FRESNO COUNTY BOARD OF EDUCATION
1111 Van Ness Avenue
Fresno, California 93721

BID PACKET
(Formal Bid Pursuant to California Uniform Public Construction Cost Accounting Act,
Public Contract Code section 22000 et seq.)

KKEC SERVER ROOM RELOCATION PROJECT NO. C2020-14

Architect:
SIM-PBK
7790 N. Palm
Fresno, California 93711
Phone No.: (559) 448-8400
FAX No.: (559) 448-8467
BID DOCUMENTS LIST

BID DOCUMENT A

The following documents and any addenda, whether attached or not, are referred to separately as a “Bid Document” and collectively as the “Bid Documents” and together form the “Bid Packet” and this “Bid”. The Bid Documents and any addenda thereto, the plans and specifications for the Project/Design Documents, the successful bidder’s bid in response to this Bid, all documents required to be submitted by the successful bidder pursuant to this Bid or the Construction Services Agreement, any amendments to the Construction Services Agreement shall constitute the “Contract”. Terms with initial capital letter shall have the respective meanings set forth in this Bid.

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NOTICE INVITING BIDS
BID DOCUMENT B

[Not attached]
C1. DESCRIPTION OF PROJECT AND SCOPE OF WORK.

The Fresno County Board of Education ("Owner") is a public entity located in Fresno County, California. Owner provides educational and related programs for students up to age 22. Owner intends to undertake the following "Project":

KKEC Server Room Relocation Project No. C2020-14
Kermit Koontz Education Complex
1320 North Mariposa Street
Fresno, CA 93703

The Project will involve relocating low voltage pathways and utilities from existing server room to new modular server room building (to be provided by Owner), site and utility work necessary to install new modular server room building, selective demolition of restroom building and walkway canopy, and partial roofing system. Re-roof and paint existing building.

In performing the Work on the Project, the selected contractor shall comply with all laws applicable to public works for a public school district. The Project will be paid for by Owner with general funds.

The successful bidder (also referred to as "Contractor") shall perform the Work, as this term is defined in the Contract, for the Project in accordance with the Contract and during the Project Period, and perform other obligations required of Contractor under the Contract. The scope of Work and particular requirements for the Project are set forth in greater detail in the Contract.

C2. PROJECT TIMELINE.

The Work on the Project shall be completed in one hundred (100) calendar days from the first day of work as stated in the Owner’s Notice to Proceed. Work is anticipated to commence on December 9, 2019 and be completed by no later than March 18, 2020. The final Project Start Date and Project Completion Date shall be as stated in the Owner's Notice to Proceed. Owner reserve the right to modify the construction duration before the award of the Contract, notice of which will be provided by an addendum issued by Owner.
INSTRUCTIONS TO BIDDERS
BID DOCUMENT D

“Contact Person”:
Jeffrey D. Becker, Senior Director, Facilities & Operations
Fresno County Superintendent of Schools
1111 Van Ness, Fresno, CA 93721
Phone: (559) 497-3705  FAX: (559) 265-3035  Email: jbecker@fcoe.org

Each bid submitted to Owner in response to this Bid must be in accordance and comply with the following instructions and the requirements set forth in other Bid Documents.

D1. EXAMINATION OF BID AND CONTRACT DOCUMENTS; SECURING PLANS AND SPECIFICATIONS.

Before submitting a bid, each bidder shall review carefully, and shall be deemed to have reviewed and understand, these Instructions to Bidders, other Bid Documents, and the Contract.

Interested bidders may obtain plans and specifications by contacting Jason Domoto, Project Manager, SIM-PBK, 7790 N. Palm, Fresno, CA 93711 by telephone at (559) 448-8400 or electronic mail at jdomoto@sim-pbk.com.

D2. BIDDER QUALIFICATIONS.

To be considered by Owner, the successful bidder must have, at a minimum, the following qualifications:

D2.1 Be qualified and skilled and hold a California contractor’s license with the classification(s) as stated on the Notice, which license must be active at the time of the award of the Contract and at all times during performance of the Work on the Project.

D2.2 Be registered as a contractor at the time of bid submission, contract award, and throughout the Project with the California Department of Industrial Relations in accordance with the Prevailing Wage Addendum attached to the Contract and applicable laws and regulations.

D2.3 Be a California business or a foreign corporation registered with the California Secretary of State to do business in California.

D2.4 Be willing and able to provide labor, materials, supplies, equipment, and transportation to perform the Work on the Project in accordance with the plans and specifications prepared by Architect and the Contract, and provide such other services as may be agreed upon between Contractor and Owner.

D2.5 Have knowledge and understanding of laws applicable to California public school districts relating to the design, construction, and maintenance of school buildings.

D2.6 Have knowledge and understanding of California Building Codes, laws, regulations, requirements, and procedures that apply to school district public works projects.

D2.7 Have at least five years of experience working with the California Division of the State Architect in regard to plan review and approvals for public works projects of school districts.

D2.8 Procure and maintain in effect throughout the Project insurance that complies with the requirements in the Contract.

D2.9 Procure the Payment Bond and Performance Bond in accordance with the Contract.

D3. ADDENDA.

D3.1 RESPONSE TO QUESTIONS. In its discretion or in response to questions submitted by bidders or other interested parties and before the time for submission of bids (“Bid Deadline”), Owner may issue one or
more addenda to this Bid, which Owner will provide to each potential bidder that Owner know have received a copy of this Bid. In no event will Owner be responsible for any failure of a bidder to receive any addendum. Any addendum issued by Owner shall become a part of this Bid and each bidder will be deemed to have knowledge of the contents contained therein, whether or not such addendum is received or reviewed by a bidder.

D3.2 EXTENSION OF DEADLINES. At Owner’s discretion and upon written notice to all potential bidders who Owner knows have received a copy of this Bid, Owner may extend, at any time before the award of the Contract, any or all deadlines stated in this Bid.

D3.3 MODIFICATION OF BID. At Owner’s discretion and upon written notice to all potential bidders who Owner knows have received a copy of this Bid, Owner may modify, at any time before the Bid Deadline, any provisions contained in this Bid.

D4. BID – REQUIREMENTS AND FORMS.

D4.1 GENERAL REQUIREMENTS.

D4.1.1 COMPLIANCE WITH REQUIREMENTS. Each bid must be in accordance and comply with the requirements of this Bid. Owner may refuse to consider any bid that does not comply with the requirements of this Bid.

D4.1.2 ONE BID ONLY. A bidder may submit only one bid to this Bid. However, a person who or an entity that has submitted a sub-bid, or quoted prices of materials, to a bidder on this Bid is not thereby disqualified from submitting a sub-bid or quoting prices to other bidder(s) or submitting a bid to this Bid.

D4.1.3 BID DEADLINE AND BID LOCATION. The dates and times, locations, and other requirements relating to this Bid and bids submitted in response hereto are set forth in the Notice Inviting Bids. Each bidder and any bid submitted hereto shall comply with all such requirements. Each bid shall be hand-delivered, mailed, or delivered by courier or overnight services to the Bid Location stated in the Notice. **Owner will not accept any bid by facsimile, email, or other electronic means.** Irrespective of how a bidder chooses to deliver its bid to Owner, the bidder is solely responsible for ensuring that Owner actually receives the bid at the Bid Location in accordance with the Bid Deadline. Owner will not accept, and will return unopened to the bidder, any bid that is not submitted at the Bid Location in accordance with the Bid Deadline, which Bid Deadline will be based on the time stated on the clock that Owner designates.

D4.1.4 SEALED BID. Each bid shall be in a sealed envelope, clearly identifying on the cover that the bid is to this Bid and the bidder’s name.

D4.1.5 NO EXCEPTION OR RESERVATION. Owner will not consider any bid that makes any exception or change, or in any manner makes any reservation, to any terms and/or conditions of the Bid Proposal or other Bid Documents, or any Contract Documents.

D4.1.6 COSTS. Each bidder is solely responsible for its costs to respond to this Bid, including costs associated with preparation and submission of the bid, and expenses for travel to the Pre-Bid Conference or any other meetings. In no event will Owner pay or reimburse a bidder or other party for any such costs or expenses.

D4.2 BID PROPOSAL FORM. Each bidder shall use the Bid Forms that are provided by Owner as part of this Bid Packet. Owner will not consider any bid that does not use the Bid Forms.

D4.3 BID SECURITY. Each bid must be accompanied by a bid security. The bid security shall be in an amount equal to 10 percent of the Base Bid and shall not include the amount of any additive alternate or deduct the amount of any deductive alternate. The bid security shall be given as a guarantee that the bidder will enter into the Contract with Owner if awarded the Contract, and will be forfeited, paid to, and retained by Owner as liquidated damages if the bidder refuses or fails to enter into the Contract provided by Owner. Owner shall have the right to withhold the bid security for 60 days following the later of the
date of award of the Contract or the date Owner receives the signed Contract and other required documents from the successful bidder, and thereafter Owner shall return the bid security to each bidder.

D4.4 WITHDRAWAL OR MODIFICATION OF BID. A bidder may withdraw its bid by submitting to Owner a written request signed by the bidder's authorized representative. A bidder may modify its bid by submitting the modified bid together with a written request to withdraw the original bid and to replace it with the modified bid. To be effective, Owner must receive the notice of withdrawal or the modified bid and the request for modification before the Bid Deadline stated in the Notice. After the Bid Deadline, a bidder shall have no right to withdraw its bid until 60 days after the Bid Deadline and shall have no right to modify its bid.

D4.5 OWNERSHIP AND PUBLIC RECORD. All bids submitted in response to this Bid shall become Owner's property and are public records, and as such, are subject to inspection and production to the public after the award of the Contract.

D5. EVALUATION OF BIDS AND AWARD OF CONTRACT.

D5.1 OPENING OF BIDS. Opening of bids shall be at the location stated in the Notice Inviting Bids and shall occur after the Bid Deadline as will be possible. All bidders may but are not required to attend the bid opening in order to be considered for the award of the Contract.

D5.2 REJECTION OF BIDS/NO GUARANTEED OF CONTRACT. This Bid does not create any obligation for Owner to award or enter into any contract with any bidder or other party. Moreover, this Bid and any bid in response hereto shall not constitute or be construed to create a contract between Owner and any bidder, create any obligation for Owner to enter into a contract with any bidder, or serve as the basis for any claim by any bidder for payment or reimbursement for any costs associated with preparation or submission of a bid to this Bid. Owner reserves the right to reject any and all bids, to contract for work with whomever and in whatever manner Owner decides, to abandon any or all of the Work on the Project and the Contract entirely, and/or to waive any informality or irregularity in any bid. Owner also reserves the right, without any liability, to cancel the award of the Contract at any time before the Construction Services Agreement is signed by both the successful bidder and Owner.

D5.3 AWARDING OF CONTRACT.

D5.3.1 The lowest bid shall be determined as stated in the Notice.

D5.3.2 Owner will notify the successful bidder of the selection of its bid. Before awarding the Contract, Owner, at its sole discretion, may require from the successful bidder evidence of the bidder's qualifications to perform the Contract faithfully, capably, and reasonably, and may consider other evidence. If the successful bidder refuses or fails to provide the requested evidence, the bidder’s bid shall be deemed non-responsive.

D5.3.3 The form of the Construction Services Agreement that the successful bidder must sign and deliver to Owner is attached as part of this Bid Packet.

D5.3.4 Within 10 days of the date on which the Contract is awarded, the successful bidder shall sign the Construction Services Agreement attached to this Bid and deliver all documents required by the Contract to Owner. If the successful bidder fails to sign the Construction Services Agreement and furnish the required documents within the 10 days, the following shall apply: (1) Contractor’s rights, if any, arising out of Owner’s selection of Contractor’s bid shall be deemed to have been abandoned by Contractor; (2) Owner may award the Contract to the next lowest bidder or otherwise proceed as allowed by applicable laws; (3) Contractor’s bid security shall be forfeited, paid to, and retained by Owner as liquidated damages; and (4) Owner shall be entitled to such other rights as may be granted to Owner by this Bid, law, or equity.

D5.3.5 The bidder to whom Owner awards the Contract may substitute securities or establish an escrow in lieu of retention pursuant to Public Contract Code section 22300 and the Contract.
D5.4  BID PROTEST. Any protest to a bid shall be filed and handle in accordance with Owner’s Board Policy and Administrative Regulation No. 3311. Owner will not consider any protest that is not submitted in accordance with said policy and regulation.

D6.  QUESTIONS AND CONTACT.

Any potential bidder that has questions regarding this Bid must submit them in writing by email to the Contact Person listed above, receipt of which by Owner must be before the deadline for questions to Owner, which deadline is stated in the Notice. The subject heading for any writing containing questions shall be specified: “Questions – Bid: KKEC Server Room Relocation Project No. C2020-14.” Owner will reply to questions by issuing one or more written addenda.
BID PROPOSAL
BID DOCUMENT E-1

Bidder’s Full Legal Name:__________________________________________________________

Business Address:________________________________________________________________

______________________________________________________________________________

CA Contractor’s License: No.:_____________________ Classification:__________ Exp. Date:_______________

CA Dept. of Industrial Relations Registration No.:____________________________ Exp. Date:_______________

Contact Person Name:_____________________________________ Title:____________________________

Phone: (_______) _______________ Email:__________________________

Dear Fresno County Board of Education ("Owner"):

The above-listed Bidder understands and agrees that: (1) all items on this Bid Proposal must be completed and shall be without interlineations, alterations, or erasures; (2) this Bid Proposal must be completed and submitted to Owner in accordance with the instructions contained herein; and (3) when requested by Owner, Bidder shall furnish evidence satisfactory to Owner of the authority of each person executing below on Bidder’s behalf. If Bidder is a partnership, this Bid Proposal must be signed in the partnership’s name and by a general partner authorized to bind the partnership, with the name and title of the person signing typed or printed below the signature. If Bidder is a corporation, this Bid Proposal must be signed in the corporation’s legal name and by the chairman of the board, president or any vice president, and by the secretary, assistant secretary, the chief financial officer or assistant treasurer, with the name and title of each person signing typed or printed below the signature. Owner will not consider any bid that is not signed in accordance with the above-stated instructions.

BASE BID. The above-listed Bidder hereby proposes and agrees to enter into the Contract to furnish, including applicable taxes, any and all labor, materials, supplies, equipment, and transportation for completion of the Work on the Project in strict accordance with the Contract for the following “Base Bid” (state the amount in word and number):

($____________________________________)

OWNER CONTINGENCY ALLOWANCE: Bidder shall NOT include in the Base Bid the amount of $40,000.00 for Owner’s allowance. The $40,000.00 will be added to the Base Bid after the award of the Contract and shall be used by Owner for the payment of additional costs of materials, equipment, transportation or other items that Contractor is required to incur and/or additional work that Contractor is required to perform on the Project as a result of a change in the scope of the Work on the Project by Owner, unknown conditions on the Project Site, or necessary construction changes that were unforeseen but that are realized during the construction of the Project.

ADDENDA RECEIVED BY BIDDER. Addenda issued by Owner for this Bid are included in and are part of this Bid. Bidder hereby acknowledges that it has received the following Addenda:

Addendum # _____  Addendum # _____  Addendum # _____  Addendum # _____
Addendum # _____  Addendum # _____  Addendum # _____  Addendum # _____

BID DOCUMENTS. Bidder shall submit, and hereby submits, as part of its bid all of the following Bid Forms (mark and submit all of the following):
1. DESIGNATION OF CONTACT PERSON. Bidder designates the contact person and address listed above as Bidder’s office to which Owner may communicate with Bidder if Bidder is the successful bidder.

2. EXAMINATION OF BID AND CONTRACT DOCUMENTS. Bidder carefully examined this Bid and all documents describing the scope and requirements for the Work.

3. EXAMINATION OF BID. Bidder checked carefully all information and amount stated in its bid and understands that Owner will not be responsible for any errors or omissions of Bidder in completing this Bid Proposal or other documents submitted as part of the bid.

4. WORKERS COMPENSATION CERTIFICATION. Bidder hereby certifies that it is aware of the provisions of Labor Code section 3700, which provides in relevant part as follows:

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

   (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

   (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

   Bidder hereby agrees, if it is awarded the Contract, that it will comply with such provisions before commencing and during the performance of the Work and will require Bidder’s subcontractors to do the same. Moreover, Bidder hereby agrees to provide Owner with proof of workers compensation insurance or self-insurance in accordance with the requirements set forth in the Contract.

5. DRUG-FREE WORKPLACE CERTIFICATION. Bidder hereby agrees, if it is awarded the Contract, to comply with the Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.) and will provide a drug free workplace as set forth in the Contract.

6. SUFFICIENT FUNDS DECLARATION. Bidder’s bid includes sufficient funds to permit Bidder to comply with applicable local, state, and federal laws and regulations governing the labor and services to be provided on the Project, including but not limited to, payment of prevailing wage rates. Moreover, Bidder hereby declares that it will comply with the provisions of Labor Code section 2810, subdivision (d), if Bidder is awarded the Contract.

7. AWARD AND EXECUTION OF CONTRACT. If Owner selects Bidder as the successful bidder at any time before Bidder withdraws Bidder’s bid, which withdrawal must be in accordance with the provisions stated in this Bid, the following shall apply: (A) Owner will notify Bidder of the selection; (B) within 10 days of the date on which the Contract is awarded, Bidder shall sign the Construction Services Agreement attached to this Bid and deliver all documents required by the Contract to Owner; and (C) if Bidder fails to so sign the Construction Services Agreement and deliver the required documents, Owner, in addition to any remedy that Owner has or may have against Bidder, may award the Contract to another bidder without any notice, obligation, or liability to Bidder.

Each person executing below declares under penalty of perjury under the laws of the State of California and executes on behalf of the above-named Bidder that the representations made and information provided in this
Bid Proposal and the other documents submitted herewith are true and correct and that he/she is duly authorized to execute this Bid Proposal on behalf of and to bind Bidder to this Bid Proposal and Bidder’s bid to this Bid.

Signature:______________________________ Date:______________________________
Print Name:______________________________
Title:______________________________

Signature:______________________________ Date:______________________________
Print Name:______________________________
Title:______________________________
//
BID BOND
BID DOCUMENT E-2

KNOW ALL MEN BY THESE PRESENTS, that we, ____________________________, as principal (hereinafter "Principal"), and ______________________________ as Surety, are firmly bound unto the Fresno County Board of Education (hereinafter "Owner"), in the sum of ___________________ ($_____________________) for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, trustees, administrators, successors and assigns, jointly and severally, firmly by the presents.

The condition of this obligation is such that whereas the Principal has submitted to Owner a certain bid, attached hereto and made a part hereof, to enter into a Contract in writing to provide labor, materials, supplies, equipment, transportation and other services to perform the Work on the KKEC Server Room Relocation Project No. C2020-14 in strict accordance with the Contract.

NOW, THEREFORE, if said bid shall be rejected by Owner, or, in the alternative, if said bid shall be accepted and the Principal shall sign and deliver the Construction Services Agreement together with other required Contract Documents in accordance with the requirements of the Bid Packet and shall in all other respects perform the Contract created by the acceptance of said bid, then the above obligation shall be void and of no effect, otherwise the same to remain in full force and effect, it being expressly understood and agreed that the liability of Surety for any and all default of the Principal hereunder shall be the amount of this obligation as herein stated.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or the call for bids or to the services to be performed thereunder shall in any way affect Surety's obligation under this bond, and Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract or the call for bids or to the services.

IN WITNESS WHEREOF, the above-bounden Parties have executed this instrument under their several seals this ____ day of ____________________, the name and corporate seal of each corporate party being hereunder affixed and these presents duly signed by its undersigned representative, pursuant to the authority of its governing body.

(Corporate Seal)

Principal
By: ____________________________
Title: ____________________________

(Corporate Seal) 

Surety

Attach Attorney-In-Fact
By: ____________________________
Title: ____________________________

(To be signed by Principal and Surety and Acknowledgment and Notary Seal to be attached.)

The rate or premium of this bond is ____________________________ per thousand, the total amount of premium charged, $ ____________________________.
NON-COLLUSION AFFIDAVIT
BID DOCUMENT E-3

Name of Bidder:__________________________________________________________

The undersigned declares:

1. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham.

2. Bidder has not directly or indirectly induced or solicited any other bidders to put in a false or sham bid. Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposed price of Bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. Bidder has not, directly or indirectly, submitted its, his, or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

3. I have full power to execute, and do execute, this Non-Collusion Affidavit on behalf of Bidder and declare under penalty of perjury under the laws of the State of California that the statements contained herein are true and correct and that this Non-Collusion Affidavit is executed on the dated stated below.

Signature:_________________________________________________________ Date:_________________________

Print Name:__________________________________________________________

Title:______________________________________________________________
DESIGNATION OF SUBCONTRACTORS FORM
BID DOCUMENT E-4

E-4.1 Pursuant to Public Contract Code section 4106, each bidder shall set forth the following information on the Designation of Subcontractors Form:

E-4.1.1 The name, location of the place of business, phone number, and State of California contractor’s license number of each subcontractor who will perform work or labor or render service to the bidder in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the bidder, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half (1/2) of one percent (1%) of the Base Bid.

E-4.1.2 The portion of the Work on the Project that will be done by each subcontractor and the amount for which the bidder will pay the subcontractor for such work. The bidder shall list only one subcontractor for each portion of the Work on the Project.

E-4.1.3 If bidder fails to specify a subcontractor for a portion of the Work or if bidder specifies more than one subcontractor for the same portion of the Work to be performed in excess of one-half (1/2) of one percent (1%) of the Base Bid, bidder agrees that it is fully qualified to perform and will perform that portion itself.

E-4.2 In addition to those subcontractors that Contractor specifies pursuant to E-4.1 above, Contractor shall specify on the Designation of Subcontractors Form any other subcontractors who will perform any of the Work on the Project.

E-4.3 Pursuant to Labor Code section 1725.5, each subcontractor that will be performing any portion of the Work shall be registered with DIR and be qualified to perform public work. If a bidder lists a subcontractor that is not registered with DIR as of the date of the award of the Contract, bidder agrees that it is fully qualified to perform and will perform that portion itself.

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DESIGNATION OF SUBCONTRACTORS FORM
BID DOCUMENT E−5

INSTRUCTION: Each bidder must complete the information required in columns A through E for: (1) each subcontractor that will perform any part of the Work on the Project in an amount in excess of one-half (1/2) of one percent (1%) of the Base Bid; and (B) any other subcontractor(s) who will perform any of the Work on the Project. If additional spaces are needed, duplicate this form.

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<tr>
<th>A</th>
<th>Name of Subcontractor</th>
<th>B</th>
<th>Location of Place of Business, Phone No., AND Email</th>
<th>C</th>
<th>CA. Contractor License No.</th>
<th>D</th>
<th>DIR Registration No.</th>
<th>E</th>
<th>Portion of Project Work</th>
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JOB REFERENCES
BID DOCUMENT E-5

Name of Bidder: ________________________________________________________________

Each bidder must submit a list of at least three projects containing similar work as required by this Bid and of similar or greater dollar value completed by bidder within the last five years for reference purposes. Bidder authorizes Owner to contact the Project Owners for purposes of references.

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<th>Date Completed</th>
<th>Project</th>
<th>Project Owner</th>
<th>Contact Person/ Phone Number</th>
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</table>
CONSTRUCTION SERVICES AGREEMENT
BID DOCUMENT F
**ROOFING CONTRACT: FINANCIAL INTEREST CERTIFICATION**
("Certification")
(Materials manufacturers/Contactors/Vendors)
(Public Contract Code § 3006)

**FOR PROJECTS WITH SUBSTANTIVE ROOFING COMPONENTS:**

☐ The work on the subject Project includes (1) the replacement or repair of a roof; or (2) is a repair of twenty-five percent (25%) or more of the roof; or (3) is a repair project that has a total cost of twenty-one thousand dollars ($21,000.00) or more.

Pursuant to California Public Contract Code § 3006(a)(1), I, ____________________________, [NAME/NAME OF EMPLOYER] certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the subject roof project contract or subcontract on the Project. As used in this certification, “person” means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I ____________________________, [NAME/NAME OF EMPLOYER] certify that I do not have, and throughout the duration of the contract for the subject roof project, I will not have, any financial relationship in connection with the performance of this contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, ____________________________, [NAME/NAME OF EMPLOYER], have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of person or firm: _____________________________________________________
Mailing address: ___________________________________________________________
Address of branch office used for this Project: __________________________________
If subsidiary, name and address of parent company: ____________________________
Nature of financial relationship: ______________________________________________

________________________________________________________________________

________________________________________________________________________

(If additional space needed, or additional relationships need to be described, please use and affix additional pages.)

I certify to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Signature: _____________________________

Date: _____________________________

Print Name: ___________________________

Print Name of Employer: _____________________________
CONSTRUCTION SERVICES AGREEMENT
("Agreement")

Owner Contract No.: □
Owner Project No.: C2020-14   DIR Project No.: □
“Project”: KKEC Server Room Relocation Project

COVER
CONTRACT DOCUMENT A

CONTRACTOR

Full legal name of Contractor ("Contractor")
Attn: Name of contact person, Title
Street address (no PO Box)
City, CA 9####
Phone: (###) ###-####   Email: Email

CA Contractor’s License − No.: Number  Classification: B    Expiration: ###/###/20##
CA Dept. of Industrial Relations ("DIR") Registration − No.: Number  Expiration: ###/###/20##

OWNER

Fresno County Board of Education ("Owner")
Attn: Jeff Becker, Senior Director, Facilities & Operations
1111 Van Ness Ave.
Fresno, CA 93721
Phone: (559) 497-3705   Email: jbecker@fcoe.org

ADDRESS FOR INVOICE TO OWNER: All invoices to Owner shall be addressed to the attention of Internal Business Services − Accounts Payable, Fresno County Office of Education, 1111 Van Ness Ave, Fresno, CA 93721

PROJECT AND SCOPE OF WORK

“Project Site”: Kermit Koontz Education Complex
1320 Mariposa
Fresno, CA 93703

DSA JURISDICTION: The Project is not under the jurisdiction of DSA.

SCOPE OF WORK: Contractor shall perform all obligations required of Contractor under this Agreement, the Design Documents, and other Contract Documents for the following: Perform all work as defined in the contract documents and plans and specifications dated ______ as provided by the Project Architect. The Project will involve relocating low voltage pathways and utilities from existing server room to new modular server room building (to be provided by Owner), site and utility work necessary to install new modular server room building, selective demolition of restroom building and walkway canopy, and partial roofing system. Re-roof and paint existing building.

Mark if applicable: HANDLING OF HAZARDOUS MATERIALS − The Contract includes as part of the Work the removal and handling of any hazardous substances or materials encountered or disturbed on the Project Site. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done in accordance with the specifications and by Contractor if Contractor is qualified and knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency or by subcontractor(s) so qualified and knowledgeable. No work will be accepted until asbestos contamination is reduced to levels deemed acceptable by Owner or Owner’s consultant.

Mark if applicable and provide required certification: ROOF PROJECT − The Project requires Contractor to replace or repair more than 25 percent of a roof of a public facility or the total cost of the roof repair project is greater than $21,000. Contractor shall complete and submit to Owner, upon Owner’s award of the Contract to Contractor, a certification containing the content and in the form set forth in Public Contract Code section 3006, subdivision (b), the form of which may be obtained from Owner.

CONTRACT TERM (see Section M7.1)
**“Effective Date”**: November 21, 2019  
Termination Date: See Section M7.1

### PROJECT PERIOD (see Article E1). The Project shall be completed within the following “Project Period”:

| “Project Start Date” | Date stated as the Project Start Date on Owner’s Notice to Proceed |
| “Project Completion Date” | Date stated as the Project Completion Date on Owner’s Notice to Proceed |

### WARRANTY PERIOD (see Article M1.14)

| “Warranty Period” | One year commencing on the later of the date on which Owner accepts the Project, the date of recording of the notice of completion, or the day immediately following the cessation of the Work for a continuous period of 60 days |

### PAYMENTS AND AMOUNTS (see Contract Document G)

| “Base Bid Amount” (A): | $____________ |
| “Owner Contingency” (B): | $40,000.00 |
| “Contractor Contingency” (C): | $0.00 |
| “Contract Amount” (A + B + C): | $____________ |
| “LD Amount” | $1,000 |

### PREVAILING WAGE PAYMENT, MONITORING, AND ENFORCEMENT:

Contractor and each subcontractor that performs the Work on the Project shall comply with laws and regulations, and rules and determinations of DIR and other governmental agencies applicable to payment, monitoring, and enforcement of prevailing wages. (See Prevailing Wage Work Addendum.)

### ASBESTOS PROGRAM MANAGEMENT PLAN, SHORT TERM WORKER NOTIFICATION

**Mark if applicable**: The Project involves work near known asbestos-containing material as follows:

Contractor acknowledges that it has reviewed and agrees to comply with the reasonable precautions and steps stated here. Contractor shall take reasonable steps not to disturb the material. If Contractor disturbs and causes a spill or release of the material, Contractor **must**:

1. Stop work immediately;
2. Leave the affected work area;
3. Shut and, if possible, lock doors;
4. Notify Owner’s Senior Director of Facilities & Operations or his/her designee immediately;
5. Do not re-enter the affected work area until authorized to do so.

If Contractor fails to comply with these precautions and steps, Owner shall have the right to terminate the Contract upon written notice to Contractor and back-charge Contractor for cleanup costs and, to the full extent permitted by applicable laws, require Contractor to pay or reimburse Owner for expenses and liabilities arising out or caused by Contractor’s failure to comply with the precautions and steps.

### DISABLED VETERANS BUSINESS ENTERPRISE PARTICIPATION REQUIREMENT

**Mark if applicable**: The Project is funded, in part or in whole, through the State of California’s School Facility Program. Accordingly, Owner is required under Education Code section 17076.11 to have a participation of at least 3 percent, per year, of the overall dollar amount expended each year by Owner, for disabled veteran business enterprises. In order for Owner to comply with this requirement, Contractor shall complete and submit to Owner documentation of disabled veteran business enterprises participation, including the Documentation of Disabled Veteran Business Enterprise Program Requirements, Form STD 840 of the California General Services Procurement Division, which form may be obtained from Owner.
In consideration of the covenants, conditions, and promises in and for good and valuable consideration and the mutual benefits to be derived from the Contract, Contractor and Owner, separately referred to as a “Party” and collectively as the “Parties,” have reviewed, understand, and hereby enter into the Contract. Unless the context requires otherwise, any reference to a Party in this Agreement or any other Contract Documents shall mean the Party and its governing body, officers, employees, and agents and, in the case of Owner, includes Owner’s students and the Fresno County Board of Education/Fresno County Superintendent of Schools and, in the case of Contractor, includes Contractor’s subcontractors and suppliers of every level. Each person executing this Agreement on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind the Party to the Contract.

CONTRACTOR

Signature: ________________________________
Print Name: ______________________________
Title: ____________________________________

OWNER

Signature: ________________________________
Print Name: ______________________________
Title: ____________________________________
## CONTRACT DOCUMENTS LIST

**CONTRACT DOCUMENT B**

### ARTICLE B1 CONTRACT AND CONTRACT DOCUMENTS.

The Design Documents, Owner’s Bid Packet and any addenda thereto, Contractor’s bid and supporting documents, each Contract Document listed below, each Required Document listed below, and each document listed elsewhere in this Agreement, whether attached or not, are referred to separately as a “Contract Document” and collectively as the “Contract Documents” and together constitute and form the “Contract”.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Cover</td>
<td>Cover signed by Contractor</td>
<td>Owner</td>
<td>Within 10 days of the award of the Contract</td>
</tr>
<tr>
<td>B</td>
<td>Contract Documents List</td>
<td>None</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>C</td>
<td>Recitals and Representations</td>
<td>None</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>D</td>
<td>Definitions</td>
<td>None</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>
| E   | Project Period and Schedule | Preliminary Project Schedule  
Project Schedule | Owner | As stated in Project Period and Schedule |
<p>| F   | Payment and Withholding | Contract Amount and breakdown, and schedule of values | Owner | Within 10 days of the Effective Date of this Agreement |
|     |                    | Taxpayer Identification Number Request (W-9) and other documents that Owner may require to process payment to Contractor under this Agreement | Owner | At Owner’s request |
|     |                    | Escrow Agreement for Security Deposits in Lieu of Retention <em>(form attached)</em> | Owner | If applicable, before Owner releases any retention to Contractor, except where such release is the Final Payment |
| G   | Insurance         | Written proof of commercial general liability, commercial automobile, and workers compensation and employer’s liability | Owner | Within 10 days of the award of the Contract |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th><strong>X (mark if required):</strong> Written proof of builder’s risk/course-of-construction</th>
<th>If required by Owner as stated to the left</th>
<th>Within 10 days of the award of the Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>H</td>
<td>Payment Bond</td>
<td>Payment Bond (form attached)</td>
<td>Owner</td>
<td>Within 10 days of the award of the Contract</td>
</tr>
<tr>
<td>I</td>
<td>Performance Bond</td>
<td>Performance Bond (form attached)</td>
<td>Owner</td>
<td>Within 10 days of the award of the Contract</td>
</tr>
<tr>
<td>J</td>
<td>Subcontractor, and Subcontractor Registration and Designation</td>
<td>Designation of Subcontractors (form attached to Bid)</td>
<td>Owner</td>
<td>Bid Deadline</td>
</tr>
<tr>
<td>K</td>
<td>Fingerprinting and Criminal Background Check Certification</td>
<td>X (mark if required): Fingerprinting and Criminal Background Check Certification (form attached)</td>
<td>Owner</td>
<td>Within 10 days of the Effective Date and before commencement of any Work</td>
</tr>
<tr>
<td>L</td>
<td>General Conditions and Terms</td>
<td>As stated in General Conditions and Terms</td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>Prevailing Wage Work Addendum</td>
<td>As stated in Prevailing Wage Work Addendum</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>Addendum to Specifications – Claim Resolution Process</td>
<td>Not Applicable</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**ARTICLE B2  COMPLIMENTARY AND CONFLICTS.**

The Contract Documents are complementary and intended to cooperate with each other so that what is required by any one shall be as binding as if required by all. Any item of Work mentioned or shown in one Design Document and not mentioned or shown on another Design Document shall be provided by Contractor as if shown or mentioned in all Design Documents. However, anything that is expressly stated, delineated, or shown in or upon the Design Documents shall govern and be followed, notwithstanding anything to the contrary in any other source of information or authority to which reference may be made. If a conflict exists between any provision in Contractor’s bid and any provision in another Contract Document, the provision in the other Contract Document shall prevail and govern over Contractor’s bid.

//
RECITALS AND REPRESENTATIONS
CONTRACT DOCUMENT C

ARTICLE C1 RECITALS.

This Agreement and the other Contract Documents are entered into based on the recitals and representations set forth in this Article C1, which recitals and representations constitute a part of the Contract.

SECTION C1.1 PURPOSE. By this Agreement and the other Contract Documents, Owner desires to contract with Contractor to provide the Work for the Project in accordance with the terms and conditions of the Contract Documents. The Parties also desire to set forth the terms and conditions that govern the Work and the Project.

SECTION C1.2 AUTHORITY. Owner has elected, by resolution, to become subject to the uniform construction cost accounting procedures set forth in the California Uniform Public Construction Cost Accounting Act (“CUPCCAA”), Public Contract Code section 22000 et seq. As authorized by CUPCAA, Owner sought and received formal bids from contractors to perform the Work on the Project. Contractor submitted the lowest responsive bid and Owner awarded the Contract to Contractor.

ARTICLE C2 REPRESENTATIONS BY OWNER.

Owner represents to Contractor that Owner is a local agency existing pursuant to State laws. Owner has good and merchantable fee title to the Project Site, and has authority to enter into and perform its obligations under this Agreement and the Contract.

ARTICLE C3 REPRESENTATIONS BY CONTRACTOR.

Contractor represents to Owner as follows:

C3.1 Contractor is duly organized, validly existing, and in good standing under State laws.

C3.2 Contractor has full power, authority, and legal right to enter into and perform its obligations under this Agreement and the other Contract Documents, and the execution, delivery and performance of this Agreement and the other Contract Documents have been duly authorized by all necessary corporate actions on the part of Contractor.

C3.3 Execution, delivery, and performance of this Agreement and the other Contract Documents do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Contractor is a party.

C3.4 Contractor holds, as of the Effective Date, the contractor’s license stated on the Cover and shall maintain such license in effect and in good standing throughout the Contract Term and during all times when Contractor performs any work during the Warranty Period. Contractor represents that it is registered and qualified pursuant to Labor Code section 1725.5 and other Applicable Laws to perform public works as of the Effective Date, and shall renew and maintain such registration and qualification throughout the Contract Term and during all times when Contractor performs any work during the Warranty Period.

C3.5 There is no pending or, to Contractor’s best knowledge, threatened action or proceeding before any court or administrative agency that will materially and adversely affect Contractor’s ability to perform its obligations under this Agreement and the other Contract Documents.

C3.6 Contractor has visited or had the opportunity to visit the Project Site, familiarized itself with the local conditions under which the Project is to be performed, and correlated its observations with the requirements of this Agreement and the other Contract Documents.

C3.7 Contractor has carefully reviewed and understands the terms and conditions of this Agreement and the other Contract Documents, and agrees to perform and comply with all obligations required of Contractor under this Agreement and the other Contract Documents.
DEFINITIONS
CONTRACT DOCUMENT D

Words that have well-known technical trade meanings are used in this Agreement and the other Contract Documents in accordance with such recognized meanings. Terms used in this Agreement and the other contract Documents shall be as defined throughout this Agreement and the other Contract Documents and as follows:

D1 “Architect” means the architect and/or engineer, including any replacement thereof, who Owner has retained to prepare the Design Documents and/or perform other architectural and/or engineering services for the Project. Architect shall be one or more certified architect(s) holding, at all times during the Project, a license under Chapter 3, Division 3, of the Business and Professions Code.

D2 The term “asbestos” and “asbestos containing products” shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite. Any or all material containing greater than one tenth of one percent (>1%) asbestos shall be defined as asbestos-containing material.

D3 The term “building” means the entire structure, drives, walks, steps, approaches, and ground on which the building sits.

D4 The term “called for” means as called for, shown noted, and/or indicated in the Design Documents.

D5 A “change order” is a written order to Contractor signed by Owner and Architect and issued after the Effective Date authorizing a change in the Work and/or an adjustment in the Contract Amount and/or the Project Period. A change order signed by Contractor indicates Contractor’s agreement therewith, including any adjustment to the Contract Amount and/or to the Project Period stated in the change order.


D8 The term "day" means calendar day unless otherwise specifically stated in this Agreement or the other Contract Documents.

D9 “Design Documents” shall include, but are not limited to, plans and specifications consisting of complete working drawings and specifications setting forth in detail the Work to be done and the materials, workmanship, finishes, and equipment required to for the Project and any addenda, construction change documents, and revisions thereto that are prepared for the Project by Architect and, if the Project is under DSA’s jurisdiction, have been reviewed and approved by DSA as to the safety of design and construction as required by Education Code section 17297 and other Applicable Laws.

D10 The term “drawings,” if any exist for the Project, means graphic and pictorial portions of the Design Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and/or scope of the Project, generally including drawings, elevations, sections, details, schedules, and diagrams as drawn or approved by Architect.

D11 “DIR” means the California Department of Industrial Relations.

D12 “DSA” means the Division of the State Architect in the California Department of General Services.

D13 Where "F.B.O." is noted on the drawings or listed in the specifications, such item is shown or listed for information and will be "Furnished by Owner” and installed by Contractor. Contractor shall verify all dimensions and details necessary for the proper installation of such item.

D14 A “Final Determination” means any judgment, order, or decision by a court of competent jurisdiction or a governmental entity with jurisdiction to render such judgment, order, or decision where the judgment, order, or decision is not subject to appeal or the period for an appeal has expired.

D15 “Inspector” means a person approved by DSA to perform construction inspection for public works
D16 The term “labor” means any services provided by and any amounts paid to workers in the form of employee wages and benefits in order for Contractor to perform the Work.

D17 The term “materials” means all products, materials, equipment, and devices that are physically incorporated in the Project.

D18 “Modification” means: (A) a written amendment to the Contract executed by the Parties; (B) a change order with DSA approval (if such approval is required by Applicable Laws); (C) a written interpretation issued by Architect and approved by DSA (if such approval is required by Applicable laws); or (D) a written order for a minor change in the Project issued by Architect pursuant to Section M10.4. A modification may be made by the Parties only after the Parties have fully executed the Contract.

D19 “Notice to Proceed” means the written notice, if applicable as stated on the Cover, that Owner issues to Contractor setting forth the date on which Contractor is to commence the Work on the Project and complete the Project.

D20 Where “N.I.C.” is noted on the drawings or listed in the specifications, such item is shown or listed for the purpose of general information and is “Not in Contract”. Installation and connection to services for such work are not in the Contract.

D21 The term "overhead" means any necessary costs and expenses that Contractor incurs in performing the Work, excluding labor and materials as defined above.

D22 The term “plans” means the drawings associated with the Project such as, but not limited to, vicinity maps, site plans, foundation plans, floor plans, ceiling plans, roof plans, cross sections, interior elevations, exterior elevations, and details.

D23 The term “product data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information that Contractor furnishes to illustrate a material, product, or system for some portion of the Project.

D24 “Project” shall mean the work and improvements set forth in the Design Documents, including but not limited to, the Work and any other work that Contractor is required to perform under the Contract during the Warranty Period.

D25 The term "provide" means furnish and install in place.

D26 The term “samples” means physical examples that Contractor furnishes to illustrate materials, equipment, or workmanship and to establish standards by which the Project will be judged.

D27 The term “shop drawings” means drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data that are prepared by Contractor or any of Contractor’s subcontractor, manufacturer, supplier, or distributor and which illustrate some portion of the Project.

D28 The term “similar” shall be taken in its general sense and not meaning identical, and all details of such Work shall be in proper relation to the location and connection of other parts of the Project.

D29 The term “specifications” means the portion of the Design Documents consisting of the written requirements for materials, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance related services.

D30 “State” means the State of California.

D31 A “subcontractor” means: (A) a person or organization who has a contract with Contractor to perform any of the Work; or (B) a person or organization who has a direct or indirect contract with any of Contractor’s subcontractors to perform any of the Work (sub-subcontractor).

D32 The term “substantial completion” means the date certified by Architect when the Work is substantially completed in accordance with the Contract so Owner may use and occupy the Project Site for the use for which the Project Site is intended.
D33 “Testing Lab” means an entity approved by DSA to perform testing for public works project and retained by Owner to perform such testing for the Project, including any replacement for any such testing entity retained by Owner.

D34 The term “UL” means Underwriters Laboratories.

D35 “Work” means and comprises the completed construction of the Project required by the Contract and all services related thereto, including but not limited to those services required of Contractor on the Cover, this Section D33, and the following: (A) all labor necessary to complete the Project in accordance with the Contract and all labor, materials, tools, equipment, services, transportation, and other items that are necessary and proper, and to perform the Work in a good and workmanlike manner, free from any and all liens and claims of mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the Work, all in strict compliance with the Contract; (B) Contractor’s obligation to visit the Project Site with Owner’s representatives and thoroughly examine and become familiar with the Project Site and such adjacent lands as may be directly affected by Contractor’s performance of the Work; (C) a continuing obligation by Contractor after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be performed under the Contract; (D) make such investigation as Contractor may see fit so that Contractor fully understands the facilities, physical conditions, and restrictions attending the Work; and (E) Contractor’s obligations to thoroughly examine and become familiar with the Contract.
ARTICLE E1  PROJECT.

The Parties shall negotiate in good faith and agree upon the Project Schedule in accordance with the provisions in this Article E1, the Parties agreeing that the Project Schedule shall not extend beyond the Project Completion Date.

SECTION E1.1 PREPARATION AND SUBMISSION. Contractor shall prepare and submit in electronic format and a hard copy for approval by Architect and Owner a preliminary construction schedule ("Preliminary Project Schedule") for the Work, which Preliminary Project Schedule shall comply with the following: (A) state dates for the starting and completion of the various stages of performance of the Work, which dates shall be within the Project Period; and (B) comply with all of the scheduling required by the Design Documents.

SECTION E1.2 REVIEW AND APPROVAL. Upon Owner's receipt of the Preliminary Project Schedule, Owner and Architect shall coordinate, cooperate, and communicate with Contractor to review and to have Contractor make any revisions thereto. The final version of the Preliminary Project Schedule shall be approved by Owner and shall be referred to as the “Project Schedule” and shall govern Contractor's performance of the Work.

SECTION E1.3 PROJECT PERIOD AND SCHEDULE REASONABLE. Regardless of the cause therefor, Contractor may not maintain any claim or cause of action against Owner for damages incurred because of Contractor’s failure or inability to complete the Project within the Project Period in accordance with the Contract. The Parties stipulate and agree that the Project Period is a reasonable time within which Contractor is to perform the Work and complete the Project in accordance with the Contract.

ARTICLE E2  PERFORMANCE AND PROGRESS OF WORK.

All time limits stated in the Contract are of the essence of the Contract. Contractor shall commence the Work on the Project Start Date, and shall perform the Work expeditiously with sufficient forces and complete the Project by no later than the Project Completion Date and any extension of time that Owner may grant to Contractor and/or any adjustment in the Project Completion Date made in accordance with the Contract.

ARTICLE E3  DELAYS AND LIQUIDATED DAMAGES.

SECTION E3.1 GENERALLY. Contractor’s failure to complete the Project within the Project Period in accordance with the Project Schedule and the Contract shall subject Contractor to liquidated damages in the LD Amount stated on the Cover.

SECTION E3.2 EXCUSABLE DELAY. Contractor shall not be charged for liquidated damages because of any delays in completion of the Project due to acts of God, acts of public enemy, acts of government (including delays caused by agencies having jurisdiction over the Project and not attributable to Contractor’s acts or omissions), acts of Owner or anyone employed by Owner, acts of another contractor in performance of a separate contract with Owner, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and/or delays of Contractor’s subcontractors due to such causes (collectively “Excusable Delay”).

E3.2.1 NOTICE BY CONTRACTOR REQUIRED. Within 10 days of the beginning of any delay due to an Excusable Delay (unless Owner grants in writing additional time to file such notice before the date of the Final Payment under the Contract), Contractor shall notify Owner in writing of such delay. Following receipt of Contractor’s notice, Owner will ascertain the facts and extent of the delay and grant an extension of time for completing the Project when, in Owner’s judgment, the facts justify such an extension. Owner's finding of fact shall be final and conclusive on the Parties. Any extension of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected. Contractor’s sole remedy for an Excusable Delay shall be an extension of the Project Period with no adjustment to the Contract Amount.

E3.2.2 CONDITIONS FOR EXTENSION OF TIME. If Contractor is delayed at any time in the progress of the Work by: (A) an act or neglect of Owner, Architect, and/or a separate contractor retained by Owner; (B) changes ordered by Owner in the Work, which changes are not due to the errors and/or omissions of Contractor or any of its contractors or suppliers; (C) labor disputes not involving the employees of Contractor or any of its subcontractors or suppliers; (D) fire not caused by Contractor
or any of its subcontractors or invitees; (E) unusual delay in deliveries not caused by Contractor or any of its subcontractors or suppliers; (F) unavoidable casualties not caused by Contractor or any of its subcontractors or suppliers; (G) delay authorized by Owner; or (H) other causes that Architect determines may justify delay, then the Project Period shall be extended by change order for such reasonable time as Architect or Owner may determine.

SECTION E3.3 DELAYS DUE TO GOVERNMENTAL APPROVALS. Owner shall not be liable for any delays or damages related to the time required to obtain government approvals that are required for the Project unless Owner shall have delayed in seeking the approvals.
ARTICLE F1 CONTRACT AMOUNT AND CONTINGENCY ALLOWANCES.

SECTION F1.1 CONTRACT AMOUNT. Contractor agrees that the Contract Amount for the Contract shall be the Contract Amount stated on the Cover, which includes the Owner Contingency and Contractor Contingency that are stated on the Cover. Contractor agrees and understands that the Contract Amount shall constitute full consideration and compensation for Contractor to perform and complete the Project in accordance with the Contract and the Project Schedule, and within the Project Period. Contractor shall be solely responsible for any and all costs that are in excess of the Contract Amount and shall have no right to payment of any additional costs except as agreed in writing by the Parties in accordance with the provisions of the Contract.

SECTION F1.2 CONTINGENCY ALLOWANCE. The Owner Contingency is as stated on the Cover.

1.2.1 ESTABLISHMENT. Owner shall establish a contingency allowance for the Owner ("Owner Contingency Allowance"), which shall be under Owner’s control and possession. The Owner Contingency Allowance is also referred to as "Contingency Allowances".

1.2.2 PURPOSE. Owner may approve in a change order the use of the Owner Contingency Allowance to pay for the additional costs of materials, equipment, transportation, or other items that Contractor is required to incur for and/or additional work that Contractor is required to perform on the Project as a result of a change in the scope of the Work on the Project by Owner, unknown conditions on the Project Site, or necessary construction changes that were unforeseen but that are realized during the construction of the Project. The Contingency Allowances shall not be used to pay for any costs that are included in the Contract Amount or for any additional costs of materials, equipment, transportation, or other items that Contractor incurs for and/or additional work that Contractor performs on the Project as a result of any acts, errors, or omissions of Contractor and/or any of its subcontractors. The portion of the Contingency Allowances that Owner approves in a change order executed by the Parties shall be added to and become a part of the Contract Amount.

1.2.3 AMOUNT. The amount of the Owner Contingency Allowance shall be as stated on the Cover.

1.2.4 OWNERSHIP OF CONTINGENCY ALLOWANCES. Except for amounts that Owner approves pursuant to change orders out of the Contingency Allowances, all funds in the Contingency Allowances shall belong to Owner.

1.2.5 USE OF FUNDS IN CONTINGENCY ALLOWANCES. Any use of the funds out of the Contingency Allowances shall only be made pursuant to a change order that is executed by the Parties and sets forth, at a minimum, the additional work, materials, and/or other items that Contractor will provide; the amount for such additional work, materials, and/or other items and any change to the Contract Amount; and any adjustment to the Project Period and Contract Term.

ARTICLE F2 APPLICATION FOR PAYMENT, PAYMENT SCHEDULE, AND WITHHOLDING.

SECTION F2.1 APPLICATION FOR PAYMENT AND DECLARATION UNDER PENALTY OF PERJURY. Contractor shall submit an Application for Payment ("Application for Payment") on a monthly basis that references the Contract in sufficient detail to allow Owner to identify the Contract. Each person submitting and/or signing an Application for Payment on behalf of Contractor declares under penalty of perjury under State laws, and certifies and attests that: (A) he/she has thoroughly reviewed the claim for payment and know its content; (B) the Application for Payment and supporting information are true, accurate, and complete, and reflect the Work that Contractor has completed in accordance with the Contract and the correct amount for the completed Work; (C) Contractor has complied and is in compliance with all obligations required of Contractor under the Contract; and (D) he/she is familiar with Penal Code section 72 pertaining to false claims, and knows and understands that submission and/or certification of a false claim may lead to fines, imprisonment, and/or other legal consequences. Upon receiving an Application for Payment and if Architect or Owner objects to it and/or requires additional information, Architect shall notify Contractor and Contractor shall provide such information to Architect within 10 days after Contractor receives Architect’s notice. If Contractor fails or refuses to provide the additional information, Owner shall have the right to withhold payment of any or all portion of the Contract Amount that is due to Contractor until such time that Architect receives such information from Contractor.
SECTION F2.2 PAYMENT AND PAYMENT SCHEDULE. Owner shall make each payment of the Contract Amount to Contractor, at Contractor's address stated on the Cover, within 30 days of the date on which Architect receives and approves Contractor's Application for Payment based on the schedule of values. Owner's payment of any portion of the Contract Amount shall not be construed as Owner's acceptance of the Work performed by Contractor.

SECTION F2.3 SECURITIES OR ESCROW IN LIEU OF RETAINAGE. Pursuant to Public Contract Code section 22300, Contractor, upon a written request to Owner and at Contractor's expense, may: (A) substitute securities for any moneys withheld by Owner to ensure Contractor's performance of the Contract; or (B) request that Owner make payment of retentions earned directly to an escrow account established by contract. Before Owner is required to make any retention payment to an escrow account, the Parties and the escrow agent shall enter into the Escrow Agreement for Security Deposits in Lieu of Retention, the form of which is attached to this Agreement.

SECTION F2.4 PAYMENT TO SUBCONTRACTORS. Contractor shall pay each of its subcontractor in accordance with the Subcontractor and Subcontractor Registration and Designation.

SECTION F2.5 DENIAL OF APPLICATION FOR PAYMENT. Architect may deny, in whole or in part, any of Contractor's Application for Payment if, in Architect's opinion, Architect is unable to represent to Owner that Contractor has performed the Work in accordance with the Contract. Architect may also deny an Application for Payment or, due to subsequently discovered evidence or subsequent inspections, nullify in whole or in part any previously approved Application for Payment, to such extent as may be necessary in Architect's opinion to protect Owner from loss due to one or several of the following:

1. Defective Work that Contractor does not remedy.
2. Claims filed or reasonable evidence indicating probable filing of claims.
3. Contractor's failure to pay subcontractors or for labor, materials, or equipment.
4. Damage to another contractor.
5. Reasonable indication that the Work will not be completed in accordance with the Project Schedule, within the Project Period, and/or within the Contract Amount.
6. Contractor's failure to perform the Work in accordance with the Contract.
7. Stop payment notices filed, unless Contractor at its sole expense provides a bond or other security satisfactory to Owner in the amount equivalent to at least 125 percent of the claim and in a form satisfactory to Owner, which protects Owner against such claim. Any stop payment notice release bond shall be executed by a surety that is admitted in the State to issue surety bonds, fiscally solvent, completely unaffiliated with and separate from the surety that issued the Payment Bond and Performance Bond, and does not have any assets pooled with the surety(ies) that issued the Payment Bond and the Performance Bond.
8. Liquidated damages assessed by Owner against Contractor in the LD amount stated on the Cover.
9. Contractor's failure to submit on a timely basis proper and sufficient documentation required by the Contract, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports.
10. Contractor's failure to update and maintain the as-built plans.
11. Contractor's erroneous estimates of the value of the Work performed or other false statements in any Application for Payment.
12. Contractor's material breach of any provision of the Contract.
13. Certified payroll records have not been submitted in accordance with the requirements of the Contract and Applicable Laws.
14. Any civil wage and penalty assessment issued against Contractor or a subcontractor by the California Labor Commissioner.

15. Any portion of the Project is incomplete, including "punch-list" items, or is completed not in accordance with the Contract.

SECTION F2.7 WITHHOLDING OF PAYMENT.

F2.7.1 RETENTION. Owner shall have the right to withhold from each payment due to Contractor an amount equal to five percent of such payment ("Retention") and shall not be obligated to pay Contractor such Retention as the "Final Payment" until 60 days after the following are satisfied: (A) the Work and the Project is 100% completed; (B) Contractor has delivered to Owner, and Owner has accepted and approved, the as-built plans and other documents that Contractor is required by the Contract or Applicable Laws to deliver to Owner at or after the completion of the Project; and (C) if the Project is subject to DSA's jurisdiction, DSA has certified and closed out the Project.

F2.7.2 OTHER WITHHOLDINGS. When under the Contract or Applicable Laws, Owner is permitted, required, or entitled to withhold any amount from Contractor, the provisions in this Section F2.7.2 shall apply unless otherwise stated. The amount to be withheld shall be deducted and retained by Owner from any payment of the Contract Amount due or to become due to Contractor. If the remaining Contract Amount, at any point in time, that is due or to become due to Contractor is insufficient to cover the amount that Owner is entitled to withhold from Contractor, Owner shall have the right to recover the balance from Contractor and/or Contractor's sureties and such balance shall be paid within 30 days of Contractor's receipt of Owner's invoice requesting payment thereof.

ARTICLE F3 CHARGES FOR ADDITIONAL PROFESSIONAL SERVICES.

If, at any time during the Project Period, through no fault of Owner, Owner is required to provide or secure additional professional services for any reason by any act and/or omission of Contractor, Contractor shall be invoiced by Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be deducted from the Contract Amount due or to become due to Contractor. Such invoicing shall be independent from any other remedies Owner has, including but not limited to liquidated damages. If the Contract Amount then or thereafter due to Contractor is not sufficient to cover such amounts, Contractor or Contractor's surety shall pay the difference to Owner within 30 days of Contractor's receipt of Owner's invoice requesting payment thereof. Additional professional services shall include, but shall not be limited to, legal services, architectural services, engineering services, inspection and testing services, and review and inspection by the governmental agency(ies) with jurisdiction over the Project, where applicable, attributable to the following:

1. Services made necessary by Contractor's error and/or omission.
2. Services made necessary due to defects and/or deficiencies in the Work caused by Contractor.
3. Services required by Contractor's failure to perform according to any provision of the Contract.
4. Services in connection with evaluating substitutions of products, materials, or equipment; subcontractors proposed by Contractor; revising drawings or specifications; and/or providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
5. Services for evaluating and processing claims submitted by Contractor relating to the Work outside the process set forth in Section M10.
6. Services required by Contractor's failure to prosecute and perform the Work in a timely manner in accordance with the Project Schedule and within the Project Period.
7. Services in conjunction with the testing, adjusting, balancing, and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
8. Services in conjunction with more than one re-review of required submittals of shop drawings, product data, or samples.

ARTICLE F4 LIQUIDATED DAMAGES.
SECTION F4.1 LD AMOUNT. The occurrence of, and actual amount of, damages that Owner would suffer if the Project is not completed in accordance with the Project Schedule and within the Project Period are dependent upon many circumstances and conditions that could prevail in various combinations, and, from the nature of the circumstances, it is impracticable and extremely difficult to fix the actual damages. Damages that Owner would suffer if completion of the Project is delayed include, but are not limited to, loss of the use of the Project Site and the completed Project thereon, disruption of activities, costs of administration and supervision, and the loss suffered by Owner and the public. Accordingly, the Parties agree that the LD Amount stated on the Cover shall be the amount of damages that Owner shall sustain for each day beyond the Project Completion Date (including any adjustment thereto in accordance with the Contract) and continuing until, but not including, the date on which the Project is fully completed. The LD Amount shall be in each case the actual cash value that the Parties agree as Owner's loss resulting from Contractor's failure to complete the Project in accordance with the Project Schedule and within the Project Period.

SECTION F4.2 WITHHOLDING AND PAYMENT OF LD AMOUNT. If Contractor becomes liable for liquidated damages or any damages, costs, or expenses, Owner, in addition to all other remedies provided under the Contract and/or by Applicable Laws, shall have the right to withhold, from any payment of the Contract Amount due or to become due to Contractor. Owner shall have the right to use and apply such withheld amounts to reimburse Owner for all liquidated damages due to Owner. If the Contract Amount that is due or to become due to Contractor is not sufficient to discharge Contractor's liability for liquidated damages, Contractor and its sureties shall remain liable to Owner until the liability is satisfied in full. Owner shall have the right to recover the balance from Contractor and its sureties, and Contractor shall pay such remaining liquidated damages within 30 days of Contractor's receipt of Owner's invoice requesting payment thereof.

ARTICLE F5 TAXES.

Contractor shall pay all sales, consumer, use, and other taxes required of Contractor by federal, State, and local laws relating to the Project.
ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement For Security Deposit in Lieu of Retention (“Escrow Agreement”) is entered into and effective on __________________________ by and between the following parties, each referred to as a “Party” and collectively as Parties”:

“Contractor”: ________________________________________________________________

“Owner”: ___________________________________________________________________

“Escrow Agent”: ___________________________________________________________________

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the agreement entered into between Owner and Contractor, effective on __________________________ (“Agreement”), for the construction of the Project in accordance with the Agreement and the provision of related work in the amount of $________________________. Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Agreement between Owner and Contractor. Securities shall be held in the name of Owner, and shall designate Contractor as the beneficial owner. Subsequent to Contractor’s deposit of securities as a substitute for Contract earnings, if the market value of such securities falls below the cash amount then required to be withheld as retention under the terms of the Agreement between Owner and Contractor, Owner shall notify Contractor and Escrow Agent in writing, and Contractor shall, within 10 business days of Contractor’s receipt of Owner’s notice, deposit additional securities to correct the shortfall.

2. The Owner shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to the provisions of the Agreement, provided that Escrow Agent holds securities in the form and amount specified above.

3. When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this Escrow Agreement is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement, and the rights and responsibilities of the Parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the escrow account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest, shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

7. The Owner shall have the right to draw upon the securities in the event of default by the Contractor. Upon seven days’ written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

8. Upon receipt of written notification from the Owner certifying that the Agreement is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Agreement, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges to the Escrow
Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

9. Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections 5 to 8, inclusive, of this Escrow Agreement, and the Owner and the Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

ON BEHALF OF OWNER
Title: _______________________________________________________
Print Name: __________________________________________________
Signature: ____________________________________________________
Address: _____________________________________________________
Phone No.: _________________________________________________
Email: _____________________________________________________

ON BEHALF OF ESCROW AGENT
Title: _________________________________________________________
Print Name: __________________________________________________
Signature: ____________________________________________________
Address: _____________________________________________________
Phone No.: _________________________________________________
Email: _____________________________________________________

ON BEHALF OF CONTRACTOR
Title: _________________________________________________________
Print Name: __________________________________________________
Signature: ____________________________________________________
Address: _____________________________________________________
Phone No.: _________________________________________________
Email: _____________________________________________________

at the time the Escrow Account is opened, the Owner and the Contractor shall deliver to Escrow Agent a fully executed copy of this Escrow Agreement.
IN WITNESS WHEREOF, the Parties have executed this Escrow Agreement by their proper officers on the date first set forth above.

OWNER
Title:____________________________________
Print Name:______________________________
Signature: _______________________________

CONTRACTOR
Title:____________________________________
Print Name:______________________________
Signature: _______________________________

ESCROW AGENT
Title:____________________________________
Print Name:______________________________
Signature: _______________________________

/ /
ARTICLE G1 CONSTRUCTION DOCUMENT G

SECTION G1.1 REQUIRED INSURANCE. Contractor, at its cost, shall maintain in effect insurance that complies, at a minimum, with the requirements stated below, and be provided by insurers that are admitted by the State to transact insurance and has an A.M. Best rating of at least A-:VII or higher. Owner, in its sole discretion, may waive in writing any of the requirements in this Article G1. However, Owner’s failure to insist or request that Contractor comply with the requirements in this Article G1 shall not constitute a waiver on Owner’s part. Owner reserves the right to reject any insurance and/or to require that Contractor obtain insurance through an insurer satisfactory to Owner.

G1.1.1 COMMERCIAL GENERAL LIABILITY, in effect throughout the Contract Term and the Warranty Period, with minimum limits per project of $1,000,000 per occurrence and $5,000,000 aggregate for property damage, bodily injury, advertising injury, and personal injury. This insurance shall state that Owner’s insurance coverage is excess of Contractor’s insurance coverage and will not contribute with Contractor’s insurance as to any claims, demands, lawsuits, causes of action, actions, proceedings, damages, liabilities, judgments and expenses, including costs and attorney’s fees, arising out of, resulting from, or relating to the Contract and resulting from, arising out of, or caused by Contractor or its governing body, officers, employees, agents, subcontractors, and/or suppliers. This insurance shall: (A) name or be endorsed to name Owner and its governing board of trustees, officers, employees, and agents, and Architect as an additional insured; and (B) contain or be endorsed to contain a waiver of subrogation by the insurer with respect to Owner and its governing board of trustees, officers, employees, and agents, and Architect.

G1.1.2 WORKERS COMPENSATION, in effect throughout the Contract Term and the Warranty Period, with limits of not less than $1,000,000 or as required by State laws, whichever is greater, and employer’s liability of not less than $1,000,000. By signing this Agreement, Contractor certifies that it is aware of the provisions of Labor Code section 3700, which provides in relevant part as stated below, and Contractor hereby agrees that it will comply with such provisions before commencing and during the performance of the Work and will require Contractor’s subcontractors to do the same:

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

(a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

G1.1.3 COMMERCIAL AUTOMOBILE LIABILITY, in effect throughout the Contract Term and the Warranty Period, covering, at a minimum, non-owned and hired autos and, if there are any autos owned by Contractor, then also covering owned autos, with a combined single limit of not less than $1,000,000 per accident.

G1.1.4 If required by Owner, as stated on the Contract Documents List (Contract Document B), BUILDER’S RISK/COURSE-OF-CONSTRUCTION, in effect throughout the Project Period, satisfactory to Owner and issued on a completed value basis on all insurable Work. This insurance shall insure against all risks, including but not limited to, the following perils: fire, lightning, explosion, riot or civil commotion, falling objects, vandalism, theft, malicious mischief, sprinkler leakage, sonic boom, explosion, collapse, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for any costs and expenses of professional services required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace, or reconstruct the Project. This insurance shall include or be endorsed to include Owner and any person or entity with insurable interest in the Project as an additional named insured. Contractor and its surety shall bear the risk of the damage to the Project due to the perils
covered by this insurance policy and any other hazard that might result in damage to the Project. No claim for such loss or damage shall be recognized by Owner, and such loss or damage shall not excuse Contractor’s obligations to perform completely and satisfactorily the Project in accordance with the Contract.

SECTION G1.2 PROOF AND NOTICE. Contractor shall provide written proof satisfactory to Owner of the existence of the insurance required in Section G1.1 above, including all required endorsements. Upon Owner’s request, Contractor shall provide a certified copy of the insurance policy or other document satisfactory to Owner. Contractor shall also provide Owner with proof of renewal of each required insurance, including all required endorsements, at least 15 days before the date on which the insurance expires. Moreover, Contractor shall provide Owner with written notice within two business days of the occurrence of any of the following: (A) any required insurance is cancelled or non-renewed, (B) notice from the insurer that the insurer intends to or will cancel or non-renew the insurance, and/or limit, restrict, or reduce Contractor’s insurance coverage such that the insurance does not comply with the requirements of this Article G1, or (C) any required insurance contains policy limits below those required in Section G1.1 above.

SECTION G1.3 DEDUCTIBLE OR SELF-INSURED RETENTION. Contractor must disclose any deductible or self-insured retention for any of the required insurance. Owner reserves the right to require that such deductible or self-insured retention be eliminated or reduced, that Contractor obtain a bond or other security guaranteeing payment of losses and costs within the limits of the deductible or self-insured retention, or that Contractor provide other assurances satisfactory to Owner.

SECTION G1.4 INSURANCE OF SUBCONTRACTORS. Contractor shall require each of Contractor’s subcontractors to procure and maintain the insurance listed, and with the same coverage and policy limits as stated, in Section G1.1 above. Each subcontractor’s commercial general liability insurance shall contain a blanket additional insured endorsement or be endorsed to name Owner and its governing board of trustees, officers, employees, and agents, and Architect as an additional insured. Contractor shall require each subcontractor to provide Owner with written proof of the required insurance at Owner’s request.

ARTICLE G2 OWNER.

SECTION G2.1 REQUIRED INSURANCE.

G2.1.1 COMMERCIAL GENERAL LIABILITY. Owner shall procure and maintain, throughout the Contract Term, commercial general liability insurance or self-insurance of at least $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury, property damage, advertising injury, and personal injury.

G2.1.2 WORKERS COMPENSATION. Owner shall maintain workers compensation insurance or self-insurance to insure its employees against liability for compensation under the State Workers Compensation Insurance and Safety Act.

G2.1.3 BUILDER’S RISK/COURSE-OF-CONSTRUCTION. If Contractor is not required, as stated on the Contract Documents List (Contract Document B), to provide builder’s risk/course-of-construction, Owner may maintain, in effect throughout the Project Period, coverage on the Project for builder’s risk/course-of-construction. If Owner so maintains, Owner shall deliver to Contractor written proof of each of the required insurance or self-insurance upon Contractor’s request.

SECTION G2.2 PROOF OF INSURANCE AND NOTICE. Upon Contractor’s request, Owner shall deliver to Contractor written proof of each of the required insurance or self-insurance.

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PAYMENT BOND
CONTRACT DOCUMENT H

Owner: Fresno County Board of Education

Project Address: Kermit Koontz Education Complex
1320 N. Mariposa Street
Fresno, CA 93703
County of Fresno

KNOW ALL MEN BY THESE PRESENTS that the Principal and Surety listed below are held and firmly bound unto, in the county stated above in the State of California, laborers and other persons referred to in California Civil Code section 9554, subdivision (b), in the sum of ___________ dollars ($___________________________) in lawful money of the United States for the payment of which Principal and Surety bind themselves and their heirs, executors, trustees, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, California Civil Code sections 9550 and 9554 require the Principal, as the direct contractor awarded a public works contract involving an expenditure in excess of $25,000, to give a payment bond issued by an admitted surety insurer to and approved by the public entity by whom the contract was awarded in an amount not less than 100 percent of the total amount payable pursuant to the contract.

WHEREAS, the Principal has by written agreement, effective on ________________, with Owner (which agreement and all Contract Documents, including any drawings and specifications, attached to or forming a part of the agreement are by reference made a part hereof and are hereinafter referred to collectively as the “Agreement”) to furnish all materials, tools, equipment, labor, services, transportation, and other items necessary to construct the Project in accordance with the Agreement and provide related work as set forth in the Agreement.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is that, if the Principal or any of its subcontractors or the heirs, executors, trustees, administrators, successors, or assigns of any, all, or any of them, shall fail to pay: (A) any of the persons named in California Civil Code section 9100; (B) amounts due under the Unemployment Insurance Code with respect to work or labor performed pursuant to the Agreement; or (C) amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and its subcontractors under California Unemployment Insurance Code section 13020, the Surety will pay the obligation, and, if an action is brought to enforce the liability on this bond, will pay a reasonable attorney’s fee to be fixed by the court. This bond shall pay in full the claims of all claimants and by its terms inure to the benefit of any person authorized under California Civil Code 9100 to assert a claim against this bond so as to give a right of action to that person or that person’s assigns in an action to enforce the liability on this bond. Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the Agreement or to the work to be performed thereunder shall in any way affect Surety’s obligations under this bond, and Surety does hereby waive notice of any change, extension of time, alteration, or addition to the Agreement or to the work thereunder.

SIGNATURES ON SEPARATE PAGE}
IN WITNESS WHEREOF, this bond has been duly executed by the Principal and Surety under their several seals hereto affixed on the dates stated below.

(To be signed by Principal and Surety, and Acknowledgment and Notary Seal to be attached)

**Principal:** ________________________________  **Surety:** ________________________________

Address: ___________________________________  Address: ___________________________________

____________________________________  __________________________________

By: ________________________________________  By: ________________________________________

Print Name: ________________________________  Print Name: ________________________________

Title: ______________________________________  Title: ______________________________________

Date: ______________________________________  Date: ______________________________________

The rate or premium of this bond is _______________________________ per thousand, the total amount of premium charged is $ _______________________________.

//
PERFORMANCE BOND

CONTRACT DOCUMENT I

Owner: Fresno County Board of Education

Project Address: Kermit Koontz Education Complex
1320 N. Mariposa Street
Fresno, CA 93703
County of Fresno

KNOW ALL MEN BY THESE PRESENTS that the Principal and Surety listed below are held and firmly bound unto, in the county stated above in the State of California, the Owner in the sum of ________________ dollars ($____________________) in lawful money of the United States for the payment of which Principal and Surety bind themselves and their heirs, executors, trustees, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement, effective on ________________, with Owner (which agreement and all Contract Documents, including any drawings and specifications, attached to or forming a part of the agreement are by reference made a part hereof and are hereinafter referred to collectively as the “Agreement”) to furnish all materials, tools, equipment, labor, services, transportation, and other items necessary to construct the Project in accordance with the Agreement and provide related work as set forth in the Agreement.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the Principal and its heirs, executors, trustees, administrators, successors or assigns shall in all things stand to and abide by, and well and truly keep and perform all undertakings, covenants, terms, conditions, and agreements in the Agreement and any modifications thereof made as therein provided and any extensions thereof that may be granted by Owner, with or without notice to Surety, on Principal’s part to be kept and performed at the time, in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless Owner and its officers, employees, and agents, as therein stipulated, then this obligation shall become null and void. Otherwise, it shall be and remain in force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the Agreement or to the work to be performed thereunder shall in any way affect Surety’s obligations under this bond, and Surety does hereby waive notice of any change, extension of time, alteration, or addition to the Agreement or to the work thereunder.

[SIGNATURES ON SEPARATE PAGE]
IN WITNESS WHEREOF, this bond has been duly executed by the Principal and Surety under their several seals hereto affixed on the dates stated below.

(To be signed by Principal and Surety, and Acknowledgment and Notary Seal to be attached)

Principal: ______________________________
Address: __________________________________________________________________________
_________________________________________________________________________________
By: __________________________________
Print Name____________________________
Title: __________________________________
Date: __________________________________

Surety: ______________________________
Address: __________________________________________________________________________
_________________________________________________________________________________
By: __________________________________
Print Name: ____________________________
Title: __________________________________
Date: __________________________________

The rate or premium of this bond is ________________________________ per thousand, the total amount of premium charged is $ __________________________.

/ /
SUBCONTRACTOR, AND SUBCONTRACTOR REGISTRATION AND DESIGNATION

CONTRACT DOCUMENT J

The provisions of this Contract Document J shall apply if Contractor subcontracts any portion of the Work.

ARTICLE J1 SUBCONTRACTOR QUALIFICATION AND REGISTRATION WITH DIR.

Each subcontractor that performs any portion of the Work shall comply with the qualification and registration requirements set forth in the Prevailing Wage Work Addendum.

ARTICLE J2. SUBLETTING AND SUBCONTRACTOR DESIGNATION.

SECTION J2.1 Pursuant to Public Contract Code section 6109, Contractor may not perform the Work with any subcontractor that is ineligible to perform public works pursuant to Labor Code section 1777.1 or 1777.7.

SECTION J2.2 Subletting the whole or any part of the Work shall be done in accordance with Public Contract Code sections 4100 to 4113, inclusive, which are hereby incorporated by reference and made a part hereof.

SECTION J2.3 Contractor, as part of its bid, has set forth the information required on the Subcontractor Designation Form.

SECTION J2.4 If after award of the Contract, Contractor subcontracts, except as provided in Public Contract Code section 4107 or 4109, any such portion of the Work, Contractor shall be subject to the penalties in Public Contract Code section 4111.

SECTION J2.5 Contractor shall comply with Public Contract Code sections 4104 through 4107.5 and be fully responsible for any and all acts and/or omissions of each subcontractor.

SECTION J2.6 Owner reserves the right to approve any subcontractor that Contractor has designated for use on the Project and may require financial, performance, and such additional information as Owner needs to render such approval. If Owner does not approve a subcontractor, Contractor shall promptly submit another subcontractor of the same trade for Owner’s approval. Owner’s approval of any subcontractor shall not create any contractual or legal relationship between Owner and the subcontractor, and shall not constitute any representation or warranty by Owner as to the subcontractor’s qualifications or ability to perform any portion of the Work.

ARTICLE J3. SUBSTITUTION OF SUBCONTRACTOR; ASSIGNMENT OR TRANSFER OF SUBCONTRACT.

Any substitution of a subcontractor listed in the Subcontractor Designation Form, and any assignment or transfer of a subcontract, shall be in accordance with Applicable Laws, including but not limited to, Public Contract Code sections 4107, 4107.5, 4108, and 4019. Failure by a subcontractor to be registered to perform public work as required by Labor Code section 1771.1(a) shall be grounds under Public Contract Code section 4107 for Contractor, with the consent of Owner, to substitute a subcontractor who is registered to perform public work pursuant to Labor Code section 1725.5 in place of the unregistered subcontractor. Contractor’s violation of any of the provisions of such Applicable Laws constitutes a material breach of the Contract and Owner may exercise the option, in Owner’s discretion, of: (A) terminating the Contract or (B) assessing Contractor a penalty in accordance with Public Contract Code section 4110.

ARTICLE J4. SUBCONTRACT RELATIONS.

J4.1 SUBCONTRACT. Any Work performed by a subcontractor shall be pursuant to a written agreement between Contractor and the subcontractor, and where appropriate between subcontractors and sub-subcontractors, each of which shall contain provisions that:

J4.1.1 Preserve and protect Owner’s rights under the Contract with respect to the portion of the Work to be performed under the subcontract so that the subcontract will not prejudice such rights.

J4.1.2 Require that such portion of the Work be performed in accordance with the Contract.

J4.1.3 Require submission to Contractor of applications for payment under each subcontract to which Contractor is a party in reasonable time to enable Contractor to apply for payment in accordance with the Contract.
J4.1.4 Require that all claims for additional costs, extension of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to Contractor and not to Owner.

J4.1.5 Identify to each subcontractor any terms and conditions of each subcontract that may be at variance with the Contract.

J4.1.6 Provide to each subcontractor a copy of, and require the subcontractor to comply with, the Contract.

Any subcontract between Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on the Contract, and any public money that may have been paid to a debarred subcontractor shall be returned to Owner. Contractor shall be responsible for paying prevailing wages to workers of a debarred subcontractor who has been allowed to work on the Project.

J4.2 NO RELATION TO OWNER. Nothing in the Contract creates any contractual or other legal relationship between any subcontractor and Owner. Owner shall be deemed the third party beneficiary of the subcontract between Contractor and subcontractor.

ARTICLE J5. PAYMENT TO SUBCONTRACTOR.

Except as required of Owner by Applicable Laws, Contractor shall be solely responsible for payment to Contractor’s subcontractors and suppliers. No later than 10 days after Contractor receives payment of any portion of the Contract Amount from Owner, Contractor, pursuant to Business and Professions Code section 7108.5, shall pay to each subcontractor, out of the amount paid to Contractor on account of such subcontractor's portion of the Work, the amount to which the subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of such subcontractor's portion of the Work. Contractor, by appropriate agreement with each subcontractor, shall require each subcontractor to pay sub-subcontractors in a like manner. If Owner fails to make any payment for any cause which is Contractor’s fault and not the fault of a subcontractor, Contractor shall pay that subcontractor as stated in the subcontract, made at any time after the payment from Owner shall otherwise have been issued, for the subcontractor’s work to the extent completed, less the retained percentage. Owner shall not have any obligation to pay or to see to the payment of any moneys to any subcontractor except as required by Applicable Laws.

ARTICLE J6. DISPUTES NOT TO AFFECT WORK.

If there is any dispute as to whether or not any portion of the Work is within the scope of the work to be performed by a subcontractor, or any dispute as to whether or not the subcontractor is entitled to a change order for any work requested of it, the subcontractor shall diligently perform its portion of the Work as required by Contractor. Regardless of the size or nature of the dispute, the subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. Contractor shall continue to pay the subcontractor the undisputed amounts called for under the subcontract during the existence of the dispute.

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FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION
CONTRACT DOCUMENT K

Contractor:________________________________________________________________________________

In accordance with Education Code sections 45125.1 and 45125.2, Owner has determined that Contractor may have more than limited contact with students during performance of the Contract and that Contractor will not be performing work in an emergency or exceptional situation. Therefore, before Contractor and any of its employees may commence any Work that involves more than limited contact with students, Contractor must complete and sign, and submit to Owner, this Certification.

Contractor shall comply with Option A or Option B below (mark one):

_ OPTION A:  Before commencing any Work, Contractor and each employee who will provide the Work shall complete the fingerprinting and criminal background check required by Education Code sections 45125.1 and 45125.2, and, as ascertained by the California Department of Justice (“DOJ”), shall have, throughout the Project Period and the Warranty Period, no conviction of and no pending criminal proceeding for any violent felony listed in Penal Code section 667.5(c) or any serious felony listed in Penal Code section 1192.7(c).

Contractor’s DOJ-issued ORI # is: ______________________________________

_ OPTION B:  Throughout the Project Period, Contractor shall ensure the safety of students by one or more of the following (mark as applicable):

_ 1. Install a physical barrier at the Project Site to limit contact with students.

_ 2. Have an employee continually supervise and monitor Contractor’s employees at the Project Site who: (A) has completed the fingerprinting and criminal background check required by Education Code sections 45125.1 and 45125.2; and (B) as ascertained by DOJ, has not been convicted of and does not have any pending criminal proceeding for any violent felony listed in Penal Code section 667.5(c) or any serious felony listed in Penal Code section 1192.7(c).

Contractor’s DOJ-issued ORI #: ________________________________________________

Name of supervising employee: _________________________________________________

Date DOJ verified clearance of supervising employee: ________________________________

_ 3. With Owner’s prior approval, arrange with Owner to have an Owner personnel provide surveillance of Contractor’s employees at the Project Site.

If any of Contractor’s employees must be fingerprinted and have criminal background check clearance as required above, Contractor, by signing below, agree that throughout the Project Period and Warranty Period, Contractor shall: (A) ensure and hereby certify that each employee performing the Work has been fingerprinted and has no conviction of and no pending criminal proceeding for any violent felony listed in Penal Code section 667.5(c) or any serious felony listed in Penal Code section 1192.7(c); (B) apply for subsequent arrest notifications with DOJ in order for Contractor to receive subsequent arrest notices for Contractor and its employees; and (C) immediately remove any employee who is convicted of or has a criminal proceeding pending for any violent felony listed in Penal Code section 667.5(c) or any serious felony listed in Penal Code section 1192.7(c) from performing any services at the Project Site.

The undersigned is authorized to execute on behalf of, and to commit and bind, Contractor to this Certification, and Contractor hereby agrees to comply with the terms and conditions of this Certification.

Signature: ____________________________________       Title:_____________________________________

Print Name:___________________________________

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GENERAL CONDITIONS AND TERMS
CONTRACT DOCUMENT L

These General Conditions and Terms is a part of this Agreement and the Contract, and contain the following Articles:

Article L1    Scope of Services and Obligations – Generally
Article L2    Scope of Services and Obligations – Contractor
Article L3    Scope of Services and Obligations – Subcontractor
Article L4    Scope of Services and Obligations – Architect, Inspector, Testing Laboratory, and Consultant
Article L5    Scope of Services and Obligations – Owner
Article L6    Payment
Article L7    Term and Termination of Agreement; and Suspension or Stop of Work
Article L8    Insurance and Bonds
Article L9    Indemnity
Article L10   Modifications, Claims, and Dispute Resolution
Article L11   General Provisions

ARTICLE L1    SCOPE OF SERVICES AND OBLIGATIONS – GENERALLY.

SECTION L1.1   SCOPE OF WORK AND CHANGES THERETO. The Parties’ obligations under the Contract are as set forth in these General Terms and Conditions and the other Contract Documents. Owner reserves the right to deduct, add, or otherwise change any part of the Work. Any deduction, addition, or change relating to Work shall be made in accordance with the provisions in Article L10. Except as stated otherwise in this Agreement or other Contract Documents, the Parties may modify or amend any covenant, term, or condition of the Contract only by a writing executed by them.

SECTION L1.2   COMPLIANCE WITH APPLICABLE LAWS. Each Applicable Law is deemed inserted herein; however, if any conflict or inconsistency exists between a provision in the Contract and a provision in an Applicable Law, the provision in the Contract shall govern except where the provision in the Contract is specifically prohibited or void by the Applicable Law in which case the provision in the Applicable Law shall govern to the extent provided in the Applicable Law. Contractor shall comply with and ensure that the Work comply with all applicable laws and related regulations and Contractor’s performance of the Contract, and all laws and related regulations for which Contractor agrees to comply under the Contract (“Applicable Laws”), including but not limited to, those set forth below. Nothing in the Contract is to be construed to permit any Work that does not comply with Applicable Laws.

L1.2.1 All federal, State, local laws that apply to the Work and/or the Contract, including but not limited to, applicable provisions of the Education Code, Business and Professions Code, Government Code, and Health and Safety Code.

L1.2.2 All regulations, ordinances, orders, procedures, policies, and requirements of each government agency that has jurisdiction over the Project (“Jurisdictional Agency”), including but not limited to, applicable provisions of Title 21 and Title 24 of the California Code of Regulations (“CCR”).

L1.2.3 If the Project is subject to the jurisdiction of DSA, the regulations, policies, Interpretation of Regulations, procedures, and requirements of DSA.

L1.2.4 All laws and regulations applicable to access for physically handicapped persons, including but not limited to, applicable provisions of the Government Code, Health and Safety Code, and Title 24 of the CCR.

L1.2.5 Applicable laws, regulations, procedures, and requirements of the State Fire Marshal and DIR.

L1.2.6 If the Contract is funded with any federal funds, federal suspension and debarment regulations, including Executive Order 12549 (29 C.F.R. Part 98).

L1.2.7 Pursuant to Labor Code section 1735, Contractor and all subcontractors shall not discriminate in the employment of persons for the Project on any basis listed in Government Code section 12940(a), as those basis are defined in Government Code section 12926 and 12926.1, except as otherwise provided.
in Government Code section 12940. If Contractor or any subcontractor violates Labor Code section 1735, each shall be subject to all of the penalties imposed for violations of Chapter 1, Part 7, Division 2 of the Labor Code. Moreover, Contractor shall not refuse to accept otherwise qualified employees as registered apprentices on the Project on any basis listed in Government Code section 12940(a), as those bases are defined in Government Code sections 12926 and 12926.1, except as provided in Government Code 12940 and Labor Code section 3077.

SECTION L1.3 QUALIFICATION, LICENSE, AND REGISTRATION. Contractor represents and shall ensure that it and all persons whom it employs or retains to perform the Work have the proper training, skill, and experience and is qualified to so perform, including having throughout the Project Period and the Warranty Period all required licenses, permits, registrations, and/or certifications. Contractor shall provide Owner with written proof of such licenses, permits, and/or certifications upon Owner’s request and notify Owner in writing no later than 10 days after Contractor receives any notice that any such licenses, permits, registrations, and/or certifications have been revoked, suspended, placed on probation, or non-renewed. In accordance with Public Contract Code section 3300, Contractor has the contractor's license listed on the Cover and Contractor shall maintain such license in good standing for the duration of the Project Period and the Warranty Period.

SECTION L1.4 WORK PRODUCTS AND RIGHTS THERETO. Unless stated otherwise in the Contract, the following applies to the Design Documents, other Contract Documents, and any data, document, display, drawing, report, material, invention, work, and discovery (whether written, recorded, or electronically stored), including any copyright, right, and interest therein or thereto (collectively “Work Product”) that Owner provides to Contractor pursuant to the Contract (“Owner Work Product”) or that are prepared for and/or provided to Owner by or on behalf of Contractor pursuant to the Contract (collectively “Contractor Work Product”): (A) the Owner Work Product is Owner’s property and Owner has all rights thereto; (B) Contractor does not own and shall not claim any right or interest to or in the Owner Work Product; (C) Owner grants to Contractor a limited license during the Contract Term and the Warranty Period to use and reproduce only those portions of the Owner Work Product necessary for Contractor to perform the Work and the Contract; (D) Contractor shall return any or all Owner Work Product to Owner upon Owner’s request; (E) Contractor represents that the Contractor Work Product is Contractor’s original work and does not contain any unlawful matter or infringe upon any third party’s copyright, right, or interest; (F) the Contractor Work Product is an instrument of service and shall become Owner’s sole property upon, and Contractor shall deliver to Owner the Contractor Work Product within 30 days of the Project Completion Date or the date of termination of the Contract, whichever is earlier; and (G) Owner shall have the right to, and may authorize others to, use, modify, duplicate, distribute, sell, dispose, and/or disclose, in whole or in part, in any manner, and for any purpose, the Contractor Work Product. The provisions of this Section shall survive the termination of the Contract.

SECTION L1.5 RECORD KEEPING, RETENTION, INSPECTION, AND AUDIT. Contractor shall maintain accurate books and records of the Work provided under, amounts billed pursuant to, and all documents required of Contractor under the Contract for at least five years after the date on which the Contract terminates and make them available for review, audit, and/or copying by Owner. The Contract is subject, for three years after the final payment is made, to the State Auditor’s examination and audit at Owner’s request or as part of an audit of Owner. The provisions of this Section shall survive the termination of the Contract.

SECTION L1.6 COOPERATION AND COMMUNICATION. Contractor shall cooperate with Owner, Architect, Inspector, Testing Lab, and any other consultants, persons, or entities that Owner may retain to work on or assist with the Project. In addition, there may be other contractors at the Project Site working on related site improvements. Contractor shall cooperate with the other contractors to insure that Contractor’s activities do not delay or hinder the construction activities of the other contractors. Contractor shall forward all communications relating to the Project and the Contract to Owner through Architect.

ARTICLE L2 SCOPE OF SERVICES AND OBLIGATIONS – CONTRACTOR.

SECTION L2.1 PROVISION OF WORK. Contractor shall commence the Work on the Project Start Date and perform such Work in accordance with the Contract and the Project Schedule and within the Project Period.

SECTION L2.2 REVIEW AND COMPLIANCE WITH CONTRACT DOCUMENTS.

L2.2.1 COVERAGE OF DESIGN DOCUMENTS. The Design Documents describe the details for the performance and completion of the Project that Contractor shall perform in accordance with the Contract. Where the Design Documents describe the Project or the Work thereon in general terms, but not in complete detail, Contractor shall use the best general practice and only materials and
workmanship of the first quality. Unless otherwise specified, Contractor shall furnish all labor, materials, tools, equipment, and incidental and do the Work in a satisfactory and workmanlike manner.

L2.2.2 ORGANIZATION OF DESIGN DOCUMENTS. The organization of the specifications into divisions, sections, and articles, and the arrangement of drawings shall not control Contractor in devising the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

L2.2.3 EXAMINATION OF PROJECT SITE AND REVIEW OF AGREEMENT. Contractor shall examine carefully the Project Site, the Design Documents, and other Contract Documents. It will be assumed that Contractor has investigated and is satisfied as to the conditions to be encountered; the character, quality and quantities of the Work to be performed and materials to be furnished; and Owner's requirements and the Contract.

L2.2.4 REPORT OF ERROR, OMISSIONS, AND VARIANCES. Contractor shall carefully study the Design Documents. Contractor shall promptly report to Architect any error, inconsistency, omission, or items that appear to be in error in the Design Documents to the attention of Architect, through the Project Inspector, for interpretation or correction. In no case, however, shall Architect's instruction be construed to cause Work to be done that is not in conformity with the Design Documents. If Contractor observes that any of the Design Documents or other Contract Documents are at variance with Applicable Laws or the Contract, Contractor shall promptly notify Architect in writing, and any necessary changes shall be adjusted by appropriate modification. If Contractor performs any Work knowing the Work to be contrary to Applicable Laws or the Contract, and without such notice to Architect, Contractor shall be fully responsible therefor and shall bear all costs attributable thereto. However, Contractor shall not be liable to Owner or Architect for any damage resulting from any such errors, inconsistency, or omission in the Design Documents. Contractor shall not perform any portion of the Work at any time without Design Documents or where required, approved shop drawings, product data, or samples for such portion of the Work.

L2.2.5 WORK MUST CONFORM TO AGREEMENT; CONFLICTS. Contractor shall perform the Work in accordance with the Design Documents and other Contract Documents. Without limiting Contractor’s obligation to identify conflicts for resolution by Architect, the more stringent, higher quality, and greater quantity of work shall apply. If a conflict exists within the drawings, larger scale drawings shall govern over smaller scale drawings, and written dimensions shall govern over scaled dimensions.

L2.2.6 NO DEVIATIONS FROM DRAWINGS AND SPECIFICATIONS. No deviations from the approved Design Documents will be permitted except upon addenda issued by Owner before the execution of this Agreement or change orders executed by the Parties and approved by Architect and, where applicable, government agency(ies) having jurisdiction of the Project.

L2.2.7 OWNERSHIP AND COPIES FURNISHED. Unless otherwise consented to by the Parties, Contractor will be furnished, free of charge, a maximum of 20 copies of the drawings and specifications necessary for the execution of the Work. All copies of such documents, except Contractor’s record set, shall be returned to or suitably accounted for Architect upon completion of the Project. The Design Documents and copies thereof furnished to Contractor are for use solely for the Project. Contractor and its subcontractors or material or equipment supplier shall not use the Design Document for other projects or for additions to the Project outside the scope of the Project without the written consent of Owner and Architect.

L2.2.8 DESIGN DOCUMENTS AT PROJECT SITE. Contractor shall maintain at the Project Site one copy of all drawings, specifications, addenda, approved shop drawings, change orders, and other modifications in good order and marked to record all changes made during construction. These shall be available to Architect and Inspector. The drawings, marked to record all changes made during construction, shall be delivered to Architect for Owner upon completion of the Project.

SECTION L2.3 PERMITS, NOTICES, ROYALTIES, PATENTS, AND FEES.

L2.3.1 GENERAL REQUIREMENT. Unless otherwise stated in the Contract, Contractor shall secure and pay for all permits, governmental fees, licenses, and inspections necessary for the proper execution and completion of the Work. In addition, Contractor shall give all notices and comply with all laws,
ordinances, rules, regulations, and orders required for the Work.

L2.3.2 STORM WATER DISCHARGE PERMIT. If applicable, Contractor shall file a Notice of Intent to comply with the terms of the general permit for storm water discharges associated with construction activity (Water Quality Order No. 920-08-DWQ or such other applicable order(s)). Unless required otherwise, the Notice of Intent shall be sent to the following address along with the appropriate payment (Owner to issue warrant upon Contractor’s request, allow warrant processing time): California State Water Resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, CA 95812-1977. Contractor may also call the State Water Board’s Construction Activity Storm Water Hotline at (916) 657-1146. Contractor shall file the Notice of Intent before the start of any construction activity on the Project.

L2.3.3 ROYALTIES AND PATENTS. Contractor shall pay all royalties and license fees relating to the Work. Contractor shall defend all suits or claims for infringement of any patent rights, and shall save Owner harmless from loss on account of the infringement, except that Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified in the Contract. However, if Contractor has reason to believe that the design, process or product specified is an infringement of a patent, Contractor shall be responsible for such loss unless Contractor promptly gives such information to Architect.

SECTION L2.4 LABOR AND MATERIALS.

L2.4.1 GENERAL REQUIREMENT. Unless otherwise specifically provided in the Contract, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, fuel, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work within the Project Period.

L2.4.2 SUPERVISION AND COORDINATION OF WORK.

L2.4.2.1 SUPERVISION AND DIRECTION OF WORK. Contractor shall supervise and direct the Work using its best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, procedures, safety, and coordination of all portions of the Work. In addition, Contractor shall be responsible for inspection of Work already performed to determine that such Work is in proper condition to receive subsequent Work.

L2.4.2.2 WORK HOURS AND COORDINATION OF INSPECTION AND TESTING. Whenever Contractor arranges to perform any of the Work at night or at any time when work is not usually in progress or to vary the period during which the Work is carried out each day, Contractor shall give Owner due notice in writing so that any required inspection or testing may be provided. Such Work shall be done without extra compensation to Contractor, and Contractor shall be responsible for any additional inspection costs, provided such Work is not performed at Owner’s request to meet an earlier completion time than the Project Completion Date.

L2.4.3 LABOR.

L2.4.3.1 SUPERINTENDENT. Unless the Parties agreed otherwise, Contractor shall employ a full-time and competent superintendent and necessary assistants who shall be at the Project Site during the progress of the Work. The superintendent shall be satisfactory to Architect and Owner, and shall not be changed except with the consent of Architect and Owner, unless the superintendent proves to be unsatisfactory to Contractor or ceases to be in Contractor’s employ. The superintendent shall represent Contractor and all communications given to the Superintendent shall be as binding as if given to Contractor. Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of Contractor or any subcontractor, material or equipment supplier, or other person or entity.

L2.4.3.2 EMPLOYEES AND SUBCONTRACTORS. Contractor shall be responsible for the acts and omissions of Contractor’s employees, subcontractors, sub-subcontractors, and their officers, employees, agents, and other persons performing any of the Work. At all times
during the Project Period and Warranty Period, Contractor shall enforce strict discipline and good order amongst and between such persons and entities, and shall not employ on the Project any person who is unfit or is not skilled in the task assigned to Contractor.

L2.4.3.3 PREVAILING WAGE PAYMENT, MONITORING AND ENFORCEMENT. Contractor and each subcontractor shall comply with the provisions set forth in the Prevailing Wage Work Addendum.

L2.4.3.4 WORKING HOURS. Contractor shall comply with this Subsection L2.4.3.4 in performance of the Work.

L2.4.3.4(A) WORKING HOURS AND RECORDS THEREOF. Work on the Project shall be performed during regular working hours except that in an emergency or when required to complete the Work in accordance with the Project Schedule, Work may be performed outside of regular working hours with Owner’s prior written consent. In accordance with Labor Code sections 1810 to 1815, which are hereby incorporated and made a part of the Contract, the time of service of any worker who Contractor or a subcontractor employs to perform any part of the Work is limited and restricted to 8 hours during any one day and 40 hours during any one calendar week, except that such worker may perform work in excess of 8 hours per day and 40 hours per week provided that compensation for all hours worked in excess of 8 hours per day and 40 hours per week is paid at a rate not less than 1½ times the basic rate of pay. Contractor and each subcontractor shall keep an accurate record showing the name of and the actual hours worked each day and each week by each worker employed by them in connection with the Project, and keep the records open at all reasonable hours to inspection by representatives of Owner and the Division of Labor Standards Enforcement.

L2.4.3.4(B) PENALTY. As a penalty to Owner, Contractor shall pay to Owner $25.00 for each worker that Contractor or any subcontractor employs in the execution of the Work for each day during which such worker is required or permitted to work more than 8 hours in any one day and 40 hours in any one calendar week, unless compensation for the worker is not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours per day and 40 hours per week.

L2.4.3.5 APPRENTICES. Contractor and each subcontractor shall comply with Labor Code sections 1777.5 and 1777.6, which are hereby incorporated and made a part of the Contract. These sections include requirements that a contractor shall employ apprentices in at least the ratio set forth in Labor Code 1777.5 and submit contract award information to an applicable apprenticeship program that can supply apprentices. Contractor or any subcontractor that the Labor Commissioner determines knowingly violated Labor Code section 1777.5 shall be subject to penalties as set forth in Labor Code section 1777.7.

L2.4.4 MATERIALS.

L2.4.4.1 CONDITION. Materials shall be new and of quality equal to that specified in the specifications. When not particularly specified, materials shall be the best of their class or kind. If requested by Architect or Owner, Contractor shall submit satisfactory evidence as to the kind and quality of materials to Architect.

L2.4.4.2 DELIVERY, STORAGE, AND LOSS. All materials shall be delivered as to insure a speedy and uninterrupted progress of the Work. All materials shall be stored so as to cause no obstruction and so as to prevent overloading of any portion of the structure, and Contractor shall be entirely responsible for damage or loss by weather or other cause.
L2.4.4.3 NOTICE OF DEVIATIONS. When materials to be incorporated into the Project fail to meet the requirements of the specifications, Contractor shall call attention to the deviations on the laboratory report.

L2.4.5 DRUG-FREE WORKPLACE CERTIFICATION.

L2.4.5.1 By signing this Agreement, Contractor certifies under penalty of perjury under the laws of the State that Contractor will comply with the Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.) and will provide a drug free workplace by doing all of the following:

L2.4.5.1(A) Publishing a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in Contractor’s workplace and specifying actions to be taken against employees for violations of the prohibition.

L2.4.5.1(B) Establishing a drug-free awareness program to inform employees about all of the following:

1. The dangers of drug abuse in the workplace.
2. Contractor’s policy of maintaining a drug-free workplace.
3. Any available counseling, rehabilitation, and employee assistance programs.
4. The penalties that may be imposed upon employees for drug abuse violations.

L2.4.5.1(C) Requiring that each employee engaged in the performance of the Work be given a copy of the statement required by Government Code section 8355, subdivision (a) and that, as a condition of employment, the employee agrees to abide by the terms of the statement.

L2.4.5.2 Contractor’s failure to comply with the requirements in Section L2.4.5.1 may result in suspension of payments to Contractor under the Contract or termination of the Contract, or both. In addition, Contractor may be subject to debarment if it is determined that any of the following has occurred: (A) Contractor has made a false certification under Government Code section 8355; or (B) Contractor violates the certification contained in Section L2.4.5.1 by failing to carry out the requirement of Government Code section 8355, subdivisions (a) to (c).

SECTION L2.5 EXISTING UTILITIES. Prior to conducting any excavation, Contractor shall contact Owner to identify any known utility locations. Contractor shall exercise extreme caution in excavating and compacting for the Project in the area of suspected existing utilities and shall protect existing utilities from damage, inasmuch as their exact location or the exact number of utilities is uncertain.

SECTION L2.6 TRENCH EXCAVATION GREATER THAN FIVE FEET. Pursuant to Labor Code section 6705, if the Contract Amount exceeds $25,000 and involves the excavation of any trench or trenches five feet or more in depth, Contractor shall, in advance of excavation promptly, submit to Owner and/or a registered civil or structural engineer employed by Owner or Architect a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan that Contractor submits varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until the plan has been accepted by Owner or by the person to whom authority to accept has been delegated by Owner. Contractor shall not commence any excavation work until Contractor has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Project Site before commencing any excavation. Pursuant to Labor Code section 6705, nothing in this Section shall impose tort liability upon Owner or any of its officer, employees, or agents or Architect.
SECTION L2.7  SHOP DRAWINGS, MATERIALS LIST, AND SAMPLES.

L2.7.1 GENERAL REQUIREMENTS. All materials, samples, tests, and inspections shall be in accordance with the requirements of the specifications. All samples and tests shall be made by a properly qualified person or testing laboratory, who shall furnish Architect with reports certified in the presence of a notary public or in other manners acceptable to Architect, showing the results of the tests and stating that they were made in accordance with the specified provisions. All tests, sampling, and preparation of samples shall be in accordance with the standards adopted by the A.S.T.M.

L2.7.2 SHOP DRAWINGS, SAMPLES, AND PRODUCT DATA.

L2.7.2.1 PREPARATION AND SUBMISSION BY CONTRACTOR.

L2.7.2.1(A) SAMPLES AND SHOP DRAWINGS. Samples of materials or articles shall be submitted for tests or examination and consideration by Architect before incorporation of it in the Project. Contractor, with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the work of any other contractor, shall review, stamp with its approval, and submit all shop drawings and samples required by the Contract or by Architect pursuant to any modification to the Contract. Contractor shall identify shop drawings and samples as Architect may require. At the time of submission, Contractor shall inform Architect in writing of any deviation in the shop drawings or samples from the requirements of the Contract. Contractor shall be solely responsible for any delay due to materials and samples not submitted in time to allow proper time to make tests or consideration. Samples of bulk materials shall be selected by the laboratory. Samples that are of value after testing will remain the property of Contractor.

L2.7.2.1(B) MATERIALS/EQUIPMENT LIST. Unless requested by Owner or Architect otherwise, Contractor shall submit to Architect and Owner for approval a complete list setting forth the brand names and manufacturers of all materials and/or equipment proposed for use on the Project within 40 days of the Effective Date. The list shall include all items required under the Contract, although the brand name or manufacturer may not be specifically included in the specifications.

L2.7.2.1(C) CONTRACTOR REPRESENTATION. By approving and submitting shop drawings, product data and samples, Contractor thereby represents that Contractor has determined and verified all field measurements, field construction criteria, materials, catalog numbers, and similar data, or will do so, and that Contractor has checked and coordinated the information contained within such submittal with the requirements under the Contract.

L2.7.2.2 REVIEW AND APPROVAL BY ARCHITECT, AND CORRECTIONS.

L2.7.2.2(A) ARCHITECT REVIEW AND APPROVAL. Contractor shall not commence any Work that requires a shop drawing, product data, or sample submission until after Architect approves the submission. All such Work shall be in accordance with the approved submittal. Architect will review and approve shop drawings, product data and samples with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the Project and with the information given in the Contract. Architect's approval of a separate item shall not indicate approval of an assembly in which the item functions. Acceptance or rejection will be expressed in writing. Architect's approval of shop drawings, product data, or samples shall not relieve Contractor of Contractor's responsibility for any deviation from the requirements of the Contract unless Contractor has informed Architect in writing of such deviation at the time of submission and Architect has given written approval to the specific deviation. Architect's approval does not relieve Contractor from responsibility for errors or omissions in the shop drawings, product data, or samples.
L2.7.2.2(B) CONTRACTOR CORRECTION AND RESUBMISSION. Contractor shall make any corrections required by Architect and resubmit the required number of corrected copies of shop drawings, product data, or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted shop drawings to revisions other than the corrections requested by Architect on previous submissions.

L2.7.2.3 MATERIALS AND WORK FURNISHED. Materials furnished for the Project shall be equal to approved samples and the materials/equipment list in every respect.

L2.7.3 SUBSTITUTIONS.

L2.7.3.1 DEFINITION. A “substitution,” as used in this Section L2.7.3, means any change in products, materials, equipment, and/or methods of construction from those required by the Contract and proposed by Contractor.

L2.7.3.2 SUBSTITUTION REQUEST GENERALLY. Contractor shall submit three copies of each request for substitution, identifying the product or fabrication or installation method to be replaced and including the specification section number and title and drawing numbers and titles. If a substitution request form is available from Architect or Owner, Contractor shall use such form. Contractor’s failure to propose the substitution of any article within 40 days of the Effective Date will be deemed sufficient cause for the denial of a request for substitution. Each substitution request shall comply with the following, if applicable:

L2.7.3.2(A) Detailed comparison of significant qualities of proposed substitution with those of the Work specified. Contractor shall include an annotated copy of applicable specification section. Significant qualities may include attributes such as performance, weight, size, durability, visual effect, sustainable design characteristics, warranties, and specific features and requirements indicated. Indicate deviations, if any, from the Work specified.

L2.7.3.2(B) Product data, including drawings and descriptions of products and fabrication and installation procedures.

L2.7.3.2(C) Samples, where applicable or requested.

L2.7.3.2(D) List of similar installations for completed projects with project names and addresses and names and addresses of architects and owners.

L2.7.3.2(E) Contractor’s certification that the proposed substitution complies with the requirements in the Contract except as indicated in the substitution request, is compatible with related materials, and is appropriate for applications indicated.

L2.7.3.2(F) Contractor’s waiver of rights to additional payment or time that may subsequently become necessary because of failure of proposed substitution to produce indicated results.

L2.7.3.3 PRODUCTS.

L2.7.3.3(A) SUBSTITUTIONS FOR CAUSE. Contractor shall submit requests for substitution immediately on discovery of the need for change but no later than 15 days before the time required for preparation and review of related submittals.

L2.7.3.3(B) CONDITIONS. Architect will consider Contractor’s request for substitution when the following conditions are satisfied:
a. Requested substitution is consistent with the Contract and will produce indicated results.
b. Requested substitution provides sustainable design characteristics that specified product provided.
c. Requested substitution will not adversely affect the Project Schedule.
d. Requested substitution has received necessary approvals of authorities having jurisdiction of the Project.
e. Requested substitution is compatible with other portions of the Work.
f. Requested substitution has been coordinated with other portions of the Work.
g. Requested substitution provides specified warranty.
h. If requested substitution involves more than one contractor, requested substitution has been coordinated with other portions of the Work and is uniform and consistent, compatible with other products, and acceptable to all contractors involved.

L2.7.3.3(C) Where specific brands are required in the specifications or Contractor desires to substitute another material or article for the specified material or article, Contractor shall submit samples in triplicate to Architect with all freight charges prepaid and clearly indicate the substitutions that Contractor proposes on its material/equipment list. One sample will be returned to Contractor at Contractor’s expense, with a letter stating that it is approved or rejected and one sample will be returned to Owner for Owner’s records.

L2.7.3.4 ARCHITECT ACTION AND CHANGE ORDER. If necessary, Architect will request additional information or documentation for evaluation within seven days of receipt of a request for substitution. Architect will notify Contractor of acceptance or rejection of the proposed substitution within 15 days of Architect’s receipt of the request or seven days of Architect’s receipt of additional information or documentation, whichever is later. Unless Architect approves a proposed substitution, Contractor shall not deviate from the drawings and specifications. Any substitution that Architect approves shall be processed as a change order.

SECTION L2.8 TESTS AND INSPECTIONS.

L2.8.1 GENERAL REQUIREMENTS.

L2.8.1.1 NOTICE. If the Contract or Applicable Laws, or orders of any government agency having jurisdiction over the Project require any Work to be inspected, tested, or approved, Contractor shall give Architect timely notice of the readiness of the Work and of the date arranged so Architect may observe such inspection, testing or approval. Whenever Contractor arranges to perform any of the Work at night or at any time when Work is not usually in progress or to vary the period during which Work is carried out each day, Contractor shall give Owner notice so that inspection may be provided. Such Work shall be done without extra compensation to Contractor, and such additional inspection costs shall be chargeable to Contractor, provided such Work is not performed at Owner’s request to meet earlier completion time than that established in the Contract, or for a cause not under Contractor’s control.

L2.8.1.2 QUALIFIED PERSON OR LAB. All sampling and tests shall be made by a properly qualified person or testing laboratory approved and paid for by Owner unless otherwise stated in the Contract, who shall furnish copies of the test results to Contractor, Architect, and Owner. All tests as well as sampling and preparation of samples, where applicable,
shall be in accordance with the latest adopted standards of A.S.T.M. The laboratory or person shall be selected and approved by Owner.

L2.8.1.3 OBSERVATION BY ARCHITECT/OWNER. If Architect and/or Owner wishes to observe any inspection, test, or approval, they will do so promptly and, where practicable, at the location where the Work is being performed.

L2.8.1.4 COSTS OF TESTS. Owner shall be responsible for the costs of original tests of materials called for in the specifications. Costs of tests of materials substituted for previously accepted materials and retests made necessary by the failure of materials to comply with the requirements of the specifications shall be paid for by Owner but will be deducted from the Contract Amount. Owner shall bear all costs of such inspections, tests, and approvals unless Contractor does not give Architect timely notice or the inspections, tests, and approvals are due to Contractor’s fault or negligence.

L2.8.2 COMPACTION TESTS. Compaction tests shall be taken for all phases of the Project requiring compaction. Contractor shall notify Architect at least two working days before the date on which Contractor desires compaction tests to be taken. Compaction test samples will be taken at points selected by Architect. The original compaction tests will be performed at Owner’s expense. Any further tests needed to check areas requiring re-compaction due to failure to pass original tests shall be done at Contractor’s expense, and deducted from payment due or to become due to Contractor.

L2.8.3 TESTING. All tests of completed portion of the Project shall be made at Owner’s expense. Contractor shall repair all damage resulting from these tests if such completed portion fails through Contractor’s fault. Contractor shall not test any portion of the Project already completed except with the written consent and under the direction and control of Architect or Owner.

L2.8.4 INSPECTION. All Work shall be subject to inspection by Architect and any governmental agency with jurisdiction over the Project. When specific inspection is required by the drawings and/or specifications, Contractor shall inform Architect of the schedule for Work so that Architect may schedule the inspection. Contractor’s failure to do so may require that completed Work be torn out and replaced under proper inspection, in which case Contractor shall pay the entire cost of tearing out and replacement, including cost of any materials furnished by Owner and used in the Work torn out. Completed Work that is covered up without Architect’s approval shall be uncovered by Contractor to the extent required and Contractor shall bear the cost of performing all the work and furnishing all the materials necessary for the removal of the covering and its subsequent replacement.

L2.8.5 SPECIAL INSPECTION, TESTING, OR APPROVAL. If, after the commencement of a particular Work by Contractor, Architect determines that such Work requires special inspection, special testing, or special approval beyond the inspection and/or testing set forth in these General Conditions and Terms, Architect will, upon Owner’s written authorization, order such special inspection, special testing, or special approval, and Contractor shall give notice as required by this Agreement. If such special inspection, special testing, or special approval reveals a failure of the Work or Project to comply: (A) with the requirements of the Contract, or (B) with respect to the performance of the Work, with Applicable Laws or orders of any public authority having jurisdiction over the Project, Contractor shall bear all costs of the special inspection, special testing, or special approval, including Architect’s additional services made necessary by such failure; otherwise, Owner shall bear the costs for such special inspection, special testing, and/or special approval.

L2.8.6 NO RELIEF OF CONTRACTOR OBLIGATIONS. Neither the observations of Architect in its administration of the Contract nor inspections, tests or approvals by Inspector, the Testing Lab, or persons other than Contractor shall relieve Contractor of Contractor’s obligations to perform the Work in accordance with the Contract and Applicable Laws.

SECTION L2.9 PROTECTION OF PERSONS AND PROPERTY.

L2.9.1 SAFETY PRECAUTIONS AND PROGRAMS. Contractor shall initiate, maintain and supervise all safety precautions and programs in connection with the Work.
L2.9.2 SAFETY OF PERSONS AND PROPERTY.

L2.9.2.1 Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to: (A) all employees of Contractor or subcontractors on the Project and all other persons who may be affected by the Project, including officers, employees, and agents of Owner or Architect; (B) the Work and all materials and equipment to be incorporated in the Project, whether in storage on or off the Project Site, under the care, custody or control of Contractor or any subcontractor; and (C) other property at the Project Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of performing the Work, and the property of any separate contractors that may be performing work at the Project Site.

L2.9.2.2 Contractor shall give all notices and comply with all Applicable Laws and orders of any public authority having jurisdiction for the safety of persons or property. Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying Owners and users of adjacent utilities.

L2.9.2.3 No explosive or hazardous material or equipment shall be used on the Project or stored on the Project Site without the prior written consent of Owner.

L2.9.2.4 All damage or loss to any property caused, in whole or in part, by Contractor or any subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable shall be remedied by Contractor.

L2.9.2.5 Contractor shall designate a responsible member at the Project Site, whose duty shall be the prevention of accidents on the Project Site. This person shall be Contractor's superintendent, unless otherwise designated in writing by Contractor to Owner and Architect.

L2.9.2.6 Contractor shall not load or permit any part of the Project to be loaded so as to endanger its safety.

L2.9.3 EMERGENCIES. In any emergency affecting the safety of persons or property, Contractor shall act, at Contractor's discretion, to prevent threatened damage, injury or loss. Contractor shall exercise due diligence in notifying Architect of such emergency as soon as reasonably possible after the occurrence of the emergency. Additional compensation or extension of time claimed by Contractor for emergency work shall be determined as provided in Article L10 below for changes in the Work. Contractor shall promptly report in writing to Owner all accidents arising out of or in connection with the Project, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to Owner.

L2.9.4 HAZARDOUS MATERIALS.

L2.9.4.1 CONTRACTOR RESPONSIBILITY.

L2.9.4.1(A) Contractor and subcontractors shall comply with Labor Code section 6360 et. seq. and Title 22 of the CCR with regard to hazardous substances in the work place. Contractor shall ensure Material Safety Data Sheets ("MSDS") are available in a readily accessible place at the Project Site for any material requiring a MSDS pursuant to the federal "Hazard Communication" standard or employee "right to know" laws. Contractor and each subcontractor shall supply to their employees of MSDS for hazardous substances that may be used in the course of the Project, together with notice of actual hazardous substances to which employees may be exposed while performing work and appropriate protective measures. Two additional copies of the MSDS shall also be submitted to Owner.
L2.9.14.1(B) Contractor shall also ensure proper labeling on materials brought on the Project Site such that any person working with the materials or within the general area of the materials is informed of the hazards of the materials and follows proper handling and protections procedures.

L2.9.14.1(C) No asbestos, asbestos-containing products or other hazardous materials shall be used in the construction of the Project or in any tools, devices, clothing or equipment used to affect the construction. Any disputes involving the question of whether or not material contains asbestos shall be settled by electron microscopy; the costs of any such tests shall be paid by Contractor. All work or materials found to contain asbestos or work or material installed with asbestos containing equipment will be immediately rejected and the work shall be removed at no additional cost to Owner.

L2.9.14.1(D) Interface of the Work with work containing asbestos shall be executed by Contractor at its risk and at its discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. Contractor shall hold harmless, as set forth below and in the indemnity provisions of this Agreement, Owner and its governing body, officers, employees, and agents and Architect for all asbestos liability that may be associated with the Work and shall instruct Contractor’s employees with respect to the above mentioned standards, hazards, risks, and liabilities.

L2.9.4.2 DISCOVERY, REMOVAL, AND HANDLING OF HAZARDOUS MATERIALS. If Contractor encounters or suspects the presence on the Project Site material reasonably believed to be asbestos, polychlorinated biphenyl ("PCB"), or any other material defined as being hazardous by Health and Safety Code section 25249.5, which has not been rendered harmless, Contractor shall immediately stop work in the area affected and report the condition to Owner and Architect in writing. The work in the affected area shall be resumed only in the absence of asbestos, PCB, or other hazardous material, or when such hazardous material has been rendered harmless.

L2.9.4.3 INDEMNIFICATION BY CONTRACTOR FOR HAZARDOUS MATERIAL. If Contractor fails to properly discover, remove, or handle any hazardous materials on the Project Site, or Contractor or its subcontractors, materialmen, or suppliers cause any such hazardous materials on the Project Site, Contractor shall pay for all costs of testing and remediation, if any, and shall compensate Owner for any additional costs incurred as a result of such failure or generation of hazardous material on the Project Site. In addition and to the greatest extent allowed by law, Contractor shall defend, indemnify and hold harmless Owner and Owner's governing body, officers, employees, and agents and Architect from and against any and all claims, damages, losses, fines, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Project Site, whether or not such hazardous material is caused or generated by Contractor or its subcontractors, materialmen, or suppliers, or by Owner or Owner's officers, employees, or agents, or the hazardous materials were present on the Project Site before Contractor's commencement of the Work under the Contract.

L2.9.5 DUST CONTROL. Dust control measures shall be provided by Contractor as required and as directed by Architect. The cost for dust control measures is included in the Contract Amount and no separate payment will be made for dust control measures.

SECTION L2.10 CUTTING AND PATCHING OF WORK. Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Project or to make its several parts fit together properly. Contractor is responsible for any costs caused by defective or ill-timed cutting or patching. Contractor shall not damage or endanger any portion of the Project or the work of Owner or any separate contractors by cutting, patching or otherwise altering any work or by excavation. Contractor shall not cut or otherwise alter the work of Owner or any separate contractor except with the written consent of Owner and of such separate contractor. New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be
cut, bored, or drilled except by written authority of Architect. Work done contrary to such authority is at Contractor’s risk, subject to replacement at Contractor’s expense and without reimbursement from Owner.

SECTION L2.11 UNCOVERING AND CORRECTION OF WORK.

L2.11.1 UNCOVERING OF WORK.

L2.11.1.1 If any Work is covered by Contractor or any subcontractor contrary to Architect’s request or the Contract, the Work must, if required in writing by Architect, be uncovered, at Contractor’s expense, for observation of Architect or any governmental agency having jurisdiction over the Project, and replaced, at Contractor’s expense. Where inspection of any Work or any portion of the Project is required by any governmental agency having jurisdiction over the Project, Contractor shall perform the Work at such time and manner as to allow the inspection.

L2.11.1.2 If any other portion of the Work has been covered which Architect has not specifically requested to observe or is not required to be inspected by any governmental agency having jurisdiction over the Project before being covered, Architect may request to see such portion and Contractor shall uncover such portion. If such portion is found to be in accordance with the Contract, the cost of uncovering the replacement shall, by appropriate change order, be charged to Owner. If such portion is found to be not in accordance with the Contract, Contractor shall pay such costs unless it is found that the non-conforming portion was caused by Owner or a separate contractor retained by Owner in which case Owner shall pay such costs. If the non-conforming portion is caused jointly by the Parties, both Parties shall share in the cost to uncover and replace the portion in proportion to each Party’s liability.

L2.11.2 CORRECTION OF WORK.

L2.11.2.1 If, at any time, Contractor discovered that work is being done that is not in accordance with the Design Documents, Contractor shall correct the work immediately. Contractor shall promptly correct all Work rejected by Architect and/or any Jurisdictional Agency as defective or as failing to conform to the Contract, whether observed before or after substantial completion and whether or not fabricated, installed or completed. Contractor shall bear all costs of correcting such rejected Work, including the cost of Architect’s additional services and any costs charged to Owner by any governmental agency having jurisdiction over the Project.

L2.11.2.2 Contractor shall remove from the Project Site all portions of the Project that is defective or nonconforming and which have not been corrected as required by these General Conditions and Terms, unless Owner waives in writing such removal.

L2.11.2.3 If Contractor fails to correct defective or non-conforming Work, Owner may correct the Work as provided for in these General Terms and Conditions.

L2.11.2.4 If Contractor does not proceed with the correction of defective or non-conforming Work within a reasonable time fixed by the written notice from Owner or Architect, Owner may remove the portion(s) of the Project containing the defective or non-conforming Work and may store any materials or equipment at Contractor’s expense. If Contractor does not pay the cost of such removal and storage within 10 days after Owner’s written demand, Owner may, upon 10 additional days’ written notice to Contractor, sell such materials or equipment, at an auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that are to be borne by Contractor, including compensation for additional architectural and inspection services. If such proceeds of sale do not cover all costs which Contractor are to bear, the difference shall be charged to Contractor, and an appropriate change order shall be issued. If the payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Owner, which payment Contractor shall make to Owner within 15 days of Owner’s written demand.
L2.11.2.5 Contractor shall bear the cost of making good all work of Owner or any separate contractor that are destroyed or damaged by the correction or removal of portion(s) of the Project containing defective or non-conforming Work by Contractor.

SECTION L2.12 CLEANING UP.

L2.12.1 Contractor, at all times during performance of the Work, shall keep the premises and the area of the Project Site free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Project, Contractor shall remove all its waste materials and rubbish within 15 days after completion of the Project, all such property shall be deemed abandoned, and Owner may dispose of them for Owner's own benefit by any means or methods Owner deems appropriate. Contractor shall pay for any costs incurred by Owner to dispose of the property and shall pay Owner within 30 days of Contractor's receipt of Owner's invoice.

L2.12.2 When directed by Owner or Architect, Contractor and its subcontractors shall disarm temporary structures, if any, and remove from the Project Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or its subcontractors. If Contractor fails to do so within 15 days after completion of the Project, Contractor shall pay for any costs incurred by Owner to dispose of the property and shall pay Owner within 30 days of Contractor's receipt of Owner's invoice.

SECTION L2.13 AS-BUILT PLANS AND MANUALS.

L2.13.1 INSTRUCTIONS AND MANUALS. Contractor shall provide three copies of all maintenance instructions application/installation instructions and service manuals called for in the specifications. These shall be complete as to drawings, details, parts lists, performance data, and other information that may be required for Owner to easily maintain and service the materials and equipment installed under the Contract. All manufacturers' application/installation instructions shall be given to Owner at least 10 days prior to the first material application or installation of the item. The maintenance instructions and manuals, along with any specified guarantees, shall be delivered to Architect for review before submitting to Owner, and Contractor or appropriate subcontractors shall instruct Owner's personnel in the operation and maintenance of the more complex equipment before Owner's final acceptance of the Project.

L2.13.2 AS-BUILT PLANS. Contractor and subcontractors will maintain on the Project Site a separate complete set of record drawings and annotated specifications ("As-Built Plans") that will be used solely for the purpose of recording changes made in any portion of the Project during the course of construction, regardless of the reason for the change. As changes occur on the As-Built Plans, there will be included or marked on this record set on a daily basis if necessary to keep them up to date at all times. Actual locations to scale shall be identified on the As-Built Plans for all runs of mechanical and electrical work, including but not limited to, all site utilities, installed underground, in walls, floors, and furred spaces, or otherwise concealed. Contractor shall show all deviations from the drawings in detail on the As-Built Plans. All main runs, whether piping, conduit, ductwork, drain lines, etc., shall be located on the As-Built Plans by dimension and elevation. Contractor shall verify that all changes in the Project are included in the As-Built Plans, and deliver the complete set thereof to Architect for review and approval within 30 days after the Project Completion Date.

L2.13.3 PROJECT CLOSEOUT AND CERTIFICATION. Contractor shall provide services necessary to close out the Project and, if the Project is subject to the jurisdiction of DSA, certification of the Project, which services shall include but are not limited to the following:

L2.13.3.1 Prepare, execute, and submit all reports and other documents required by each Jurisdictional Agency.

L2.13.3.2 If the Project is subject to DSA's jurisdiction, prepare, execute, and file with DSA all reports and other documents required by Contractor to close out the Project and to obtain certification from DSA stating that the construction of the Project has been completed in accordance with the requirements as to safety of design and construction of Education
Code sections 17280-17316 and requirements relating to accessibility for persons with disabilities.

SECTION L2.14 WARRANTY AND GUARANTEE.

L2.14.1 CONDITION OF MATERIALS AND EQUIPMENT; AND QUALITY OF WORK. Contractor warrants to Owner that all materials and equipment incorporated into the Work will be new unless otherwise specified in the Contract and that the Work will be of good quality, free from faults and defects, and in conformance with the Contract. If Architect so requires, Contractor shall furnish evidence satisfactory to Architect as to the kind and quality of materials and equipment. Owner may consider as defective and reject any portion of the Work that does not conform to the Contract, in which case, Contractor shall remove and replace such portion at no cost to Owner.

L2.14.2 REPAIR AND REPLACEMENT DURING WARRANTY PERIOD. Contractor hereby warrants and guarantees the Project throughout the Warranty Period. Within the Warranty Period, Contractor shall repair and/or replace, to Owner’s satisfaction and at no expense to Owner, any portion of the Project that is defective in workmanship and/or materials, ordinary wear and tear and unusual abuse or neglect by Owner excepted, together with any other work which may be damaged or displaced during Contractor’s performance of work to correct the defective portion of the Project. If Contractor fails to commence the repair and/or replacement within 10 days of Contractor’s receipt of Owner’s written notice of any defects or sooner if required by an emergency, Contractor hereby authorizes that Owner, without any notice to Contractor and after the 10-days, may perform the repair or replacement at Contractor’s expense, and Contractor shall pay the costs and charges therefor within 30 days of Contractor’s receipt of Owner’s demand. Contractor’s performance pursuant to this warranty and guarantee shall not relieve Contractor from any obligations under the Contract.

L2.14.3 ADDITIONAL RIGHTS AND REMEDIES. The warranty and guarantee provided in this Section L2.14 shall be in addition to, and not in limitation of, any warranty, rights, and/or remedies available to Owner under the Contract, in law, or in equity. Contractor’s performance of its obligations under this Section L2.14 shall not relieve Contractor from any other obligations that Contractor owes to Owner under the Contract, in law, or in equity. Neither the Warranty Period nor any provision contained in this Subsection L2.14.3 shall be construed to establish a period of limitation with respect to any other obligations that Contractor owes to Owner under the Contract, in law, or in equity. The establishment of the Warranty Period, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract relates only to Contractor’s obligation to correct the defective or non-conforming portion of the Project and has no relationship to and does not affect any time within which Owner may initiate claims, actions, or other proceedings to enforce Contractor to perform other obligations under the Contract, in law, or in equity.

SECTION L2.15 OBLIGATIONS NOT CHANGED BY ACTIONS OF ARCHITECT, INSPECTOR, AND OTHERS. Contractor is in no way relieved of or excused from performing the Work in accordance with the Design Documents and performing other obligations under the Contract by the activities of Architect, Inspector, Testing Lab, and/or any Jurisdictional Agency.

ARTICLE L3 SCOPE OF SERVICES AND OBLIGATIONS – SUBCONTRACTOR.

If Contractor uses any subcontractor to perform any portion of the Work, Contractor shall comply, and require each subcontractor to comply, with the provisions set forth in Subcontractor, and Subcontractor Registration and Designation and the Prevailing Wage Work Addendum, the provisions of both of which are a part of these General Conditions and Terms.

ARTICLE L4 SCOPE OF SERVICES AND OBLIGATIONS – ARCHITECT, INSPECTOR, TESTING LAB, AND CONSULTANT.

SECTION L4.1 GENERALLY. Owner has or may retain one or more architects or engineers, inspectors, testing laboratories, and other persons or entities as is required of Owner by Applicable Laws or as determined necessary by Owner.

SECTION L4.2 ARCHITECT. The provisions in this Section shall apply if Owner has retained an Architect for the Project.
L4.2.1 AUTHORITY AND RESPONSIBILITIES. Architect shall provide services to Owner pursuant to the terms and conditions under Architect's separate contract with Owner. Architect will be Owner’s representative during the Project Period and Warranty Period. Architect has authority to act on behalf of Owner to the extent provided in this Section L4.2 and elsewhere in the Contract. Architect will have all responsibilities and power established by law, including Title 24 of the CCR. All of Owner’s instructions to Contractor shall be issued through Architect. The duties, responsibilities, and limitations of authority of Architect as Owner's representative during construction as set forth in these General Conditions and Terms shall not be modified or extended without written consent of Owner and Architect, which will be communicated to Contractor.

L4.2.2 LIMITATIONS OF RESPONSIBILITIES. Architect will not be required to check the quality or quantity of the Work. Architect will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. Any visits, inspections, or any acts or omissions of Architect shall not relieve Contractor of Contractor’s obligations under the Contract. Contractor shall perform all Work in strict conformance with the requirements of the Contract. Architect will not be responsible for Contractor’s acts or omissions of Contractor relating to Contractor’s performance or failure to perform the Contract.

L4.2.3 INTERPRETATION OF CONTRACT DOCUMENTS. Architect will be, in the first instance, the interpreter of the requirements of the Contract and the judge of the Parties’ performance under the Contract. In its capacity as interpreter and judge, Architect shall exercise its best efforts to insure each Party’s faithful performance of the Contract. Architect shall issue written interpretations necessary for the proper execution or progress of the Work in the form of drawings or otherwise with reasonable promptness and in accordance with any schedule that Owner and Contractor agreed. Architect will render, within a reasonable time, such interpretations as Architect may deem necessary for the proper execution or progress of the Work. All interpretations and decisions of Architect shall be consistent with the intent of the Contract.

L4.2.4 FACILITIES. Contractor shall provide and allow access to facilities for use by Architect to allow Architect to perform its functions to administer the Contract.

L4.2.5 ACCESS TO WORK. Architect shall have, at all times during the Project Period, access to the Project.

L4.2.6 VISITS. Architect will make periodic visits to the Project Site at intervals necessary in Architect’s judgment or as otherwise agreed by Owner and Architect in writing to familiarize Architect generally with the progress and quality of the Project and Work and to determine in general if the Project and Work are proceeding in accordance with the Contract. On the basis of Architect’s on-site observations as an architect, Architect will keep Owner informed of the progress of the Project and Work.

L4.2.7 ARTISTIC EFFECT. Architect’s decision in matters relating to artistic effect will be final if consistent with the intent of the Contract and approved by Owner.

L4.2.8 SHOP DRAWINGS AND SAMPLES. Architect will review shop drawings and samples as provided in these General Conditions and Terms. Unless Architect specifies otherwise in which case Contractor shall comply therewith, Contractor shall submit to Architect six copies of all shop drawings or equipment submittals.

L4.2.9 CHANGE ORDERS. Architect will prepare change orders in accordance with Article L10 below and will have authority to order minor changes in the Work as provided in these General Conditions and Terms.

L4.2.10 PAYMENT APPLICATIONS. Based on Architect’s observations of the Project and Work and evaluation of Contractor’s applications for payment, and approval of the Project by governmental agency(ies) having jurisdiction over the Project, Architect will recommend to Owner regarding the amount due to Contractor on an Application for Payment.

L4.2.11 REJECTION. Architect will have authority to recommend to Owner that certain Work be rejected because it does not conform to the Contract. Whenever, in Architect’s reasonable opinion, Architect considers it necessary or advisable to insure the proper implementation of the intent of the Contract, Architect will have authority to recommend that Owner require Contractor to stop the Work or any
portion thereof or require special inspection or special testing of the Work, whether or not such Work be then fabricated, installed or completed. However, neither Architect's authority to act under this Subsection L4.2.11 nor any decision or recommendations made by Architect in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of Architect to Contractor, any subcontractor, any of their agents or employees, or any other person performing any of the Work.

L4.2.12 COMPLETION OF PROJECT. Architect will conduct inspection(s) to determine the dates of the substantial completion and final completion of the Project, receive written guarantees and related documents required by the Contract and assembled by Contractor, and will recommend that Owner issue a final certificate of payment.

SECTION L4.3 INSPECTOR. The provisions in this Section shall apply if Owner has retained any Inspector for the Project.

L4.3.1 GENERAL. One or more inspectors retained by Owner and approved by DSA will be assigned to the Project in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s)' duties will be as defined in Title 24.

L4.3.2 DUTIES. All Work shall be under the observation of or with the knowledge of the Inspector. Inspector shall have free access to any or all parts of the Work at any time. Contractor shall furnish Inspector such information as may be necessary to keep Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve Contractor from responsibility for full compliance with the Contract, or be construed to lessen to any degree Contractor's responsibility for providing efficient and capable superintendence. Inspector is not authorized to make changes in the drawings or specifications nor shall the Inspector's approval of the Work and methods relieve Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract.

L4.3.3 AUTHORITY TO REJECT OR STOP WORK. Inspector shall have the authority to reject Work that does not comply with the Contract. In addition, Inspector may stop any Work that poses a probable risk of harm to persons or property. The absence of any stop work order or rejection of any portion of the Work shall not relieve Contractor from any of its obligations under the Contract.

L4.3.4 FACILITIES. Contractor shall provide and allow access to facilities for use by Inspector to allow Inspector to perform inspection of the Work.

L4.3.5 NOTICE TO INSPECTOR. Contractor shall notify Inspector, in writing, of the commencement of construction of each and every aspect of the Work at least 48 hours in advance and the completion of each aspect of the Work.

SECTION L4.4 TESTING LABORATORY. The provisions in this Section shall apply if Owner has retained or will retain a testing laboratory (“Testing Lab”) to perform testing for the Project. Owner will pay the Testing Lab to conduct all tests required on the Project. Selection of the materials required to be tested shall be made by the Testing Lab or Owner's representative, and not by Contractor. Any costs or expenses of testing incurred outside of a 50- mile radius from the Project Site shall be paid for by Owner, invoiced by Owner to Contractor and deducted from Contractor's next progress payment, unless otherwise specified in the Contract.

SECTION L4.5 CONSULTANT. Owner may retain consultant(s) as Owner determines appropriate for the Project and Contractor shall cooperate with each consultant.

ARTICLE L5 SCOPE OF SERVICES AND OBLIGATIONS – OWNER.

SECTION L5.1 INFORMATION AND SERVICES REQUIRED OF OWNER.

L5.1.1 SURVEYS. When required by the Work, Owner, at Owner's expense, shall furnish all surveys describing the physical characteristics, legal limits, and utility locations for the Project Site. Contractor shall not rely upon and must question in writing to Architect any information that appears incorrect based upon Contractor's inspection of the Project Site, knowledge of the Project, or prior experience with similar projects, unless specifically stated in writing by Owner that Contractor may rely upon the surveys. Contractor shall provide surveys to determine locations of construction, grading, and the site work.
L5.1.2 EASEMENTS. Owner shall secure and pay for any easement required for permanent structures or permanent changes in existing facilities.

L5.1.3 REASONABLE PROMPTNESS. Information or services under Owner's control shall be furnished by Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

L5.1.4 COMMUNICATIONS THROUGH ARCHITECT. Owner shall issue all instructions to Contractor through Architect.

SECTION L5.2 INSPECTION AND TESTING. Owner will provide or retain inspection and/or testing services as Owner deems appropriate for the Project and as required by Applicable Laws.

SECTION L5.3 CARRY OUT WORK. Notwithstanding any provision to the contrary in the Contract, if Contractor defaults or neglects to carry out the Work in accordance with the Contract or fails to perform any provision of the Contract, Owner may, after seven days written notice to Contractor and without prejudice to any other remedy Owner may have, make good such deficiencies. In such case, a change order shall be issued deducting from the payments then or thereafter due Contractor, the cost of Architect's additional services made necessary by Contractor's default, neglect, or failure. Architect must approve both such action and the amount charged to Contractor. If the portion of the Contract Amount then or thereafter due Contractor is not sufficient to cover the amount due to Owner, Contractor shall pay the difference to Owner within 30 days of Contractor's receipt of Owner's invoice requesting payment thereof.

SECTION L5.4 WORK BY OWNER OR BY SEPARATE CONTRACTORS.

L5.4.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS. Owner reserves the right to perform work related to the Project with Owner's own forces, and to award separate contracts for other work related to the Project or other work on the Project Site. Contractor shall coordinate with each such separate contractor and Owner to avoid delays to the Project and the other projects. If there is a conflict between Contractor and any other separate contractor, Owner's decision shall be final.

L5.4.2 MUTUAL RESPONSIBILITY OF CONTRACTORS.

L5.4.2.1 Contractor shall afford Owner and the separate contractors reasonable opportunity for the introduction and storage of their materials and equipment, and the execution of their work, and shall properly connect and coordinate Contractor's work with theirs.

L5.4.2.2 If any part of the Work by Contractor depends for proper execution or results upon the work of Owner or any separate contractor, Contractor shall inspect and promptly report to Architect any discrepancies or defects in such other work that render the work unsuitable for such proper execution and results. Contractor's failure to so inspect and report shall constitute an acceptance of Owner's or the separate contractor's work as fit and proper to receive the Work, except as to defects which may develop in the other separate contractor's work after the execution of the Work.

L5.4.2.3 If Contractor causes damage to the work or property of any separate contractor on the Project Site, Contractor shall, upon receiving notice thereof, settle with such other contractor by agreement or other means, if Contractor will so settle. If such separate contractor initiates any claims or lawsuits against Owner on account of any damage alleged to have been so sustained, Owner shall notify Contractor and Contractor shall defend, indemnify, and hold harmless Owner from and against any such allegations and damages at Contractor's expense with legal counsel acceptable to Owner, and, if any judgment and settlement against Owner arises therefrom, Contractor shall pay or satisfy the judgment and shall reimburse Owner for all attorney's fees and court costs which Owner has incurred relating to or arising out of such allegations and damages.

L5.4.3 OWNER'S RIGHT TO CLEAN UP. If a dispute arises between the separate contractor(s), including Contractor, as to their responsibility for cleaning up as required by the Contract, Owner may clean up and charge the cost thereof to the several contractor(s) and Contractor as Owner shall determine to be just and Contractor shall pay Contractor's portion of the cost within 30 days of Contractor's receipt of Owner's invoice requesting payment thereof.
ARTICLE L6 PAYMENT.

The terms and conditions governing payments due under the Contract are set forth in Payment and Withholding.

ARTICLE L7 TERM AND TERMINATION OF AGREEMENT; AND SUSPENSION OR STOP OF WORK.

SECTION L7.1 CONTRACT TERM. This Agreement and the other Contract Documents shall become effective on the Effective Date stated on the Cover and shall continue in full force and effect thereafter until and including the following, whichever is earlier (“Termination Date”): (A) the Project Completion Date stated on the Cover plus any extension thereof that Owner grants and/or any adjustment in the Project Completion Date made in accordance with this Agreement; or (B) the date on which termination of the Contract is effective pursuant to Section L7.2 below.

SECTION L7.2 TERMINATION DUE TO OTHER PARTY’S MATERIAL BREACH OF AGREEMENT.

L7.2.1 TERMINATION BY CONTRACTOR.

L7.2.1.1 Contractor may not terminate the Contract for convenience. Contractor may only terminate the Contract if Owner materially breaches one or more provisions of the Contract, which material breach may include, but is not limited to, Owner’s failure to pay the Contract Amount as each becomes due.

L7.2.1.2 If Contractor intends to terminate the Contract due to Owner’s material breach of one or more provisions of the Contract, Contractor shall provide Owner with written notice of such intent at least 30 days before the intended date of termination and state therein, at a minimum, the following: (A) the provision(s) in the Contract regarding which Contractor claims Owner materially breached; (B) the action(s) or omission(s) by Owner that Contractor claims constitute a material breach of the Contract; and (C) the corrective action(s) that Contractor requests that Owner take to cure the material breach. If Owner fails within the 30 days: (A) to cure the material breach; or (B) to diligently commence and continue performing corrective actions, then Contractor, upon expiration of the 30 days and unless the Parties agree otherwise in a writing executed by them, may terminate the Contract effective immediately upon providing written notice of termination to Owner. Any dispute between the Parties relating to Contractor’s notice of intent to terminate or any content contained therein, or Owner’s response or actions thereto shall be handled in accordance with the claims and dispute resolution provisions in Article L10.

L7.2.2 TERMINATION BY OWNER.

L7.2.2.1 GROUNDS. Owner may terminate the Contract if Contractor materially breaches one or more provisions of the Contract, which material breach includes, but is not limited to, one, several, or all of the following:

L7.2.2.1(A) Contractor’s refusal or failure to supply sufficient and properly skilled workers or proper materials, or refusal or failure to perform the Work in accordance with the Contract.

L7.2.2.1(B) Contractor’s failure to pay subcontractors for materials or labor in accordance with Business and Professions Code section 7108.5 and other Applicable Laws.

L7.2.2.1(C) Contractor’s violation of laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction over the Project.

L7.2.2.2 NOTICE. If Owner intends to terminate the Contract due to Contractor’s material breach of one or more provisions of the Contract, Owner shall provide Contractor with written notice of such intent at least seven days before the intended date of termination and state therein, at a minimum, the following: (A) the provision(s) in the Contract regarding which Owner claims Contractor materially breached; (B) the action(s) or omission(s) by Contractor that Owner claims constitute a material breach of the Contract; and (C) the corrective action(s) that Owner requests that Contractor take to cure the material breach. If Contractor fails within the seven days: (A) to cure the material breach; or (B) to
SECTION L7.3 TERMINATION BY OWNER ON OTHER GROUNDS. Notwithstanding any provision to the contrary in the Contract, Owner may terminate the Contract based on one or more of the following grounds:

L7.3.1 NON-ALLOCATION OF OR INSUFFICIENT ALLOCATED FUNDS. If for any fiscal year (July 1 to June 30 of the succeeding calendar year) during the Contract Term, Owner fails to appropriate or allocate funds after exercising reasonable efforts to do so and/or Owner does not receive funds from the State or other funding agency(ies) to make future payments of the Contract Amount, Owner may, upon 30 days written notice to Contractor, terminate the Contract effective at 12:00 midnight on the last day of the 30-day period.

L7.3.2 LICENSE, CERTIFICATION, REGISTRATION, AND PERMIT. The Contract shall terminate effective on the date stated in Owner’s notice of termination if: (A) any of Contractor’s license, certification, and/or permit that Contractor is required to maintain to perform the Work has been revoked, repealed, suspended, or placed on probation by any governmental or accrediting agency; and/or (B) Contractor refuses or fails during the Project Period and Warranty Period to qualify and register, and maintain such qualification and registration, with DIR pursuant to Labor Code section 1725.5 and other Applicable Laws.

L7.3.3 EXPIRATION OF PROJECT PERIOD. Owner may terminate the Contract at any time after the last day of the Project Period upon providing written notice to Contractor, unless the Project Period has been extended in accordance with the Contract.

L7.3.4 UNAUTHORIZED ASSIGNMENT OR TRANSFER. The Contract shall terminate effective on the date stated in Owner’s written notice of termination to Contractor if Contractor assigns or transfers any of Contractor’s rights or obligations under the Contract. Any subcontract entered into, in accordance with the Contract, by Contractor with any subcontractor to perform a portion of the Work shall not constitute an assignment or transfer of the Contract.

L7.3.5 BANKRUPTCY OR RECEIVERSHIP. The Contract shall terminate without any notice from Owner on the day immediately preceding the day on which Contractor: (A) files a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors; (B) applies for, consents to, or has an order, judgment, or decree entered by a court for, approval of a petition, or appointment of, a receiver, trustee, custodian, or liquidator of all or a substantial part of Contractor’s assets; (C) is unable to, fails to, or admits in writing Contractor’s inability generally to pay Contractor’s debts as they become due; or (D) makes a general assignment for the benefit of creditors. Contractor shall notify Owner in writing when any such event occurs.

L7.3.6 CONVENIENCE. Owner may terminate the Contract for Owner’s convenience and without cause upon providing Contractor with written notice at least 30 days before the effective date of termination.

SECTION L7.4 TERMINATION DUE TO EMINENT DOMAIN. If the whole or any portion of the Project Site is taken under the power or threat of eminent domain as to render the remaining portion of the Project Site unusable for the purposes for which Owner was using the Project Site at the time of the taking, the Contract shall terminate on the date that possession of the Project Site is taken. If only a portion of the Project Site is taken under the power or threat of eminent domain and the remaining portion of the Project Site is usable for the purposes for which Owner was using the Project Site at the time of such taking, the Contract shall continue in full force and effect as to the remaining portion of the Project Site and the Parties waive the benefits of any law to the contrary, and there shall be a reduction of the Contract Amount in an amount equal to the amount for the portion of the Work that Contractor has not performed on the portion of the Project Site taken by eminent domain.
SECTION L7.5  RIGHTS AND OBLIGATIONS UPON TERMINATION.

L7.5.1 APPLICABILITY. The provisions in the chart that follows shall govern the Parties’ rights and obligations upon: (A) termination of the Contract due to one or more grounds stated in Subsections L7.2.1, L7.2.2, or L7.3; (B) termination of the Contract by the Parties’ mutual agreement; or (C) the Parties’ full performance of the Contract. Full performance shall occur when Contractor has performed and completed the Work, and Owner has paid the Contract Amount due to Contractor or Contractor agrees in writing to release Owner of the obligation to pay any remaining Contract Amount.

L7.5.2 OWNER TERMINATION NOT A WAIVER. Owner’s termination of the Contract due to Contractor’s material breach of one or more provisions of the Contract or any other grounds shall not act as a waiver of any claims by Owner against Contractor or others for damages or other liabilities based on contract, law, or equity.

L7.5.3 RIGHTS AND OBLIGATIONS UPON TERMINATION. The rights and obligations set forth in the chart below shall correspond with the following:

L7.5.3.1 NO. 1: CONTRACTOR CESSION OF WORK. Upon receipt of written notice from Owner to terminate the Contract and provided that Work is in progress, Contractor shall: (A) cease the Work as directed by Owner in the notice; (B) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and (C) except for Work that Owner has directed that Contractor continue to perform until the effective date of termination, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

L7.5.3.2 NO. 2: RETURN OF WORK PRODUCTS. At Owner’s request and without seeking or entitlement to any compensation, Contractor shall deliver to Owner by no later than 30 days after the effective date of termination of the Contract or the date of Owner’s request, whichever is earlier, all Owner Work Product and Contractor Work Product.

L7.5.3.3 NO. 3: TRANSITION OF WORK. Upon Owner’s request, Contractor, without seeking or entitlement to any compensation, shall: (A) assist Owner to transition and transfer the incomplete Work to third party(ies) selected by Owner, or to terminate and close down the Project; and (B) to the extent required by Applicable Laws or requested by Owner, assist Owner or and prepare and execute any documents that are required or proper to complete and close out the Project.

L7.5.3.4 NO. 4: REMOVAL OF CONTRACTOR PERSONAL PROPERTY. Contractor shall promptly remove any personal property that Contractor has placed on the Project Site or any other portion of the Site within 15 days of the effective date on which the Contract terminates. If Contractor fails to do so within the 15 days, Contractor shall be deemed to have abandoned the property and Owner may, without any compensation or liability to Contractor, keep or remove and/or dispose of the property as Owner deems proper. If Owner incurs any cost to remove and/or dispose of the property, Owner shall have the right to deduct the cost from any payment of the Contract Amount that is due or will become due to Contractor; if such payment of the Contract Amount is not sufficient to cover the cost, Contractor shall pay the cost to Owner within 30 days of Contractor’s receipt of Owner’s invoice.

L7.5.3.5 NO. 5: REMOVAL OF LIENS AND CLAIMS. Contractor, without seeking or entitlement to any compensation, shall promptly release or obtain the release of any stop payment notices, liens, assessments, and other charges for or relating to the Work, but in no case not later than 30 days after the effective date of termination of the Contract unless Owner agrees to a longer time deadline.

L7.5.3.6 NO. 6: VACATION OF PROJECT SITE. Contractor shall quit and surrender the Project Site within 15 days of the effective date of termination of the Contract.

L7.5.3.7 NO. 7: OWNER PERFORMANCE OF WORK. Owner may: (A) take possession of the Project Site, the Work, and all material, equipment, tools, and construction equipment and machinery thereon owned by Contractor; (B) notify Contractor in writing and accept
assignment of those subcontracts selected by Owner, subject to the prior rights of any surety obligated under any bond relating to the Contract; and/or (C) complete the Work by whatever reasonable method Owner may deem expedient.

L7.5.3.8 NO. 8: PAYMENT TO CONTRACTOR – PORTION OF CONTRACT AMOUNT. Owner shall pay Contractor the portion of the Contract Amount that is due to Contractor but only for the Work that Contractor performed in accordance with the Contract before the effective date of termination. If Owner terminates the Contract due to Contractor’s material breach of one or more provisions of the Contract, Contractor shall not be entitled to receive any payment of the Contract Amount that is due to Contractor until the Project is fully completed in accordance with the Contract. Upon full completion of the Project and provided that the remaining Contract Amount does not exceed the costs of completing the Project, including compensation for professional services and expenses made necessary thereby, Owner shall pay Contractor for Work that Contractor performed in accordance with the Contract before the effective termination date of the Contract. If the costs to complete the Project exceed the remaining Contract Amount, Contractor shall pay the excess costs to Owner within 30 days after Contractor receives Owner’s invoice requesting payment thereof.

L7.5.3.9 NO. 9: PAYMENT TO CONTRACTOR – OVERHEAD AND PROFIT. Owner shall pay Contractor reasonable overhead and profit for Work that Contractor performed in accordance with the Contract before the effective termination date of the Contract. Contractor shall not be entitled to any overhead and profit for Work that Contractor did not perform before the effective date of termination of the Contract.

L7.5.3.10 NO. 10: PAYMENT TO CONTRACTOR – MATERIAL COSTS. Owner shall pay Contractor for reasonable costs of materials, equipment, tools, construction equipment, and machinery that Contractor incurred before the effective date of termination of the Contract where Owner accepted in writing such materials, equipment, tools, construction equipment, and machinery but has not paid Contractor therefor.

L7.5.3.11 NO. 11: PAYMENT TO CONTRACTOR – PENALTIES AND FEES. Owner shall pay to Contractor the amount of any penalty or fee that suppliers assessed against Contractor for cancellation of any order for equipment or materials for the Project that Contractor ordered before Contractor provided Owner with notice of termination of the Contract or received Owner’s notice of termination of the Contract.

L7.5.3.12 NO. 12: PAYMENT TO CONTRACTOR – DEMOBILIZATION COSTS. Owner shall pay Contractor for reasonable demobilization costs that Contractor incurred due to the termination of the Contract.

L7.5.3.13 NO. 13: PAYMENT TO CONTRACTOR – OTHER COSTS. Owner shall pay Contractor for other costs pre-approved in writing by Owner and actually incurred by Contractor.

CHART
RIGHTS AND OBLIGATIONS UPON TERMINATION OF AGREEMENT

<table>
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<tr>
<th>NO.</th>
<th>RIGHTS AND OBLIGATIONS</th>
<th>TERMINATION BEFORE WORK COMMENCES</th>
<th>TERMINATION AFTER WORK COMMENCES</th>
<th>TERMINATE BY MUTUAL AGREEMENT</th>
<th>FULL PERFORMANCE OF AGREEMENT</th>
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<td>Contractor Terminates for Owner Material Breach</td>
<td>Owner Terminates for Contractor Material Breach</td>
<td>Owner Terminates for Other Grounds</td>
<td></td>
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</tr>
<tr>
<td>2</td>
<td>Return of Work Products</td>
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<td>TERMINATE BY MUTUAL AGREEMENT</td>
<td>FULL PERFORMANCE OF AGREEMENT</td>
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<td>Owner Performance of Work</td>
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<td>9</td>
<td>Payment to Contractor – Overhead and Profit</td>
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</table>

L7.5.4 PAYMENT BY OWNER. Owner shall pay Contractor for any amount due to Contractor based on the provisions in Subsection L7.5.3 within 30 days of the effective termination date of the Contract and Owner’s receipt of written documentation/verification thereof from Contractor. Upon payment thereof, Owner shall not owe, and shall have no further liability to, Contractor for any compensation or damages for any Work that Contractor performed under the Contract, whether under contract, law, or equity.

SECTION L7.6 STOP AND SUSPENSION OF WORK BY OWNER.

L7.6.1 FOR CONVENIENCE. Owner, without cause and in writing, may order Contractor to suspend, delay, or interrupt the Work, in whole or in part, for such period of time as Owner may determine and subject to the following:

L7.6.1.1 CONTRACTOR OBLIGATIONS. Upon receiving Owner’s notice of the suspension, Contractor shall: (A) except for Work that Owner directed for Contractor to perform before the effective date of suspension stated in the notice, cease the Work as Owner directed in the notice; (B) take actions necessary, or that Owner may direct, to protect and preserve the Work; and (C) notify all Subcontractor to comply with this Subsection L7.6.1.

L7.6.1.2 ADJUSTMENTS. An adjustment in an amount to be agreed upon by the Parties shall be made for increases to the Contract Amount, including profit on the increased cost caused
by a suspension, delay, or interruption of the Work. No adjustment shall be made to the extent: (A) that performance is, was or would have been so suspended, delayed, or interrupted by another cause for which Contractor is responsible; or (B) that an equitable adjustment is made or denied under another provision of the Contract or Applicable Laws.

L7.6.2 FOR CAUSE. Notwithstanding any provision to the contrary in the Contract, if Contractor does not perform the Work in accordance with the Contract, fails to correct defective Work, or persistently fails to carry out the Work in accordance with the Contract, Owner itself or through Architect or Inspector, by a written order, may order Contractor to stop or suspend the Work, or any portion thereof, until the cause for such order has been eliminated. However, Owner's right to stop or suspend the Work shall not give rise to any duty on Owner's part to exercise the right for the benefit of Contractor or any other person or entity.

SECTION L7.7 STOP AND SUSPENSION OF WORK BY DSA. If the Project is subject to the jurisdiction of DSA, DSA is authorized to and may issue a stop work order if DSA finds that any construction work is being performed in a manner contrary to the provisions of Title 24 of the CCR and would compromise the structural integrity of any building. Upon DSA's issuance of a stop work order, Contractor shall cease immediately the cited Work.

ARTICLE L8 INSURANCE AND BONDS.

SECTION L8.1 INSURANCE. Requirements for insurance are as stated in Insurance, Contract Document G.

SECTION L8.2 BONDS. Requirements for the Payment Bond and the Performance Bond are as set forth in each such document. If the Parties determine it necessary and Owner agrees to extend the Project Period, such extension as Owner may grant shall in no way release any guarantee that Contractor has given pursuant to the Contract or relieve or release the sureties on the bonds executed pursuant to the Contract. The sureties in executing the Payment Bond and Performance Bond shall be deemed to have expressly agreed to any such extension of the Project Period.

ARTICLE L9 INDEMNITY.

Except as specifically stated elsewhere in another Contract Document in which case such provision shall govern to the extent provided therein, each Party's indemnity, defense, and hold harmless obligations to the other Party under or related to the Contract shall be governed solely by this Article L9. A Party ("Indemnitor") shall: (A) indemnify and hold harmless the other Party ("Indemnitee") to the full extent permitted by State laws for any Loss sustained by Indemnitee or a Third Party only in proportion to Indemnitor's liability based on a Final Determination; and (B) defend and pay for all of Indemnitor's attorney's fees and litigation costs related to any Claim or Loss without any right against or from the Indemnitee for indemnity and/or hold harmless of such costs and fees, or any right for defense. A Party who intends to seek or seeks indemnity and/or hold harmless for any Loss from the other Party: (A) shall notify the other Party in writing and within a reasonable time after the Party knows or becomes aware of any Claim that may or will result in a Loss, describing, if known or determinable, the pertinent circumstances, all entities and persons involved, and the amount being claimed; and (B) shall not settle or resolve the Claim until it has notified the other Party of the Claim in accordance with the preceding provision and given the other Party written notice and an opportunity to participate in and to consent to the settlement or resolution of the Claim, which consent the other Party shall not unreasonably withhold. A Party's obligations under this Article L9 are not limited to or by any insurance that it maintains or the lack of insurance but apply to the full extent permitted by State laws, and shall survive the termination of the Contract. "Claim" means any claim, demand, lawsuit, cause of action, action, cross-complaint, cross-action, and/or proceeding arising out of, resulting from, or relating to the Contract where there has been no Final Determination. "Loss" means any bodily injury, property damage, personal injury, advertising injury, liability, loss, damage, judgment, expense, and/or cost (excluding attorney's fees and litigation costs that a Party or a Third Party incurred or paid related to a Loss or Claim) arising out of, resulting from, or relating to the Contract and for which there has been a Final Determination that a Party is or both Parties are liable. "Third Party" means a person who or an entity that is not any of the following: (A) a Party; (B) an owner, director, officer, employee, or agent of Contractor; (C) an officer, employee, or agent of Owner; or (D) contracted with (whether directly or through a subcontract of any level) or otherwise retained by a Party to act for or on the Party's behalf. "Final Determination" means any judgment, order, or decision, each a "Determination," by a court of competent jurisdiction or a governmental entity with jurisdiction to render the Determination where the Determination is not subject to appeal or the period for an appeal has expired.
ARTICLE L10 MODIFICATIONS, CLAIMS, AND DISPUTE RESOLUTION.

SECTION L10.1 APPLICABILITY. Unless specifically required otherwise by Applicable Laws in which case such Applicable Laws shall govern to the extent applicable, the provisions of this Article L10, as applicable, and the claim resolution process set forth in the Addendum to Specifications, Contract Document N, shall apply to any claim (PCC 9204 Claim), as this term is defined in Public Contract Code section 9204. Except for a PCC 9204 Claim, the provisions of this Article L10 shall apply to any changes to or any claims or disputes between the Parties arising out of, resulting from, or relating to, the Work, the Project, and/or the Contract. No provision in this Article L10 shall constitute or be construed to constitute a waiver by any Party of any attorney-client privilege, attorney work product privilege, or any other privilege available to a Party by Applicable Laws.

SECTION L10.2 PROVISIONS APPLICABLE TO ALL CLAIMS, INCLUDING PCC 9204 CLAIM.

L10.2.1 CONTINUING PERFORMANCE. Pending final resolution of a change order request, request for change, claim, mediation, and/or litigation and, unless the Parties agree otherwise in a writing executed by them, Contractor shall proceed diligently with performance of the Work, and Owner shall continue to make any undisputed payment, in accordance with the Contract. During any dispute, Owner's decision, for the time being, shall prevail and Contractor shall perform the Contract as Owner directs without prejudice to a Final Determination.

L10.2.2 PRE-CONDITION TO LITIGATION. Except for an action to preserve the status quo and/or prevent irreparable harm, a Party shall not commence any cause of action, action, lawsuit, or proceeding arising out of, resulting from, or relating to the Work, this Project, or the Contract until after complying with the provisions of this Article L10.

L10.2.3 REQUEST FOR CHANGE. If a Party desires to make any change to the Work, the Project, or any provisions in the Contract, the Party requesting the change shall give the other Party and Architect written notice thereof within 15 days after the occurrence of the event giving rise for the requested change, together with detailed estimates of the impact on the Contract Amount, Project Schedule, and Project Period. Contractor shall give this notice before providing any labor or materials for which Contractor is requesting the change, except in an emergency endangering life or property in which case Contractor shall proceed as Contractor determines appropriate and provide Owner with written notice of the services as promptly as reasonably possible. No change shall be considered unless made in accordance with this Subsection L10.2.3. However, the mere presentation of a change order request or other request for change shall not establish the validity of the cause giving rise to the change.

L10.2.4 CHANGE THROUGH MODIFICATION. Except as specifically permitted in this Article L10 or elsewhere in the Contract, any change to the Work, the Project, or the Contract shall be made only by a modification executed by the Parties. Owner shall not be liable for the cost of any work or any substitutions, changes, additions, omissions, or deviations from the requirements of the Contract unless the same shall have been authorized by and the cost thereof set forth in a modification. No extension of the Project Period shall be allowed unless an extension thereof is made at the time of the change in the Work and such extension is stated in a modification.

L10.2.5 ARCHITECT MINOR CHANGES TO WORK. Owner, without breaching the Contract and submitting a request for a change, may have Architect order in a writing to Contractor minor changes in the Work and/or the Project within the general scope of the Contract consisting of additions, deletions, or other revisions that do not affect the Contract Amount and the Project Period. Architect may also issue written field orders that interpret the Contract. Contractor shall carry out such minor change orders and field orders in accordance therewith.

L10.2.6 SUBMISSION OF CLAIMS.

L10.2.6.1 TIME DEADLINE. Unless a different deadline is stated in this Agreement in which case such deadline shall apply, any claim by a Party must be made in writing to the other Party within 10 days after the day of occurrence of the event that gave rise to the claim or within 10 days after the Party making the claim first becomes aware of or has knowledge of the condition that gave rise to the claim. An additional claim regarding the same subject matter(s) as an earlier claim will not be considered by Owner if the Parties have agreed on the earlier claim through change order(s) or another modification. Contractor's failure
to provide the required notice to Owner within the specified time in this Subsection L10.2.6.1 shall constitute an express waiver by Contractor of any right that Contractor has to assert such claim, whether affirmatively or defensively.

L10.2.6.2 SUBMISSION UNDER PENALTY OF PERJURY.

L10.2.6.2(A) FORM OF CERTIFICATION. Contractor shall submit with each claim a certification, stating as follows:

Name of Contractor:__________________________________________

I, the undersigned, being an officer of the above-listed Contractor, declare under penalty of perjury under the laws of the State of California do personally certify and attest that I have thoroughly reviewed the attached claim for additional cost and/or extension of time, and know its contents, and the claim is made in good faith; the supporting data is truthful, accurate, and complete; and the amount requested accurately reflects the adjustment that Contractor believes Owner is liable. I am familiar with California Penal Code section 72 pertaining to false claims, and know and understand that submission or certification of a false claim may lead to fines, imprisonment, and/or other severe legal consequences.

Signature:_____________________________ Date:________________

Print Name:___________________________

Title:_________________________________

L10.2.6.2(B) NON-COMPLIANCE. Contractor understands and agrees that any claim submitted without the certification set forth above does not meet the requirements of this Agreement and Owner may reject the claim on that basis. Unless Contractor properly and timely files a claim with this certification, Contractor shall have no right to assert and pursue the claim in any forum, Contractor understanding that the certification is a condition precedent.

L10.2.6.3 REPRESENTATION. Throughout the claim and dispute resolution process set forth in this Article L10 or the claim resolution process set forth in the Addendum to Specifications – Claim Resolution Process, Contract Document N, a Party may be represented by person(s) of its choice, who shall have full authority to negotiate a resolution of the dispute on the Party’s behalf. At the same time that a Party makes a claim or initiates dispute resolution under this Article L10 or the aforementioned Addendum to Specifications, the Party shall provide to the other Party in writing the name, address, phone number, facsimile number, and email address of each person who will represent the Party throughout the claim and dispute resolution process. The recipient Party shall provide the same information to the initiating Party within seven days of the recipient Party’s receipt of the claim or initiation of dispute resolution.

L10.2.7 ADDITIONAL PROVISIONS APPLICABLE TO CLAIMS FOR INJURY OR DAMAGE TO PERSON OR PROPERTY. If a Party suffers injury and/or damage to person or property relating to the Work, the Project, or this Agreement because of the other Party’s act or omission, the Party suffering the injury shall notify the other Party in writing of such injury or damage within a reasonable time but not later than 10 days following the day on which the event(s) that gave rise to the injury or damage occurred. The notice shall provide sufficient detail to enable the other Party to investigate the matter, stating at a minimum, a description of the particular injuries and/or damages that occurred, the location(s) where the injury and/or damage occurred, the date(s) of occurrence, the estimated amount of the damage and/or injury if known, and all persons and witnesses involved.
L10.2.8 ADDITIONAL PROVISIONS APPLICABLE TO CLAIM RELATING TO CONCEALED OR UNKNOWN CONDITIONS.

L10.2.8.1 TRENCHES OR EXCAVATIONS LESS THAN FOUR FEET BELOW THE SURFACE. If conditions are encountered at the Project Site that are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in this Agreement, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this Agreement, then notice by the observing Party shall be given to the other Party promptly before conditions are disturbed and in no event later than 10 days after first observance of the conditions. Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, time required for, or performance of any part of the Work, will recommend an equitable adjustment in the Contract Amount or Project Period, or both. If Architect determines that the conditions at the Project Site are not materially different from those indicated in this Agreement and that no change in this Agreement is justified, Architect shall so notify the Parties in writing, stating the reasons. Claims by either Party in opposition to such determination must be made within 10 days after the date of Architect's notice of the decision. If the Parties cannot agree on an adjustment in the Contract Amount or the Project Period, the adjustment shall be referred to Architect for initial determination.

L10.2.8.2 TRENCHES OR EXCAVATIONS GREATER THAN FOUR FEET BELOW THE SURFACE. Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface the following provisions shall apply:

L10.2.8.2(A) Contractor shall promptly, and before the following conditions are disturbed, notify Owner, in writing, of any:

   (1) Material that Contractor believes may be material that is hazardous waste, as defined in Health and Safety Code section 25117, required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

   (2) Subsurface or latent physical conditions at the Project Site differing from those indicated by information about the Project Site made available to contractors prior to Contractor's execution of this Agreement.

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

L10.2.8.2(B) Owner shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in this Agreement.

L10.2.8.2(C) If a dispute arises between the Parties regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, Contractor shall not be excused from completing the Work within the Project Period but shall proceed with the Work. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.
L10.2.8.3 ADJUSTMENT IN CONTRACT AMOUNT. Should concealed conditions encountered in the performance of the Work below the surface of the ground be at variance with the conditions indicated by the Contract or known or should have reasonable been known to Contractor, or should unknown physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract, be encountered, the Contract Amount shall be equitably adjusted by change order upon claim by either Party, which claim shall be made within a reasonable time, but not later than 10 days after the Party making the claim first observed the conditions and in no event shall the claim be made after performance of the applicable Work.

L10.2.9 ADDITIONAL PROVISIONS APPLICABLE TO CLAIM FOR AND DETERMINATION OF INCREASE IN CONTRACT AMOUNT.

L10.2.9.1 SUBMISSION OF CLAIM. If Contractor wishes to make any claim for an increase in the Contract Amount, Contractor shall notify Owner and Architect in writing before Contractor proceeds to perform the work for which Contractor seeks the increase. Each claim for additional cost must state, at a minimum, the following: (A) the amount of the increase to the Contract Amount and computation of such amount; (B) any claim for additional time; (C) all facts supporting the claim; (D) a schedule showing the impact on the critical path of any claimed delay and that the delay will extend the Work beyond the Project Completion Date; and (E) a copy of written computations of delay damages and supporting documentation, including but not limited to, any relevant job cost and home office overhead.

L10.2.9.2 FORMAT FOR PROPOSED CHANGE TO CONTRACT AMOUNT. The following provisions shall apply to any proposed change to the Contract Amount:

L10.2.9.2(A) FORMAT. The Parties shall use the following format to propose additions and/or deductions to the Contract Amount:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>EXIST</th>
<th>CREDIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Material (attach itemized quantity and unit cost plus sales tax)</td>
<td>_______</td>
<td>_______</td>
</tr>
<tr>
<td>2. Labor (attach itemized hours and rates)</td>
<td>_______</td>
<td>_______</td>
</tr>
<tr>
<td>3. Equipment (attach invoices)</td>
<td>_______</td>
<td>_______</td>
</tr>
<tr>
<td>4. Subtotal of Items 1 - 3</td>
<td>_______</td>
<td>_______</td>
</tr>
<tr>
<td>5. If subcontractor performed work, add subcontractor's overhead and profit to portions performed by subcontractor, not to exceed 10% of item 4.</td>
<td>_______</td>
<td>_______</td>
</tr>
<tr>
<td>6. Workers compensation insurance, social security, and unemployment taxes (Contractor to provide substantiation of rates and amount).</td>
<td>_______</td>
<td>_______</td>
</tr>
<tr>
<td>7. Subtotal of Items 4, 5, and 6</td>
<td>_______</td>
<td>_______</td>
</tr>
<tr>
<td>8. Contractor's overhead and profit, not to exceed 10% of item 7 if Contractor performs the work or 10% percent if a subcontractor performs the work.</td>
<td>_______</td>
<td>_______</td>
</tr>
<tr>
<td>9. Subtotal of Items 7 and 8</td>
<td>_______</td>
<td>_______</td>
</tr>
</tbody>
</table>
10. Bond and liability and property damage insurance, the total cost of which shall not exceed 2% of item 9.

11. TOTAL (sum of 9 and 10) __________ __________

L10.2.9.2(B) COSTS INCLUDED AND WAIVER. The Parties understand and agree that the value of extra work or changes, as determined by the format set forth immediately above, includes any and all of Contractor's costs and expenses, direct and indirect, resulting from additional time required on the Project or resulting from delays to the Project. Any costs or expenses not included are deemed waived.

L10.2.9.2(C) LIMITATIONS ON COSTS. The following limitations shall apply: (A) overhead and profit shall not be applied to taxes and insurance by Contractor or subcontractors or to credits; and (B) State and city sales taxes shall be indicated; federal excise tax shall not be included; and Owner will issue exemption on request.

L10.2.9.2(D) CERTIFICATION. All proposed change orders or requests for change orders by Contractor must include, at a minimum, the following certification by Contractor:

Name of Contractor:____________________________________

The above-listed Contractor approves and agrees to the foregoing. To the extent there is any change in the Work that requires Contractor to perform additional and/or change in the work, Contractor agrees to furnish all labor necessary to perform the additional and/or change in the work and all materials, tools, equipment, services, transportation, and other items that are necessary and proper, and to perform the change in work in a good and workmanlike manner, free from any and all liens and claims of mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the work, all in strict compliance with this Agreement. Submission of claims which have no basis in fact or which Contractor knows are false are made at the sole risk of Contractor and may violate the False Claims Act (Government Code section 12650 et seq.) It is understood that the changes to this Agreement shall only be effective upon approval by Owner. It is expressly understood that the value of the extra work or changes expressly includes any and all of Contractor's costs and expenses, direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included herein are waived by Contractor. No oral statements of any person whosoever shall, in any manner or degree, modify or otherwise affect the terms and conditions of this Agreement.

L10.2.9.3 DETERMINATION OF INCREASE IN CONTRACT AMOUNT. The amount of the increase or decrease in the Contract Amount resulting from a change order or other modification shall be determined in one or more of the following methods as applicable to a specific situation.

L10.2.9.3(A) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

L10.2.9.3(B) Unit prices, if any, stated in Contractor's response, this Agreement, or agreed by the Parties.
L10.2.9.3(C) Cost to be determined in a manner agreed by the Parties and a mutually acceptable fixed or percentage fee.

L10.2.9.3(D) Cost of material and labor and percentage of overhead and profit. If the cost is determined by this method, the following requirements shall apply:

(1) DAILY REPORTS BY CONTRACTOR.

(a) **GENERAL.** At the close of each working day, Contractor shall submit a daily report to Architect or other person designated by Owner, on forms approved by Owner, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the Work, and for other services and expenditures when authorized concerning extra work items. The Parties shall cooperate in good faith to reconcile the report daily and it shall be signed by Architect and Contractor. If there is any disagreement, each Party shall enter pertinent notes to explain points which cannot be resolved immediately. Each Party shall retain a signed copy of the daily report. Daily reports by subcontractors or others shall be submitted through Contractor.

(b) **LABOR.** Show names of workers, classifications, and hours worked.

(c) **MATERIALS.** Describe and list quantities of materials used.

(d) **EQUIPMENT.** Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.

(e) **OTHER SERVICES AND EXPENDITURES.** Describe other services and expenditures in such detail as Owner may require.

(2) BASIS FOR ESTABLISHING COSTS.

(a) **LABOR.** Labor will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra work is done, plus employer payments as required by Applicable Laws. The use of a labor classification, which would increase the extra work cost, will not be permitted unless Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

(b) **MATERIALS.** Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Project Site in the quantities involved, plus sales tax, freight, and delivery. Owner reserves the right to approve materials and sources of supply or to supply materials to Contractor if necessary for the progress of the Project. No markup shall be applied to any materials that Owner provides to Contractor.

(c) **TOOL AND EQUIPMENT RENTAL.** No payment will be made for the use of tools that have a replacement value of $100 or less. Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time of rental of the equipment. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Necessary loading and transportation costs for equipment used on the extra work shall be
included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to Owner than holding it at the Project Site, it shall be returned unless Contractor elects to keep it at the Project Site at no expense to Owner. Each equipment shall be acceptable to Architect or Owner, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

(d) OTHER ITEMS. Owner may authorize other items that may be required on the extra work. Such items include labor, services, material, and equipment that are different in their nature from those required by the Project and are of a type not ordinarily available from Contractor or any subcontractor. Contractor shall submit invoices covering all such items in detail with Contractor's request for payment.

(e) INVOICES. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the change order request. If the Application for Payment is not substantiated by invoices or other documentation, Owner may establish the cost of the item involved at the lowest price that was current at the time of the daily report.

(f) OVERHEAD. Overhead, including direct and indirect costs, shall be submitted with the change order request and include home office overhead, off-site supervision, change order preparation/negotiation/research for Owner initiated changes, time delays, Project interference and disruption, additional guaranty and warranty durations, on-site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

L10.2.9.3(E) FORCE ACCOUNT. If the Parties are unable to agree on any of the above methods, because of the nature of the work or for any other reason, and to fix an increase in price definitely in advance, the change order may fix a maximum price which shall not under any circumstances be exceeded, and subject to such limitation, such alteration, modification or extra shall be paid for at the actual necessary cost as determined by the sum of the following items, inclusive:

(1) Labor, including premium on compensation insurance and charge for social security taxes, and other taxes pertaining to labor.

(2) Material, including sales taxes and other taxes pertaining to materials.

(3) Plant and equipment rental, to be agreed upon in writing before the work is begun. No charge for the cost of repairs to plant or equipment will be allowed.

(4) Overhead and profit computed at 10% of the total of items (1) to (3) inclusive.

(5) The proportionate cost of premiums on bonds required by these specifications, computed at 2% of the total of items (1) to (4) inclusive.
If the force account work is done by a subcontractor, the amount shall be determined as set forth above and Contractor's overhead and profit on the costs of subcontracts (exclusive of taxes and insurance) shall not exceed 10 percent of such costs. Owner reserves the right to furnish such materials as Owner may deem expedient and no allowance will be made for profit thereon.

L10.2.9.4 DISCOUNTS, REBATES, AND REFUNDS. For purposes of determining the cost of any change, addition, or omission to the Work, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to Contractor. Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided pursuant to any change order.

L10.2.9.5 ACCOUNTING RECORDS. With respect to portions of the Work performed by change orders and FCDs on a time-and-materials, unit-cost, or similar basis, Contractor shall keep and maintain cost-accounting records satisfactory to Owner, which shall be available to Owner on the same terms as any other books and records Contractor is required to maintain under this Agreement.

L10.2.10 ADDITIONAL PROVISIONS APPLICABLE TO CLAIMS FOR EXTENSION OF PROJECT COMPLETION DATE.

L10.2.10.1 NOTICE AND EXTENT OF CLAIM. If Contractor wishes to make a claim for an increase in the Project Period and/or the Contract Term, Contractor shall provide written notice to Owner and Architect within 10 days of the day on which the event(s) giving rise to the claim occurred. Contractor's claim shall include, at a minimum, the following: (A) the time extension requested; (B) any cost associated with the extension, (C) all facts supporting the claim; and (D) a schedule showing the impact on the critical path of any claimed delay and that the delay will extend the Work beyond the Project Completion Date. In the case of a continuing delay, only one claim is necessary.

L10.2.10.2 UNUSUALLY SEVERE WEATHER CLAIMS. If unusual severe weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period, could not have been reasonably anticipated, and had an adverse effect on the critical path of the Work.

SECTION L10.3 CLAIM RESOLUTION PROCESS.

L.10.3.1 CLAIMS SUBJECT TO PUBLIC CONTRACT CODE SECTION 9204. Public Contract Code section 9204 shall govern the resolution of any claim ("PCC 9204 Claim"), as this term is defined in Subdivision (C)(1) of Section 9204. The claim resolution process for PCC 9204 Claims is set forth in the Addendum to Specifications – Claim Resolution Process, Contract Document N. If there is any conflict between any provision set forth in said Addendum and any provision set forth in this Agreement or any other Contract Document, the provision set forth in the Addendum shall govern.

L.10.3.2 CLAIMS AND DISPUTES NOT SUBJECT TO PUBLIC CONTRACT CODE SECTION 9204. Unless otherwise agreed to in writing by the Parties, through their authorized representatives, the dispute resolution process set forth in this Subsection L.10.5.2 shall apply in the order stated below to any claims or disputes that are not PCC 9204 Claims. For purposes of this Subsection L.10.5.2 and unless designated in writing by a Party otherwise, “authorized representatives” shall mean the person who signed this Agreement or his or her designee.

L10.3.2.1 STEP 1 − MEET AND CONFER. Unless meet and confer requirements are provided elsewhere in this Agreement in which case such provisions shall govern to the extent provided therein and in lieu of this Subsection L10.5.2.1, the Parties shall meet and confer in good faith to resolve any disputes between them arising out of, resulting from, or relating to the Contract.
L10.3.2.2 STEP 2 – ARCHITECT REVIEW AND RESOLUTION.

L10.3.2.2(A) SUBMISSION TO ARCHITECT. The Parties shall submit any claim, including those alleging an error or omission by Architect, initially to Architect for action. Architect’s decision shall be required as a condition precedent to any mediation, litigation, or other action or proceeding on any claim between the Parties as to claims that are not PCC 9024 Claims. Architect’s decision in response to a claim shall not be a condition precedent to any mediation, litigation, or other action or proceeding in the following situation: (A) the position of Architect is vacant; (B) Architect has not received evidence or has failed to render a decision on a claim within time limits agreed to by the Parties and Architect; (C) Architect has failed to take action on a claim within 30 days after the claim was submitted to Architect; (D) 45 days have passed after a claim has been referred to Architect; or (E) a claim relates to a stop payment notice.

L10.3.2.2(B) REVIEW BY ARCHITECT. Architect shall review a claim and take one or more of the following actions within 10 days of Architect’s receipt of the claim: (A) request additional supporting data from the claimant Party; (B) submit a schedule to the Parties indicating when the Architect expects to take action on the claim; (C) reject the claim in whole or in part, stating reasons for the rejection; (D) recommend approval of the claim by the other Party; or (E) suggest a compromise.

L10.3.2.2(C) DOCUMENTATION IF RESOLVED. If a claim has been resolved, Architect will prepare for the Parties’ signatures or obtain from the Parties a writing executed by them and setting forth the agreed-upon resolution(s).

L10.3.2.2(D) ACTIONS IF NOT RESOLVED. If a claim has not been resolved through the process in this Subsection L10.5.2.2, the Party making the claim shall take one or more of the following actions within 10 days after Architect’s response: (A) submit additional supporting data requested by Architect; (B) modify the initial claim; or (C) notify Architect that the initial claim stands.

L10.3.2.2(E) ARCHITECT’S WRITTEN DECISION. If a claim has not been resolved after consideration of the foregoing and of other evidence presented by the Parties or requested by Architect, Architect shall notify the Parties in writing that Architect’s decision will be made within seven days. Upon expiration of the seven days, Architect shall render a written decision to the Parties relating to the claim, including any change in the Contract Amount or the Project Period or both.

L10.3.3 STEP 3 – MEDIATION.

L10.3.3.1 VOLUNTARY. If a claim or dispute is not resolved through Step 1 or Step 2 above or either Party objects to Architect’s decision in Step 2 above, the Parties shall attempt to resolve the matter by mediation. The mediation is voluntary, non-binding, and intended to provide the Parties the opportunity to arrive at a mutual solution. These provisions relating to voluntary mediation shall not be construed or interpreted as mandatory arbitration.

L10.3.3.2 INITIATION. Either Party may initiate mediation by providing the other Party with a request for mediation in writing, stating, at a minimum, the following: (A) the provision(s) of this Agreement that are the subject of the dispute; (B) the ground(s) or reason(s) for the dispute; (C) any prior communications
between the Parties regarding the dispute; and (D) the remedy(ies) or corrective action(s) that the requesting Party seeks.

L10.3.3.3 SELECTION, QUALIFICATION, AND AUTHORITY OF MEDIATOR.

L10.3.3.3(A) SELECTION. Within 10 days after a request for mediation is made, the Parties will meet-and-confer to select an appropriate mediator.

L10.3.3.3(B) QUALIFICATION. Any mediator selected shall have expertise in the area of the dispute and be knowledgeable in the mediation process. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation. Before accepting an appointment, the prospective mediator shall disclose any circumstances likely to create bias or prevent a prompt meeting with the Parties. Upon receipt of such information, the Parties shall meet and confer and decide whether to select the prospective mediator or another mediator.

L10.3.3.3(C) AUTHORITY. The mediator shall not have authority to impose a settlement on the Parties but will assist the Parties to attempt to reach a mutual resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties agree to pay the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the Parties, as the mediator shall determine. The mediator shall interpret and apply these mediation provisions insofar as they relate to the mediator's duties and responsibilities.

L10.3.3.4 TIME AND PLACE. The mediator shall set the time of each mediation session. The mediation shall be held at any convenient location agreeable to the mediator and the Parties. The Parties and the mediator shall make all reasonable efforts to schedule and hold the first mediation session within 30 days after a Party requests mediation.

L10.3.3.5 STATEMENT OF POSITION. At least 10 days before the first scheduled mediation session, each Party shall provide the mediator a memorandum setting forth its position with regard to the dispute(s) to be resolved. If a Party so chooses, it may provide its memorandum to the other Party. At the mediation session(s), the Parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. The mediator may request that each Party provide additional information.

L10.3.3.6 PRIVACY AND CONFIDENTIALITY. Mediation sessions are private. The Parties and their representatives may attend mediation sessions. Other persons may attend the mediation sessions only with the Parties’ permission and the mediator’s consent. The mediator shall not disclose to the other Party or any third party confidential information disclosed to the mediator by a Party or by any witness in the course of the mediation. All records, reports, or other documents received by the mediator while serving as mediator shall be confidential. The mediator shall not be compelled to divulge such records, reports, and documents or to testify in regard to the mediation in any adversary proceeding or judicial forum. The Parties shall maintain the confidentiality of the mediation and shall not rely on, or
introduce as evidence in any judicial or other proceedings, views expressed or suggestions made by the other Party with respect to the possible settlement of the dispute, statements made by either Party in the course of the mediation, proposals made or views expressed by the mediator, and whether a Party had or had not indicated any willingness to accept a proposal for settlement made by the mediator or the other Party.

L10.3.7 NO STENOGRAPHIC RECORD. There shall be no stenographic record of the mediation.

L10.3.8 TERMINATION. The mediation shall be terminated by one of the following: (A) the Parties’ execution of a settlement agreement; (B) the mediator’s written declaration to the effect that further efforts at mediation are not worthwhile; or (C) a written declaration of a Party or both Parties to the effect that the mediation is terminated.

L10.3.9 MEDIATOR NOT NECESSARY PARTY. No mediator shall be a necessary party in any judicial proceeding relating to any matter discussed or resolved during the mediation.

L10.3.10 EXPENSES. Each Party shall pay any expenses of witnesses that the Party produces, and any fees and costs for legal counsel, experts, and/or consultants that the Party may incur relating to the mediation. Each Party shall pay one-half of the mediator’s fees, travel and other expenses, the expenses of any witness who the mediator calls, and the cost of any proofs or expert advice produced at the mediator’s request.

SECTION L10.4 ASSIGNMENT OF ANTI-TRUST CLAIMS. Pursuant to Government Code section 4552 and Public Contract Code section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor and each subcontract or offer and agree to assign to Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code, arising from the purchase of goods, materials, or services pursuant to the Contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders the Final Payment to Contractor, without further acknowledgment by the Parties. If Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned pursuant to the foregoing provisions, the assignor may, upon demand, recover from Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by Owner as part of the Contract Amount, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by the assignor, Owner shall, within one year from such demand, reassign the cause of action if the assignor has been or may have been injured by the violation of law for which the cause of action arose and Owner has not been injured thereby or Owner declines to file a court action for the cause of action.

ARTICLE L11 GENERAL PROVISIONS.

SECTION L11.1 ENTIRE AGREEMENT AND EXECUTION OF AGREEMENT. The Contract is a complete and exclusive statement of the Parties’ agreement under Code of Civil Procedure section 1856. The Parties may execute this Agreement and each modification hereto in counterparts such that each Party’s signature is on a separate page. A copy or an original of this Agreement with the Parties’ signatures and other Contract Documents, whether original or transmitted by electronic means, shall be deemed a fully executed contract. Contractor shall complete and execute each Contract Document and Required Document as required by this Agreement and submit it to Owner in accordance with the submission deadline set forth in the Contract Documents List, unless Owner consents to submission of such Contract Document or Required Document on another date. If any Contract Document or Required Document becomes incorrect or no longer effective during the Contract Term, Contractor shall promptly notify in writing and/or submit to Owner the appropriate document reflecting the correct information.

SECTION L11.2 INTERPRETATION, APPLICABLE LAWS AND TIME ZONE, AND VENUE. The Parties agree that in cases of uncertainty of any language in the Contract, the provisions of Civil Code section 1654 shall not apply to interpret the uncertainty. The language of the Contract shall be interpreted according to its fair meaning and not strictly for or against any Party and under State laws without giving effect to State choice of law.
provisions that may result in the application of the laws of another jurisdiction. All dates and times stated in the Contract shall be according to Pacific Time. All causes of action, actions, lawsuits, and proceedings arising out of, resulting from, or relating to the Contract shall be adjudicated in state or federal court in the county within California where the Project Site is located, provided that Owner does not hereby waive any immunity to suit.

SECTION L11.3 SEVERABILITY AND SURVIVAL OF TERMINATION. If a court of competent jurisdiction holds any provision of the Contract void, illegal, or unenforceable, the Contract shall remain in full force and effect and shall be interpreted as though such invalidated provision is not a part of the Contract and the remaining provisions shall be construed to preserve the Parties’ intent in the Contract. Any provision in the Contract that by its nature applies after, or is specifically stated to survive, the termination of the Contract shall survive the termination of the Contract.

SECTION L11.4 WAIVER. Except as specifically stated otherwise in this Agreement or other Contract Documents, the Parties may waive any covenant, term, or condition of the Contract only by a writing executed by them.

SECTION L11.5 INDEPENDENT CONTRACTOR, ASSIGNMENT, AND TRANSFER. Contractor is an independent contractor, and it and its officers, employees, agents, and subcontractors are not, and shall not represent themselves as, officers, employees, or agents of Owner. The Contract does not and shall not be construed to create an agency relationship, partnership, or joint venture between the Parties. Contractor and its officer, employees, agents, subcontractors, and any other person performing any Work on Contractor’s behalf shall not have any right or claim against Owner under the Contract for wages or employee compensation, social security benefits, workers compensation benefits, health benefits, vacation, sick leave, or any other employee benefits of any kind. Contractor shall not assign or transfer any or all of its obligations and/or rights under the Contract, including by operation of law or change of control or merger, without Owner’s prior written consent; however, this provision shall not be read or construed to prohibit Contractor from subcontracting with one or more subcontractors in accordance with the Contract to perform one or more portions of the Work.

SECTION L11.6 BINDING EFFECT. Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands it, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns (if such assignment is made in accordance with this Agreement).

SECTION L11.7 NOTICES. Except as may be stated otherwise in this Agreement in which case such provision shall govern to the extent provided therein, each Party shall give any notices, demands, and all other communications required or permitted under the Contract in writing and by one of the following methods to the other Party at its address and/or email stated on the Cover, delivery to be effective upon receipt thereof by the other Party: (A) hand delivery; (B) sent by a reputable overnight courier service that tracks the delivery; (C) sent by certified mail, return receipt requested, postage prepaid; or (D) sent by regular mail and transmitted by e-mail. A Party may change its contact person and/or contact information stated on the Cover by notifying the other Party of the particular change and the effective date thereof in accordance with this Section. The provisions of this Section shall survive the termination of the Contract.

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PREVAILING WAGE WORK ADDENDUM

CONTRACT DOCUMENT M

The Parties desire and intend that this Prevailing Wage Work Addendum shall become and constitute a part of the Contract. Each Party shall comply with the provisions set forth in this Prevailing Wage Work Addendum.

SECTION M1 CONTRACTOR AND SUBCONTRACTOR QUALIFICATION AND REGISTRATION WITH DIR.

M1.1 INELIGIBLE CONTRACTOR. A contractor that is ineligible to bid on, work on, or be awarded a public works project pursuant to Labor Code section 1777.1 or 1777.7 shall not bid on or be awarded or perform any of the Work. Moreover, Contractor shall not perform the Work with a subcontractor who is ineligible to perform public works pursuant to Labor Code section 1771.1 or 1777.7.

M1.2 BID.

M1.2.1 No contractor shall submit a bid unless the contractor is registered and qualified pursuant to Labor Code section 1725.5 and other applicable laws to perform public works or applicable laws permit the bid.

M1.2.2 No contractor shall list on its bid any subcontractor unless the subcontractor is registered and qualified pursuant to Labor Code section 1725.5 and other applicable laws to perform public works, or applicable laws permit such listing and the subcontractor’s bid.

Pursuant to Labor Code section 1771.1(c), an inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

A. The subcontractor is registered prior to the bid opening.

B. Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5(a)(2)(E).

C. The subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.

M1.3 AGREEMENT AND PERFORMANCE OF SERVICES. Owner will not enter into the Contract with Contractor unless there is proof of Contractor’s current registration with DIR to perform public works pursuant to Labor Code section 1725.5 and other applicable laws. Contractor shall not enter into any subcontract with any subcontractor unless there is proof of the subcontractor’s current registration with DIR to perform public works pursuant to Labor Code section 1725.5 and other applicable laws. Contractor and each subcontractor shall be registered and qualified pursuant to Labor Code section 1725.5 and other applicable laws to perform public works. Contractor and each subcontractor shall renew and maintain such registration and qualification throughout the Contract Term of the Contract and during all times when Contractor performs any Work or warranty work under the Contract. To qualify for registration with DIR, Contractor and each subcontractor shall comply with Labor Code section 1725.5 and other applicable laws.

SECTION M2 OWNER NOTICE TO DIR OF AWARD OF CONTRACT; WITHHOLDING OF FINAL PAYMENT.

M2.1 NOTICE. Pursuant to Labor Code section 1773.3, Owner shall provide notice of the Contract to DIR within 30 days of the award by Owner, but in no event later than the first day in which Contractor has workers employed upon the Work. The notice shall be transmitted electronically on such form and in such format as specified by DIR, and shall include the information required by Labor Code section 1773.3 and other applicable laws.

M2.2 WITHHOLDING OF FINAL PAYMENT SUBSEQUENT TO SUBMISSION OF NOTICE. Pursuant to Labor Code section 1773.3(d) and notwithstanding any other provisions in the Agreement, Owner shall
withhold payment due to Contractor until at least 30 days after all of the required information in Labor Code section 1773.3(a)(2) has been submitted, including but not limited to, providing a complete list of all subcontractors.

SECTION M3 PREVAILING WAGE PAYMENT, MONITORING, AND ENFORCEMENT. Contractor and each subcontractor shall comply with the provisions set forth in this Section M3.

M3.1 WORK SUBJECT TO PREVAILING WAGE PAYMENT, AND COMPLIANCE MONITORING AND ENFORCEMENT BY DIR. The Work is subject to compliance monitoring and enforcement of prevailing wages by DIR. Contractor shall comply, and require each subcontractor to comply, with all applicable laws and regulations, and rules and determinations issued by DIR relating to the payment, monitoring, and enforcement of prevailing wages.

M3.2 CONTRACT AMOUNT REFLECT PAYMENT OF PREVAILING WAGES. The Parties agree that the Contract Amount reflects the payment of prevailing wages in accordance with applicable California laws.

M3.3 PREVAILING WAGE RATES AND PAYMENT THEREOF.

M3.3.1 Pursuant to Labor Code sections 1770 to 1781, which are hereby incorporated by reference and made a part of the Contract, the Director of DIR has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification, or type of worker needed to execute the Work. Per diem wages shall include employer payments for the items specified in Labor Code section 1773.1. Copies of the prevailing rate of per diem wages are on file at Owner's principal office, which copies shall be made available to any interested party on request.

M3.3.2 Contractor and each subcontractor shall pay not less than the specified prevailing rates of wages to all workmen, including apprentices, employed in the execution of the Work. Contractor and any subcontractor who pay less than the specified prevailing rates of wages are subject to penalties under applicable laws, including Labor Code section 1775.

M3.4 WORK SITE NOTICES. Contractor shall post the following at the Project Site:

M3.4.1 A copy of DIR Director’s determination of the prevailing rate of per diem wages.

M3.4.2 Jobsite notices as prescribed by applicable laws and regulations and required to be posted by Contractor.

M3.5 PAYROLL RECORDS.

M3.5.1 MAINTENANCE. Contractor and each subcontractor shall keep accurate payroll records in accordance with, and comply with the requirements of, Labor Code section 1776 and applicable regulations.

M3.5.2 INSPECTION AND FURNISHING. Contractor and each subcontractor shall make payroll records relating to the Work available for: (A) inspection by or furnishing to Owner and/or any third party at Owner’s request unless such inspection is specifically prohibited by applicable laws; and (B) inspection by and/or furnishing in accordance with a subpoena, court order, or applicable laws and regulations, including but not limited to Labor Code section 1776, and the Public Records Act (Government Code section 6250 et seq.). Contractor shall cooperate with Owner to respond to any subpoena, court order, or request for inspection and/or furnishing of payroll records. If Owner is required to furnish or make payroll records available for inspection under Labor Code section 1776, Contractor and each applicable subcontractor shall redact from the payroll records such information as required under Labor Code section 1776 and provide the redacted payroll records to Owner in accordance with the timeline set forth in Labor Code section 1776.
M3.5.3 FURNISHING TO LABOR COMMISSION. Contractor and each subcontractor shall furnish payroll records as required by Labor Code section 1776 directly to the Labor Commissioner in the Division of Labor Standards Enforcement of DIR at least monthly, unless required otherwise by applicable laws or DIR in which case Contractor and each subcontractor shall comply with such requirements. All payroll records shall be reported in a format and on such form(s) as required by the Labor Commissioner and shall comply with Labor Code section 1776 and other applicable laws.

ARTICLE M2 CONFLICTS.

If any conflict exists between any provision in this Prevailing Wage Work Addendum and any provision in the Contract, the provision in this Prevailing Wage Work Addendum shall govern.

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ADDENDUM TO SPECIFICATIONS – CLAIM RESOLUTION PROCESS
CONTRACT DOCUMENT N

The claim resolution process stated below and in Public Contract Code section 9204, as set forth below and as may be amended from time to time, shall govern the resolution of any claim ("PCC 9204 Claim"), as this term is defined in Subdivision (c)(1) of Section 9204. If there is any conflict between any provision in Article N1 and any provision in Article N2, the provision in Article N1 shall govern.

ARTICLE N1 PUBLIC CONTRACT CODE SECTION 9204 CLAIM RESOLUTION PROCESS.

Public Contract Code section 9204 states as follows:

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3)

(A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.
(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d)

(1)

(A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2)

(A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

ARTICLE N2 ADDITIONAL PROVISIONS RELATING TO CLAIM RESOLUTION PROCESS PURSUANT TO PUBLIC CONTRACT CODE SECTION 9204 – MEDIATION.

SECTION N2.1 INITIATION OF MEDIATION. Either Party may initiate mediation by providing the other Party with a request for mediation in writing, stating, at a minimum, the following: (A) the provision(s) of this Agreement that are the subject of the dispute; (B) the ground(s) or reason(s) for the dispute; (C) any prior communications between the Parties regarding the dispute; and (D) the remedy(ies) or corrective action(s) that the requesting Party seeks.

SECTION N2.2 QUALIFICATION AND AUTHORITY OF MEDIATOR.

N2.2.1 QUALIFICATION. Any mediator selected shall have expertise in the area of the dispute and be knowledgeable in the mediation process. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation. Before accepting an appointment, the prospective mediator shall disclose any circumstances likely to create bias or prevent a prompt meeting with the Parties. Upon receipt of such information, the Parties shall meet and confer and decide whether to select the prospective mediator or another mediator.

N2.2.2 AUTHORITY. The mediator shall not have authority to impose a settlement on the Parties but will assist the Parties to attempt to reach a mutual resolution of their dispute. The mediator is authorized to
conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties agree to pay the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the Parties, as the mediator shall determine. The mediator shall interpret and apply these mediation provisions insofar as they relate to the mediator's duties and responsibilities.

SECTION N2.3 TIME AND PLACE. The mediator shall set the time of each mediation session. The mediation shall be held at any convenient location agreeable to the mediator and the Parties. The Parties and the mediator shall make all reasonable efforts to schedule and hold the first mediation session within 30 days after a Party requests mediation.

SECTION N2.4 STATEMENT OF POSITION. At least 10 days before the first scheduled mediation session, each Party shall provide the mediator a memorandum setting forth its position with regard to the dispute(s) to be resolved. If a Party so chooses, it may provide its memorandum to the other Party. At the mediation session(s), the Parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. The mediator may request that each Party provide additional information.

SECTION N2.5 PRIVACY AND CONFIDENTIALITY. Mediation sessions are private. The Parties and their representatives may attend mediation sessions. Other persons may attend the mediation sessions only with the Parties' permission and the mediator's consent. The mediator shall not disclose to the other Party or any third party confidential information disclosed to the mediator by a Party or by any witness in the course of the mediation. All records, reports, or other documents received by the mediator while serving as mediator shall be confidential. The mediator shall not be compelled to divulge such records, reports, and documents or to testify in regard to the mediation in any adversary proceeding or judicial forum. The Parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any judicial or other proceedings, views expressed or suggestions made by the other Party with respect to the possible settlement of the dispute, statements made by either Party in the course of the mediation, proposals made or views expressed by the mediator, and whether a Party had or had not indicated any willingness to accept a proposal for settlement made by the mediator or the other Party.

SECTION N2.6 NO STENOGRAPHIC RECORD. There shall be no stenographic record of the mediation.

SECTION N2.7 TERMINATION. The mediation shall be terminated by one of the following: (A) the Parties’ execution of a settlement agreement; (B) the mediator's written declaration to the effect that further efforts at mediation are not worthwhile; or (C) a written declaration of a Party or both Parties to the effect that the mediation is terminated.

SECTION N2.8 MEDIATOR NOT NECESSARY PARTY. No mediator shall be a necessary party in any judicial proceeding relating to any matter discussed or resolved during the mediation.

SECTION N2.9 EXPENSES. Each Party shall pay any expenses of witnesses that the Party produces, and any fees and costs for legal counsel, experts, and/or consultants that the Party may incur relating to the mediation. The term “associated costs” stated in Public Contract Code section 9204(d)(2)(B) shall mean the mediator's fees, travel and other expenses; the expenses of any witness who the mediator calls; and the cost of any proofs or expert advice produced at the mediator's request.