

#### 0.3.1 COPIES OF DRAWINGS AND SPECIFICATIONS

Contractor will be issued without any cost to him or her ten (10) sets of Drawings and Specifications,

including copies already issued for bidding purposes. Contractor's deposit on previously issued Drawings will be returned upon request. Cost of reproduction of any additional sets of Drawings and Specifications will be charged to the Contractor.

#### **0.3.2 OWNERSHIP AND USE OF DRAWINGS AND SPECIFICATIONS**

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 such documents. All copies of such documents, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, upon completion of the Work or upon Architect's request. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to this 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.

## **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 or the Owner's authorized representative.

#### **2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

##### **2.2.1 FINANCING AND FUNDING**

At the request of the Contractor, the Owner will, prior to execution of the Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

##### **2.2.2 SITE SURVEY**

When required by the scope of the Project, the Owner will furnish, at its expense, a legal description and 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 and deemed necessary by the Architect 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 or 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 through 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 Project, and prior experience with school 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 § 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 available at the Pre-Submittal Conference pursuant to the requirements of the Request for Proposals. The Contractor shall not be assessed for liquidated damages for delay in completion of the Project 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 § 4216, *et seq.*

#### 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 to avoid delay in orderly progress of the Work.

#### 2.2.9 **COPIES FURNISHED**

The Contractor will be furnished such copies of Drawings and Project Manuals as stated in these General Conditions.

#### 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 as required by paragraph 12.2, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, after providing Notice pursuant to paragraph 2.4, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated. 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 defaults or neglects to carry out the Work in accordance with the Contract Documents and such default remains uncured for a period of thirty (30) days after the Owner has given written notice specifying the failure and requesting that it be remedied, in accordance with the Agreement, the Owner may correct such deficiencies without prejudice to other remedies the Owner may have. In such case, the Contractor will be invoiced the cost of correcting such deficiencies, including compensation for additional professional and internally generated services and expenses made necessary by such default, neglect, or failure. The invoice amount shall be deducted from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, 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. 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. If any of the Work is performed by contractors retained directly by the Owner, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule pursuant to the requirements of Article 6. 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 § 17309 in the manner prescribed by Title 24 of the California Code of Regulations.

#### **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 ARCHITECT'S ACTIONS**

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 or by tests, inspections, or approvals required or performed by persons other than the Contractor.

#### **3.2.4 ACCEPTANCE/APPROVAL OF WORK**

The Contractor shall be responsible to determine when any completed portions of the Work already performed under this Contract or provided pursuant to Article 6 are suitable to receive subsequent work thereon.

### **3.3 SUPERINTENDENT**

#### **3.3.1 FULL TIME SUPERINTENDENT**

The Contractor shall provide a competent, English-speaking superintendent and assistants as necessary 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 and fit 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 any reason.

## **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 whether or not incorporated or to be incorporated in the Work.

### **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 for every part of this Work, unless otherwise specified. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment. Additionally, all samples, tests and inspections shall be in accordance with the requirements of the Specifications.

CONTRACTOR SHALL SUBMIT SAFETY DATA SHEETS FOR ALL CONSTRUCTION MATERIALS USED ON THE PROJECT. CONTRACTOR SHALL COLLECT AND KEEP ALL SAFETY DATA SHEETS (MSDS) ON THE JOB SITE IN A READILY ACCESSIBLE THREE RING BINDER. THIS BINDER SHALL BE SUBMITTED AT THE END OF THE PROJECT WITH THE OTHER CLOSE-OUT DOCUMENTATION.

All labor shall be performed by workers skilled in their respective trades, shall perform under the direction of a competent foreman or supervisor, and shall be of such quality so that Work in accordance with the standards of construction set forth in Contract Documents will result.

### **3.4.3 REPLACEMENT AND REMOVAL**

Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved and condemned by the Owner, in which case, they shall be removed and replaced by the Contractor. In accordance with paragraph 3.3.3, anyone employed to perform Work on the Project may be deemed incompetent or unfit for his or her duties by the Architect and the Owner. In such case, the Contractor shall dismiss him or her, and he or she shall not again, without the express written permission of the Architect and the Owner, be employed on the Project.

### **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 5.5.2 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### **3.4.5 COMPLIANCE WITH LAWS**

All Work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshal; the safety order of the Division of Industrial Safety; the California Electrical Code; the California Plumbing Code; the California Mechanical Code; California Building Code and other applicable State laws and regulations. Nothing in the plans or Specifications is to be construed to permit Work not conforming to these codes.

#### **3.5 WARRANTY**

The Contractor warrants to the Owner and Architect 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 Architect, 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 after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the 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 any Supplementary General Conditions. Owner shall be responsible for all fees concerning plan checks and building permits, subject to pre-approval by the Owner.

##### **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 and Owner in writing, and necessary changes shall be accomplished by appropriate modification.



#### 3.7.4 RESPONSIBILITY

If the Contractor performs 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 or Project delay.

### 3.8 ALLOWANCES

#### 3.8.1 CONTRACT

Notwithstanding the provisions of this paragraph 3.8, allowances shall be governed by the provisions of the Agreement. The Contractor shall include in the Guaranteed Maximum Price all allowances stated in the Contract Document. Items covered by 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 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 Guaranteed Maximum Price.** 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 Guaranteed Maximum Price and not in the allowances.

3.8.2.4 **Costs Affecting Guaranteed Maximum Price.** Whenever costs are more than or less than allowances, causing the Guaranteed Maximum Price to be exceeded, such costs shall be paid according to the Construction Contingency provision of the Agreement or credited to the Guaranteed Maximum Price consistent with the provisions of the Contract Documents. The amount of the Change Order shall reflect the difference between actual cost and the allowances under paragraph 3.8.2.2 and the change in the Contractor's costs under paragraph 3.8.2.3.

### 3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

#### 3.9.1 REQUIREMENTS

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and the Architect's information the Construction Schedule for the Work. The Construction Schedule shall not exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required by Division 1 of the Specifications.

#### 3.9.2 FAILURE TO MEET REQUIREMENTS

Failure of the Contractor to provide a proper Construction Schedule as required by this paragraph may, at the sole discretion of Owner, constitute grounds to withhold, in whole or in part, Lease Payments to the Contractor.

### 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 of the California Code of Regulations 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 Architect and shall be delivered to 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 Architect 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 all required shop drawings and samples in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" as required in Division 1 of the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor or subcontractor but in no event later than ninety (90) days after the execution of the Contract. 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 in the Specifications. 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, 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 Architect's opinion is incomplete, contains numerous errors, or has been checked only superficially will be returned unreviewed by the Architect for resubmission by the Contractor.

3.11.1.4 **Extent of Review.** In reviewing shop drawings, the Architect 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. 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 any quantities, which may be 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 Project and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project 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 Project, 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. A copy of such Record Drawings and Annotated Specifications will be delivered to Owner in accordance with the Construction 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 and the Architect. On completion of the Contractor's portion of the Work and prior to Application for Final 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 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 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 patent or proprietary name, manufacturer 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. If the material, process, or article offered by the Contractor is not, in the opinion of the Architect, equal in every respect to that specified, then the Contractor must furnish the material, process, or article specified or one that in the opinion of the Architect, subject to the Owner's final decision, is the equal thereof in every respect.

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 the required notice is not provided and an "or equal" substitution is requested, the Owner, at its sole discretion, may refuse to consider the substitution unless the product specified is no longer commercially available. If the Owner allows the substitution to be proposed despite the lack of proper notice, the Contractor will be invoiced by the Owner for the professional fees incurred by the Architect or Architect's consultants in reviewing the proposed substitution.

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 within thirty-five (35) days of the execution of the established date for the start of construction stated in the Notice to Proceed. Any Requests submitted after the thirty-five (35) days will not be considered, except as noted in paragraph 3.11.4.2 or at the sole discretion of the Owner. 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 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. If after the Architect has made a review of materials, process, or article, it is found that the materials, process, or article presented and approved for substitution and use are not justifiably equal in quality and performance to the product originally specified, the Architect retains the right to revoke said approval, and to reject the materials, process or article prior to the installation without any additional cost to Owner. The final decision to approve the substitution 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 DSA's, or any other governmental agency having jurisdiction, approval of a requested substitution shall be on the requesting party. Time used by the Architect in making decisions on substitute materials will not be allowed as a claim for extension of Contract Time.

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.

**3.11.4.5 Request for Substitution Prior to Agreement on Guaranteed Maximum Price.** Any material may be submitted to the Architect prior to the parties reaching agreement on a Guaranteed Maximum Price for consideration as an approved equal to the proprietary material. Requests for such substitution shall be in writing and be made at any time prior to the submission of a Guaranteed Maximum Price to the Owner. The request will be accompanied by manufacturer literature, details, test data and samples in a format which shows direct item by item comparison between the proprietary and proposed materials. Approval lies solely within the province of the Owner based on Architect's professional recommendation.

#### **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 DSA'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 separate contractors 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 or 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.

### **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 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, and the cost thereof shall be invoiced to the Contractor and deducted from the next Lease Payment. Each Subcontractor shall have the responsibility for the cleanup of its own Work. If the Subcontractor fails to clean up, the Contractor may do so and back-charge the Subcontractor.

#### **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.

### **3.14 ACCESS TO WORK**

The Contractor shall provide the Owner, the Architect, and the Inspector, 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 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 Architect.

#### **3.15.2 REVIEW**

The review by the 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, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, and directors, from and against claims, damages, losses, and expenses (including, but not limited to attorneys' fees and costs including fees of consultants) arising out of or resulting from: performance of the Work (including, but not limited to) the Contractor's or its Subcontractor's use of the Site; the Contractor's or its Subcontractor's construction of the Project, or failure to construct the Project, 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, 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.

### 3.16.2 SCOPE: SUBCONTRACTORS

3.16.2.1 **Indemnity.** The Subcontractors shall defend, indemnify, and hold harmless the Owner, the Architect, and the Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, and directors from and against claims, damages, losses, and expenses, including, but not limited to, attorneys' fees and costs, including consultants) arising out of or resulting from: performance of the Work (including, but not limited to) the Subcontractors' use of the Site; the Subcontractors' construction of the Project or failure to construct the Project 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.

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 and 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.

## **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 engineering consultants under the Architect's direction and control.

#### **4.1.2 MODIFICATION**

Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

#### **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 as described in the Contract Documents and will be the Owner's representative during construction, until final payment is due, and during the two (2) 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 provided in the Contract Documents, unless otherwise modified by in writing in accordance with other provisions of The Owner/Architect Agreement. The Architect will have all responsibilities and power established by law including California Code of Regulations, Title 24.

#### **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. However, the Architect will not be required to make exhaustive or continuous on-Site inspections to check quality or quantity of the Work. On the basis of its on-Site observations, the Architect will keep the Owner informed of the progress of and any deficiencies in the Work.

#### **4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY**

The Architect shall not have control over, charge of, or be responsible for construction means, methods, techniques, schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt, installation, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract Documents. The Architect shall not be responsible for the Contractor's, Subcontractors', material or equipment suppliers', or any other person's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, their agents or employees, or any other persons or entities performing or supplying portions of the Work. 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. The Architect's duties shall not extend to the receipt, inspection, and acceptance on behalf of the Owner of furniture, furnishings, and equipment at the time of their delivery to the premises and installation.

#### **4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Owner and the Contractor shall communicate through the Architect. Where direct communication is necessary between the Owner and the Contractor, the Architect shall be promptly informed, and shall receive copies of all written communications. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material or equipment suppliers shall be through the Contractor.

#### **4.2.5 PAYMENT APPLICATIONS**

Pursuant to Article 9, based on the Architect's observations, the Contractor's Applications for Payment, and the Inspector's approval, the Architect will review and make recommendations to the Owner regarding the amounts due the Contractor on the Certificates for Payment.

#### **4.2.6 REJECTION OF WORK**

In addition to the rights, duties, and obligations of the Inspector under this Article, the Architect may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents. The Architect's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents. Whenever the Architect considers it necessary or advisable to achieve the intent of the Contract Documents, the Architect may recommend to the Owner that the Owner require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect 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 will prepare Change Orders and construction change directives and may authorize minor changes in the Work as provided in paragraph 7.1.2.

#### 4.2.8 **WARRANTIES UPON COMPLETION**

The Architect in conjunction with the Inspector 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, and will issue a final Certificate for Payment when the Architect believes the Work has been completed in compliance with the requirements of the Contract Documents. 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.

The Architect will conduct a field review of the Contractor's comprehensive list of items to be completed or corrected (final 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 deducted from the final payment.

#### 4.2.9 **INTERPRETATION**

The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or the Contractor. The Architect's response to such request will be made with reasonable promptness, while allowing sufficient time in the Architect's professional judgment, to permit adequate review and evaluation of 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 and decisions, the Architect will endeavor to secure faithful performance by both the Owner and the Contractor, will not show partiality to either. The Architect will not be liable for the result of interpretations or decisions so rendered in good faith. 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 Architect'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 employed by the Owner and approved by the DSA and Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties will be as specifically defined in Title 24 of the California Code of Regulations, and paragraph 4.3.2 below.

#### 4.3.2 **INSPECTOR'S DUTIES**

All Work shall be performed under the observation of or with the knowledge of the Inspector. The Inspector shall have free access to any or all parts of the Work at any time. The Inspector shall report to the Architect

any non-conformance with the Drawings and Specifications. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector 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 is not authorized to make changes in the Drawings or Specifications nor shall the Inspector'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. Specifically, the Inspector's duties include the following:

- A. Preparation of daily written report on work progress, including types of equipment, number of men and number of hours worked, description of Work installed and delivery or removal of materials at the Site.
  - (1) Maintain copies of Title 24, Parts 1 through 5 and 9 and all Contract Documents at the Site.
- B. Rejection of any material not conforming to requirements of the Contract Documents and Title 24 of the California Code of Regulations.
- C. Preparation of monthly summaries of work progress with copies submitted to the Architect and the Owner.
- D. Review of partial payment requests before forwarding requests to the Architect for certification.
- E. Preparation of punch lists at intervals during work progress as the Architect requires. Also, preparation of complete and detailed punch list prior to Architect's final inspection.
- F. Review the compilation and maintenance of "as-built" drawings of actual locations of concealed and below grade plumbing, mechanical and electrical lines. Contractor shall cooperate by supplying required information prior to every Application for Payment.

#### **4.3.3 INSPECTOR'S AUTHORITY TO REJECT OR STOP WORK**

The Inspector shall have the authority to reject Work that does not comply with the provisions of the Contract Documents. In addition, the Inspector 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'S FACILITIES**

Within seven (7) days after issuance of the Notice to Proceed, the Contractor shall provide the Inspector with the temporary facilities as required under Division 1 of the Specifications.

### **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 of the Contractor, the Contractor shall be invoiced by the Owner for any costs incurred for any such additional services, which costs shall be deducted from the next Lease Payment. Such invoicing shall be independent from any other Owner remedies. 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 of 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

### **CLAIMS AND DISPUTES**

#### **4.5.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and the Contractor arising out of or relating to the Contract Documents. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### **4.5.2 DECISION OF ARCHITECT**

Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in paragraph 4.6. A decision by the Architect, as provided in paragraph 4.6.4, shall be required as a condition precedent to mediation of a Claim between the Contractor and the Owner as to all such matters arising prior to the date final payment is due, regardless of whether such matters relate to execution and progress of the Work, or the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to mediation in the event: the position of Architect is vacant; the Architect has not received evidence or has failed to render a decision within agreed time limit; the Architect has failed to take action required under paragraph 4.6.4 within thirty (30) days after the Claim is made, forty-five (45) days have passed after the Claim has been referred to the Architect; or the Claim relates to a Stop Notice Claim.

#### **4.5.3 TIME LIMIT ON CLAIMS**

Claims by either party must be made within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim,

whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered. The failure of the Contractor to provide the required notice shall constitute an express waiver of any right to assert such claim, whether affirmatively or defensively.

#### **4.5.4 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim including mediation, arbitration, or litigation, unless otherwise agreed to in writing, the Contractor shall proceed diligently with performance of the Contract, and the Owner shall continue to make any undisputed payments in accordance with the Contract.

#### **4.5.5 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS**

**4.5.5.1 Trenches or Excavations Less Than Four Feet Below the Surface.** If conditions are encountered 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. The Architect will promptly investigate such conditions, and if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, or performance of any part of the Work, will recommend an equitable adjustment in the Contract Time, or payment from the Construction Contingency, or both. If the Architect determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and the Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within ten (10) days after the Architect has given notice of the decision. If the Owner and the Contractor cannot agree on an impact on the Guaranteed Maximum Price and the Construction Contingency or the Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to other proceedings pursuant to paragraph 4.6.

**4.5.5.2 Trenches or Excavations Greater Than Four Feet Below the Surface.** Pursuant to Public Contract Code §7104, when any excavation or trenching extends greater than four feet below the surface:

A. The Contractor shall promptly, and before the following conditions are disturbed, notify the Owner, 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.
- (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.

B. The Owner 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.

C. In the event that a dispute arises between the Owner 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 scheduled completion date provided for 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.

#### **4.5.6 CLAIMS FOR ADDITIONAL COST**

Notwithstanding this paragraph 4.5.6, all claims for additional costs, causing the Guaranteed Maximum Price to be exceeded, shall be processed and paid in accordance with the Construction Contingency provisions of the Agreement. If the Contractor wishes to make Claim for an impact on the Guaranteed Maximum Price and Construction Contingency, written notice as provided herein shall be given before proceeding to execute the Work. Each Claim for additional cost must include any claim for additional time and its associated costs.

Prior notice is not required for claims relating to an emergency endangering life or property arising under paragraph 10.4.1. Cost overruns and additional costs are described in the Agreement. If the Contractor believes such cost overruns are involved, a claim shall be filed in accordance with the procedure established herein.

#### **4.5.7 CLAIMS FOR ADDITIONAL TIME**

**4.5.7.1 Notice and Extent of Claim.** If the Contractor wishes to make a claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's claim shall include the cost associated with the extension and effect of delay on progress of the Work. In the case of a continuing delay, only one (1) claim is necessary.

**4.5.7.2 Adverse Weather Claims.** If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

**4.5.7.3 No Reservation Allowed.** In no event will the Contractor be allowed to reserve its rights to assert a claim for time extension later than as required by paragraph 4.5.3 unless the Owner agrees in writing to allow such reservation.

#### **4.5.8 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 twenty-one (21) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be made as provided in paragraphs 4.5.6 or 4.5.7.

### **4.6 RESOLUTION OF CLAIMS AND DISPUTES**

#### **4.6.1 ARCHITECT'S REVIEW**

The Architect will review claims and take one or more of the following preliminary actions within ten (10) days of receipt of a claim: request additional supporting data from the claimant; submit a schedule to the parties indicating when the Architect expects to take action; reject the claim in whole or in part, stating reasons for rejection; recommend approval of the claim by the other party; or suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

#### **4.6.2 DOCUMENTATION IF RESOLVED**

If a claim has been resolved, the Architect will prepare or obtain appropriate documentation.

#### **4.6.3 ACTIONS IF NOT RESOLVED**

If a claim has not been resolved, the party making the claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: submit additional supporting data requested by the Architect; modify the initial claim; or notify the Architect that the initial claim stands.

#### **4.6.4 ARCHITECT'S WRITTEN DECISION**

If a claim has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days. Upon expiration of such time period, the Architect will render to the parties its written decision relative to the claim, including any effect on the Guaranteed Maximum Price and Construction Contingency or change in the Contract Time or both. The Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

### **4.7 ALTERNATE DISPUTE RESOLUTION OF CLAIMS OF \$375,000 OR LESS**

#### **4.7.1 CLAIMS LESS THAN \$375,000**

Notwithstanding any other provision herein, claims of \$375,000 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contracts Code §§ 20104, *et seq.* "Claim" for this purpose means a separate demand by the Contractor for a time extension, payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, for which payment is expressly provided, or the Contractor is otherwise entitled to, or an amount the payment of which is disputed by the Owner.

#### **4.7.2 SUBMISSION OF CLAIMS LESS THAN \$375,000**

The Contractor shall submit its claim of \$375,000 or less to the Owner in writing, within the time frames established under paragraph 4.5.3, but no later than before the final payment is made. The Owner shall respond within the time provided by statute. If the Contractor disagrees with the response or the Owner fails to respond within the time permitted, the Contractor shall notify the Owner of the disagreement in writing within fifteen (15) days from the date of the response or expiration of the time permitted to respond and demand a meet-and-confer conference as detailed in paragraph 4.8.1. The Owner shall schedule a meet-and-confer conference within thirty (30) days of the demand. If not resolved at the meet-and-confer conference, then the claim shall be submitted to mediation pursuant to the procedures set forth in paragraph 4.9. If the dispute is not resolved at the mediation, the Contractor may initiate a civil action as set forth in Public Contract Code §§ 20104 *et seq.*

#### **4.7.3 TIME LIMITS NOT EXTENDED**

Nothing in Subdivision (a) of Public Contract Code § 20104.2 shall extend the time limit or supersede the notice requirements provided in this Contract for filing claims by the Contractor.

### **4.8 DISPUTE RESOLUTION OF CLAIMS IN EXCESS OF \$375,000**

As a condition precedent to the initiation of litigation and subsequent to the fulfillment of the claims procedures established in paragraph 4.5 of this Article, disputes in excess of a total value of \$375,000 shall first be submitted to mediation pursuant to the procedures set forth in paragraph 4.9.



#### 4.8.1 MEET AND CONFER CONFERENCE

Following action by the Architect under paragraph 4.6, the parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior executives of the parties who have authority to settle the controversy. The party disputing the Architect's action shall give the other party written notice of the dispute. Within ten (10) days after delivery of said notice, executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within twenty (20) days of the disputing party's notice, or if the party receiving such notice will not meet within ten (10) days, either party may initiate mediation of the controversy or claim under paragraph 4.9.

### 4.9 MEDIATION PROCEDURES

#### 4.9.1 NEGOTIATIONS BEFORE MEDIATION

Negotiations to resolve disputes before Mediation is initiated are for settlement purposes only and are not binding.

#### 4.9.2 MEDIATION

4.9.2.1 **Authorization.** In the event of a dispute or issue that cannot be resolved by negotiation, the Owner and the Contractor agree to attempt to resolve the matter by Mediation. Said Mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable solution. These provisions relating to voluntary Mediation shall not be construed or interpreted as mandatory arbitration.

4.9.2.2 **Initiation of Mediation.** Either party may initiate Mediation by notifying the other party or parties in writing.

4.9.2.3 **Request for Mediation.** A Request for Mediation shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the Mediation.

4.9.2.4 **Selection of Mediator.** Within fourteen (14) days after execution of the Contract for Construction, the parties will meet-and-confer to select an appropriate Mediator agreeable to all parties and two (2) alternate mediators, who will serve for the entire Project. If the parties cannot agree on a Mediator, they hereby agree to accept a Mediator appointed by a recognized association such as the American Arbitration Association.

4.9.2.5 **Qualifications of a Mediator.** Any Mediator selected shall have expertise in the area of the dispute and be knowledgeable in the Mediation process. No person shall serve as a Mediator in any dispute in which that person has any financial or personal interest in the result of the Mediation. Before accepting an appointment, the prospective Mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the parties shall meet and confer and decide whether to select another Mediator.

4.9.2.6 **Vacancies.** If any Mediator shall become unable or unwilling to serve, the First Alternate Mediator shall be selected unless the parties agree otherwise.

4.9.2.7 **Representation.** Any party may be represented by persons of its choice, who shall have full authority to negotiate. The names and addresses of such persons shall be communicated in writing to all parties and to the Mediator.

4.9.2.8 **Time and Place of Mediation.** The Mediator shall set the time of each Mediation session. The Mediation shall be held at any convenient location agreeable to the Mediator and the parties, as the Mediator shall determine. All reasonable efforts will be made by the parties and the Mediator to schedule the first session within thirty (30) days after initiation of Mediation.

4.9.2.9 **Identification of Matters in Dispute.** At least ten (10) days before the first scheduled Mediation session, each party shall provide the Mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the Mediator such memoranda may be mutually exchanged by the parties.

At the first session, the parties will be expected to produce all information reasonably required for the Mediator to understand the issue presented. The Mediator may require each party to supplement such information.

4.9.2.10 **Authority of Mediator.** The Mediator does not have authority to impose a settlement on the parties but will attempt to assist the parties in reaching a satisfactory resolution of their dispute. The Mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the Mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the Mediator or the parties, as the Mediator shall determine.

The Mediator is authorized to end the Mediation whenever, in the Mediator's judgment, further efforts at Mediation would not contribute to a resolution of the dispute between the parties.

4.9.2.11 **Privacy.** Mediation sessions are private. The parties and their representatives may attend Mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the Mediator.

4.9.2.12 **Confidentiality.** Confidential information disclosed to a Mediator by the parties or by witnesses in the course of the Mediation shall not be divulged by the Mediator. All records, reports, or other documents received by a Mediator while serving as Mediator shall be confidential. The Mediator shall not be compelled to divulge such records or to testify in regard to the Mediation in any adversary proceeding or judicial forum. The parties shall maintain the confidentiality of the Mediation and shall not rely on, or introduce as evidence in any arbitration, judicial, or other proceedings: views expressed or suggestions made by the other party with respect to the possible settlement of the dispute; statements made by the other party in the course of the Mediation proceedings; proposals made or views expressed by the Mediator; and whether the other party had or had not indicated willingness to accept a proposal for settlement made by the Mediator.

4.9.2.13 **No Stenographic Record.** There shall be no stenographic record of the Mediation.

4.9.2.14 **Termination of Mediation.** The Mediation shall be terminated: by the execution of a settlement agreement by the parties; by a written declaration of the Mediator to the effect that further efforts at Mediation are no longer worthwhile; or by a written declaration of a party or parties to the effect that the Mediation proceedings are terminated.

4.9.2.15 **Exclusion of Liability.** No Mediator shall be a necessary party in judicial proceedings related to the Mediation. No Mediator shall be liable to any party for any act or omission in connection with any Mediation conducted hereunder.

4.9.2.16 **Interpretation and Application of These Mediation Provisions.** The Mediator shall interpret and apply these Mediation provisions insofar as they relate to the Mediator's duties and

responsibility.

4.9.2.17 **Expenses.** The expenses of witnesses for each party shall be paid by the party producing the witnesses. All other expenses of the Mediation, including, required travel and other expenses of the Mediator, the expenses of any witness called by the Mediator, and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by all parties to the Mediation.

## **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". The Owner will communicate and oversee the Project only through the Contractor, who shall be responsible for the proper execution of the whole Work.

#### **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 § 7058 of the Business and Professions Code, all of the Work outside of that Subcontractor's specialty shall be performed in compliance with the requirements of the Contract and in compliance with applicable law.

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

#### **5.2.1 RESERVED**

#### **5.2.2 ASSIGNMENT OR SUBSTITUTION - CONSENT OF OWNER**

Assignment or substitution of any Subcontractor is subject to notice to the Owner and the right of the Owner to pre-approve the assignment or substitution, and shall not be inconsistent with any provision of the Agreement.

#### **5.2.3 GROUNDS FOR SUBSTITUTION**

5.2.3.1 **No Change in Contract.** Any substitutions of Subcontractors shall not result in any increase in the Guaranteed Maximum Price or result in the granting of any extension of time for the completion of the Project.

5.2.3.2 **Reserved.**

### 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 and the Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect 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 paragraph 5.3 above.

#### 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 Subcontractor shall not employ on the Work any unfit person or anyone not skilled in the task assigned. 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 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 Subcontractor's 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 Project 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 Occupation Safety and Health Administration (OSHA) and Division of Occupational Safety and Health (Cal/OSHA) requirements and those of other authorities having jurisdiction over 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: (1) 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; (2) delay the progress of the Project or otherwise fail in any of its obligations; or (3) either have a receiver appointed or be 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, 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, the Subcontractor shall continue to proceed diligently with the performance as required by the Contractor. 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**

The Owner reserves the right to perform Work related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project 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 and waiver of subrogation. Upon the election to perform 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 make such Claim as provided elsewhere 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 case shall mean the Contractor who executes each separate Owner/Contractor Agreement.

**6.1.3 CONTRACTOR DUTIES**

The Contractor 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, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing the Construction Schedule when directed to do so. The Contractor shall make any revisions to the Construction Schedule and record any impacts on the Guaranteed Maximum Price and Construction Contingency deemed necessary after a joint review and mutual agreement. The Construction Schedule shall then constitute the Construction Schedules to be used by the Contractor, separate contractors, and the Owner 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, 11, 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 Contractor's 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 Architect apparent 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 shall be borne by the party responsible.

#### **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 paragraph 3.13, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

## **ARTICLE 7 CHANGES IN THE WORK**

### **7.1 CHANGES**

#### **7.1.1 NO CHANGES WITHOUT AUTHORIZATION**

Pursuant to Title 24 of the California Code of Regulations, there shall be no change, modification or deviation whatsoever from the DSA-approved Drawings, Specifications, or in the Work without an executed Change Order, Construction Change Directive, or order by the Architect for a minor change in the Work as herein provided, approved by the DSA as applicable. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been authorized by and the cost thereof approved in writing by Change Order or executed Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time is authorized and duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 7, all Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the Owner, the Architect, the Contractor, and the DSA.

#### **7.1.2 ARCHITECT AUTHORITY**

The Architect will have authority to order minor changes in the Work not involving any impact on the Guaranteed Maximum Price and Construction Contingency, 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 Change Order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

### **7.2 CHANGE ORDERS ("CO")**

A CO is a written instrument prepared by the Architect and signed by the Owner, the Contractor, the Architect, stating their agreement upon all of the following:



- A. a change in the Work;
- B. the amount by which the Guaranteed Maximum Price will be exceeded, if any, subject to the provisions in the Agreement concerning Guaranteed Maximum Price and Construction Contingency; and
- C. the extent of the adjustment in the Contract Time, if any.

### 7.3 **CONSTRUCTION CHANGE DIRECTIVES ("CCD")**

#### 7.3.1 **DEFINITION**

A CCD is a written order prepared by the Architect and signed by the Owner and the Architect, and reviewed and approved by DSA, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Time, or impact on the Guaranteed Maximum Price triggering payment from the Construction Contingency, or both. 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, with the Construction Contingency and Contract Time being adjusted accordingly.

#### 7.3.2 **USE TO DIRECT CHANGE**

A CCD shall be used in the absence of agreement on the terms of a CO.

### 7.4 **REQUEST FOR INFORMATION ("RFI")**

#### 7.4.1 **DEFINITION**

An RFI is a written request prepared by the Contractor asking the Architect 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 Guaranteed Maximum Price, Construction Contingency, Contract Time, or the Contract Documents.

#### 7.4.3 **RESPONSE TIME**

The Architect must respond to an RFI within fourteen (14) calendar days after receiving such request. If the Architect's response results in a change in the Work, then such change shall be effected by a written CO or CCD. If the Architect cannot respond to the RFI within fourteen (14) calendar days, the Architect shall notify the Contractor, with a copy to the Inspector and the Owner, of the amount of time that will be required to respond.

#### 7.4.4 **COSTS INCURRED**

The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be deducted from the next Lease Payment, 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 a written request prepared by the Architect asking the Contractor to submit to the Owner and the Architect an estimate of the effect of a proposed impact on the Guaranteed Maximum Price and Construction Contingency and the proposed change on 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 paragraph 7.7. The Contractor shall not be entitled to any additional compensation for preparing a response to an RFP, whether ultimately accepted or not.

## **7.6 CHANGE ORDER REQUEST ("COR")**

### **7.6.1 DEFINITION**

A COR is a written request prepared by the Contractor asking the Owner and the Architect to incorporate a proposed change called for in an RFP or a claim per paragraph 7.7.6 into a CO.

### **7.6.2 CHANGES IN PRICE**

A COR shall include breakdowns per paragraph 7.7 to validate any impact on the Guaranteed Maximum Price and the Construction Contingency due to proposed change or claim.

### **7.6.3 CHANGES IN TIME**

A COR shall also include any additional time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in paragraph 3.9 and Division 1 of the Specifications.

## **7.7 COST OF CHANGE ORDERS**

### **7.7.1 SCOPE**

Within ten (10) days or such lesser period of time as may be required by Owner after a request is made for a change that impacts the Guaranteed Maximum Price and the Construction Contingency or the Contract Time, the Contractor shall provide to the Owner and the Architect in writing an estimate of the effect of the proposed CO upon the Guaranteed Maximum Price and the Construction Contingency, 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. Changes may be made by Owner by an appropriate written CO, or, at the Owner's option, such changes shall be implemented immediately upon the Contractor's receipt of an appropriate written CCD.

### **7.7.2 DETERMINATION OF COST**

The amount of the impact on the Guaranteed Maximum Price and Construction Contingency 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 Guaranteed Maximum Price, 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, 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 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 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: List names of workers, classifications, and hours worked.
- c) Materials: Describe and list quantities of materials used.
- d) Equipment: List 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, 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 for 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 request for payment.
- e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the request 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. Overhead, including direct and indirect costs, shall be submitted with the COR and include: home office overhead, off-Site supervision, CO preparation/negotiation/research, time delays, project interference and disruption, additional guaranty and warranty durations, on-Site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

#### **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. Any additions or deductions that effect the Guaranteed Maximum Price and the Construction Contingency shall be subject to the provisions of the Agreement and these General Conditions.

	<u>EXTRA</u>	<u>CREDIT</u>
A. Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
B. Labor (attach itemized hours and rates)	_____	_____
C. Equipment (attach invoices)	_____	_____
D. Subtotal	_____	_____
E. If Subcontractor performed Work, add Subcontractor's overhead and profit to portions performed by Subcontractor, not to exceed ten percent (10%) of item D.	_____	_____
F. Liability and Property Damage Insurance, 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, not to exceed ten percent (10%) of Item G.	_____	_____
I. Subtotal	_____	_____
J. Bond not to exceed two percent (2%) of Item I.	_____	_____
K. TOTAL		

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes 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. 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 Owner, 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 credit to the Guaranteed Maximum Price 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**

If the Contractor desires to make a claim for an impact on the Guaranteed Maximum Price and Construction Contingency, or any extension in the Contract Time for completion, it shall give the Owner and the Architect written notice thereof within ten (10) days after the occurrence of the event giving rise to the claim, together with detailed estimates of the impact on the Guaranteed Maximum Price and the Construction Contingency and/or the Contract Time. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with paragraph 10.4 hereof. No claim shall be considered unless made in accordance with this Subparagraph; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the Contract Time, and/or the effect on the Guaranteed Maximum Price and the Construction Contingency. Contractor shall proceed to execute the Work even though the adjustment has not been agreed upon. Any effect on the Guaranteed Maximum Price and the Construction Contingency or extension of the Contract Time resulting from such claim shall be authorized by a CO, and paid subject to the Agreement and these General Conditions.

#### **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.

### **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. Contract Time begins from the date of commencement of the Work as set forth in the Notice to Proceed. The Work must be completed within 91 consecutive days thereafter, but may be adjusted as set forth herein. Contract Time is distinct and separate from the term of the Agreement (as defined in Section 1.1.18 of the Development and Lease Agreement between the Owner and Contractor).

##### **8.1.2 NOTICE TO PROCEED**

The date of commencement of the Work is the date established in the Notice to Proceed. The date

shall not be postponed by the failure to act by the Contractor or by 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 Construction Schedule.

#### **8.2.2 PERFORMANCE DURING WORKING HOURS**

Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the 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 or provided by statute. 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 provided that compensation for all hours worked in excess of eight (8) hours per day shall be paid at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor 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 or by any Subcontractor 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.

The Contractor and each Subcontractor shall keep an accurate record showing the name of and actual hours worked by each workman employed on the Work contemplated by the Contract, which record shall be kept open at all reasonable hours to the inspection of the Owner and to the Division of Labor Standards Enforcement.

Contractor shall forfeit as a penalty to the Owner the sum of Twenty-Five Dollars (\$25.00) for each workman employed in the execution of this Contract, by Contractor or by any Subcontractor, for each calendar day during which said workman is required or permitted to labor more than eight (8) hours in violation of the provisions of said Article 3, as modified by Section 1815 of the Labor Code.

#### **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'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 shall be invoiced to the Contractor by the Owner and deducted from the next Lease Payment.

If the Contractor elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Contractor by the Owner and deducted from the next Lease Payment.

#### **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 Contract Time is a reasonable period 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 proceed expeditiously with adequate forces and shall achieve completion within the Contract Time.

### **8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES**

#### **8.4.1 EXCUSABLE DELAY**

The Contractor shall not be charged for liquidated damages, as set forth in the Contract, because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or the negligence of Contractor, including, but not restricted to, acts of God, acts of public enemy, acts of Government, acts of the Owner or anyone employed by Owner, acts of another contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, or delays of subcontractors due to such causes.

#### **8.4.2 NOTICE BY CONTRACTOR REQUIRED**

The Contractor shall within seven (7) calendar days of beginning of any such delay (unless Owner grants in writing a further period of time to file such notice prior to the date of final payment under the Contract) notify the Owner in writing of causes of delay. Owner will then ascertain the facts and extent of the delay and grant an extension of time for completing the Work when, in its judgment, the findings of fact justify such an extension. The Owner's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Work affected by the delay and



shall not apply to other portions of the Work not so affected. The sole remedy of Contractor for extensions of time under paragraph 8.4.1 shall be an extension of the Contract Time at no cost to the Owner.

#### 8.4.3 **CONDITIONS FOR EXTENSION OF TIME**

If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner, the Architect, an employee of either, or of a separate contractor employed by the Owner, by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, by delay authorized by the Owner pending arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Claims relating to time extensions shall be made in accordance with applicable provisions of Article 7.

#### 8.4.4 **WEATHER DAYS**

The number of days allowed for completion as referred to in the Agreement takes into consideration a time loss up to and including thirty (30) working days within the Contract Time period for time loss due to adverse weather and weather caused conditions such as rain, mud and wind, which in the Architect's opinion actually delays the Work or a portion of the Work. Up to and including thirty (30) working days shall not be regarded as unavoidable delays in this sense, as the Contractor should understand that such conditions are to be expected within the average climatic range, and shall be so considered for purposes of this Contract.

#### 8.4.5 **LIQUIDATED DAMAGES**

The Owner reserves the right to claim liquidated damages for delays in completion of the Work attributable to the Contractor.

8.4.5.1 ***Amount of Liquidated Damages.*** As of this date of this Contract, it is impossible to determine precisely the damages which Owner would sustain, should Contractor fail to complete the Work within the Contract Time. Under the circumstances existing at the current time, the parties hereto have exercised a good faith attempt to estimate the amount of such damages, and agree that said amount is \$250 per day. If Contractor fails to complete the Work within the Contract Time, Contractor shall pay to Owner or Owner shall withhold from funds otherwise due and payable to Contractor (at Owner's option) the sum of \$250 per day for each day after the expiration of the Contract Time until the Project is completed. These damages are in addition to any other rights and remedies of Owner as set forth herein. Contractor acknowledges that the aforesaid sum is not intended to compensate Owner for and shall not affect its rights to collect from Contractor costs and expenses incurred by Owner to complete the Work after the expiration of the Contract Time.

8.4.5.1 ***Liquidated Damages for Delays in Completing Punch List.*** The Lease Payments shall be reduced by an amount of \$500 per day, if, after thirty (30) days receipt of the Punch List, any item has not yet been completed. Thereafter, Contractor acknowledges that the Owner shall have the right to hire an outside contractor to complete the Punch List item. The parties stipulate that the above sum fixed as liquidated damages is a reasonable and good faith estimate of the actual amount necessary to compensate Owner for damages incurred as the result of delay when viewed prospectively upon the making of this Contract.

## **ARTICLE 9**

### **PAYMENTS AND COMPLETION**

#### **9.1 GUARANTEED MAXIMUM PRICE**

The Guaranteed Maximum Price is stated in the Agreement and, including authorized adjustments, 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 execution of the Agreement, a detailed breakdown of the Guaranteed Maximum Price (Schedule of Lease Payments) for each Project or Site;
- B. Within ten (10) days of the execution of the Agreement, 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 execution of the Agreement, the name, address, telephone number, fax number, license number, and classification 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 APPROVAL REQUIRED**

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

#### **9.3 APPLICATIONS FOR PAYMENT**

##### **9.3.1 PROCEDURE**

Unless otherwise mutually agreed upon, 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 an itemized Application for Payment for operations completed in accordance with the Schedule of Lease Payments. Such application shall be notarized, if required, and supported by the following or such portion thereof as Architect requires:

- A. The amount paid to the date of the Application for Payment 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 effect (in dollar amounts) on the Guaranteed Maximum Price and the Construction Contingency and the additions and subtractions from the Contract Time;
- F. A summary of the retentions (each Application shall provide for retention, as set out in Article 9.6, of the amount due until completion of the Work of the Contractor and final acceptance thereof by Owner);
- 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; and
- 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.

#### **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 Architect and 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.

### **9.4 REVIEW OF LEASE PAYMENT**

#### **9.4.1 OWNER APPROVAL**

The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Architect's reasons for withholding approval in whole or in part as provided in paragraph 9.5.1.

#### 9.4.2 ARCHITECT'S REVIEW

The review of the Contractor's Application for Payment by the Architect is based on the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to 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 Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the review by the Architect will not be a representation that the Architect 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 Guaranteed Maximum Price.

### 9.5 DECISIONS TO WITHHOLD PAYMENT

#### 9.5.1 REASONS TO WITHHOLD PAYMENT

The Owner may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the Owner if, in the Owner's opinion, the representations to the Owner required by paragraph 9.4.2 cannot be made. The Owner may withhold payment, in whole, or in part, to such extent as may be necessary to protect the Owner from loss because of:

- A. Defective Work not remedied;
- B. Stop Notices filed, unless 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 claims;
- C. Liquidated damages assessed against the Contractor;
- D. Reasonable doubt that the Work can be completed for the unpaid balance of any Construction Contingency or by the completion date;
- E. Damage to 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 Lease Payments, 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 dates; or
- M. Violations of the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code. The Owner shall withhold payments when payroll records are delinquent or inadequate or when, after an investigation, it is established that underpayment of the prevailing wage has occurred. The authority of the Owner to withhold payments is found in Labor Code section 1771.6 and is also subject to provisions contained at Title 8 CCR section 16463. As explained more fully at Section 16463, the Labor Commissioner shall provide the Contractor and subcontractors, if applicable, with immediate written notice of the withholding of payments, that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate, (2) specifies what amounts the Owner has been directed to withhold, and (3) informs the Contractor or subcontractor of the right to request an expedited hearing to review the withholding of payments under Labor Code section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Commissioner has exceeded his or her authority under Section 16463.

#### **9.5.2 WRITTEN REASONS FOR WITHHOLDING PROVIDED**

Upon request of the Contractor whose payment is deferred, the Contractor shall be given a written copy of Owner's reasons for withholding payment.

#### **9.5.3 PAYMENT AFTER CURE**

When the grounds for declining approval are removed, payment shall be made for amounts withheld because of such grounds. 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.

### **9.6 LEASE PAYMENTS**

#### **9.6.1 PAYMENTS TO CONTRACTOR**

Within thirty (30) days after approval of the Application for Payment, Contractor shall be paid a sum equal to no less than ninety-five percent (95%) of the value of the Work performed up to the last day of the previous month, less the aggregate of previous payments. 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.

The Contractor shall not be entitled to have any Application for Payment 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 uncomplished with. At any time after fifty percent (50%) of the Work has been completed, if the Owner, by action of its governing body, finds that satisfactory progress is being made, the Owner may make any of the remaining payments in full for actual Work completed or may withhold any amount up to five percent (5%) thereof as the Owner may find appropriate based on the Contractor's progress.

#### **9.6.2 PAYMENTS TO SUBCONTRACTORS**

No later than ten (10) days after receipt, pursuant to Business and Professions Code § 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 approved Application for Payment, a Lease Payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of 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. 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 RESERVED**

**COMPLETION OF THE WORK****9.8.1 CLOSE-OUT PROCEDURES**

When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is complete, the Contractor shall prepare and submit to the Owner a comprehensive list of minor items to be completed or corrected (Punch List). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Upon receipt of the Contractor's list, the Owner will make an inspection to determine whether the Work, or designated portion thereof, is complete. If the Owner's inspection discloses any item, whether or not included on the Contractor's list, is not completed in accordance with the requirements of the Contract Documents, the Contractor shall, before Owner's issuance of the Notice of Completion, complete or correct such item. The Contractor shall then submit a request for an additional inspection by the Owner to determine completion. When the Work, or designated portion thereof, is complete, as deemed by the Owner, the Owner will prepare a Notice of Completion which shall establish the date of completion, establish the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Notice of Completion. Warranties required by the Contract Documents shall commence on the date of completion of the Work, or designated portion thereof, unless otherwise provided in the Notice of Completion, or as provided in paragraph 9.9.4 below. The Notice of Completion shall be submitted to the Owner and the Contractor for their written acceptance of responsibilities assigned to them in such Notice.

**9.8.2 PAYMENT UPON COMPLETION**

Upon completion of the Work, or designated portion thereof, and upon application by the Contractor, the Owner shall make payment reflecting adjustment in retainage, if any, for such Work, or portion thereof, as provided in the Contract Documents.

**9.8.3 COSTS OF MULTIPLE INSPECTIONS**

More than two (2) requests of the Owner to make inspections required under paragraph 9.8.1 shall be considered an additional service of Architect, and all subsequent costs will be invoiced to Contractor and withheld from remaining payments.

**PARTIAL OCCUPANCY OR USE****9.9.1 OWNER'S RIGHTS**

The Owner may occupy or use any completed or partially completed portion of the Work at any stage. The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. When the Contractor considers a portion complete, the Contractor shall prepare and submit a Punch List to the Owner as provided under paragraph 9.8.1.

**9.9.2 INSPECTION PRIOR TO OCCUPANCY OR USE**

Immediately prior to such partial occupancy or use, the Owner, the Contractor, and the Architect 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.

#### 9.9.3 **NO WAIVER**

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

#### 9.9.4 **COMMENCEMENT DATE FOR GUARANTEE OR WARRANTY PERIODS**

If Owner's occupancy of the Work in advance of completion of the total Project requires Owner's operation of equipment or mechanical systems, the guarantee or warranty periods for these systems shall commence on the date of Owner's occupancy with the following exceptions:

- A. The guarantee or warranty period shall not be in effect during any required testing or balancing of systems.
- B. Operation of systems for use by both Owner and Contractor shall be cause for sharing responsibility for systems, and commencement of guarantee or warranty periods shall be established by mutual agreement of both parties.

### 9.10 **COMPLETION AND FINAL PAYMENT**

#### 9.10.1 **FINAL INSPECTION**

Contractor shall immediately upon receipt of the Punch List, initiate work on all items therein related to Contractor's Work and diligently complete the same. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect shall inspect the Work and shall submit to Contractor and Owner a final inspection report noting the work, if any, required in order to complete the Work in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

Upon completion of the Work contained in the final inspection report, the Contractor shall so notify the Architect, who shall again inspect such Work. If the Architect finds the Work contained in such final inspection report acceptable under the Contract Documents and, therefore, the Work fully completed, Architect shall so notify Contractor, who shall then submit to the Architect its final Application for Payment.

Upon receipt and approval of such final Application for Payment, the Architect shall issue a final Certificate of Payment stating that to the best of its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Architect in connection with the Work, such Work has been completed in accordance with the Contract Documents. The Owner shall thereupon inspect such Work and either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Contractor as fully complete (which, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the Owner shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of payment from Owner, pay the amounts due Subcontractors.

#### 9.10.2 **RETAINAGE**

The retainage, less any amounts disputed by the Owner or which the Owner has the right to withhold, shall be paid after approval by the Owner of the Architect's Certificate of Payment referred to in paragraph 9.10.1, after the satisfaction of the conditions set forth in paragraph 9.10, and after sixty (60) days after the acceptance of the Work and recording of the Notice of Completion by Owner. No interest shall be paid on any retainage, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any escrow agreement between the Owner and the Contractor pursuant to Public



Contract Code § 22300.

#### 9.10.3 PROCEDURES FOR APPLICATION FOR FINAL PAYMENT

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

- A. A full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by Contractor, including a release of Stop Notice in recordable form, together with (to the extent permitted by law) a copy of the full and final waiver of all Stop Notices or a Stop Notice Release Bond from a surety acceptable to the Owner as defined by the Contract Documents, including a release of Stop Notice in recordable form, in connection with the Work obtained by Contractor from each person to receive a payment thereunder, which waivers of Stop Notice shall be in a form as approved by Owner.
- B. 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.
- C. 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.
- D. The Contractor shall deliver to the Owner 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, all guarantees, and operation and maintenance instructions for equipment and apparatus.
- E. Architect shall have issued a Final Certificate of Payment.
- F. The Contractor shall have delivered to the Owner all manuals and materials required by the Contract Documents.
- G. The Contractor shall have removed, or caused to be removed, all waste materials and rubbish from and about the Site, as well as all tools, construction equipment, machinery, surplus material, scaffolding equipment, and any other similar materials of the Contractor or any Subcontractor, shall have cleaned, or caused to be cleaned, all glass surfaces, and shall have left the Work broom-clean, except as otherwise provided in the Contract Documents.

#### 9.101 SUBSTITUTION OF SECURITIES

In accordance with § 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any 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 monies to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Securities eligible for investment under this section shall include those listed in Government Code

§ 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.

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

##### **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 and the Architect 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, and equipment to be incorporated therein, 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.

## 10.3 PROTECTION OF WORK AND PROPERTY

### 10.3.1 PROTECTION FROM ELEMENTS

The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss arising in connection with operations under the Contract Documents. 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.

### 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 heat, coverings, and enclosures necessary to maintain adequate protection against 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 appropriate Contractor. All such items shall conform with 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 or the Contractor, 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 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 compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in 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 § 25249.5 of the California Health and Safety Code, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether or not such material was generated by the 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 and pursuant to 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 to perform 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 Project 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 additional costs incurred or Project delay in accordance with the applicable provisions of Article 7 herein. In addition, 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.

### **10.5.4 INDEMNIFICATION BY CONTRACTOR FOR HAZARDOUS MATERIAL CAUSED BY CONTRACTOR**

In the event the hazardous materials on the Project Site is caused by the Contractor, 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 Contractor's 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 Project Site.

### **10.5.5 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.

## **ARTICLE 11**

### **INSURANCE AND BONDS**

#### **11.1 CONTRACTOR'S LIABILITY INSURANCE**

##### **11.1.1 INSURANCE REQUIREMENTS**

Before the commencement of the Work, 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 or as amended by any Supplementary General Conditions, such insurance 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 anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- A. claims for damages because of bodily injury, sickness, disease, or death of any person other than the Contractor's employees; and
- B. claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person; and
- C. 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
- D. 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
- E. 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
- F. claims involving completed operations, independent contractors' coverage, and broad form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating.

The Contractor shall maintain such Comprehensive General Liability Insurance in the following amounts, at minimum: personal injury at \$1,000,000 each occurrence and property damage at \$200,000 each occurrence.

##### **11.1.2 SUBCONTRACTOR INSURANCE REQUIREMENTS**

The Contractor shall require its Subcontractors to take out and maintain similar public liability insurance and property damage insurance required under paragraph 11.1.1 in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy the requirements of paragraph 11.1.1 without prior written approval of the Owner.

##### **11.1.3 OWNER'S INSURANCE**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance in accordance with the requirements of the Agreement. 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 required under paragraph 11.1, the Owner, its officers, agents, and employees, and the Architect as additional insureds. Subcontractors shall name the Contractor, the Owner and the Architect 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 on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

### **11.2 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 in the amounts prescribed by the State of California. 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 paragraph 11.6 and in compliance with Labor Code § 3700.

### **11.3 BUILDER'S RISK/"ALL RISK" INSURANCE**

#### **11.3.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS**

The 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/"All Risk," course-of-construction insurance issued on a completed value basis on all insurable Work included under the Contract Documents. Coverage is to provide extended coverage and insurance against vandalism, malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, earthquake, collapse, flood, wind, lightning, smoke, riot, debris removal (including demolition), and reasonable compensation for the Architect's services and expenses required as a result of such insured loss upon the entire Work which is the subject of the Contract Documents, including completed Work and Work in progress to the full insurable value thereof. Such insurance shall include the Owner and the Architect as an additional named insured and any other person with an insurable interest designated by the Owner as an additional named insured.

The Contractor shall submit to the Owner for its approval all items deemed to be uninsurable. The risk of the damage to the Work due to the perils covered by the Builder's Risk/"All Risk" 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.

#### **11.3.2 CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE**

Partial occupancy or use in accordance with Article 9 shall not commence until the insurance company

providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

#### 11.4 **FIRE INSURANCE**

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 subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the Owner.

#### 11.5 **OTHER INSURANCE**

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

##### 11.5.1 **COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE**

Contractor shall maintain Comprehensive Automobile Liability Insurance for all owned and non-owned and hired vehicles in the following amounts: personal injury at \$1,000,000 each occurrence and property damage at \$200,000 each occurrence.

#### 11.6 **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 and certificates 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.
- D. The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Article 11 upon written request of the Owner.

#### 11.7 **COMPLIANCE**

In the event of the failure of any contractor to furnish and maintain any insurance required by this Article 11, the Contractor shall be in default under the Contract. Compliance by Contractor with the



requirement to carry insurance and furnish certificates or policies 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.

## **11.8 WAIVER OF SUBROGATION**

The Owner, the Architect, and the Contractor each waive (to the extent permitted by law) any right to recover against the other for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by either the Owner, or any Contractor.

The provisions of this Section 11.8 are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The Owner and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

## **11.9 PERFORMANCE AND PAYMENT BONDS**

### **11.9.1 BOND REQUIREMENTS**

Unless otherwise specified in any Supplementary General Conditions, prior to commencing any portion of the Work, the Contractor shall apply for and furnish 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.

To the extent, if any, that the Guaranteed Maximum Price is impacted in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, 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 impact on the Guaranteed Maximum Price, 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.

### **11.9.2 SURETY QUALIFICATION**

Only bonds executed by admitted surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.

### **11.9.3 ALTERNATE SURETY QUALIFICATIONS**

If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with § 995.660 of the California Code of Civil Procedure and proof of such is provided 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 Inspector's request, the Architect's request, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Inspector or the Architect, be uncovered for the Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Guaranteed Maximum Price or Construction Time or payment from the Construction Contingency.

**12.1.2 COSTS FOR INSPECTIONS NOT REQUIRED**

If a portion of the Work has been covered which the Inspector or the Architect has not specifically requested to observe prior to its being covered, the Inspector or the Architect 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 charged to 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**

**12.2.1 CORRECTION OF REJECTED WORK**

The Contractor shall promptly correct the Work rejected by the Inspector or the Owner upon recommendation of the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

**12.2.2 TWO-YEAR WARRANTY CORRECTIONS**

If, within two (2) years after the date of completion of the Work or a designated portion thereof, or after the date for commencement of warranties established under paragraph 9.8.1, or paragraph 9.9.4, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of two (2) years shall be extended with respect to portions of the Work first performed after completion by the period of time between completion and the actual performance of the Work. This obligation under this paragraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

**12.2.2.1 *Extended Guarantee or Warranty Periods.*** Certain portions of Work may have a guarantee or warranty period extended beyond two (2) years where noted in individual sections of the Specifications or as noted below or special warranty requirements as provided below. In each instance, the Contractor shall furnish a written guarantee to the Owner noting the Work concerned and the duration of the guarantee or warranty period specified.

- A. Exterior openings of any nature, whether doors, windows, window wall, louvers, grilled openings, etc. in their entirety including each component, are to be guaranteed watertight, securely installed without audible vibration, to retain finish textures and colors within limits approved from sample submittals, and to be free from cracking, shattering, or breaking of any glazing caused by failure of fabrication or method of installation of systems or by exposure to design strength including reasonably expected weather conditions, for a period of five (5) years. Components include framing members, reinforcing, attachments, caulking, glazing, structural gaskets, sealants flashings, hardware and weather-stripping. Exceptions to guarantee: Wind driven rain through louvers and grilles but not through their framing members; defects caused by Owner's negligence.
- B. Roofing, flashings, membranes, and waterproof coatings are to be guaranteed for a period of two (2) years to be in accordance with manufacturers specifications, to be watertight, without defects in labor or materials, and Contractor shall so maintain them by repairing any leakage occasioned by ordinary wear and tear during that period including repair of damage caused by leaks or by repair of them.

#### **12.2.3 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 by the Owner.

#### **12.2.4 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 paragraph 2.4. In addition, if the Contractor does not proceed with correction of such nonconforming Work within the time fixed by written notice from the Inspector or the Owner through the Architect, the Owner may remove it and store the 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 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. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

#### **12.2.5 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.

#### **12.2.6 NO TIME LIMITATION**

Nothing contained in this paragraph 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 two (2) years as described in paragraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work 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 other than specifically to correct the Work.

### **12.3 ACCEPTANCE OF NONCONFORMING WORK**

If it is found at any time before or after 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 Architect shall make a recommendation: that all such improper Work should be removed, remade, and replaced, that all Work disturbed by these changes be made good at the Contractor's expense, and that the Owner deduct from any amount 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 Architect shall determine such difference in value. The Owner, at its option, may pursue either course unless correction is required by law.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **13.1 GOVERNING LAW**

The Contract shall be governed by the law of the State of California.

### **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 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, written notice 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 mail to the last business address known to the party giving notice.

### **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 Inspector, the Owner, the Architect or the Contractor 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 in writing.

## 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 of the California Code of Regulations, 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. Selection of the materials required to be tested shall be made by the laboratory or the Owner's representative and not by the Contractor. Any costs or expenses of inspection or testing incurred outside of a fifty (50) mile radius from the Project Site or not located in a contiguous county to the Site, whichever distance is greater, shall be paid for by the Owner, invoiced by the Owner to the Contractor, and deducted from the next Lease Payment.

### 13.5.3 ADVANCE NOTICE TO INSPECTOR

The Contractor shall notify the Inspector a sufficient time in advance of its readiness for required observation or inspection so that the Inspector may arrange for same. The Contractor shall notify the Inspector 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 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 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, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under paragraph 13.5.1, the Inspector 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 paragraph 13.5.6.

### 13.5.6 COSTS FOR RETESTING

If such procedures for testing, inspection, or approval under paragraphs 13.5.1 and 13.5.2 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 deducted from the next Lease Payment.

### 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 shall be deducted from the next Lease Payment.

#### **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 RESERVED**

#### **13.7 TRENCH EXCAVATION**

##### **13.7.1 TRENCHES GREATER THAN FIVE FEET**

Pursuant to Labor Code § 6705, if the Guaranteed Maximum Price 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 § 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.

##### **13.7.5 COMPLIANCE WITH CIVIL CODE AND BUILDING CODE**

Contractor shall comply with the California Civil Code and the Detailed Regulations of the California Building Code regarding Protection of Adjoining Property from Excavations, Foundations and Retaining Walls.

#### **13.8 WAGE RATES, TRAVEL, AND SUBSISTENCE**

##### **13.8.1 WAGE RATES**

Pursuant to the provisions of Articles 1 and 2 (commencing at § 1720) of Chapter 1, Part 7, Division 2 of the Labor Code, the Contractor and all Subcontractors shall pay their workmen on all Work included in this Contract not less than the general prevailing rate of per diem wages for each craft or type of workman needed to execute the Work contemplated under the Contract, as ascertained by the Owner, and as set forth in the prevailing wage rate schedule described below. 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 the Department 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. Further, the Contractor shall post a Compliance Monitoring Unit work place poster in accordance with California Code of Regulations, Title 8, Section 16451(d).

#### **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 for each craft or type of workman needed to execute the Work contemplated under the Contract, 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 Work on the Project 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 TRAVEL AND SUBSISTENCE**

The Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining agreements.

#### **13.8.5 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 in the Notice calling for Bids or the contract subsequently awarded.

#### **13.8.6 FORFEITURE AND PAYMENTS**

Pursuant to Labor Code § 1775, the Contractor shall, as a penalty to the Owner, forfeit 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. The amount of the penalty shall be determined by the Labor Commission and shall be based on consideration of the Contractor's mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of *per diem* wage, the previous record of the Contractor in meeting his or her prevailing rate of *per diem* wage obligations, or the Contractor's willful failure to pay the correct prevailing rate of *per diem* wages. A mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of *per diem* wage is not excusable if the Contractor had knowledge of it or the obligations under this part. 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 worker by the Contractor or Subcontractor.

#### **13.8.7 MINIMUM WAGE RATES**

Any worker employed to perform work on the Project, 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.

#### **13.8.8 PER DIEM WAGES**

Pursuant to Labor Code § 1773.1, *per diem* wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay.

#### **13.8.9 POSTING OF WAGE RATES**

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.

#### **13.8.10 COMPLIANCE MONITORING UNIT**

The Contract is subject to monitoring and enforcement of prevailing wage requirements by the Compliance Monitoring Unit ("CMU") of the Division of Labor Standards Enforcement as set forth in Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing at Section 1720) and the accompanying regulations set forth at Subchapter 4.5 of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations (commencing at Section 16450) (collectively, "CMU Laws"). The Owner and the Contractor and each subcontractor performing any portion of the Work under the Contract shall comply with all CMU Laws.

### **13.9 RECORD OF WAGES PAID: INSPECTION**

#### **13.9.1 APPLICATION OF LABOR CODE**

Pursuant to § 1776 of the Labor Code, as reproduced in part below:

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

...

"(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 body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

"(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided



pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

“(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division...

“(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the 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, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement 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...

“(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 a 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 Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due...”

Notwithstanding monitoring by the Owner and the CMU, the responsibility for compliance with this Article shall rest upon the Contractor.

### **13.9.2 ELECTRONIC SUBMISSION OF PAYROLL RECORDS**

The Department of Industrial Relations (DIR) has implemented an electronic certified payroll reporting (eCPR) system to allow contractors to submit certified payroll records (CPRs), as described above at paragraph 13.9.1, to the Public Works Compliance Monitoring Unit (CMU). The awarding body, commonly referred to as the “Owner”, is required to provide notice of the project to DIR using the electronic PWC-100 form. The PWC 100 form requires the Owner to submit detailed project information including contractor information. If the project is determined to fall under CMU requirements, the Owner will be notified by the CMU. Owner will then require the Contractor to submit CPRs to the CMU. The Contractor will be required to register for an account on the CMU Payroll Records Application at <https://apps.dir.ca.gov/ecpr/DAS/AltLogin>. The CMU Payroll Records Application allows contractors to upload Certified Payroll Records and Statements of Employer Payments (PW 26) using PDF format. Contractors will be able to add their subcontractors to a project so that subcontractors can upload their CPRs.

### **13.9.3 INSPECTION OF PAYROLL RECORDS AND INVESTIGATION BY CMU**

Certified payroll records are on the DIR's on-line system for review and inspection by the Owner, the

CMU, and the Division of Labor Standards Enforcement. The Owner and the Contractor and any subcontractors performing any portion of the Work under the Contract shall cooperate with the CMU and the Division of Labor Standards Enforcement in any investigation of suspected violations of prevailing wage requirements, including permitting interviews of tradesworkers during working hours on the project site and withholding of payments upon determination of a violation of prevailing wage requirements.

## 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 § 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 of the Labor Code, 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.

### 13.10.2 APPRENTICE LABOR POOL

When the Contractor to whom the Contract is awarded by the Owner, or any Subcontractor under Contractor, 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 or the higher standard stipulated by the joint apprenticeship committee shall apply during any day or portion of a day when any journeyman 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 paragraph 13.10, upon the issuance of the approval certificate by the joint apprenticeship committee, 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. 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 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 Contractor, 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 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 § 227.

#### **13.10.7 CONTRACTOR COMPLIANCE**

The responsibility of compliance with this paragraph 13.10 and § 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 paragraph 13.10 and Labor Code § 1777.5 are subject to Labor Code § 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.

#### **13.10.10 VIOLATION OF LABOR CODE**

Pursuant to Labor Code § 1777.7, as reproduced in part below, in the event a Contractor or Subcontractor willfully fails to comply with the provisions of this paragraph 13.10 and Labor Code § 1777.5:

“(a) (1) A contractor or subcontractor that is determined by the Chief of the Division of Apprenticeship Standards to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Chief if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed by the Chief, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

“(2) In lieu of the penalty provided for in this subdivision, the Chief may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d), 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.

“(b) In the event a contractor or subcontractor is determined by the Chief to have knowingly committed a serious violation of any provision of Section 1777.5, the Chief may also 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 contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Chief becomes a final order of the Administrator of Apprenticeship.

...

“(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

...

“(g) The interpretation of Section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council. The Administrator may adopt regulations to establish guidelines for the imposition of monetary penalties and periods of debarment and may designate precedential decisions under Section 11425.60 of the Government Code.”

## **13.11 ASSIGNMENT OF ANTITRUST CLAIMS**

### **13.11.1 APPLICATION**

Pursuant to Government Code § 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 Business and Professions 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 Owner tenders final 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 shall be entitled to receive reimbursement for actual legal costs incurred and 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 Guaranteed Maximum 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 STATE AUDIT**

Pursuant to and in accordance with the provisions of Government Code § 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 final payment is made under this Contract. Contractor shall preserve and cause to be

preserved such books, records, and files for the audit period.

### **13.13 PROTECTION OF SCHOOL CHILDREN**

This Work may be executed at the time school is in session; therefore, the Contractor shall arrange with the Principal of the School and/or the Board of Education, who shall designate the areas which the Contractor shall use in the storage of materials and the construction activities. Every precaution shall be exercised to protect the children from injury by building accident.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE**

#### **14.1.1 GROUNDS FOR TERMINATION**

The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, for only the following reasons:

- A. issuance of an order of a court or other public authority having jurisdiction;
- B. an act of government, such as a declaration of national emergency, making material unavailable;
- C. if repeated suspensions, delays, or interruptions by the Owner as described in paragraph 14.3 constitute in the aggregate more than 100 percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less; or
- D. the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence of financing or funding as required by paragraph 2.2.1.

#### **14.1.2 NOTICE OF TERMINATION**

If one of the above reasons exists, the Contractor may, upon written notice of seven (7) additional days to the Owner, terminate the Contract and recover from the Owner payment for Work executed and for reasonable costs verified by the Architect with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages.

#### **14.1.3 NOTICE OF TERMINATION - OWNER FAULT**

If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, Subcontractor, Sub-Subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon written notice of seven (7) additional days to the Owner, terminate the Contract and recover from the Owner as provided in paragraph 14.1.2.

## 14.2 TERMINATION BY THE OWNER FOR CAUSE

### 14.2.1 GROUNDS FOR TERMINATION

The Owner may terminate the Contract if the Contractor:

- A. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- B. fails to make payment to Subcontractors for materials or labor;
- C. persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- D. otherwise is in substantial breach of a provision 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 and after giving the Contractor and the Contractor's surety, if any, written notice in accordance with the provisions of the Agreement, terminate the Contract and may, subject to any prior rights of the surety:

- 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 paragraph 5.4; and
- C. complete the Work by whatever reasonable method the Owner may deem expedient.

### 14.2.3 PAYMENTS WITHHELD

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

### 14.2.4 PAYMENTS UPON COMPLETION

If the unpaid balance of the Guaranteed Maximum Price 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 shall pay the difference to the Owner. The amount to be paid to the Contractor, or Owner, as the case may be, shall be certified by the Architect upon application. This payment obligation shall survive completion of the Contract.

## 14.3 TERMINATION OR SUSPENSION BY THE OWNER FOR CONVENIENCE

### 14.3.1 SUSPENSION BY OWNER

The Owner may, without cause, order the Contractor in writing to suspend, delay, interrupt, or terminate 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, interruption, or termination. 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.

#### 14.4 **TERMINATION DUE TO DISCOVERY OF UNKNOWN OR CHANGED CONDITIONS**

The Owner reserves the right to terminate this Contract should the Owner determine not to proceed because of the discovery of any condition described in paragraphs 4.5.5 or 10.5. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

#### 14.5 **MUTUAL TERMINATION FOR CONVENIENCE**

The Contractor and the Owner may mutually agree to terminate 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.

**END OF SECTION**