

# *GENERAL CONDITIONS*

Community Center Roofing

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ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 APPLICABLE CODE REQUIREMENTS. The term "Applicable Code Requirements" means all laws; statutes; the most recent applicable building standard codes, as modified by State Regulations (Title 24); ordinances; rules; regulations; and lawful orders of all public authorities having jurisdiction over the Owner, Contractor, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work.

1.1.2 CONTRACT AGREEMENT. The term "Contract Agreement" means the written agreement executed between the Owner and the Contractor which requires the Contractor to do all the work and furnish all the labor and materials necessary for the Project, which sets forth the consideration to be paid by Owner to the Contractor for such work, and which incorporates by reference these general provisions.

1.1.3 CONTRACT DOCUMENTS. The "Contract Documents" consist of all documents listed in Article 6 of the Contract Agreement.

1.1.4 CONTRACT MODIFICATION. The term "Contract Modification" means (1) an amendment to the Contract Documents, (2) a change order, (3) a field order, or (4) a letter of instruction.

1.1.5 CONTRACT SUM. The term "Contract Sum" means the entire sum to be paid by Owner to Contractor for all work to be performed on the Project as set forth in the Contract Agreement.

1.1.6 CONTRACT TIME. The term "Contract Time" means the number of days set forth in the Contract Agreement within which full completion of the Work must be achieved. The Contract Time may be adjusted only by change order.

1.1.7 DAY. The term "Day," as used in the bidding requirements and the Contract Documents, shall mean calendar day or any part thereof, unless otherwise specifically provided.

1.1.8 DRAWINGS. The term "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work,

generally including plans, elevations, sections, details, schedules, and diagrams. The Drawings are listed in the list of drawings.

1.1.9 FINAL COMPLETION. The term "Final Completion" means the Work has been fully completed in accordance with the Contract Documents as determined by Owner's Representative pursuant to Section 9.7, Final Completion and Final Payment, of the General Conditions.

1.1.10 OWNER. The term "Owner" means Chico Area Recreation and Park District.

1.1.11 OWNER'S REPRESENTATIVE. The term "Owner's Representative" means Owner's General Manager or designee identified as such in the Contract Documents.

1.1.12 PRODUCT DATA. "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate or describe materials or equipment for some portion of the Work.

1.1.13 PROJECT. The term "Project" means the total construction of the Work performed under the Contract Documents which may be the whole or a part and which may include construction by Owner or by separate contractors.

1.1.14 SAMPLES. "Samples" are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

1.1.15 SHOP DRAWINGS. "Shop Drawings" are drawings, diagrams, schedules, and other data specially prepared for the Work by Contractor or a Subcontractor to illustrate some portion of the Work.

1.1.16 SPECIFICATIONS. The term "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.17 SUBCONTRACTOR. The term "Subcontractor" means any person or legal entity who contracts with Contractor to provide labor, materials, equipment and/or services required for construction of the Project.

1.1.18 WORK. The term "Work" means the construction and services required by the Contract Documents and includes all labor, materials, equipment, tools, and services provided or to be provided by Contractor to fulfill Contractor's obligations.

## 1.2 INTERPRETATION

1.2.1 The Contract Documents are complementary and what is required by one shall be as binding as if required by all. In the case of conflict or inconsistency, the Supplementary Conditions shall control over the General Conditions and the Specifications shall control over the Drawings. Figured dimensions shall control over scaled measurements.

1.2.2 The Contract Documents may 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. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.2.3 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only as a matter of reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

## **ARTICLE 2**

### **OWNER**

#### **2.1 INFORMATION AND SERVICES PROVIDED BY OWNER**

2.1.1 If required for performance of the Work, as determined by Owner's Representative, Owner will make available a survey describing those physical characteristics, boundaries, easements, and utility locations for the Project site of which Owner has actual knowledge.

2.1.2 Contractor will be furnished, free of charge, such copies of the Contract Documents as Owner deems reasonably necessary for execution of the Work.

#### **2.2 OWNER TO PROVIDE ACCESS TO PROJECT SITE**

2.2.1 So long as Contractor is not in default in performance under the Contract documents, Owner will provide, no later than the date designated in the current contract schedule accepted by Owner's Representative, the lands and facilities upon which the Work is to be performed, including such access to other lands and facilities designated in the Contract Documents for use by Contractor.

### 2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If Contractor fails to correct defective work as required by Section 12.2 or fails to perform the Work in accordance with the Contract Documents, Owner or Owner's Representative may direct Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Contractor. Contractor shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order. Owner and Owner's Representative shall have no duty or responsibility to Contractor or any other party to exercise the right to

### 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If Contractor fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services to maintain the contract schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within four (4) days after receipt of notice from Owner to promptly commence and thereafter diligently continue to completion the correction of such failure, Owner may, without prejudice to other remedies Owner may have, correct such failure at Contractor's expense. In such case, Owner shall be entitled to deduct from payments then or thereafter due Contractor the cost of correcting such failure, including compensation for the additional services and expenses of Owner's Representative and Owner's consultants made necessary thereby. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the additional amount to Owner.

### 2.5 OWNER'S RIGHT TO REPLACE OWNER'S REPRESENTATIVE

2.5.1 Owner may at any time and from time to time, without prior notice to or approval of Contractor, replace Owner's Representative with a new Owner's Representative. Upon receipt of notice from Owner informing Contractor of such replacement and identifying the new Owner's Representative, Contractor shall recognize such person or firm as Owner's Representative for all purposes under the Contract Documents.

## **ARTICLE 3**

## CONTRACTOR

### 3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.1.1 Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner, and shall promptly report in writing to Owner's Representative any errors, inconsistencies, or omissions in the Contract Documents or inconsistencies with Applicable Code Requirements observed by Contractor.

3.1.2 Contractor shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to Contractor before commencing the Work. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to Owner's Representative.

3.1.3 If Contractor performs any construction activity which it knows or should know involves an error, inconsistency, or omission referred to in Paragraphs 3.1.1 and 3.1.2, without notifying and obtaining the written consent of Owner's Representative, Contractor shall be responsible for the resultant losses, including, without limitation, the costs of correcting defective work.

### 3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 Contractor shall supervise, coordinate, and direct the Work using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work, unless otherwise shown or specified in the Contract Documents or directed in writing by Owner's Representative.

3.2.2 Contractor shall be responsible to Owner for acts and omissions of Contractor's agents, employees, and Subcontractors, and their respective agents and employees.

3.2.3 Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by acts or omissions of Owner or Owner's Representative in the administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons or firms other than Contractor.

3.2.4 Contractor shall be responsible for inspection of all portions of the Work, including those portions already performed under the Contract Documents, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.

3.2.5 Contractor shall at all times maintain good discipline and order among its employees and Subcontractors. Contractor shall provide competent, fully qualified personnel to perform the Work.

3.2.6 Contractor shall furnish Owner's Representative at the beginning of each week with a copy of each of Contractor's daily Project reports prepared by Contractor's superintendent (or other Project manager) for the prior week.

### 3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for all labor, materials, 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 CONTRACTOR'S WARRANTY

3.4.1 Contractor warrants to Owner that all materials and equipment used in or incorporated into the Work will be of good quality, new, and free of liens, Claims, and security interests of third parties; that the Work will be of good quality and free from defects; and that the Work will conform with the requirements of the Contract Documents. If required by Owner's Representative, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### 3.5 TAXES

3.5.1 Contractor shall pay all sales, consumer, use, and similar taxes for the Work or portions thereof provided by Contractor, which are enacted when bids for the Work are received, whether or not yet effective or merely scheduled to go into effect.

### 3.6 PERMITS, FEES, AND NOTICES

3.6.1 Contractor shall secure and pay for all permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of the Work. Contractor shall deliver to Owner all original licenses, permits, and approvals obtained by Contractor in connection with the Work prior to the final payment or upon termination of the Contract Agreement, whichever is earlier.

### 3.7 APPLICABLE CODE REQUIREMENTS

3.7.1 Contractor shall perform the Work in accordance with the following Applicable Code Requirements:

- .1 All laws, statutes, the most recent applicable building standard codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over Owner, Contractor, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work.
- .2 The Federal Occupational Safety and Health Act and all other Applicable Code Requirements relating to safety.
- .3 Applicable titles in the State of California Code of Regulations.
- .4 Applicable sections in the State of California Labor Code.

3.7.2 If Contractor performs Work which it knows or should know is contrary to Applicable Code Requirements, without prior notice to Owner and Owner's Representative, Contractor shall be responsible for such Work and shall bear the resultant losses, including, without limitation, the costs of correcting defective work.

### 3.8 SUPERINTENDENT

3.8.1 Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the performance of the Work. The superintendent and any replacement superintendent shall be subject to the approval of Owner. Upon notice from Owner's Representative requesting replacement of a superintendent who is unsatisfactory to Owner, Contractor shall promptly replace such superintendent with a competent superintendent satisfactory to Owner. The superintendent shall have authority to act on behalf of the contractor and all communications given to and received from superintendent shall be binding on Contractor.

### 3.9 SCHEDULES REQUIRED OF CONTRACTOR

3.9.1 Contractor shall submit a preliminary contract schedule to Owner's Representative in the form and within the time limit required by the Specifications. Owner's Representative will review the preliminary contract schedule with Contractor within the time limit required by the Specifications.

3.9.2 Contractor shall submit a contract schedule to Owner's Representative in the form and within the time limits required by the Specifications, which must be acceptable to Owner's Representative. Contractor shall submit updated contract schedules, which must be acceptable to Owner's Representative, within five (5) days following the end of each calendar month during which Work is in progress or at such other frequency as

many be provided by the plans and Specifications. Failure to provide the required acceptable schedules may result in Owner's withholding of partial payments.

3.9.3 The preliminary contract schedule, the contract schedule, and updated contract schedules shall represent a practical plan to complete the Work within the Contract Time. Extension of any schedule beyond the Contract Time shall not be acceptable. Schedules showing the Work completed in less than the Contract Time may be acceptable if judged by Owner's Representative to be practical. However, acceptance of such a schedule by Owner's Representative shall not change the Contract Time. The Contract Time, not the contract schedule, shall control the determination of whether liquidated damages should be assessed against the Contractor because of any delay in completion of the Project.

If a schedule showing the Work completed in less than the Contract Time is accepted, Contractor shall not be entitled to extensions of the Contract Time for Excusable Delays or Compensable Delays or to adjustments of the Contract Sum for Compensable Delays until such delays extend the completion of the Work beyond the expiration of the Contract Time.

3.9.4 Contractor shall prepare and keep current, to the satisfaction of Owner's Representative, a schedule of submittals, as required by the Specifications, and that is coordinated with the contract schedule.

3.9.5 Owner's Representative's review of the form and general content of the preliminary contract schedule, contract schedule, and updated contract schedules is for the purpose of determining, in its judgment, whether the following requirements are satisfied:

- .1 Schedules must be suitable for monitoring progress of the Work.
- .2 Schedules must provide necessary data about the timing for Owner decisions and Owner-furnished items.
- .3 Schedules must be in sufficient detail to demonstrate adequate planning for the Work.
- .4 Schedules must represent a practical plan to complete the Work within the Contract Time.

Contractor shall plan, develop, supervise, control, and coordinate the performance of the Work so that its progress and the sequence and timing of Work activities conform to the current accepted contract schedule. Contractor shall continuously obtain from Subcontractors information and data about the planning for and progress of the Work and the delivery of equipment, shall coordinate and integrate such information and data into updated contract schedules, and shall monitor the progress of the Work and the delivery of equipment. Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of

Subcontractors, regardless of tier. Contractor shall cooperate with Owner's Representative in the development of the contract schedule and updated contract schedules.

Owner's Representative's acceptance of or its review comments about any schedule or scheduling data shall not relieve Contractor from its sole responsibility to plan for, perform, and complete the Work within the Contract Time. Acceptance of or review comments about any schedule shall not transfer responsibility for any schedule to Owner's Representative or Owner nor imply their agreement with (1) any assumption upon which such schedule is based or (2) any matter underlying or contained in such schedule.

Failure of Owner's Representative to discover errors or omissions in schedules that it has reviewed, or to inform Contractor that Contractor, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the contract schedule shall not relieve Contractor from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

3.9.6 Contractor shall perform the Work in accordance with the current accepted contract schedule.

### 3.10 DOCUMENTS AND SAMPLES AT PROJECT SITE

3.10.1 Contractor shall maintain the following at the Project site:

- .1 One record copy of the Contract Documents, in good order and marked to record current changes and selections made during construction.
- .2 The current accepted contract schedule.
- .3 Shop Drawings, Product Data, and Samples.
- .4 All other required submittals.
- .5 A copy of each subcontract requiring Work to be done for the Project.

These shall be available to Owner's Representative and shall be delivered to Owner's Representative for submittal to Owner upon the earlier of Final Completion or termination of the Contract Agreement.

### 3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.11.1 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which

submittals are required, how Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

3.11.2 Contractor shall review, approve, and submit to Owner's Representative Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or of separate contractors. Submittals made by Contractor which are not required by the Contract Documents may be returned without action by Owner's Representative.

3.11.3 Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by Owner's Representative and no exceptions have been taken by Owner's Representative. Such Work shall be in accordance with approved submittals and the Contract Documents.

3.11.4 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, Contractor represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related Work.

3.11.5 If Contractor discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, Contractor shall notify Owner's Representative and receive instruction before proceeding with the affected Work.

3.11.6 Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Owner's Representative's review of Shop Drawings, Product Data, Samples, or similar submittals, unless Contractor has specifically informed Owner's Representative in writing of such deviation at the time of submittal and Owner's Representative has given written approval of the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by Owner's Representative's review, acceptance, comment, or approval thereof.

3.11.7 Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by Owner's Representative on previous submittals.

### 3.12 USE OF SITE AND CLEAN UP

3.12.1 Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents. Contractor shall not unreasonably encumber the Project site with materials or equipment.

3.12.2 Contractor shall, during performance of the Work, keep the Project site and surrounding area free from the accumulation of excess dirt, waste materials, and

rubbish caused by Contractor. Contractor shall remove all excess dirt, waste material, and rubbish caused by the Contractor; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Work.

3.12.3 Personnel of Contractor and Subcontractors shall not occupy, live upon, or otherwise make use of the Project site during any time that Work is not being performed at the Project site, except as otherwise provided in the Contract Documents.

### 3.13 CUTTING AND PATCHING

3.13.1 Contractor shall do all cutting, fitting, or patching of the Work required to make all parts of the Work come together properly and to allow the Work to receive or be received by Work of separate contractors shown upon, or reasonably implied by, the Contract Documents.

3.13.2 Contractor shall not endanger the Work, the Project, or adjacent property by cutting, digging, or otherwise. Contractor shall not cut or alter the Work of any separate contractor without the prior consent of Owner's Representative.

### 3.14 ACCESS TO WORK

3.14.1 Owner, Owner's Representative, their consultants, and other persons authorized by Owner shall at all times have access to the Work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access and for inspection.

### 3.15 ROYALTIES AND PATENTS

3.15.1 Contractor shall pay all royalties and license fees required for the performance of the Work. Contractor shall defend suits or Claims resulting from Contractor's or any Subcontractor's infringement of patent rights and shall indemnify Owner and Owner's Representative from losses on account thereof.

### 3.16 CONCEALED OR UNKNOWN CONDITIONS

3.16.1 If conditions are encountered by Contractor or any Subcontractor at the Project site which are:

- .1 subsurface,
- .2 otherwise concealed and unusual, or
- .3 unknown and unusual physical conditions, which differ materially from those:
  - .1 indicated in or reasonably inferable from the Contract Documents, or

- .2 discoverable by a reasonable pre-bid Project site inspection, then Contractor shall give notice to Owner's Representative promptly before such conditions are disturbed and no later than three (3) days after the first observance of such conditions. Owner's Representative will promptly, using reasonable efforts to minimize delay to the progress of the Work, investigate and determine if such conditions meet the criteria specified above. If such criteria are met, Owner's Representative will determine what action shall be taken and to what extent, if any, adjustments should be made to the Contract Sum and the Contract Time. Owner's Representative will state the reasons for such determination in writing.

### 3.17 REPAIR OF DAMAGED WORK

3.17.1 Contractor shall promptly repair and replace any Work or materials damaged or destroyed prior to Final Completion. If such damage to or loss of the Work does not arise, in whole or in part, from the acts or omissions of Contractor, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable, the following may occur:

- .1 The Contract Time will be subject to adjustment by change order.
- .2 The Contract Sum will be subject to adjustment by change order, if and to the extent that the actual costs of such repair and replacement exceed the greater of the following:
  - .1 The proceeds of insurance received by Contractor for such loss.
  - .2 The amount of insurance proceeds which would have been obtained under the insurance policies required to be maintained by Contractor under the Contract Documents.
  - .3 The amount of insurance proceeds which would have been obtained under the insurance policies required to be maintained by Contractor under the Contract Documents, but for the insurers' inability or refusal to honor such policies.

### 3.18 DUTY TO DEFEND

3.18.1 To the fullest extent permitted by law, the Contractor shall defend Owner from and against all suits filed against Owner alleging Claims (including costs of attorneys' fees) by reason of liability imposed by law and all Claims, including but not limited to, Claims of personal injury, death, damage to property and loss of use thereof, or any Claims arising out of Contractor's performance of the Contract Agreement, or damages or other relief based on allegations of the failure of the Contractor or its Subcontractors to properly perform its obligations under the Contract Agreement, or the Contractor's

violations of any legal duties, even if the allegations of any such suit are groundless, false or fraudulent, and the Contractor may make such investigation and settlement of any such suit as it deems expedient. This duty to defend is separate and independent from the Contractor's duty to indemnify and hold harmless Owner from such Claims. Any failure to fulfill this obligation shall be a default of the Contractor's performance obligations under the Contract Agreement.

### 3.19 DUTY TO INDEMNIFY AND HOLD HARMLESS

3.19.1 The company which is selected as the Contractor shall, at its own expense, protect, defend, indemnify, save and hold harmless CARD and its elected and appointed officers, employees, servants, volunteers, and agents from any and all claims, damages, lawsuits, costs and expenses including, but not limited to, all costs from administrative proceedings, court costs and attorney fees that CARD and its elected and appointed officers, employees, servants, volunteers, and agents may incur as a result of the acts, omissions or negligence of the Contractor or its employees, servants, agents or subcontractors that may arise out of the agreement or the performance or lack of performance of those obligations on the part of the Contractor to be performed under the agreement.

The Contractor's indemnification responsibility under this section shall include the sum of damages, costs, and expenses which are in excess of the sum of damages, costs, and expenses which are paid out on behalf of or reimbursed to CARD, its officers, employees, servants, volunteers, and/or agents by the insurance coverage obtained and/or maintained by the Contractor.

## ARTICLE 4

### ADMINISTRATION OF THE CONTRACT

#### 4.1 ADMINISTRATION OF THE CONTRACT BY OWNER'S REPRESENTATIVE

4.1.1 Owner's Representative will provide administration of the Contract Documents in the manner provided therein and will be the representative of Owner as follows:

- .1 During construction.
- .2 Until final payment is due.
- .3 At Owner's request from time to time during the guarantee to repair period described in Section 12.2.

Owner's Representative will have authority to act on behalf of Owner only to the extent provided in the Contract Documents. The approval by any architect or designer providing design services for Owner of any modification to the Drawings or

Specifications and/or any time extension is not effective unless and until incorporated into a change order approved by Owner's Representative.

4.1.2 Owner's Representative will visit the Project site at intervals appropriate to the stages of construction to become familiar with the progress and quality of the completed Work and to determine if the Work is being performed in accordance with the Contract Documents. However, no actions taken during such Project site visit by Owner's Representative shall relieve Contractor of its obligations as described in the Contract Documents.

4.1.3 Owner's Representative will not have control over, will not be in charge of, and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibility, unless otherwise required by the Contract Documents.

4.1.4 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, Owner and Contractor shall communicate through Owner's Representative. Communications by Contractor with Owner's consultants shall be through Owner's Representative. Communications by Owner and Owner's Representative with Subcontractors shall be through Contractor. Communications by Contractor and Subcontractors with separate contractors shall be through Owner's Representative. Contractor shall not rely on oral or other non-written communications.

4.1.5 Based on Owner's Representative's Project site visits and evaluations of Contractor's partial payment requests, Owner's Representative will review and certify the amounts, if any, due Contractor and will issue certificates for payment in such amounts.

4.1.6 Owner's Representative will have the authority to reject the Work, or any portion thereof, which does not conform to the Contract Documents. Owner's Representative shall have the authority to stop the Work or any portion thereof. Whenever Owner's Representative considers it necessary or advisable for implementation of the intent of the Contract Documents, Owner's Representative will have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of Owner's Representative conferred by the Contract Documents, nor any decision made in good faith either to exercise or not exercise such authority, shall give rise to a duty or responsibility of Owner's Representative to Contractor, Subcontractors, directors, officers, agents, or employees of Contractor or Subcontractors, any other person or firm performing portions of the Work, or third parties.

4.1.7 Owner's Representative will prepare change orders, field orders, and letters of instruction.

4.1.8 Owner's Representative will conduct inspections in connection with Beneficial Occupancy, as described in Section 9.6, and to determine the dates of substantial completion and Final Completion; will receive and forward to Owner, for Owner's review, any records, written warranties, and related documents required by the Contract Documents and assembled by Contractor; and will issue a final certificate for payment upon Contractor's compliance with the requirements of the Contract Documents.

4.1.9 Owner's Representative shall be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by Contractor. Should Contractor discover any conflicts, omissions, or errors in the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; or question that Work required is not sufficiently detailed or explained, then, before proceeding with the Work affected, Contractor shall notify Owner's Representative in writing and request interpretation, clarification, or furnishing of additional detailed instructions. Owner's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should Contractor proceed with the Work affected before receipt of a response from Owner's Representative, any portion of the Work which is not done in accordance with Owner's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and Contractor shall be responsible for all resultant losses.

## 4.2 CLAIMS

4.2.1 The term "Claim" means a written demand or assertion by Contractor seeking, as a matter of right, adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, or determination of other disputes or matters in question between Owner and Contractor arising out of or related to the Contract Documents or the performance of the Work, including Claims alleging an error or omission by Owner's Representative. However, the term "Claim" shall not include, and the claims procedures provided under this Article 4 shall not apply to the following:

- .1 Claims respecting penalties for forfeitures prescribed by statute or regulation which a government agency is specifically authorized to administer, settle, or determine.
- .2 Claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death.
- .3 Claims respecting a latent defect, breach of warranty, or guarantee to repair.
- .4 Claims respecting stop notices.

4.2.2 A Claim must be stated with specific owner, including identification of the event giving rise to the Claim, the date of the event, and the asserted effect on the Contract Sum and the Contract Time. The Claim shall include adequate supporting data. Adequate supporting data for a Claim for an adjustment of the Contract Time shall include scheduling data demonstrating the impact of the event on completion of the Work. Adequate supporting data for a Claim for an adjustment of the Contract Sum shall include a detailed cost breakdown of items allowed under Section 7.2. If the exact amount of a Claim is not ascertainable at the time such Claim is made, such supporting data as are then available shall be submitted. Supplemental data supporting the exact amount of the Claim shall be submitted as soon as available.

4.2.3 Submission of a Claim, and all supporting data, correspondence, and documentation relating thereto, shall be made in accordance with Section 15.8.

4.2.4 Contractor shall provide written notice to Owner's Representative of a potential Claim for additional time or compensation as soon as possible and before proceeding to execute the Work or portions of the Work giving rise to any such Claim. The written notice of potential Claim shall set forth the reasons the Contractor believes additional compensation or time may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential Claim. Thereafter, Contractor shall submit a more detailed Claim in the manner required by Section 4.3. Contractor hereby expressly waives any Claims of which Contractor was aware, whether or not the exact amounts of such Claims were ascertainable, that are not submitted to Owner's Representative prior to Contractor proceeding to execute the Work or portions of the Work giving rise to such Claims.

#### 4.3 ASSERTION OF CLAIMS

4.3.1 SUBMISSION TO OWNER'S REPRESENTATIVE. All Claims shall be first submitted to Owner's Representative within the time limits provided in Paragraphs 4.2.4 and 4.3.3. Such submission to Owner's Representative shall be a condition precedent to submission of such Claim to mediation or arbitration.

4.3.2 CONTINUING CONTRACT PERFORMANCE. Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by Owner's Representative, Contractor shall not cause any delay, cessation, or termination in or of Contractor's performance of the Work, but shall diligently proceed with performance of the Work in accordance with the Contract Documents. Owner will continue to make payments in accordance with the Contract Documents.

4.3.3 TIME LIMIT ON CLAIMS. Contractor shall submit documentation in support of a Claim, together with adequate supporting data, to Owner's Representative as soon as possible but not later than twenty-one (21) days after the occurrence of the event giving rise to the Claim or the date Contractor first recognized, or reasonably should have recognized, the condition giving rise to the Claim, whichever is later. Contractor hereby expressly waives all Claims not made within the aforesaid time limits.

#### 4.4 DECISION ON CLAIMS

4.4.1 Owner's Representative shall promptly review Claims. If Owner's Representative reasonably determines that additional supporting data are necessary, Owner's Representative shall request such additional data within ten (10) days after receipt of the Claim. Such data shall be furnished no later than ten (10) days after such request. Owner's Representative shall render a decision promptly, but, in any event, within forty-five (45) days after the later of the receipt of the Claim or the receipt of such additional supporting data; provided that, if the amount of the Claim is in excess of \$50,000, the aforesaid forty-five (45) day period shall be sixty (60) days. Failure of Owner's Representative to render a decision within the aforesaid forty-five (45) or sixty (60) day period shall be deemed a decision denying the Claim and the last day of such period shall be the date of such decision. The decision of Owner's Representative shall be final and binding, subject, however, to arbitration as provided in Paragraph 4.4.2.

4.4.2 If either Contractor or Owner disputes Owner's Representative's decision on a Claim, such party (the "Disputing Party") may initiate arbitration not later than one hundred eighty (180) days after the date of service in person or by mail on the Disputing Party of the final written decision of Owner's Representative or, if no written decision has been issued, within two hundred forty (240) days after acceptance of the Work.

4.4.3 If a demand for arbitration is not filed by either party within one hundred eighty (180) days after the written decision of Owner's Representative, that decision shall be final and binding, both parties shall have waived the right to arbitrate, and there shall not be any right to arbitrate or litigate such waiver or any other dispute arising out of the Contract Documents.

#### 4.5 ARBITRATION

4.5.1 All Claims, disputes and other matters in question between the parties arising out of or relating to the Contract Documents shall be decided by arbitration in accordance with the provisions of Public Contract Code Sections 10240-10240.13 and 22201 and the rules of the Office of Administrative Hearings. The Contractor's surety may be made a party to the arbitration proceeding and the arbitration decision shall be binding upon the Contractor's surety. The arbitration decision shall be decided under and in accordance with the laws of the State of California, supported by substantial evidence and, in writing, contain the basis for the decision, findings of fact, and conclusions of law.

4.5.2 An Arbitration is commenced by filing with the Office of Administrative Hearings in Sacramento a verified Complaint in Arbitration within one hundred eighty (180) days from receipt of the decision, or, if no written decision has been issued, within two hundred forty (240) days after acceptance of the Work. The Petitioner shall serve copies of the complaint on the Respondent and any other named party.

4.5.3 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any arbitration proceeding.

4.5.4 Contractor shall include appropriate language requiring arbitration of all disputes as required by this Article 4 in all subcontracts and agreements of all kinds to which it is a party and which relate to any aspect of the Work so that all Subcontractors and material suppliers are subject to and bound by arbitration as set forth in this Article.

4.5.5 The provisions for arbitration and mediation provided in these General Conditions are in lieu of those contained in Article 1.5, Section 20104, of the Public Contract Code, which provisions are not binding upon Owner, which is a charter owner governed by the California Constitution, Article XI, Section 5.

#### 4.6 MEDIATION

4.6.1 If the parties to a dispute agree in writing, any Claim appealed from the decision of Owner's Representative may be submitted to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association ("AAA") then in effect.

### **ARTICLE 5**

#### SUBCONTRACTORS

##### 5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Unless otherwise stated in the Contract Documents, Contractor shall submit in writing, prior to entering into subcontract agreements, the names and addresses of all Subcontractors proposed for the Work that were not previously listed in Contractor's bid. Any Subcontractor may be disqualified if Owner or Owner's Representative determines that such Subcontractor fails to meet the requirements of the Contract Documents or for any other reason.

5.1.2 In accordance with the Subletting and Subcontracting Fair Practices Act, nothing herein shall be deemed to entitle Contractor, without the approval of Owner, to substitute other Subcontractors for those named in Contractor's list of Subcontractors and list of changes in Subcontractors due to alternates contained in the completed bid form; and, except with such approval, no such substitution shall be made.

5.1.3 Except as hereinafter provided, any increase in the cost of the Work resulting from the replacement or substitution of a Subcontractor, as required by Owner or Owner's Representative pursuant to Paragraph 5.1.1, shall be borne solely by Contractor and Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time on account of such replacement or substitution. However, if a replacement or substitution of any Subcontractor is made as a result of the request of Owner or Owner's Representative for any reason other than failure of such Subcontractor to meet the requirements of the Contract Documents, the Contract Sum shall be subject to adjustment of an amount equal to the increase or decrease in the original subcontract amount. In such cases and at the request of Owner, the

replacement Subcontractor shall be selected through a competitive bidding process acceptable to Owner.

## 5.2 SUBCONTRACTUAL RELATIONS

5.2.1 All subcontracts shall be in writing and shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, to assume toward Contractor all the obligations and responsibilities which Contractor assumes towards Owner by the Contract Documents, and to perform such portion of the Work in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of Owner under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. Contractor shall cause each such subcontract to expressly include the following requirements:

- .1 Subcontractor waives all rights that Subcontractor may have against Owner for damages caused by fire or other perils covered by builder's risk property insurance carried by Contractor or Owner, except for such rights Subcontractor may have to the proceeds of such insurance held by Owner under Article 11.
- .2 Owner and entities and agencies designated by Owner shall have access to and the right to audit and copy at Owner's cost all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Subcontractor shall preserve all such records and other items for a period of at least three (3) years after Final Completion.
- .3 Subcontractor recognizes the rights of Owner under Section 5.3, Contingent Assignment of Subcontracts, and agrees, upon notice from Owner that Owner has elected to accept said assignment and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by Owner, to execute a written agreement confirming that Subcontractor is bound to Owner under the terms of the subcontract.

5.2.2 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and Owner, except when, and only to the extent that, Owner elects to accept the assignment of the subcontract with such Subcontractor pursuant to Section 5.3, Contingent Assignment of Subcontracts.

5.2.3 No Subcontractors shall commence to Work at the Project unless and until their subcontract is available for inspection at the Contractor's office at the Project site. Upon request of Owner's Representative, any or all subcontracts shall be produced for inspection. Any failure to produce a requested subcontract for inspection by Owner's Representative will be cause for Owner to withhold partial payments.

### 5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 Contractor hereby assigns to Owner all its interest in subcontracts now or hereafter entered into by Contractor for performance of any part of the Work. The assignment will be effective upon acceptance by Owner in writing and only as to those subcontracts which Owner designates in writing. Owner may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Contractor's rights under the Contract Documents. Such assignment is part of the consideration to Owner for entering into the Contract Agreement with Contractor and may not be withdrawn prior to Final Completion.

## **ARTICLE 6**

### SITE INVESTIGATION AND CONDITIONS

#### 6.1 SITE INFORMATION PROVIDED BY OWNER

6.1.1 The Owner has made available to the Contractor, prior to the receipt of bids, all information of which Owner is aware as to surface and subsurface conditions in the vicinity of the Project site, including any topographical maps, reports of investigation of soil or subsurface conditions and logs of test borings, written opinions of technical advisers, and other information. All such information was obtained by Owner to assist the Project consultants and provide geotechnical data for site preparation, grading and design of foundations.

6.1.2 The information which Owner has made available is not part of the Contract Documents and was made available solely for the convenience of the Contractor. It is expressly understood and agreed that the Owner assumes no responsibility whatsoever in respect to the sufficiency or accuracy of any investigation Owner has made, the records thereof, or of the interpretations set forth therein, and there is no warranty or guaranty, express or implied, that the conditions indicated by such investigations or records are representative of those existing throughout the Project site or any part thereof, or that unanticipated developments may not occur, or that materials other than, or in proportions different from those indicated, may not be encountered.

#### 6.2 CONTRACTOR'S DUTY TO INSPECT SITE

6.2.1 The availability to the Contractor of Owner's information shall not be construed as a waiver of the Contractor's duty to examine the Project site. The Contractor represents that prior to submitting a bid, the Contractor visited the Project site and made such independent investigations and examinations deemed necessary to determine the existing conditions, nature of materials to be encountered and other facts concerning or affecting the Work to be performed under the Contract Documents.

### 6.3 RISK OF UNANTICIPATED SOIL OR SUBSURFACE CONDITIONS

6.3.1 The information which Owner has made available to Contractor will not relieve the Contractor from the risk of unanticipated soil or subsurface conditions or other physical conditions which were discoverable by a reasonable prebid inspection of the project site or from properly fulfilling the terms of the Contract Documents at the Contract Sum.

## ARTICLE 7

### CHANGES IN THE WORK

#### 7.1 CHANGES

7.1.1 Owner may, from time to time, order additions, deletions, and other changes in the Work. Changes in the Work may be effected by change order or field order without invalidating the Contract Agreement and without notice to sureties.

7.1.2 Contractor shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant change order, field order, or letter of instruction.

7.1.3 An adjustment of the Contract Time shall not be made unless the change described in the change order affects Work that is on the critical path of the Contract Schedule or otherwise affects critical Work activities.

#### 7.2 CHANGE ORDERS

7.2.1 A change order is a written instrument prepared by Owner's Representative, which provides for the following:

- .1 A change in the Work, if any.
- .2 An adjustment of the Contract Sum, if any.
- .3 An adjustment of the Contract Time, if any.

Change orders cannot be authorized by Owner's project architect or by anyone other than Owner's Representative, unless specifically authorized by the plans and specifications.

7.2.2 If requested, Contractor shall promptly provide Owner's Representative with a change order proposal, in the form attached hereto marked Exhibit A and by this reference incorporated herein, setting forth Contractor's proposed adjustments of the Contract Sum and the Contract Time, if any, for performing the change in the Work.

Adjustments of the Contract Sum shall be determined using the methods described in this Section 7.2.

7.2.3 When Work is omitted by change order, the adjustment to the Contract Sum shall be computed on the basis of one or more of the following:

- .1 Unit prices stated in the Contract Documents or agreed upon by Owner's Representative and Contractor.
- .2 A lump sum agreed upon by Owner's Representative and Contractor, based upon the estimated costs of the omitted portions of the Work, with no Contractor fee.
- .3 As determined by Owner's Representative, if Owner and Contractor cannot agree upon one or both of the methods described above, which determination shall be in accordance with the methods described in Paragraphs 7.2.4 to 7.2.12.

7.2.4 **EXTRA WORK PERFORMED BY CONTRACTOR.** The Contractor will be paid the direct costs for labor, materials and equipment used in performing extra work approved by Owner's Representative. There will be added a markup for overhead and profit of twenty-five percent (25%) to the cost of labor, fifteen percent (15%) to the cost of materials, and fifteen percent (15%) to the equipment rental. These markups shall constitute full compensation for all profit and overhead costs, regardless of whether the work was performed by Contractor or a Subcontractor, and shall be deemed to include all items of expense not specifically designated as cost or equipment rental.

7.2.5 **PAYMENT.** Payment as provided in Paragraphs 7.2.4 "Extra Work Performed by Contractor" shall constitute full compensation to the Contractor for performance of extra work and no additional compensation will be allowed therefor. The payment will be made in accordance with the provisions in Section 9.2 "Partial Payment."

### 7.3 **FIELD ORDERS**

7.3.1 A field order describing the scope of the change in the Work and the estimated adjustments of the Contract Sum and the Contract Time may be issued by Owner's Representative to order a change in the Work before the terms of the change incorporated into a change order. If appropriate, Contractor shall promptly provide Owner's Representative with a change order proposal, in the form attached hereto marked Exhibit A, setting forth its estimate of the adjustments of the Contract Sum and the Contract Time, if any, for performing the change in the Work. The field order will be superseded by a change order which shall include the actual adjustments, if any, of the Contract Sum and the Contract Time, as well as the scope of the change in the Work. Only Owner's Representative has the authority to issue field orders, except when otherwise provided in the plans or Specifications.

7.3.2 If the field order provides for an adjustment of the Contract Sum, the adjustment shall be based upon one of the methods described in Section 7.2.

7.3.3 Upon receipt of a field order, Contractor shall promptly proceed with the change in the Work. Contractor shall advise Owner's Representative of its agreement or disagreement with the method, if any, provided in the field order for determining the proposed adjustments of the Contract Sum and the Contract Time.

7.3.4 A field order signed by Contractor indicates the agreement of Contractor therewith, including Contractor's agreement to the estimated adjustments of the Contract Sum and the Contract Time and the methods used to determine those adjustments. Such agreement shall be effective immediately and will be followed with a change order at such time as the actual adjustments are determined.

7.3.5 If Contractor does not agree to the adjustment of the Contract Sum set forth in a field order, Owner's Representative shall determine the adjustment of the Contract Sum in accordance with the provisions of Paragraphs 7.2.4.

#### 7.4 LETTERS OF INSTRUCTION

7.4.1 Owner's Representative may issue letters of instruction which make interpretations or clarifications of the Contract Documents that do not change the scope of Work or involve an adjustment of the Contract Sum or the Contract Time and that are consistent with the intent of the Contract Documents. Letters of instruction shall be binding upon Contractor. Contractor shall promptly carry out the requirements of such letters of instruction.

### **ARTICLE 8**

#### CONTRACT TIME

##### 8.1 COMMENCEMENT OF THE WORK

8.1.1 The date of commencement of the Work shall be set forth in the notice to proceed. The date of commencement of the Work shall not be postponed by the failure of Contractor, or of persons or firms for whom Contractor is responsible, to act.

##### 8.2 PROGRESS AND COMPLETION

8.2.1 By signing the Contract Agreement, Contractor represents to Owner that the Contract Time is reasonable for performing the Work and that Contractor is able to perform the Work within the Contract Time.

8.2.2 Contractor shall not, except by agreement or instruction of Owner's Representative in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by Contractor. The

dates of commencement and completion of the Work shall not be changed by the effective date of such insurance.

8.2.3 Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the Contract Time. If Contractor is not diligently proceeding with the prosecution of the Work as scheduled, Contractor shall, immediately and at no additional cost to Owner, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays, as may be required to correct said delays and to ensure no further delays to the completion of the Work.

### 8.3 DELAY

8.3.1 As used herein, the following terms shall have the following meanings:

- .1 "Excusable Delay" means any delay of the completion of the Work beyond the expiration of the Contract Time caused by conditions beyond the control and without the fault or negligence of Contractor such as embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, and abnormal stormy and inclement weather conditions in which the Work cannot continue. The financial inability of Contractor or any Subcontractor and any default of any Subcontractor, without limitation, shall not be deemed conditions beyond Contractor's control. An Excusable Delay may entitle Contractor to an extension of the Contract Time, in accordance with Paragraphs 7.1.3 and 8.3.2, but shall not entitle Contractor to any adjustment of the Contract Sum.
- .2 "Compensable Delay" means any delay of the completion of the Work beyond the expiration date of the Contract Time caused by the gross negligence or willful acts of Owner or Owner's Representative, and which delay is unreasonable under the circumstances involved and not within the contemplation of the parties. A Compensable Delay may entitle Contractor to an extension of the Contract Time, in accordance with Paragraph 8.3.2 and subject to Paragraph 7.1.3, and/or an adjustment of the Contract Sum, in accordance with Paragraph 8.3.3. Except as provided herein, Contractor shall have no Claim for damage or compensation for any delay, interruption, hindrance, or disruption.
- .3 "Unexcusable Delay" means any delay of the completion of the Work beyond the expiration of the Contract Time resulting from causes other than those listed in Subparagraphs 8.3.1.1 and 8.3.1.2. An Unexcusable Delay shall not entitle Contractor to an extension of the Contract Time or an adjustment of the Contract Sum.

### 8.3.2 CLAIMS FOR ADJUSTMENT OF THE CONTRACT TIME FOR DELAYS.

Contractor may make a Claim for an extension of the Contract Time, for an Excusable Delay or a Compensable Delay, subject to the following:

- .1 If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last.
- .2 If an Unexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Unexcusable Delay.
- .3 If an Unexcusable Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, by which the number of days determined pursuant to Subparagraph 8.3.2.1 exceeds the number of days of the Unexcusable Delay.

8.3.3 CLAIMS FOR ADJUSTMENT OF THE CONTRACT SUM FOR DELAYS. For a Compensable Delay, Contractor shall only be entitled to an adjustment of the Contract Sum in an amount equal to the sum of the following:

- .1 Actual and unavoidable additional costs of labor, material, and equipment provided by Contractor at the Project site as a result of the Compensable Delay,
- .2 plus actual and unavoidable additional costs incurred by Contractor for labor, material, and equipment provided by Subcontractors as a result of the Compensable Delay,
- .3 plus actual and unavoidable additional wages or salaries and fringe benefits and payroll taxes of supervisory and administrative personnel provided by Contractor and Subcontractors at the Project site as a result of the Compensable Delay,
- .4 plus the amount of the Contractor fee determined by applying the provisions of Paragraph 7.2.4 to the sum of items .1, .2, and .3 above.

To be entitled to an adjustment of the Contract Sum for Compensable Delay, Contractor shall comply with the provisions of Sections 4.2 through 4.5. Except as provided herein, Contractor shall have no Claim for damage or compensation for any delay, interruption, hindrance, or disruption.

8.3.4 The parties agree that Owner's exercise of its rights to order changes in the Work, regardless of the extent and number of changes, or to suspend the Work, is within the

contemplation of the parties and shall not be the basis for any Claim for Compensable Delay. The rights of Contractor to adjustments of the Contract Time and the Contract Sum, based on changes ordered in the Work or suspension of the Work, shall be solely governed by the provisions of Articles 7 and 13, respectively.

8.3.5 The determination of whether a delay is an Excusable Delay, Compensable Delay, or Unexcusable Delay shall not be affected by the fact that any earlier delay occurred, regardless of fault or causation.

## **ARTICLE 9**

### PAYMENTS AND COMPLETION

#### 9.1 COST BREAKDOWN

9.1.1 Within thirty (30) days after signing the Contract Agreement, but in any event prior to the first partial payment request, Contractor shall submit to Owner's Representative a cost breakdown of the Contract Sum in the form contained in the partial payment request in the exhibits. The cost breakdown shall itemize as separate line items the cost of each Work activity and all other costs, including warranties, record documents, insurance, bonds, overhead expenses, and the total allowance for profit, the total of which shall equal the Contract Sum. The cost breakdown, when approved by Owner, shall become the basis for determining the cost of Work performed for Contractor's partial payment requests.

#### 9.2 PARTIAL PAYMENT

9.2.1 Owner agrees to pay monthly to Contractor, subject to Paragraph 9.4.2, an amount equal to ninety percent (90%) of the sum of the following:

- .1 Cost of the Work in permanent place as of the end of the preceding month,
- .2 plus cost of materials not yet incorporated in the Work, subject to Paragraph 9.3.5,
- .3 less amounts previously paid.

9.2.2 The balance of the Contract Sum shall be paid after Final Completion in accordance with Section 9.7.

#### 9.3 PARTIAL PAYMENT REQUEST

9.3.1 On or before the tenth (10th) day of the month or such other date as is established by the Contract Documents, Contractor shall submit to Owner's Representative an itemized partial payment request for the cost of the Work in permanent place, as approved by Owner's Representative, which has been completed in

accordance with the Contract Documents as of the last day of the preceding month, less amounts previously paid. The partial payment request shall be prepared as follows:

- .1 Use the form acceptable to the Owner.
- .2 Itemize in accordance with the cost breakdown.
- .3 Include such data substantiating Contractor's right to payment as Owner's Representative may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Section 9.5, a certification of the market value of all such securities as of a date not earlier than five (5) days prior to the date of the partial payment request.
- .4 Itemize retention.

9.3.2 Partial payment requests shall not include requests for payment on account of (1) changes which have not been authorized by change orders or (2) amounts Contractor does not intend to pay a Subcontractor because of a dispute or other reason.

9.3.3 If required by Owner, a partial payment request shall be accompanied by (1) a summary showing payments that will be made to Subcontractors covered by such request and (2) unconditional waivers and releases of Claims and stop notices from each Subcontractor listed in the preceding partial payment request covering sums disbursed pursuant to that preceding partial payment request.

9.3.4 Contractor warrants that, upon submittal of a partial payment request, all Work for which partial payment authorizations have been previously issued and payment has been received from Owner shall be free and clear of all Claims, stop notices, security interests, and encumbrances in favor of Contractor, Subcontractors, or other persons or firms entitled to make Claims by reason of having provided labor, materials, or equipment relating to the Work.

9.3.5 At the sole discretion of Owner, Owner's Representative may approve for inclusion in the partial payment request the cost of materials not yet incorporated in the Work but already delivered and suitably stored either at the Project site or at some other appropriate location acceptable to Owner's Representative. In such case, Contractor shall furnish evidence satisfactory to Owner's Representative (1) of the cost of such materials and (2) that such materials are under the exclusive control of Contractor. Only materials to be incorporated in the Work will be considered for payment. Any payment shall not be construed as acceptance of such materials nor relieve Contractor from sole responsibility for the care and protection of such materials; nor relieve Contractor from risk of loss to such materials from any cause whatsoever; nor relieve Contractor from its obligation to complete the Work in accordance with the Contract

Documents; nor act as a waiver of the right of Owner to require fulfillment of all terms of the Contract Agreement.

#### 9.4 PARTIAL PAYMENT AUTHORIZATION

9.4.1 If Contractor has submitted a partial payment request in accordance with Section 9.3, Owner's Representative shall, not later than five (5) working days after the date of receipt of the partial payment request, issue to Owner, with a copy to Contractor, a partial payment authorization for such amount as Owner's Representative determines to be properly due.

9.4.2 Approval of all or any part of a partial payment request may be withheld, a partial payment authorization may be withheld, and all or part of a previous partial payment authorization may be nullified and that amount withheld from a current partial payment authorization on account of any of the following:

- .1 Defective work not remedied.
- .2 Third-party claims against Contractor or Owner arising from the acts or omissions of Contractor or Subcontractors.
- .3 Stop notices.
- .4 Failure of Contractor to make timely payments due Subcontractors for material or labor.
- .5 A reasonable doubt that the Work can be completed for the balance of the Contract Sum then unpaid.
- .6 Damage to Owner or a separate contractor for which Contractor is responsible.
- .7 Reasonable evidence that the Work will not be completed within the Contract Time; and that the unpaid balance of the Contract Sum would not be adequate to cover Owner's damages for the anticipated delay.
- .8 Failure of Contractor to maintain and update record documents.
- .9 Failure of Contractor to submit schedules or their updates as required by the Contract Documents.
- .10 Performance of Work by Contractor without properly processed Shop Drawings.
- .11 Liquidated damages assessed in accordance with Article 4 of the Contract Agreement.

.12 Any other failure of Contractor to perform its obligations under the Contract Documents.

9.4.3 Subject to the withholding provisions of Paragraph 9.4.2, Owner shall pay Contractor the amount set forth in the partial payment authorization no later than fifteen (15) days after the issuance of the partial payment authorization.

9.4.4 Neither a partial payment authorization nor any partial payment made by Owner shall constitute acceptance of defective work.

## 9.6 BENEFICIAL OCCUPANCY

9.6.1 Owner reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the Work at any time prior to Final Completion upon ten (10) days' notice to Contractor. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following conditions:

- .1 Owner's Representative will make an inspection of the portion of the Project to be beneficially occupied and prepare a list of items to be completed or corrected prior to Final Completion. Prior to Beneficial Occupancy, Owner will issue a certificate of Beneficial Occupancy on Owner's form.
- .2 Beneficial Occupancy by Owner shall not be construed by Contractor as an acceptance by Owner of that portion of the Work which is to be occupied.
- .3 Beneficial Occupancy by Owner shall not constitute a waiver of existing Claims of Owner or Contractor against each other.
- .4 The guarantee to repair periods, as defined in Section 12.2, will commence upon the first dates of actual occupancy or use of portions of the Work actually occupied and equipment or systems fully utilized.
- .5 Owner shall pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.
- .6 Owner shall pay all utility costs which arise out of the Beneficial Occupancy.
- .7 Contractor shall not be responsible for providing security in areas beneficially occupied.
- .8 Contractor shall continue to maintain all insurance required by the Contract Documents in full force and effect.

## 9.7 FINAL COMPLETION AND FINAL PAYMENT

9.7.1 Upon receipt of notice from Contractor that the Work is ready for final inspection, Owner's Representative will make such inspection. Final Completion shall be when Owner's Representative determines that the Work is fully completed and in accordance with the Contract Documents. Owner will file a notice of completion within ten (10) days after Final Completion. After receipt of the final payment request, if Owner's Representative determines that Final Completion has occurred, Owner's Representative will issue the final authorization for payment.

9.7.2 Neither final payment nor any retention shall become due until Contractor submits the following items to Owner's Representative:

- .1 The final payment request and all submittals required by Section 9.3 and the Contract Documents.
- .2 If required by Owner, conditional releases from Subcontractors entitled to receive any portion of the final payment and unconditional releases from Contractor, such releases to be in a form satisfactory to Owner.
- .3 All guarantees and warranties procured by Contractor from Subcontractors, all operating manuals for equipment installed in the Project, record documents, and all other submittals required by the Contract Documents.
- .4 Contractor has furnished to Owner written consent from the performance bond and payment bond sureties to such release of retention.

If releases are required, Contractor shall pay or cause to be paid to Subcontractors the amount stated in the conditional releases within five (5) days after receipt of the final payment, and shall promptly thereafter furnish evidence of such payment to Owner. If Owner does not require releases, the final payment shall be made, subject to the satisfaction of all other conditions to final payment, thirty-five (35) days after the filing of the notice of completion.

9.7.3 Acceptance of final payment by Contractor shall constitute a waiver of all Claims, except those previously made in writing and identified by Contractor as unsettled at the time of the final payment request.

## **ARTICLE 10**

### **PROTECTION OF PERSONS AND PROPERTY**

#### 10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract Documents.

## 10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Contractor shall take adequate precautions for safety of persons and property and shall provide adequate protection to prevent damage, injury, or loss to the following:

- .1 Employees involved in the Work and other persons who may be affected thereby.
- .2 The Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody, or control of Contractor or Subcontractors.
- .3 Other property at the Project site and adjoining property.

10.2.2 Contractor shall erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying Owner and users of adjacent sites and utilities.

10.2.3 When use or storage of explosives, other hazardous materials, equipment, or unusual methods is necessary for execution of the Work, Contractor shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.4 Contractor shall designate a responsible member of Contractor's organization at the Project site whose duty shall be the prevention of accidents. That person shall be the Contractor's superintendent, unless otherwise designated by Contractor in writing to Owner and Owner's Representative.

10.2.5 Contractor shall not load or permit any part of the Work or the Project site to be loaded so as to endanger the safety of persons or property.

## 10.3 EMERGENCIES

10.3.1 In an emergency affecting the safety of persons or property, Contractor shall act to prevent or minimize damage, injury, or loss. Contractor shall promptly notify Owner's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and Contractor's action.

## ARTICLE 11

### INSURANCE AND BONDS

#### 11.1 LIABILITY INSURANCE

11.1.1 Contractor shall, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and Owner, Owner's boards and commissions and members thereof, and Owner's officers, employees and agents from Claims, such as for bodily injury, death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

11.1.2 The following liability policies and coverages shall be furnished by Contractor:

- .1 COMPREHENSIVE OR COMMERCIAL FORM GENERAL LIABILITY INSURANCE in the amount of at least **Two Million Dollars (\$2,000,000) single limit for each occurrence, \$4 million for aggregate with a maximum policy deductible of \$500**, covering all Work done by or on behalf of Contractor and providing insurance for bodily injury, personal injury, property damage, and contractual liability. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to Work required of Contractor by these Contract Documents. However, if the insurance under this Subparagraph 11.1.2.1 is written on a claims-made form, coverage shall survive for a period of not less than three (3) years following termination of the Contract Agreement. Coverage shall provide for a retroactive date of placement coinciding with the effective date of the Contract Agreement.
- .2 BUSINESS AUTOMOBILE LIABILITY INSURANCE on an "Occurrence" form in the amount of at least One Million Dollars (\$1,000,000), and covering owned, hired, leased, and non-owned automobiles used by or on behalf of Contractor and providing insurance for bodily injury and property damage.

11.1.3 Contractor's liability insurance as required by Paragraph 11.1.2 shall, by endorsement to the policies, include the following:

- .1 An additional insured provision stating that Owner, Owner's boards and commissions and members thereof, and Owner's officers, employees and agents are covered as insureds with respect to liabilities arising out of work or operations performed by or on behalf of the Contractor, including materials, parts, or equipment furnished in connection with such work or operations, and with respect to liability arising out of automobiles owned,

leased, hired, or borrowed by or on behalf of the Contractor. However, coverage shall not extend to indemnity for the active negligence of the additional insureds in any case where an agreement to indemnify the additional insureds would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

- .2 A severability of interest clause stating that, "The term 'insured' is hereby used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurers' liability."
- .3 A cross-liability clause stating that, "In the event of claims being made under any of the coverages of the policies referred to herein by one or more insureds hereunder for which another insured hereunder may be liable, then the policies shall cover such insureds against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder. Nothing contained herein, however, shall operate to increase the insurers' limits of liability as set forth in the insuring agreements."
- .4 A provision stating that Owner, Owner's boards, commissions and members thereof, and Owner's officers, employees and agents shall not by reason of their inclusion as insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- .5 A provision stating that the coverage provided by such insurance shall be primary and not in excess of or contributing with respect to any insurance, indemnity coverage afforded by a risk pool, or self-insurance maintained by Owner, Owner's board, commissions and members thereof, or Owner's officers, employees and agents. This provision, however, shall only apply as per the stipulations of Subparagraph 11.1.3.1.
- .6 A provision stating that the coverage provided by such insurance shall not be subject to cancellation or modification without thirty (30) days' prior written notice to Owner.

11.1.4 Certificates of insurance evidencing the insurance policies required by this Section 11.1, as well as copies of all endorsements to such policies required by Paragraph 11.1.3, shall be submitted by Contractor to Owner prior to commencing Work on the Project. However, acceptance of such certificates of insurance and endorsement by Owner shall not in any way limit Contractor's liabilities under the Contract Documents. At the request of Owner, Contractor shall also submit to Owner copies of the insurance policies obtained by Contractor.

11.1.5 In the event Contractor does not comply with these insurance requirements, Owner may, at its option, provide insurance coverage to protect Owner, Owner's boards, commissions and members thereof, and Owner's officers, employees and agents; and

the cost of such insurance shall be paid by Contractor and may be deducted from the Contract Sum.

11.1.6 Contractor shall, by mutual agreement with Owner and at Owner's cost, furnish any additional liability insurance as may be required by Owner. Contractor shall provide certificates of insurance evidencing such additional insurance.

#### 11.2 WORKER'S COMPENSATION INSURANCE

11.2.1 Contractor shall, at its expense, purchase and maintain in full force and effect worker's compensation insurance as required by Federal and State of California law. A certificate of insurance or other documentation acceptable to Owner evidencing such insurance coverage shall be provided by Contractor to Owner prior to commencing Work on the Project. Contractor shall also require all of its Subcontractors to maintain this insurance coverage.

#### 11.3 MISCELLANEOUS INSURANCE PROVISIONS

11.3.1 Any insured loss is to be adjusted with Owner and made payable to Owner on behalf of the insureds, as their interests may appear. Owner shall have the power to adjust and settle any loss with the insurers unless, within five (5) working days after the loss, one of the parties in interest shall object in writing to Owner's exercise of this power; and if such objection be made, the matter shall be subject to resolution as provided in Article 4.

#### 11.4 PERFORMANCE BOND AND PAYMENT BOND

11.4.1 Contemporaneous with the execution of the Contract Agreement, and before commencement of any Work required by the Contract Documents, Contractor shall provide Owner with separate payment and performance bonds, each in a sum at least equal to the Contract Sum. These bonds will be provided on forms acceptable to Owner by surety companies licensed and admitted to do business in the State of California and are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The surety shall have not less than an "A" minimum rating in the current "Best's Key Rating Guide, Property-Liability."

11.4.2 If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business in California terminated, Contractor shall, within five (5) days thereafter, substitute another surety and bond, both of which shall be acceptable to Owner.

### **ARTICLE 12**

#### UNCOVERING AND CORRECTION OF WORK

##### 12.1 UNCOVERING OF WORK

12.1.1 All Work shall be inspected by Owner's Representative before being covered. If any Work is covered before it has been inspected, such Work must, upon written request by Owner's Representative, be uncovered for Owner's Representative's observation and be replaced at Contractor's expense without adjustment of the Contract Time or the Contract Sum.

## 12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.2.1 The term "Guarantee to Repair Period" means a period of one (1) year, unless a longer period of time is specified in the Contract Agreement or Supplementary Conditions, commencing as follows:

- .1 For space beneficially occupied or for separate systems fully utilized prior to Final Completion pursuant to Section 9.6, from the first date of such Beneficial Occupancy or actual use, as established in a certificate of Beneficial Occupancy.
- .2 For all Work other than .1 above, from the date of Final Completion.

12.2.2 Contractor shall (1) correct defective work that becomes apparent during the progress of the Work or during the Guarantee to Repair Period and (2) replace, repair, or restore to Owner's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of defective work or the correction of defective work. Contractor shall promptly commence such correction, replacement, repair, or restoration upon notice from Owner's Representative or Owner, but in no case later than ten (10) days after receipt of such notice; and Contractor shall diligently and continuously prosecute such correction to completion. Contractor shall bear all costs of such correction, replacement, repair, or restoration, and all losses resulting from such defective work, including additional testing, inspection, and compensation for Owner's Representative's services and expenses. Contractor shall perform corrective work at such times that are acceptable to Owner and in such a manner as to avoid, to the extent practicable, disruption to Owner's activities.

12.2.3 If immediate correction of defective work is required for life safety or the protection of property and is performed by Owner or separate contractors, Contractor shall pay to Owner all reasonable costs of correcting such defective work. Contractor shall replace, repair, or restore to Owner's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of such defective work or the correction of such defective work.

12.2.4 Contractor shall remove from the Project site portions of the Work and materials which are not in accordance with the Contract Documents and which are neither corrected by Contractor nor accepted by Owner.

12.2.5 If Contractor fails to commence correction of defective work within ten (10) days after notice from Owner or Owner's Representative or fails to diligently prosecute such correction to completion, Owner may correct the defective work in accordance with Section 2.4; and, in addition, Owner may remove the defective work and store salvageable materials and equipment at Contractor's expense.

12.2.6 If Contractor fails to pay the costs of such removal and storage as required by Paragraphs 12.2.4 and 12.2.5 within ten (10) days after written demand, Owner may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. Contractor shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Contractor is liable to Owner, including reasonable attorneys' fees and expenses and compensation for Owner's Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which Contractor is liable to Owner, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due Contractor or the remaining payments are insufficient to cover such deficiency, Contractor shall promptly pay the difference to Owner.

12.2.7 Contractor's obligations under this Article 12 are in addition to and not in limitation of its warranty under Section 3.4 or any other obligation of Contractor under the Contract Documents. Enforcement of Contractor's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies Owner may have under the Contract Documents or at law or in equity for defective work. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations of Contractor under the Contract Documents. Establishment of the Guarantee to Repair Period relates only to the specific obligation of Contractor to correct the Work and in no way limits either Contractor's liability for defective work or the time within which proceedings may be commenced to enforce Contractor's obligations under the Contract Documents.

### 12.3 ACCEPTANCE OF DEFECTIVE WORK

12.3.1 Notwithstanding the provisions of Section 12.2, Owner shall have the option, at its sole discretion and by notice to Contractor, to accept defective work instead of requiring its removal or correction, in which case the Contract Sum shall be reduced by an amount equal to the difference between the value to Owner such Work would have had were it complete, correct, and in conformity with the Contract Documents and the value to Owner of such defective work. Such option shall be exercised solely by notice to Contractor and shall not be implied from any act or omission by Owner or Owner's Representative. If there are no remaining payments of the Contract Sum to be made to Contractor or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Contract Sum, Contractor shall promptly pay to Owner the amount of any such deficiency.

## **ARTICLE 13**

## TERMINATION OR SUSPENSION OF THE CONTRACT

### 13.1 TERMINATION BY CONTRACTOR

13.1.1 Subject to Paragraph 13.1.2, Contractor shall have the right to terminate the Contract Agreement only upon the occurrence of one of the following:

- .1 The Work is stopped for ninety (90) consecutive days, through no act or fault of Contractor, any Subcontractor, or any employee or agent of Contractor or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.
- .2 Owner fails to perform any material obligation under the Contract Documents and fails to cure such default within thirty (30) days after receipt of notice from Contractor stating the nature of such default.
- .3 Repeated suspensions by Owner, other than such suspensions as are agreed to by Contractor under Section 13.3, which constitute in the aggregate more than twenty percent (20%) of the Contract Time or ninety (90) days, whichever is larger.

13.1.2 Upon the occurrence of one of the events listed in Paragraph 13.1.1, Contractor may, upon ten (10) days' additional notice to Owner and Owner's Representative, and provided that the condition giving rise to Contractor's right to terminate is continuing, terminate the Contract Agreement.

13.1.3 Upon termination by Contractor, Owner shall pay to Contractor the sum determined by Paragraph 13.4.4. Such payment shall be the sole and exclusive remedy to which Contractor is entitled in the event of termination of the Contract Agreement by Contractor pursuant to Section 13.1; and Contractor will be entitled to no other compensation or damages and expressly waives the same.

### 13.2 TERMINATION BY OWNER FOR CAUSE

13.2.1 Owner shall have the right to terminate the Contract Agreement for cause at any time after the occurrence of any of the following events:

- .1 Contractor becomes insolvent or files for relief under the bankruptcy laws of the United States.
- .2 Contractor makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
- .3 A receiver is appointed to take charge of Contractor's property.

- .4 The commencement or completion of any Work activity is fourteen (14) days or more behind the date set forth in the contract schedule for such Work activity, and which results in an Unexcusable Delay.
- .5 Contractor abandons the Work.

13.2.2 Upon the occurrence of any of the following events, Owner shall have the right to terminate the Contract Agreement for cause if Contractor fails to promptly commence to cure such default and diligently prosecute such cure within five (5) days after notice from Owner, or within such longer period of time as is reasonably necessary to complete such cure:

- .1 Contractor persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
- .2 Contractor fails to make prompt payment of amounts properly due Subcontractors after receiving payment from Owner.
- .3 Contractor disregards Applicable Code Requirements.
- .4 Contractor persistently or materially fails to execute the Work in accordance with the Contract Documents.
- .5 Contractor is in default of any other material obligation under the Contract Documents.
- .6 Any legal proceeding is commenced against Contractor which, in the opinion of Owner's Representative, may interfere with the performance of the Work.
- .7 In the event Contractor is involved in a labor dispute which threatens the progress or cost of Work, or which disrupts Owner's operations, Owner may suspend or discontinue the Work of Contractor or any Subcontractor, or terminate the Contract Agreement for cause.

13.2.3 Upon any of the occurrences referred to in Paragraphs 13.2.1 and 13.2.2, Owner may, at its election and by notice to Contractor, terminate the Contract Agreement and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Contractor; accept the assignment of any or all of the subcontracts; and then complete the Work by any method Owner may deem expedient. If requested by Owner, Contractor shall remove any part or all of Contractor's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within seven (7) days of such request;

and if Contractor fails to do so, Owner may remove or store, and after ninety (90) days sell, any of the same at Contractor's expense.

13.2.4 If the Contract Agreement is terminated by Owner as provided in this Section 13.2, Contractor shall not be entitled to receive any further payment until the expiration of thirty-five (35) days after Final Completion and acceptance of all Work by Owner.

13.2.5 If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, plus all losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to Contractor. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, Contractor shall pay such excess to Owner.

13.2.6 No termination shall impair Owner's rights under the performance bond and payment bond required under Section 11.4. No termination or action taken by Owner after termination shall prejudice any other rights or remedies of Owner provided by law or by the Contract Documents upon such termination; and Owner may proceed against Contractor and/or against the surety companies who provided the performance bond and payment bond required under Section 11.4 to recover all losses suffered by Owner.

### 13.3 SUSPENSION BY OWNER FOR CONVENIENCE

13.3.1 Owner may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to ninety (90) days, as Owner may determine, with such period of suspension to be computed from the date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Section 13.3. The Work may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, Contractor shall, at Owner's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within ninety (90) days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by Contractor and Owner, Owner shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a change order.

13.3.2 If a Suspension Order is canceled or expires, Contractor shall continue with the Work. A change order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. Any Claim by Contractor for an adjustment of the Contract Sum or the Contract Time shall be made within twenty-one (21) days after the end of the Work suspension.

13.3.3 The provisions of this Section 13.3 shall not apply if a Suspension Order is not issued by Owner. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

### 13.4 TERMINATION BY OWNER FOR CONVENIENCE

13.4.1 Owner may, at its option, terminate this Contract Agreement, in whole or from time to time in part, at any time by giving notice to Contractor. Upon such termination, Contractor agrees to waive any Claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of Contractor, Owner shall pay Contractor in accordance with Paragraph 13.4.4.

13.4.2 Upon receipt of a notice of termination under this Section 13.4, Contractor shall, unless the notice directs otherwise, do the following:

- .1 Immediately discontinue the Work to the extent specified in the notice.
- .2 Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued.
- .3 Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
- .4 Thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.
- .5 Leave the Project site in a safe condition.

13.4.3 Upon termination of the Contract Agreement, the obligations of the Contract Documents shall continue as to portions of the Work already performed and, subject to Contractor's obligations under Paragraph 13.4.2, as to bona fide obligations assumed by Contractor prior to the date of termination.

13.4.4 Upon such termination, Owner shall pay to Contractor the sum of the following:

- .1 The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor,
- .2 plus an amount equal to the lesser of Fifty Thousand Dollars (\$50,000) or five percent (5%) of the difference between the Contract Sum and the amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination,
- .3 plus previously unpaid costs of any items delivered to the Project site which were fabricated for subsequent incorporation in the Work,
- .4 plus any proven losses with respect to materials and equipment directly resulting from such termination,

.5 plus reasonable demobilization costs.

The above payment shall be the sole and exclusive remedy to which Contractor is entitled in the event of termination of the Contract Agreement by Owner pursuant to Section 13.4; and Contractor will be entitled to no other compensation or damages and expressly waives same.

#### **ARTICLE 14**

NOT USED

#### **ARTICLE 15**

##### MISCELLANEOUS PROVISIONS

##### 15.1 GOVERNING LAW

15.1.1 The Contract Agreement and all of the Contract Documents incorporated into the Contract Agreement shall be interpreted under and governed by the laws of the State of California.

##### 15.2 SUCCESSORS AND ASSIGNS

15.2.1 Owner and Contractor respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted 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 Agreement shall assign the Contract Agreement, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract Documents.

##### 15.3 RIGHTS AND REMEDIES

15.3.1 All Owner's rights and remedies under the Contract Documents shall be cumulative and in addition to and not in limitation of all other rights and remedies of Owner under the Contract Documents or otherwise available at law or in equity.

15.3.2 No action or failure to act by Owner or Owner's Representative shall constitute a waiver of a right 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. No waiver by Owner or Owner's Representative of any breach or default shall constitute a waiver of any other breach or default; nor shall any such waiver constitute a continuing waiver.

15.3.3 No provision contained in the Contract Documents shall create or give to third parties any Claim or right of action against Owner, Owner's Representative, or Contractor.

#### 15.4 SURVIVAL

15.4.1 The provisions of the Contract Documents which by their nature survive termination of the Contract Agreement or Final Completion, including all warranties, indemnities, payment obligations, and Owner's right to audit Contractor's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

#### 15.5 COMPLETE AGREEMENT

15.5.1 The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract Documents may be modified only by a written instrument signed by both parties or as provided in Article 7.

#### 15.6 SEVERABILITY OF PROVISIONS

15.6.1 If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

#### 15.7 OWNER'S RIGHT TO AUDIT

15.7.1 Owner and entities and agencies designated by Owner shall have access to and the right to audit and copy at Owner's cost all of Contractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Contractor shall preserve all such records and other items for a period of at least three (3) years after Final Completion.

#### 15.8 NOTICES

15.8.1 Except as otherwise provided, all notices, requests, demands, and other communications to be given under the Contract Documents shall be in writing and shall be transmitted by one of the following methods:

- .1 Personally delivered.
- .2 Sent by telecopy where receipt is confirmed.
- .3 Sent by courier where receipt is confirmed.

- .4 Sent by registered or certified mail, postage prepaid, return receipt requested.

Such notices and other communications shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and, in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. Such notices and communications shall be given at the respective street addresses set forth in such Contract Documents. Such street addresses may be changed by notice given in accordance with this Section 15.8.

#### 15.9 TIME OF THE ESSENCE

15.9.1 Time limits stated in the Contract Documents are of the essence of the Contract Agreement.

#### 15.10 NON-DISCRIMINATION CLAUSE

15.10.1 The company which is selected as the Contractor, as required by law, shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, sexual preference, disability, height, weight, or marital status.

#### 15.11 APPLICABLE LAW AND VENUE:

15.11.1 The agreement resulting from this RFB shall be construed according to the laws of the State of California. CARD and vendors agree that the venue for any legal action under this agreement shall be the County of Butte, State of California.