



Request for Proposal Composition Roof Replacement Project

RFP #- 03/10

Housing Authority of the County of Santa Clara
505 West Julian St
San Jose, California 95110
(408) 361-4610

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**HOUSING AUTHORITY OF THE COUNTY OF SANTA CLARA
505 WEST JULIAN STREET
SAN JOSE, CALIFORNIA 95110**

**REQUEST FOR PROPOSAL
COMPOSITION ROOF REPLACEMENT
PROJECT**

I. GENERAL INFORMATION:

The Housing Authority is located at 505 West Julian Street, San Jose, California, 95110. The Agency owns or operates 28 multi-family and senior rental housing apartment complexes that are either public housing, or supported by Housing and Urban Development Department Section 8 programs. In addition, the Housing Authority may develop new affordable housing, including design and construction of new projects.

The governing body of the HACSC is a seven member of the Board of Commissioners, each appointed by the County of Santa Clara Board of Supervisors. Five are members at large from the community and two are tenants of the Authority. Pursuant to the terms of a cooperation agreement, the HACSC also operates the Housing Authority of the City of San Jose throughout the city's jurisdiction.

Property Management, Inc. (PMI), while affiliated with HACSC, is a separate, stand-alone property management company whose officers and directors are appointed by the HACSC Board of Commissioners. The mission of PMI is to comply with California Real Estate Licensing law with respect to property management as well as compliance with all affordability requirements at each affordable housing development the company is under contract to manage. On-site Community Managers are employees of PMI, Inc

II. PURPOSE

HACSC is soliciting proposals from qualified contractors to perform the services per Exhibit A, Scope of Services, attached hereto and incorporated herein by this reference. Contractor submitting a proposal must hold an active "**C39/C43**" license at the time of making the proposal, and at the award of the contract.

III. IMPORTANT DATES FOR THE RFP:

- | | |
|----------------------------------|------------------|
| 1. RFP published and distributed | January 28, 2010 |
| 2. Mandatory walkthrough | February 9, 2010 |
| | 10:00AM |

Address: Pinmore Gardens
1706 Branham lane
San Jose, CA 95118

3. Proposals due

February 23, 2010 2:00PM PST

Housing Authority of the County of Santa Clara
100 Great Oaks Blvd, Suite B
San Jose, CA 95119
Attn: Rene Regino

Contractor may submit Request for Information to this RFP only by submitting a written request via email to rener@hacsc.org with copy to scotts@hacsc.org. All questions must be received in writing no later than February 15, 2010 at 5:00 PM PST.

IV. PROPOSAL SUBMISSION REQUIREMENTS

The Contractor shall be responsible for preparing an effective, clear, and concise proposal. It is recommended that proposals contain the following information:

- A. A cover letter introducing the company and the individual who will be the primary contact person.
- B. State your firm's understanding of the various services the contractor may be called on to performed and make a positive commitment to provide those service as indicated in this RFP.
- C. Indemnification and Insurance requirements: See attached insurance requirements
- D. Experience statement. List specific organizations for which the Contractor has performed services similar to those described in this Request for Proposal. At least two (2) reference lists should be attached to the proposal, with client names, contact persons, and phone numbers. Firms must possess at least three (3) years of Residential experience.
- E. Description of the firm's organization and staff's qualifications.
- F. The proposal must be a firm offer for a sixty-day period.
- G. Three (3) copies of the proposals must be submitted by 2:00PM, Tuesday, February 23, 2010.

V. SELECTION PROCESS

Each of the proposals received will be evaluated and determined if it meets the stated requirements. Failure to meet these requirements will be a cause for eliminating the proposals from further consideration.

HACSC reserves the right to reject any and all proposals, to waive any technicalities, informalities and irregularities, to accept or reject all or part of this proposal, and to be the sole judge of the suitability of the proposals offered.

Evaluation of the proposals will be made by the Housing Authority evaluation committee. Proposals will be evaluated generally on the following criteria, which is neither weighted nor prioritized:

- A. Qualifications of the firm and assigned individuals.
- B. Prior experience in performing similar work
- C. Fees charged and cost effectiveness of the proposed service
- D. Reference check

All submittals in response to this RFP are public records and available for inspection and copying upon request only if an Agreement is awarded. Any portions of the RFP submittal marked as confidential by the firms will not be made public without consent of the firms.

The Housing Authority Construction Manager will review and evaluate all the proposals submitted and received, and submit its recommendation to the Director of Real Estate Services for consideration. The HACSC reserves the right to reject any and all proposals submitted in response to this RFP. The HACSC is under no obligation to award any Agreement as a result of this RFP. If no Agreement can be reached with the first choice firm the Director of Real Estate Services may choose to consider recommending approval of an Agreement with the second choice firm but is under no obligation to do so.

VI. TERMS AND CONDITIONS:

Withdrawal of RFP:

Proposals may be withdrawn before and after the RFP submittal deadline by submitting a written request to the Contact Person. Re-submittal before the RFP submittal deadline can be made, however, they may not be re-submitted after the deadline.

RFP Costs:

All costs incurred in the preparation and presentation of the RFP shall be completely absorbed by the responding party to the RFP. All documents submitted as part of the RFP will become property of the HACSC. Requests for specific material to be returned will be considered. Any material submitted that is confidential must be clearly marked as such.

Affidavit:

All proposals must include an executed non-collusion affidavit on the form furnished in the RFP packet.

Exhibits:

Exhibit A Scope of Work/Specifications
Exhibit B Notice to Bidders
Exhibit C Instruction to Bidders
Exhibit D Bid Form
Exhibit E Bidder's Bond
Exhibit F Insurance Requirements
Exhibit G Sample Agreement
Exhibit H General Conditions

Housing Authority Contacts:

The designated individual responsible for coordination of the RFP is Rene Regino, Director of General Service, (408) 361-4610. Any technical questions relating to this RFP should be directed to Scott Schnell, Housing Authority Construction Manager, at (408) 639-2877. Contractor must submit all Requests for Information in writing at least four (4) calendar days before the deadline for receipt of proposals.

Scope of Work

Introduction

Remove and replace existing composition roof, remove and replace all sheet metal flashings, counter flashings, crickets, gutters, downspouts, vents, chimney caps and stacks. Provide and install new joint sealers as required. Carpentry removes and replaces any damaged substrate plywood sheeting, blocking and trim boards as required. Paint all sheet metal flashings, counter flashings, crickets, gutters, downspouts, vents, chimney caps and stacks. Paint all wood surfaces, in areas where work has damaged existing paint. Paint from corner to corner, top to bottom.

Drawings & Specifications

Architect:
Thoroughbred Consultants Group
Post Office Box 1315
San Ramon, CA 94583
Ted Castellanos, RCI
(925) 830-2868

Project Documents:
Roofing Renovation
Pinmore Gardens Apartments
1706 Branham Lane & Ross Avenue
San Jose, CA 95118

Owners Representative:
Scott Schnell
Construction Manager
Housing Authority of the County of Santa Clara
100 Great Oaks Boulevard
San Jose, CA 95119
(408) 361-4629

Submittals & Shop Drawings

All materials are required to have submittals, including product literature, samples, MSDS on all qualified products, fabricated sheet metal shall have shop drawings and samples provide to the project engineer.

Building Permits & Contractors Licenses

All required building permits shall be obtained by the contractor; all fees will be reimbursed at contractor actual cost. Final payment will not be made until building permit card are signed off by the building department. Work may not start unless building permit has been issued. Contractor Licensees shall be valid and in good standing with the California State Licenses Board. All required payment and performance bonding shall be received before work may start.

Schedules

Submittal Time Requirements: Within (11) days of Notice of Successful Bid.

Plan of Operation: Submit a complete plan and schedule of proposed construction operations.

Bar Graph Schedule: Shall be submitted including start & finish dates for each category of work and major milestones.

Site Progress Meetings & Progress Payments

Pre-Construction Meeting will be held after contractor has received the necessary building permits. At this meeting contractor will provide the Project Engineer with 5 copies of the project schedule and 5 copies of any missing or incomplete submittals. Work can not start until all submittals have been received and approved. Bi-Weekly progress meeting will be scheduled at the start of construction and monthly progress payment meeting will also be scheduled.

Working Hours

Hours of work will be Monday – Friday 8:00 am to 5:00 pm, Saturday work may be permitted only with prior written approval. Saturday work will only be allowed for circumstances due to weather delays or other uncontrolled circumstances that may cause project delays. No work will be allowed on Sundays.

Disposal of Debris

All debris shall be disposed of in appropriate containers if left on site during construction. Roll off dumpsters shall be able to be closed off after the day work. No debris shall be left on site at the end of each work day. Owner is not responsible for any debris or materials that may be placed in the dumpster by residents or the public when dumpster is left unattended.

NOTICE TO BIDDERS

PROJECT NAME: COMPOSITION ROOF REPLACEMENT PROJECT

PROJECT NO: 03/10

ARTICLE 1 — GENERAL

1.01 NOTICE IS HEREBY GIVEN that the Bids will be accepted by the Housing Authority of the County of Santa Clara, the Owner's Authorized Representative, General Services Department, 100 Great Oaks Blvd, San Jose, CA, 95119 no later than **2:00 p.m., on February 23, 2010.**

1.02 THE WORK

.A The Work will consist of:

See Scope of Work

.B Key Personnel

.1 The Contractor must provide a minimum full-time staff of key personnel who must be at the site at all times when Work is being performed. These staff include, at a minimum:

. a Project Supervisor

.2 No Work may begin on site until the Contractor submits, and the Owner approves, the positions in 1.a above.

1.03 INSPECTIONS

.A This project requires inspections and permits by the Building Official. See Sections 01331 and 01830. Inspections/acceptance by the Building Official does not relieve the contractor from complying the full scope of the Contract Documents. (Note to spec writer: edit this section appropriately. Some projects will not require inspection by the Building Official).

1.04 ESTIMATED COST

.A The estimated cost for the base Bid for this work is: **Approximately \$ (total of both projects)**

.B The estimated costs for additive or deductive Bid items, if any, are:

ADDITIVE/DEDUCTIVE BID ITEMS –

.C *Additive and/or deductive Bid Item 1* \$ _____

.D *Additive and/or deductive Bid Item 2* \$ _____

1.05 CONTRACT TIME AND MILESTONES

.A **The Contract Time for the completion of all the Work of the Project is 180 calendar Days.** Designated portions of the Work must be completed according to the following Milestones:

- .1 *Complete All Work (Project completion)*

1.06 LIQUIDATED DAMAGES

- .A Liquidated Damages will be assessed in the amount of **\$250.00** for each calendar Day the Work remains incomplete beyond the Contract Time for completion.
- .B Owner may withhold Liquidated Damages from payments to the Contractor as such damages accrue, or, at Owner's discretion, withhold Liquidated Damages from any payments due or that become due pursuant to the Contract, including Retention and final payment (pursuant to California Government Code §53069.85).

1.07 BIDS MUST BE ADDRESSED TO General Services Department, Housing Authority of the County of Santa Clara, and bear the Project name and Project number as they appear on the cover of the Project Manual.

1.08 BIDDER'S SECURITY

- .A Each Bid must be accompanied by cash, a certified or cashier's check, or a bond in the sum of not less than ten percent (10%) of the total aggregate of the Bid price, including all additive Bid items.
- .B The check or bond must be made payable to the "Owner"

1.09 BID OPENING

- .A The Owner's Representatives will open Bids at the time and place stated in Instruction to Bidders.
- .B The General Services Director will report the results of the Bid at a publicly noticed regular or special meeting of the Board of Directors following the date of opening of the Bids.

1.10 ERRORS OR DISCREPANCIES IN THE BIDS

- .A The Owner reserves the right to reject any and all Bids and to waive any errors or discrepancies in the Bids.

ARTICLE 2 — OTHER NOTICES

2.01 CONTRACTOR'S LICENSING REQUIREMENT

- .A Pursuant to Document 00200.3, "Compliance with Contractor's License Law", the Contractor must possess a **C39/C43** Contractor's License.
- .B The Contractor must possess the required classification(s) of Contractor's License at the time the Bid is submitted (per Business and Professions Code §7028.15).
- .C If federal/state funds are involved in this Project as indicated below, the Contractor must possess the required classification of Contractor's License at the time of the Contract Award (per Public Contract Code §20103.5). Federal/state funds:
 - .1 ☐ Are involved in the Project.
 - .2 ☒ Are NOT involved in the Project.

2.02 PREVAILING WAGE REQUIREMENT – N/A

2.03 BONDS AND INSURANCE

- .A The successful Bidder must deliver all required insurance documents to the General Services Manager for acceptance before Owner will execute the Agreement and issue a Notice to Proceed with the Work.
- .B No Contract exists until all Contract and insurance documents have been accepted by the Owner.

2.04 PRESERVATION OF CULTURAL RESOURCES

- .A If the Project Site is deemed “Archaeologically Sensitive” as indicated below, the provisions in “Preservation of Cultural Resources”, will apply.
 - .1 ☒ The Project Site has not been deemed “Archaeologically Sensitive.”
 - .2 ☐ The Project Site has been deemed “Archaeologically Sensitive.”

2.05 RETENTION FROM PAYMENTS DURING CONTRACT TIME – NOT APPLICABLE

- .A Pursuant to “Securities In Lieu Of Retention”, Contractor may substitute securities for any money withheld from progress payments, using the attached Escrow Agreement form, “Sample Escrow Agreement for Security Deposit In Lieu of Retention.”

2.06 AVAILABILITY OF BID DOCUMENTS

- .A Bid Documents will be available at the walkthrough.
- .B Following Award of the Contract, the Owner will furnish the successful Bidder with one (1) copy of the Contract Document.

2.07 PRE-BID CONFERENCE

- .A A Pre-Bid Conference will be held on February 9, 2010 10:00AM at Pinmore Gardens, 1706 Branham Lane, San Jose, CA 95118. Bidders should become thoroughly familiar with the terms and conditions of the Bid Documents and local conditions affecting the performance and costs of the Work before attending this conference.
- .B Bidders must fully inspect the Project Site in all particulars before submitting a Bid.
- .C Attendance at the Pre-Bid Conference is:
 - 1. ☒ Mandatory
 - 2. ☐ Not Mandatory

2.08 PROJECT MANAGER

- .A The Owner’s Project Manager for this Project is Scott Schnell, phone number (408) 639-2788 E-Mail to: scotts@hacsc.org
- .B The Owner’s Authorized Representative for this Project, who has authority to Approve Addenda, Changes, Payment Requests, Completion Certifications, and other documents, is the Housing Authority of the County of Santa Clara.

2.09 BID PERIOD CLARIFICATIONS AND ADDENDA

- .A Contractor must submit all requests for clarification, or interpretation of the Bid Documents in writing no later than **5:00PM, February 15, 2010**.
- .B The Owner's Authorized Representative may issue written Addenda as appropriate for clarification or other reasons during the bidding period.
- .C Addenda will be mailed or delivered to each person included on the Owner's plan holders list for the Project.
- .D Owner is not responsible for any explanation or interpretation of the Bid Documents not communicated to Bidders in an Addendum.
- .E Unless otherwise clarified in an Addendum, resolution of supposed discrepancies, conflicts, omissions or errors in the Bid Documents are governed by Document 00700.1.05, "Conflicts in the Contract Documents."

2.10 SUBSTITUTIONS

- .A Contractor may offer any material, process, article, or equipment that is substantially equal or better in every respect to that so indicated or specified; provided, however, that if the material, process, article, or equipment offered by Contractor is not, in the opinion of the Owner's Authorized Representative, substantially equal or better in respect to that specified, then Contractor must furnish that material, process, article, or equipment specified or one that in the opinion of the Owner's Authorized Representative is substantially equal or better in every respect. Offer of substitution of materials or equipment must be submitted no later than 5:00PM February 12, 2010. Contractor must first received authorization from the Owner to use alternative materials or equipment prior to submitting bid form.

2.11 MANUFACTURER CERTIFICATION AND APPROVAL OF CONTRACTOR –NOT APPLICABLE

- .A Contractor must submit, as required by Section **(Insert Section No.)** of the Technical Specifications, written approval from the manufacturer of the **(Insert Equipment Name)** affirming that the Contractor is certified and approved for system installation and service required by the Bid Documents. After Contract Award by Owner and before Owner will issue a Notice to Proceed, Contractor must submit such certification and approval documentation to the Owner's Project Manager for approval and acceptance.

2.12 SOLE SOURCE PRODUCTS – NOT APPLICABLE

2.13 ADDITIVE AND/OR DEDUCTIVE BID ITEMS

- .A California Public Contract Code §20103.8 prescribes how additive and/or deductive Bid items are to be considered in Awarding a public contract. Whenever additive or deductive Bid items are included in a Bid, the Notice to Bidders must specify one of the four methods listed below as the basis for determining the low Bid. If Additive and/or deductive Bid items are not used delete this Article 2.13 in its entirety.
 - .1 The lowest Bid will be the lowest Bid price on the base Contract without consideration of the prices on the additive or deductive Bid items.
 - .2 The lowest Bid will be the lowest total of the Bid prices on the base Contract and those additive or deductive Bid items that were specifically identified in the Bid solicitation as being used for the purpose of determining the lowest Bid price. *[Identify the additive and deductive Bid items in this section.]*

INSTRUCTIONS TO BIDDERS

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ARTICLE 1 — GENERAL

- 1.01 Bidder must examine these Instructions To Bidders carefully and respond to all requirements and conditions.
- 1.02 Bidders must be aware of the requirements of codes referenced in the Bid Documents.

ARTICLE 2 — COMPETENCE OF BIDDERS

- 2.01 Bidders must meet all qualification requirements contained in the Bid Documents.
- 2.02 Any Bidder may be required to furnish evidence satisfactory to Owner that the Bidder and its proposed Subcontractors have sufficient means and experience in the type of Work required to assure satisfactory completion of all the requirements of the Contract Documents.

ARTICLE 3 — COMPLIANCE WITH CONTRACTOR'S LICENSE LAWS

- 3.01 Bidder's attention is directed to the provisions of [Chapter 9 of Division 3](#) of the California Business and Professions Code ("Contractors"), and [§3300](#) of the California Public Contract Code. The Contractor must possess the required classification of Contractor's License at the time the Bid is submitted (per Business and Professions Code [§7028.15](#)). If federal funds are involved in this project, the Contractor must possess the required classification of Contractor's License at the time of the Contract Award (per Public Contract Code [§20103.5](#)).
- 3.02 If a Bidder does not possess the required Contractor's License at the time a Bid is submitted, in accordance with Business and Professions Code [§7028.15](#), the Bid will be considered non responsive and will be rejected by the Owner. The Owner may require forfeiture of the Bidder's Bond.
- 3.03 Joint venture Bidders must possess a joint venture license. Each party to a joint venture must be properly licensed for the Work of this Project.

ARTICLE 4 — PRIOR DISQUALIFICATION

- 4.01 Bid may be rejected on the basis of a Bidder, any officer of such Bidder, or any employee of such Bidder who has a proprietary interest in such Bidder, having been disqualified, removed or otherwise prevented from Bidding on, or completing a federal, state or local project because of a violation of a law or a safety regulation.
- 4.02 The Owner will review the circumstances presented in the Bid Form certification and will determine if acceptance of the Bid is in its best interest.

ARTICLE 5 — EXAMINATION OF BID DOCUMENTS AND PROJECT SITE

- 5.01 The Bidder must carefully examine the site of the Work and Bid Documents.
- 5.02 The submission of a Bid will be conclusive evidence that the Bidder has investigated and is fully aware of the conditions and difficulties that may be encountered including the availability of labor and materials to be provided, of the character, quality and quantities of Work to be performed, and of the requirements of all Bid Documents.
- 5.03 Where investigation of subsurface conditions has been made by Owner in respect to foundation or other design, Bidders may inspect Owner's records of such investigation, including examination of samples and drill cores, if any.
- 5.04 When logs of test borings indicating a record of the data obtained by Owner's investigation of subsurface conditions are made available, **said logs represent only the investigator's opinion as to the character of material encountered in test borings and are made available only for the convenience of bidders.**
- 5.05 Investigation of subsurface conditions is made for the purpose of design, and Owner assumes no responsibility, whatsoever, in respect to the sufficiency of test borings, accuracy of the log of test borings, of other preliminary investigations, or in the interpretation thereof. **There is no warranty or guarantee, express or implied, that the conditions indicated are**

representative of those existing throughout the Work, or any part of it, or that unforeseen conditions may not be encountered.

- 5.06** Making information available to Bidders is not to be construed in any way as a waiver of the aforesaid provisions, and **Bidders must satisfy themselves through their own investigations as to conditions to be encountered.**
- 5.07** No information derived from such inspection of records of preliminary investigations made by Owner, or from the maps, Drawings or Contract Documents relieve Contractor from any risk or from properly fulfilling all the terms of the Contract. Records of such preliminary investigations as may have been made by Owner may be inspected by contacting the Owner's Project Manager identified in the Notice to Bidders.
- 5.08** Failure by Bidder to educate itself with available information will not relieve Bidder from responsibility for estimating properly the difficulty or cost of successfully performing the Work.
- 5.09** Bidders are required to inform themselves fully of the conditions relating to the construction and labor under which the Work will be or is now performed, and, so far as possible, the successful Bidder must employ such means and methods in carrying out its Work as will not cause any interruption or interference with any other contractor.

ARTICLE 6 — DISCREPANCIES, CONFLICTS, OMISSIONS, OR ERRORS

- 6.01** If any person contemplating submitting a Bid is in doubt as to the intended meaning of any part of the Bid Documents, or finds discrepancies in, or omissions in the Bid Documents, that person must submit a written request for an interpretation or correction thereof at least ten (10) calendar Days before the deadline for receipt of Bids.
- 6.02** Inquiries must be addressed to the Project Manager identified in the Notice to Bidders.
- 6.03** Any request received fewer than ten (10) calendar Days before the said deadline may not be answered. The person submitting the request will be responsible for its prompt delivery.
- 6.04** Any interpretation or correction of the Bid Documents will be made only by Addendum, and will be mailed or delivered to each person included on the Owner's plan holders list for the Project.
- 6.05** Owner is not responsible for any explanation or interpretation of the Bid Documents not communicated to Bidders in an Addendum. If no Addenda are issued relating to supposed discrepancy, conflict, omissions or errors in figuring the Work, the supposed discrepancies, conflicts, or omissions are governed by [Document 00700.1.05, "Conflicts in the Contract Documents."](#)

ARTICLE 7 — BIDDER'S SECURITY-

- 7.01** Each Bid must be accompanied by cash, a certified or cashier's check, or an original Bidders Bond in an amount not less than ten percent (10%) of the total aggregate of the Bid including all additive Bid items, indicated in the Notice to Bidders, to be used in determining the low Bid for the Project.
- 7.02** A Bid will be considered non-responsive if not accompanied by proper Bidder's Security
- 7.03** The original Bid Bond must be provided by an admitted Surety insurer, authorized to issue Surety bonds in the State of California, and it must execute the Bid Bond.
- 7.04** Bonds and checks must be made payable to **"Owner"**.
- 7.05** All bonds must be provided on the forms included with the Bid Documents or the Bid will be considered non-responsive.

ARTICLE 8 — BID FORM

- 8.01** Prospective Bidders are furnished [Bid Forms](#) (Document 00410). A Bid Form may contain a schedule of items requesting lump sum prices. It may also state estimated quantities of various kinds of Work to be performed, or materials to be provided, with a schedule of items for which unit prices are required.
- 8.02** The unit prices or lump sum pricing must include full compensation for Providing all labor, materials, services, tools, equipment and whatever else is required to perform all Work in accordance with the requirements of the Bid Documents.
- 8.03** All Bids must be submitted on the forms furnished by the Owner. A Bid not submitted on the forms furnished by the Owner will be considered non-responsive.
- 8.04** Completing the Bid Form:
- .A Bidder's name must be the same as listed on Bidder's California State Contractor's license.
 - .B Bid price(s) must be in the manner required by the Bid Form.
 - .C Bid Form must be signed by Bidder or duly authorized representative.
 - .1 If Bidder is an individual, name must be stated.
 - .2 If Bidder is a partnership, name of the partnership must be stated and one or more partners must sign the Bid Form.
 - .3 If Bidder is a corporation, name of the corporation must be stated, the state of incorporation must be listed, the title of the person with authority to sign and bind corporation, must be stated, and the corporate seal must be affixed.
 - .4 Bidder's business and mailing address must be stated.
- 8.05** Required Listing of Proposed Subcontractors:
- .A Failures to list name, or location and kind of Work for Bid is cause for Bid to be rejected as non-responsive.
 - .B Bidders' attention is directed to the provisions of the Subletting and Subcontracting Fair Practices Act, beginning with Public Contract Code [§4100](#), related to penalties for use of unauthorized Subcontractors or by making unauthorized substitutions.

ARTICLE 9 — CONTRACTING PRINCIPLES –INTENTIONALLY LEFT BLANK

ARTICLE 10 — SUBMISSION OF BID FORMS

- 10.01** **Bid Forms** must be **completed in ink**, completely filled out, and submitted on the Bid Form furnished as part of the Bid Documents. Faxed Bids or modifications will not be considered by Owner.
- 10.02** It is the sole responsibility of the Bidder to ensure that its Bid is received at the proper time and at the proper location. Bids received after the time fixed for receiving them will not be considered.
- 10.03** Late Bids will be returned by the Owner to the Bidder unopened.
- 10.04** Each Bid must be addressed to the Housing Authority, Attn: Rene Regino, General Services Director, and must be delivered no later than the date and time set for the acceptance of Bids in the published Notice to Bidders.
- 10.05** Each Bid must be enclosed in a sealed envelope bearing the title of the Project, Project Number, the name of the Bidder and the date and time of bid acceptance deadline. Failure to do so may result in a premature opening of, or failure to open, such bid. Bid Forms improperly marked may be disregarded.

ARTICLE 11 — WITHDRAWAL OF BID FORMS

- 11.01** Any Bid may be withdrawn at any time before the time fixed in the Notice to Bidders for the acceptance of Bids only by written request of the Bidder or a duly authorized representative.
- 11.02** Withdrawal of a Bid does not prejudice the right of the Bidder to file a new Bid at any time prior to the time fixed for receiving Bids in the Notice to Bidders.
- 11.03** A Bid will not be accepted after date and time stated herein.
- 11.04** After the opening of Bids, Bids may only be withdrawn for materials mistake affecting price, as determined by the Owner's Authorized Representative.

ARTICLE 12 — OPENING OF BIDS

- 12.01** Bids will be opened and read by the Owner's Authorized Representative.

ARTICLE 13 — REJECTION OF IRREGULAR BIDS

- 13.01** The Owner may reject any Bid if there appears to be any alteration of the Bid Form, any addition or condition not called for, or any incompleteness, erasure or irregularity of any kind.
- 13.02** Bids not completed in **Ink** will be rejected.
- 13.03** If the Bid amount or other material information is changed, the **change must be initialed**.

ARTICLE 14 — COMPETITIVE BIDDING

- 14.01** More than one Bid from an individual, firm, partnership, corporation, or combination thereof, as a principal, under the same or different names will not be considered. Reasonable basis for believing that any individual, firm, partnership, corporation, or combination thereof is a principal in more than one Bid for the Work contemplated may cause the rejection of all Bids in which such individual, firm, partnership, corporation, or combination thereof is a principal.
- 14.02** If there is a reason for believing that collusion exists among the Bidders, any or all Bids may be rejected.
- 14.03** A person, firm, or corporation submitting a sub-bid to a Bidder, or who quoted prices on materials to a Bidder, is not thereby disqualified from submitting a sub-bid or quoting prices to other Bidders or from being a principal Bidder for the same Work.
- 14.04** Bids in which unit prices are obviously unbalanced may be rejected.
- 14.05** Bidders are put on notice that any collusive agreement fixing the prices to be Bid so as to control or affect Awarding of the Contract may render void any Contract let under such circumstances.

ARTICLE 15 — ESTIMATED QUANTITIES

- 15.01** The quantities stated in a schedule of items for which unit prices are asked to be Bid are approximate only.
- 15.02** The quantities are given as a basis for the comparison of Bids.
- 15.03** Owner does not, expressly or by implication, represent that the actual amount of Work will correspond with quantities given and reserves the right to increase or decrease the quantities of Work for any Bid item, or to omit portions of the Work, as Owner may deem necessary or advisable.

ARTICLE 16 — SUBSTITUTION OF ALTERNATIVE MATERIALS, ARTICLES, OR EQUIPMENT

- 16.01** Bids must be based upon use of items named in the Bid Documents.
- 16.02** In certain cases, specific items have been named (Named Products) because of operational or maintenance considerations; approval of proposed equals should not be assumed.
- 16.03** Alternative material(s), article(s), or equipment that are of equal quality and of required characteristics for the purpose intended may be proposed provided the Bidder complies with the

following requirements:

- .A The proposal will not be considered unless the submittal is accompanied by complete information and descriptive data necessary to determine equality of offered material(s), article(s) or equipment.
- .B Samples must be submitted when requested by the Owner.
- .C Burden of proof as to comparative quality, suitability, and performance of offered material(s), article(s), or equipment is the responsibility of the Bidder submitting the proposal.
- .D Requests for approval must comply with the requirements of [Section 01630, "Product Substitution Procedures."](#)

16.04 Owner's Authorized Representative is the sole judge as to such matters. In the event Owner's Authorized Representative rejects the use of such Alternative(s) submitted, then the Contractor must furnish one of the particular Named Products originally specified in the Bid Documents.

16.05 Proposals for Alternative material(s), process, article(s), or equipment requested during the Bid period must be submitted not later than ten (10) calendar Days prior to Bid opening.

16.06 If the Owner does not respond to a proposed Alternative before the Bid date, and the proposed Alternative is not approved, the Contractor will furnish one of the specified Named Products.

ARTICLE 17 — RETURN OF BIDDER'S SECURITY

17.01 If Owner does not accept the Bid within the period of Days after the Bid opening stated in [Document 00410 - Bid Form](#), Owner will return Bidder's Security to all Bidders.

17.02 If the Bidder to whom the Contract is Awarded executes and delivers to Owner all the required documents, Owner will return Bidder's Security to all Bidders.

ARTICLE 18 — RELIEF OF BIDDERS – INTENTIONALLY LEFT BLANK

ARTICLE 19 — AWARD OF CONTRACT

19.01 The Contract, if Awarded, will be to that responsible Bidder submitting the lowest responsive Bid, subject to Owner's right to reject any or all Bids and to waive any informality or irregularity in the Bids or in the bidding procedures.

19.02 No Bidder may withdraw its Bid for the period of Days stated in [Document 00410, "Bid Form"](#), after the date set for the opening thereof, and the Bid will be subject to acceptance by Owner throughout this period.

19.03 The time period within which Award of Contract may be made is subject to an extension of such further period as may be agreed upon in writing between the Owner and the Bidder.

19.04 No Contract is formed until all Contract Bonds and Insurance documents have been accepted by the Owner and the Agreement is signed by the Owner.

ARTICLE 20 — CONTRACT BONDS

20.01 The successful Bidder (hereinafter "Contractor") must pay all Contract Bond premiums, costs thereof, and incidental thereto.

20.02 Each Contract Bond must be signed by both Contractor and the Sureties.

20.03 As a condition to Owner signing the Agreement, the successful Bidder must file with Owner on the approved forms, the two surety bonds in the amounts and for the purposes noted below, duly executed by a Surety company meeting the requirements of Article 20 herein.

20.04 The "**payment bond**" must be in an amount of one hundred percent (100%) of the Contract Sum as determined from the prices in the Bid Form, including the base Bid and all additive and/or deductive Bid items accepted by the Owner and identified in the Award, and shall inure to the benefit of persons performing labor or furnishing materials in connection with the Work. This bond must be maintained in full force and effect until all Work is completed and Accepted by Owner, and until all claims for materials and labor have been paid.

20.05 The “**performance bond**” must be in an amount of one hundred percent (100%) of the Contract Sum as determined from the prices in the Bid Form, including the base Bid and all additive and/or deductive Bid items accepted by the Owner and identified in the Award, and must be so conditioned as to ensure the faithful performance by Contractor of all Work. It shall also include the replacing, or making acceptable, of any defective materials or faulty workmanship during the Guarantee period(s).

20.06 If any Surety or Sureties are deemed unsatisfactory at any time by Owner, Owner will notify Contractor, and Contractor must forthwith substitute a new Surety or Sureties satisfactory to Owner. No further payment will be deemed due or made until the replacement Sureties qualify and are accepted by Owner.

20.07 All changes to the Contract Sum, Contract Time, or Contract Documents may be made without securing the consent of the Surety or Sureties on the Contract Bonds.

20.08 Sureties must be California admitted Sureties.

ARTICLE 21 — INSURANCE

21.01 Contractor will be required to furnish to Owner, concurrently with execution of the Agreement, insurance documents evidencing coverage as required by [Document 00700.11, “Indemnification and Insurance”](#)

ARTICLE 22 — EXECUTION OF CONTRACT AGREEMENT

22.01 The form of Agreement which the successful Bidder, as Contractor, must execute, and the form of Contract Bonds and Insurance coverage that it must provide are included in the Bid Documents and must be carefully examined by each Bidder. All Contract Bonds, policies or certificates of insurance, and Insurance policy endorsements must be delivered with or before the delivery of the signed Agreement form, and must be acceptable to Owner.

22.02 The Bidder to whom the Contract is Awarded by Owner must, within ten (10) calendar Days after the Notice of Award, sign and deliver the following documents to the General Services Director:

- .A One (1) original and one (1) copy of the signed Agreement form furnished by Owner in the Bid Documents. ([Document 00500, “Agreement”](#))
- .B One (1) original copy of the Performance Bond. ([Document 00611, “Performance Bond Form”](#))
- .C One (1) original copy of the Payment Bond. ([Document 00612, “Payment Bond Form”](#))
- .D Policies of Insurance, Insurance certificates and endorsements as required by the Bid Documents.

22.03 Should Contractor begin Work in advance of the start date for the Work, as stated in the Notice to Proceed, the Work will be considered as having been done at Contractor’s risk as a volunteer.

ARTICLE 23 — FAILURE TO EXECUTE CONTRACT AGREEMENT

23.01 Failure of the successful Bidder to execute the Agreement in the form satisfactory to Owner is just cause for the annulment of the Award and the forfeiture of the Bidder’s Security.

23.02 Failure of the successful Bidder to sign and return the Agreement within ten (10) calendar Days after notification of Award by the Owner constitutes failure to execute the Agreement.

23.03 Failure to return required Contract Bonds and insurance documents within ten (10) calendar Days after notification of Award by the Owner constitutes failure to execute the Agreement.

23.04 If the Bidder to whom the Contract is Awarded does not file the documents required by the Bid Documents, files unsatisfactory documents, or refuses to enter into a Contract within the specified time, the Bidder is liable for any difference by which the cost of procuring the Work exceeds the amount of its Bid. The Bidder’s Security will be used to offset such difference.

ARTICLE 24 — NO ORAL AGREEMENTS

- 24.01** No conversation with any officer, employee, agent or Consultant of Owner, either before, during, or after the execution of the Agreement, affects or modifies any terms or obligations contained in the Contract Documents, nor entitle Contractor to any adjustment in the Contract Time or Contract Sum whatsoever.

ARTICLE 25 —BID PROTEST

- 25.01** Any Bid protest relating to the form or content of the Bid Documents must be submitted in writing to the Owner's Project Manager identified in the Notice to Bidders at least three (3) business days before the original date or extension thereto set for the Bid opening. Any Bidder who fails to submit a protest before the Bid opening deadline will be deemed to have waived any protest to the form or content of the Bid Documents.
- 25.02** Any Bid protest unrelated to Article 25.1 must be submitted in writing to the Owner's Project Manager. The protest must be received before 5:00 p.m. of the third business day following Bid opening.
- 25.03** The protest document must contain a complete statement of the basis for the protest.
- 25.04** The protest must refer to the specific portion(s) of the Bid Documents that form the basis for the protest.
- 25.05** The protest must include the name, address, and telephone number of the person representing the protesting party.

**A. DOCUMENT 00210
SUPPLEMENTARY INSTRUCTIONS TO BIDDERS**

[Note to Specifier: Document 00210 is used when it is necessary to highlight special bidding requirements. Special bidding requirements can include special certifications; requirements for Escrow Bid Documents; and the like. See examples below.]

The following requirements supplement Document 00200, Instructions to Bidders:

1. ESCROW BID DOCUMENTS - NOT APPLICABLE

Bidders' attention is directed to the requirement in Document 00800, Supplementary Conditions, for Escrow Bid Documents to be submitted by the three lowest Bidders within 48 hours after the time for receipt of bids.

2. MANUFACTURER CERTIFICATION AND APPROVAL OF CONTRACTOR –NOT APPLICABLE

Bidders' attention is directed to Section **(Insert Section Number)** of the Technical Specifications, requiring the manufacturer of the **(Insert Name Of Equipment)** to certify in writing that the Contractor is by the manufacturer for installation and service the specified system or equipment. After Contract Award by Owner and before Owner will issue a Notice to Proceed, Contactor must submit such certification to the Owner's Project Manager for acceptance.

END OF DOCUMENT 00210

**DOCUMENT 00410
BID FORM**

From:(Bidder's Company)

Name: _____

Address:

Phone :() _____ Email Address:_____

TO: Housing Authority of the County of Santa Clara herein called Owner's Authorized Representative:

Pursuant to and in compliance with the Notice to Bidders and the Contract Documents relating to the **COMPOSITION ROOF REPLACEMENT PROJECT**, the undersigned Bidder, having become thoroughly familiar with the terms and conditions of the Contract Documents and with local conditions affecting the performance and the costs of the Work at the place where the Work is to be done and having fully inspected the Work site in all particulars, hereby proposes and agrees to fully perform the Work within the Contract Time(s) stated and in strict accordance with the Contract Documents, including Providing any and all labor and materials, and perform all the Work required to construct and to complete said Work in accordance with the requirements of the Contract Documents, for the following sums of money:

BASE BID:

When the Project includes any trenching or excavation five feet or deeper, California State Labor Code Sections 6705 and 6707 require a separate Bid item for providing adequate sheeting, shoring, bracing or equivalent for the protection of life and limb. If this Project requires trenching or excavation five feet or deeper, Bidder must enter a dollar value for Base Bid Item Number 1:

Base Bid Item Number 1: Provide all labor, material, services and equipment necessary **to remove and replace existing composition roof.**

Dollars

(words) _____

\$ (figures) _____

Alternative Costs for Base Bid Item No. 1:

Show applicable deduction in paint material and labor for:

Dollars

(words) _____

\$ (figures) _____

Base Bid Item No. 2: Provide all labor, material, services and equipment necessary to:

Dollars

(words) _____

\$ (figures) _____

Alternative Material for Base Bid Item No. 2:

Dollars

(words) _____

\$ (figures) _____

=====

Total Base Bid: Provide all labor, material, services and equipment necessary for the completion of all Base Bid Work required by the Bid Documents: (Total of Base Bid Items 1-2 above):

Dollars

(words) _____

\$ (figures) _____

Total Base Bid

BASIS FOR AWARD OF CONTRACT

1. The Contract will be awarded to the "Responsible Bidder" submitting the lowest responsive Bid (as may be corrected in accordance with paragraph 8 below). "Responsible Bidder" is a Bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.
2. Whenever additive or deductive Bid items are included in a Bid, the Notice to Bidders will specify the method to be used the basis for determining the low Bid.
3. Owner reserves the right to reject this Bid.
4. This Bid must remain open and not be withdrawn for a period of sixty (60) calendar Days from the date prescribed for its opening.
5. If written notice of the acceptance of this Bid is mailed or delivered personally to the undersigned within sixty (60) calendar Days after the date set for the receipt of this Bid, or at any time thereafter before withdrawn, the undersigned Bidder must execute and deliver the Agreement to Owner in accordance with this Bid as accepted, and must furnish and deliver to Owner the Performance Bond, Payment Bond, and Proof of Insurance Coverage as required in the Bid Documents, all within ten (10) calendar Days after the date of Notice of Award furnished by the Housing Authority.
6. Insurance must be satisfactory to, and on forms acceptable to Owner.
7. Notice of acceptance of Bonds and Insurance or request for additional information may be addressed to the Bidder at the address shown on Page 1 of Document 00410, "Bid Form."
8. Wherever in this Bid an amount is stated in both words and figures, in case of discrepancy between words and figures, the words shall prevail.
9. If all or any portion of the Bid is required to be given in unit prices and totals, and a discrepancy exists between the sum of the unit prices and totals so given, the sum of the unit prices will prevail.
10. If the Bid is required to be given in individual Bid Item prices and a Total Base Bid price, and a discrepancy exists between the sum of the individual Bid Item prices and the Total Base Bid price so given, the sum of the individual Bid Item prices will prevail.

11. Bidder certifies that it has thoroughly read and understands the Bid Documents and Addenda. Bidder hereby incorporates by reference the Bid Documents and Addenda as though set out in full, and all provisions of the Notice to Bidders published by Owner pertaining to the Work described in this Bid.

BIDDER'S SECURITY & ADDENDA

1. Accompanying this Bid proposal is _____ (insert words "cash," "cashier's check," "certified check," or "Bidder's Bond" as the case may be) in an amount equal to at least ten percent (10%) of the total of the Bid including all additive Bid items.

2. Bidder acknowledges receipt of the following Addenda to the Bid Documents:

() NO Addenda received

() Addenda received as follows:

<u>Addendum Number</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Failure to acknowledge on the Bid Form receipt of an Addendum is not in itself cause for withdrawal or rejection of Bid, if it can be established that Bidder did, in fact, receive such Addendum prior to Bid opening.

DESIGNATION OF SUBCONTRACTORS

This Designation of Subcontractors form must be completed. Bidder must complete the form below for each Subcontract that exceeds one-half of one percent (1/2%) of the Bidder's total Bid. A Subcontractor is one who: (1) performs Work or labor; or (2) provides a service to the Bidder; or (3) specially fabricates and Installs a portion of the Work according to the Contract Documents. Bidders failure to list a Subcontractor for any portion of the Work in excess of 1/2% of Bidder's total Bid signifies Bidder will self perform that portion of the Work with its own forces. (Note: If more than one Subcontractor is designated for the same kind of Work, state the portion that each will perform.)

	SUBCONTRACTORS	
NAME	LOCATION OF BUSINESS	WORK

DESIGNATION OF SUBCONTRACTORS (CONT'D)

	SUBCONTRACTORS	
NAME	LOCATION OF BUSINESS	WORK

NOTE: To list additional Subcontractors, submit completed copies of this form as needed.

BIDDER'S CERTIFICATIONS

1. THE NAMES OF ALL PERSONS INTERESTED IN THE FOREGOING BID AS PRINCIPALS ARE AS FOLLOWS:

NOTE: If Bidder or other interested person is a corporation, give legal name of corporation, the State where incorporated, and names of the president and secretary thereof; if a partnership, provide name of the firm, also names of all individual partners composing firm; if Bidder or other interested person is an individual, provide first and last names in full below:

2. LICENSED IN ACCORDANCE WITH [CHAPTER 9, DIVISION 3](#), OF BUSINESS AND PROFESSIONS CODE PROVIDING FOR THE REGISTRATION OF CONTRACTORS:

Contractor's License: No.: _____ Class: _____ Expiration Date: _____

NOTE: Bidder(s) bidding jointly or as a combination of several business organizations are cautioned that such Bidder must be jointly licensed in the same form and style in which the Bid is executed. If making a Bid as a joint venture, each person submitting the Bid must provide the information required above with respect to his or her license.

NOTE: If Bidder is a corporation, the legal name of the corporation must be set forth below together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation; if Bidder is a partnership, the name of the firm must be set forth below together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if Bidder is an individual, the Bidder must sign below.

Business Address: _____
Street

City State Zip Code

Business Telephone :() _____

BIDDER'S CERTIFICATIONS (CONT'D)

3. DESIGNATION OF INSURANCE COMPANY (IES) & AGENT OR BROKER

The following insurance company (ies) and agent or broker will provide policies of insurance or insurance certificates as required by the Contract Documents:

Insurance Company

Admitted in California: YES _____ NO _____

Agent or Broker:

_____ Street _____ City _____ Zip

Phone :() _____

4. DESIGNATION OF BONDING COMPANY & AGENT OR BROKER - N/A

The following Surety Company and agent or broker will provide Payment and Performance Bonds as required by the Contract Documents:

Surety Company Providing Bonds:

Admitted in California: YES _____ NO _____

Agent or
Broker: _____

_____ Street _____ City _____ Zip

Phone :() _____

BIDDER'S CERTIFICATIONS (CONT'D)

5. NONCOLLUSION AFFIDAVIT

(Bidder's full name)

being first duly sworn, deposes and says that he or she is

(Bidder's title)

of

(Company's name)

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

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

BIDDER'S CERTIFICATIONS (CONT'D)

6. STATEMENT OF BIDDER

Has the Bidder, or any officer of the Bidder or any employee of the Bidder who may have a proprietary interest in the Bid, ever been disqualified, removed, or otherwise prevented from bidding on or completing any federal, state, or local governmental project because of a violation of law or safety regulations:

YES ____ NO ____

If your answer is yes, explain the circumstances:

7. CONFIRMATION OF SITE INSPECTION

I hereby certify that my responsible representative(s) or I inspected the Project Site during the Bid period, per the requirements in the Bid Documents:

YES _____ NO _____

I declare under penalty of perjury under the laws of the State of California that the information supplied in Paragraphs 6 and 7 above is true and correct:

SIGNATURE BLOCK (*Signature Block must be completed in **ink** & changes must be **initialed**.*)

Bidder's
Signature: _____ Date: _____

Bidder's Name & Title
(Print): _____

BIDDER'S BOND

WHEREAS, we, _____ as Principal,

and _____ as Surety, are held and firmly bound unto the Pinmore Associates, LP (herein called "Owner") in the penal sum of TEN PERCENT (10%) of the total aggregate amount of the Bid of the Principal above named, submitted by said Principal for the Work described below, 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, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that a Bid for certain construction specifically described as follows,

Composition Roof Replacement Project

for which Bids are to be opened on February 23, 2010, has been submitted by Principal:

NOW, THEREFORE, if the aforesaid Principal shall not withdraw said Bid within the period specified therein after the opening of the same or, if no period be specified, within sixty (60) days after said opening, and shall within the period specified therefore, or if no period be specified, within twenty (20) days after the prescribed forms are presented to Principal for signature, enter into a written Contract with the Owner, in the prescribed form, in accordance with the Bid as accepted, and file the two Bonds with the Owner, one to guarantee faithful Performance and the other to guarantee Payment for labor and materials, as required by law, or in the event of the withdrawal of said Bid within the period specified or the failure to enter into such Contract and give such Bonds within the time specified, if the Principal shall pay Owner the difference between the amount specified in said Bid and the amount for which Owner may procure the required Work and/or supplies, if the latter amount be in excess of the former, together with all costs incurred by Owner in again calling for bids, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

Surety for value received, hereby stipulates and agrees that no change, extension of time, alterations, or addition to the terms of the Contract on the call for Bids, or to the Work to be performed hereunder, or the specifications accompanying the same, shall in any way affect its obligation under this Bond, and it does, hereby, waive notice of any such change, extension of time, alteration, or addition to the terms of specifications.

In the event suit is brought upon this Bond by the Owner and judgment is recovered, Surety shall pay all costs incurred by the Owner in such suit, including a reasonable attorney's fee to be fixed by the court in accordance with applicable statutory law.

BIDDER'S BOND (CONT'D)

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____, 20_____.

PRINCIPAL:

SURETY:

Signature

Signature

Name

Name

Title

Title

Address

Address

NOTE TO SURETY COMPANY:

The following form of acknowledgement should be used. If any other form of acknowledgement is used, there must be submitted a certified copy of unrevoked resolution of authority for the attorney-in-fact.

SURETY COMPANY ATTORNEY-IN-FACT

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA) ss.
)

On _____, before me, the undersigned, a Notary Public in _____ and _____ for _____ the _____ State, _____ personally appeared _____, known to me to be the duly authorized Attorney-in-Fact of the corporate Surety named in the within instrument, known to me to be authorized to execute that instrument on behalf of said corporation, known to me to be the person whose name is subscribed to such instrument as the Attorney-in-Fact of said corporation, and acknowledged to me that he (she) subscribed the name of said corporation thereto as Surety, and his (her) own name as Attorney-in-Fact and that said corporation executed the same.

WITNESS MY HAND AND OFFICIAL SEAL:

(SEAL)

Notary Public for the State of California.

Original Acknowledgement by Attorney-in-Fact must be attached.
Original Corporate seals of Principal and Surety must be attached.

INSURANCE REQUIREMENTS

Indemnity

Contractor shall indemnify, defend, and hold harmless the Pinmore Associates, LP (Owner), its officers, and agents from claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-Contractor, excepting loss, injury or damage caused by the negligence or misconduct of personnel employed by the Owner to the maximum extent allowed under Civil Code Section 2782.8. Contractor shall reimburse the Owner for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the Owner under this Agreement.

Insurance

Without limiting Contractor indemnification of the Owner, Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverage and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting Owner department, unless otherwise directed. Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the Owner. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverage, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the Owner Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified Owner insurance requirements without 30 days' prior

written notice of such cancellation or change being delivered to the Owner or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate- \$2,000,000
 - c. Personal Injury - \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Personal Injury liability
 - c. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the Owner:

Additional Insured Endorsement, which shall read:

SPG Housing, Inc; Property Management Inc, HACSC and officers, agents and employees, individually and collectively, as additional insured's."

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the Owner, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy.

4. Automobile Liability Insurance
For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to hired vehicles.
5. Workers' Compensation and Employer's Liability Insurance
 - a. Statutory California Workers' Compensation coverage including broad form all-states coverage.

- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.
- 6. Professional Errors and Omissions Liability Insurance (if applicable)
 - a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
 - b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.
 - c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

7. Claims Made Coverage

If coverage is written on a claim made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Contractor's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by Owner or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- 2. Owner acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by Owner upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractor under its own policies.
4. Owner reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

If you have any questions regarding insurance requirements please contact:

Ridvana Perdue
Risk Control Manager
Housing Authority of the County of Santa Clara
Email: ridvanap@hacsc.org
Tel (408) 361-4631

AGREEMENT

This is an agreement ("Agreement") between the Housing Authority of the County of Santa Clara ("Owner") and ("Contractor")

Owner and Contractor agree as follows:

ARTICLE 1 — SCOPE OF WORK

- 1.01** Project Name:
- 1.02** Project Number:
- 1.03** Contractor must provide all of the materials and perform all of the Work for the construction of in accordance with the Contract Documents.

ARTICLE 2 — CONTRACT SUM: \$.00

- 2.01** As full compensation for furnishing all materials and performing all the Work contemplated and encompassed by this Agreement; for all loss and/or damage, arising out of the Work aforesaid, or from actions of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work until its Acceptance by Owner; for all risks of every description connected with the Work; and for all expenses incurred by or in consequence of the suspension of discontinuance of Work thereof, in the manner and according to the Contract Documents, Owner shall pay the amount specified by Contractor on the Bid Form.

ARTICLE 3 — CONTRACT DOCUMENTS:

- 3.01** All rights and obligations of Owner and Contractor are fully set forth and described in the Contract Documents. All parts of the Contract Documents are intended to be correlated so that any Work called for in one part and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all Contract Documents. The Contract Documents are incorporated herein by reference as though set forth in full.
- 3.02** Formation of a Contract between the parties requires accomplishment of the following: (1) execution of this Agreement by Contractor; (2) submission by Contractor and acceptance by Owner of the required Contract Bonds, Contractor's certification regarding Worker's Compensation, and insurance coverage and documents; (3) execution of this Agreement by Owner. No Contract is formed until these three elements have been accomplished to the satisfaction of the Owner.

ARTICLE 4 — BEGINNING OF WORK:

- 4.01** Following acceptance of Contract Bonds, Contractor's certification regarding Worker's Compensation (["Contractor's Certification Regarding Worker's Compensation"](#)), Insurance coverage and documents, and execution of this Agreement by both parties, Owner's Authorized Representative will issue a Notice to Proceed with the Work that will state the first day charged to the Contract Time.

ARTICLE 5 — WORKER'S COMPENSATION:

- 5.01** By my signature hereunder, as Contractor, I certify that I am aware of the provisions of [§3700](#) of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

ARTICLE 6 — CONTRACT TIME:

- 6.01** The Work called for herein may be commenced only after receipt of the Notice to Proceed, issued by Owner's Authorized Representative within sixty (60) calendar Days after Award. The Work must be fully completed within ____ **calendar days** set forth in the Contract Documents.

ARTICLE 7 — CONTRACTOR'S LICENSE:

- 7.01** Contractors are required by law to be licensed and regulated by the Contractor's State License Board. Any questions concerning contractor licensing must be referred to the Registrar of the Contractor's State License Board at 1020 "N" Street, Sacramento, CA 95814.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the ____ day of _____, **2010**.

CONTRACTOR:

Signature: _____

Contractor's License No. _____

Printed Name: _____

License Class: _____

Title: _____

License Expiration Date: _____

Address:

Alex Sanchez
Executive Director
Date:

If this Agreement is signed outside of the State of California, a notarized acknowledgement is required.

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1.01 ABBREVIATIONS AND DEFINITIONS

- .A **ABBREVIATIONS:** References in the General Conditions are sometimes referred to only by corresponding abbreviation. Not all abbreviations are listed and not all listed abbreviations are used. Unless otherwise specifically defined in the General Conditions, when the following abbreviations are used, the intent and meaning will be interpreted as follows:
- .1 **A/E** – Design Professional
 - .2 **CM** – Construction Project Manager
 - .3 **DFOW** - Definable Feature of Work
 - .4 **GSU** – The General Services Unit
 - .5 **LDs** – Liquidated Damages
 - .6 **NTP** – Notice To Proceed
 - .7 **OAR** – Owner’s Authorized Representative
 - .8 **PE** – Design Professional
 - .9 **QC** – Quality Control
 - .10 **RFI** – Request For Information
 - .11 **SOV** – Schedule Of Values
- .B **DEFINITIONS:** Wherever in the Request for Qualifications/Proposal (“RFP”), or Contract Documents the following terms, or pronouns in place of them are used, the intent and meaning will be interpreted as follows:
- .1 **Acceptance** - The formal acceptance by the Owner of the Completion of the entire Work of the Contract, which to Owner’s knowledge has been performed in accordance with the requirements of the Contract Documents and all Approved modifications thereof, as evidenced by a recorded Notice of Completion.
 - .2 **Addendum** - A written change to the RFP issued before the time fixed for the opening of Proposals.
 - .3 **Additional Detailed Instructions** - Detailed written and/or graphic instructions issued by the Owner to the Contractor to explain the Work more fully. Such instructions become part of the requirements of the Contract Documents without changing the requirements of the Contract Documents.
 - .4 **Agreement** - The written and signed document known as “Agreement.” (Sometimes also referred to as Contract Agreement or Contract.)
 - .5 **Alternative** - Refer to Approved Equal and Substitution
 - .6 **Approved, Directed, Ordered, or Required** - Whenever these words or their derivatives are used, it is the intent, unless otherwise clearly stated, that written approval, acceptance, or direction by the Owner’s Authorized Representative or Owner’s Project Manager is required.
 - .7 **Approved Equal** - Material, equipment, or method accepted by the Owner’s Authorized Representative for use in the Work, as being acceptable as an equivalent in essential attributes to the material, equipment, or method specified in the Contract Documents.
 - .8 **Architect of Record** – See Design Professional of Record

- .9 **Reserved.**
- .10 **Proposal Alternate** – Additive and/or deductive Proposal items identified as such on the Proposal Form.
- .11 **Proposal** - The offer of a contractor to perform the Work pursuant to a completed prescribed Proposal Form, properly executed and guaranteed, and timely submitted.
- .12 **Reserved.**
- .13 **Reserved.**
- .14 **Proposal Form** - The approved form upon which Owner requires a formal Proposal be prepared and submitted for the Work.
- .15 **Reserved.**
- .16 **Reserved.**
- .17 **Reserved.**
- .18 **Change Order** - A written amendment to the Contract, changing the Work, and/or the Contract Documents, and/or the Contract Sum, and/or the Contract Time Approved by the Owner's Authorized Representative.
- .19 **Claim** - A separate unresolved Dispute by the Contractor for: (A) a Contract Time extension, (B) payment of money or damages arising from Work done by, or on behalf of, the Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the Owner.
- .20 **Complete Submittal** – A group of individual Submittals, each meeting the requirements of the Contract Documents, encompassing all the Work included in a Definable Feature of Work (DFOW), and submitted to the Owner as a single Submittal package.
- .21 **Completion** - Acceptance of the Work.
- .22 **Construction Project Manager (CM)** - A consultant firm or such other individual or entity as Owner may designate to Contractor in writing, retained by Owner to perform project management services.
- .23 **Consultants** - Architects, Engineers, Construction Project Managers and other professionals engaged to provide the Owner with professional services for the Project.
- .24 **Contract** - The written Agreement on the Owner's form encompassing the performance of the Work and the furnishing of labor, materials, tools, and equipment in the construction of the Work. Synonymous with "Agreement", and "Contract Agreement".
- .25 **Contract Bonds** - The Performance Bond and the Payment Bond.
- .26 **Contract Documents** - The Documents identified in the Agreement, Article 15, and all Additional Detailed Instructions, Field Modifications, and Approved Change Orders.
- .27 **Contract Sum** - The Contract Sum is stated in the Agreement and, including authorized adjustments by Change Order, is the total amount payable by Owner to the Contractor for performance of the Work pursuant to the Contract Documents.

- .28 **Contract Time(s)** - Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, identified in the Contract Documents for Completion of the Work or a designated portion of the Work.
- .29 **Contractor** - The person or persons, firm, partnership, corporation, or combination thereof, private or municipal, or the legal representatives thereof, that entered into the Contract with Owner. (Sometimes also referred to as "Prime Contractor" or "Original Contractor")
- .30 **Contractor's Authorized Representative** – The Contractor's authorized representative who has the authority to represent and act for Contractor.
- .31 **Coordination Drawings** - Contractor prepared drawings submitted by Contractor to Owner to demonstrate the coordination of methods, materials, equipment, plans, or sequence the Contractor proposes to use when limited space is available for installation of different components, coordination is required for installation of Products and materials Fabricated by separate entities, or the relationship of components is shown on separate Shop Drawings or Submittals. Coordination Drawings are not considered Contract Documents.
- .32 **Cost Breakdown** - A document submitted by the Contractor to the Owner reflecting the portions of the Contract Sum allotted for the various parts of the Work. (Sometimes also referred to as "Schedule of Values")
- .33 **Critical Path** –The Contractor is required to submit a CPM Progress Schedule; the Critical Path is the path(s) of activities on the current updated version of the Official Progress Schedule without any Total Float Time. All references in the Contract Documents to the Critical Path mean the longest path of dependent activities within the current updated version of the Official Progress Schedule that determine when the Work of a Milestone or the entire Work of the Project will be complete.
- .34 **Date of Acceptance** - The date of Acceptance by the Owner of Contract Completion.
- .35 **Day(s)** - Calendar days unless otherwise designated.
- .36 **Deficiency List** - A written list of deficiencies in the completed Work. Also sometimes referred to as "Punch List."
- .37 **Definable Feature of Work (DFOW)** - A Work task that is separate and distinct from other Work tasks and has common control requirements and work crews.
- .38 **Design Professional** - The term "Design Professional" means a person licensed in California; as an architect pursuant to Chapter 3 (commencing with §5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with §6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with §8700) of Division 3 of the Business and Professions Code (Also sometimes referred to as "Architect/Engineer", "A/E", "Professional Engineer", "PE", "Design Consultant", and/or "Consultant".)
- .39 **Design Professional of Record** – The term "Design Professional of Record" means the Design Professional in responsible charge of the design services or portions of the design services in connection with the Project.
- .40 **Reserved.**
- .41 **Dispute** - A written disagreement submitted by the Contractor seeking adjustment of Contract terms, payment of money, extension of Contract Time or other relief with respect to the terms of the Contract. A Dispute is not a Claim.

- .42 **Drawings** - The graphic and pictorial portions of the Contract Documents, illustrating the design, character, location, and dimensions of the Work to be performed, generally including but not limited to, elevations, sections, details, schedules, General Notes, specific notes, and diagrams. Synonymous with "Contract Drawings" and "Plans".
- .43 **Emergency** – A sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.
- .44 **Fabricated** - Specifically assembled or made out of selected materials to meet Project specific design requirements.
- .45 **Field Modification** - A written instruction, clarification or additional information issued by the Owner's Project Manager to Contractor that does not change the Contract Time or Contract Sum but becomes part of the requirements of the Contract Documents.
- .46 **Final Inspection** – The inspection performed by the Owner and its Consultants after the Contractor has certified that the entire Work of the Project is complete.
- .47 **Force Account** - The method of performing Work by or on behalf of Contractor on a time, materials and equipment basis.
- .48 **General Notes** - The written instructions, provisions, conditions or other requirements appearing on the Drawings, and so identified thereon, which pertain to the performance of the Work.
- .49 **Reserved.**
- .50 **Governmental Agencies** - Whenever, in the Contract Documents, reference is made to any governmental agency or officer, such reference will be deemed made to any agency or officer acting in accordance with law to the power, duties, jurisdiction, and authority of the agency or officer mentioned.
- .51 **General Services (GS)** The General Services Department of the Housing Authority of the County of Santa Clara.
- .52 **Guarantee** - A promise or assurance given by one party to a second party that a third party's obligations will be fulfilled (i.e., Contractor agrees to guaranty the Work performed by one of its Subcontractors to the Owner). (Also sometimes referred to as Warranty/Guarantee)
- .53 **Inspector** - The person assigned by Owner to inspect the Work. (Also sometimes referred to as Project Inspector or Owner's Inspector or Owner's Project Inspector.)
- .54 **Install** - Synonymous with "Provide" for the purposes of this Contract.
- .55 **Reserved.**
- .56 **Laboratory** - Any laboratory authorized or accepted by Owner to test materials and Work involved in the Contract.
- .57 **Liquidated Damages** - The amount prescribed in the Contract Documents to be paid to Owner or to be deducted from any payments due or to become due Contractor for each Day's delay in completing the whole or any specified portion of the Work, beyond the time(s) allowed in the Contract Documents plus Approved time extensions.
- .58 **Manufactured** - Standard units usually mass-produced.
- .59 **Milestone** - A specific portion of the Work identified in the Contract Documents as a Milestone.

- .60 **Milestone Completion** - The date determined by the Owner when the Work of a Milestone is complete. Milestone Completion does not constitute Acceptance but does establish the completion date of the Milestone for the purpose of assessment of Liquidated Damages, if any, associated with the Milestone.
- .61 **Milestone Duration** - The time allowed in the Contract Documents, plus approved time extensions, for completion of the Work of a Milestone.
- .62 **Mobilization** - Includes preparatory work and operations, including, but not limited to, those necessary for preparation of Submittals, movement of personnel, equipment, supplies and incidentals to the Project Site, for establishment of all temporary offices, buildings and other facilities necessary for Work on the Project, and for all other work and operations which must be performed, or costs incurred including obtaining Contract Bonds and insurance, before beginning Work.
- .63 **Named Products** - Products identified in the Contract Documents by Manufacturer's product name. Named Products may include Manufacturer's make or model number or other designation.
- .64 **Reserved.**
- .65 **Notice of Completion** - A document executed by the Owner and filed with the County Recorder, signifying that the Contract has been completed and accepted.
- .66 **Reserved.**
- .67 **Notice to Proceed** - The written notice issued by Owner's Authorized Representative to Contractor whereby the Contractor is notified of the official construction Contract start date and is authorized to proceed with the Work. Unless otherwise specified in the Contract Documents or Directed by written Order of Owner's Authorized Representative, the Contractor must begin Work within ten (10) Days following the start date for the Work as stated in the Notice to Proceed.
- .68 **Official Progress Schedule** - The Contractor's Progress Schedule and all revisions and updates thereto, accepted by the Owner.
- .69 **Or Equal** - Refer to Approved Equal
- .70 **Owner** - -----
- .71 **Order** - Refer to Approved, Directed, Ordered, or Required
- .72 **Owner's Authorized Representative** - The person named in the Agreement whose authority includes but is not limited to the authority to approve Addenda, Change Orders, Payment Requests, Milestone and Project Completion dates(s).
- .73 **Plans** - See Drawings
- .74 **Preconstruction Submittals** - Submittals requiring Owner's acceptance before Contractor may proceed with the installation of Work or the procurement of the materials and/or equipment covered by the Submittal.
- .75 **Project** - The entire improvement proposed by Owner to be constructed in whole or in part pursuant to the requirements of the Contract Documents, including any phasing or Milestone requirements
- .76 **Project Number** – Owner defined identification number for a Project.
- .77 **Product Data** - Illustrations, Manufacturer's literature, standard schedules, performance charts, instructions, brochures, diagrams and other information submitted by the Contractor to illustrate materials or equipment for some portion of the Work. Product Data are not considered Contract Documents.

- .78 **Project Manager** - The person identified in the Contract Documents as the Project Manager or subsequently designated by Owner's Authorized Representative to manage the Contract and/or the Project. (Also sometimes referred to as Owner's Project Manager.)
- .79 **Project Manual** - The written volume(s) assembled for the Work, including these General Conditions, Agreement, General Requirements, Technical Specifications, and other written or graphic material as may be listed in the Project Manual Table of Contents, including any Addenda and Approved revisions by Owner.
- .80 **Project Site** - Space available to Contractor for performance of the Work, either exclusively or in conjunction with others performing other work as part of the Project.
- .81 **Provide** - Synonymous with "Install" for the purposes of this Contract: All labor, materials, equipment, supervision and whatever else is necessary to supply and incorporate a specified item into the Work in compliance with the requirements of the Contract Documents.
- .82 **Punch List** - The written list of deficiencies observed by the Owner and its Consultants and provided to the Contractor after the Contractor has certified that the Work or a designated portion of the Work is complete. (Also sometimes referred to as "Deficiency List.")
- .83 **Record Documents** - A set of the Contract Documents including Drawings and Project Manual updated on a continuous basis to indicate conditions encountered and the final configuration of a Project as it was constructed. Record Documents must include all Addenda, Changes, Additional Detailed Instructions or other clarifications to the Contract Documents and dimensional information showing the actual locations of Installed components of the Work. (Also known as "As-BUILTs" or "As-Built Documents")
- .84 **Request for Information (RFI)** - A written request by the Contractor for information or clarification regarding the requirements of the Contract Documents. Requests For Information must be numbered sequentially and presented in a format furnished by or acceptable to the Owner's Project Manager. The Owner's response to an RFI is considered an Additional Detailed Instruction and does not change the requirements of the Contract Documents, Contract Time, or Contract Sum.
- .85 **Retention** - A defined percentage of the Contract Sum held by the Owner pending Completion of the Work, or any portion of the Work.
- .86 **Samples** - Physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be evaluated.
- .87 **Shop Drawings** - Drawings, diagrams, schedules, and other data specially issued for the Work by the Contractor or a Subcontractor, Sub-Subcontractor, and Suppliers to demonstrate and/or illustrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for some specific portion of the Work. Shop Drawings are not considered Contract Documents.
- .88 **Specifications** - The written directions, provisions and requirements pertaining to the materials to be provided and to the method and manner of performing the Work, including any Addenda and Approved revisions by Owner. (Also sometimes referred to as "Technical Specifications" or "Specs.")
- .89 **State** - The State of California.

- .90 **Subcontractor** - A contractor, within the meaning of the provisions of Chapter 9 (commencing with § 7000) of Division 3 of the Business and Professions Code, who contracts directly with the Contractor to perform any Work of the Project. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or its authorized representative.
- .91 **Sub-subcontractor** - A contractor, within the meaning of the provisions of Chapter 9 (commencing with § 7000) of Division 3 of the Business and Professions Code, that has a direct or indirect contract with a Subcontractor to perform any Work of the Project. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative thereof.
- .92 **Submittal** - Data or items required by the Contract Documents to be submitted by the Contractor to the Owner. Submittals demonstrate the method, materials, plan, or sequence the Contractor proposes to use to conform to the design concept expressed in the requirements of the Contract Documents. Submittals include but are not limited to Shop Drawings, Coordination Drawings, layouts, Progress Schedules, Substitution requests, Samples, mockups, catalogs, Product Data and literature, equipment data sheets, maintenance and operating data. Unless otherwise stated in the Contract Documents, Submittals are not considered Contract Documents.
- .93 **Substitution** - A material and/or process offered by the Contractor in lieu of the specified material and/or process, and accepted by the Owner's Authorized Representative in writing as being equivalent (equal) to the specified material and/or process. (Also sometimes referred to as Product Substitution)
- .94 **Supplier** - A person or organization contracting with Contractor, a Subcontractor or a Sub-subcontractor to supply materials and/or equipment for the Work.
- .95 **Surety** - A company that provides Contractor's bonds for bidding, performance and payment and is admitted as a surety insurer as defined in §995.120(a) of the California Code of Civil Procedure.
- .96 **Total Float Time** - The time difference between the earliest start date and the latest start date, or between the earliest finish date and the latest finish date, of Project activities. (Also sometimes referred to as "slack time" or "Total Float" or "Float")
- .97 **Warranty** - A Contractor's, Subcontractor's, Manufacturer's or material Supplier's promise or assurance, written or otherwise, that its Products and services provided meet industry (implied) or contractual (the requirements of the Contract Documents) standards of performance. (Also sometimes referred to as Warranty/Guarantee.)
- .98 **Work** - That which is constructed or done pursuant to the requirements of the Contract Documents to accomplish the Project including but not limited to the Providing all labor, materials and equipment.

1.02 REPRESENTATIONS, CORRELATION AND INTENT

- .A By entering into the Agreement, Contractor represents it is familiar with the Project Site conditions including the availability of labor and materials in the local geographic area where the Work is to be performed and has correlated personal observations with requirements of the Contract Documents.
- .B The Contract Documents are complementary, and what is required by any one is as binding as though required by all. The intent of the Contract Documents is to include all labor, materials, equipment, and all other items necessary for the proper execution and completion of the entire Work. Unless otherwise specifically noted, Contractor

must Provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work.

- .C Work not explicitly depicted or mentioned in any portion of the Contract Documents is nevertheless required if it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations having well known technical, trade or industry meanings are herein in accordance with such recognized meanings.
- .D The organization of the Project Manual into Articles, Parts, Sub-Parts, Divisions, Sections, and Paragraphs and the arrangement of Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers or in establishing the extent of Work to be performed by any Subcontractor or trade.
- .E The Contract Documents prescribe the details for the construction and completion of the Work that Contractor undertakes to perform in accordance with the terms of the Contract.
- .F Scale Drawings, full-sized Drawings and Project Manual are intended to be complementary and to agree.
- .G Owner, whose decision is final, will clarify questions regarding the interpretation of the Contract Documents.
- .H Any Work called for by the Drawings and not mentioned in the Project Manual, or vice versa, is to be Provided as though fully set forth by both.
- .I Where not specifically stated otherwise, all Work and materials necessary for each unit or item of Work, including special construction for any specific brand or shape of materials called for, even though only briefly mentioned or indicated, must be Provided and Installed fully and completely as part of the Work of this Contract.
- .J In the event of any difference, discrepancy, inconsistency, error, omission, or other apparent conflict within the Contract Documents and/or with actual field conditions, Contractor must immediately notify Owner in writing, requesting clarification. If Contractor is aware the Work is affected and proceeds with the Work without instructions from Owner, Contractor must make good any resultant damage or defects without additional cost to the Owner.
- .K Contractor must not assume that one element in the Contract Documents has preference over another, except as provided in General Conditions.1.05, "Conflicts in the Contract Documents." In the event that two or more Products or methods are specified for a particular application, Contractor must furnish the most suitable quality or method, as determined by Owner.
- .L When standards of the Federal Government, trade societies, trade associations, or similar commercial standards are referred to in the Contract Documents by specific date of issue, these standards, including amendments or supplements, will be considered as part of the Contract Documents. When such references do not bear date of issue, the current published edition, including amendments or supplements, as of the date Contractor solicited bids during the RFP will be considered as part of the Contract Documents.
- .M Contractor is responsible for the complete and proper execution of the Work as described in, and as reasonably implied by, the Contract Documents. Contractor is solely responsible for ensuring that all Subcontractors, Suppliers, Manufacturers, etc., working with any portion of the Contract Documents are fully aware that all the Contract Documents apply to their Work, although the other portions of the Contract Documents may not be fully reproduced or repeated therein.

- .N Contractor must be skilled and experienced in the understanding and use of construction documents. Contractor carefully reviewed the Contract Documents for this Project and carefully examined the Project Site of the Work before entering into this Contract. Unless Contractor has otherwise informed Owner in writing before execution of the Agreement, Contractor warrants that it found all Contract Documents free of ambiguities and sufficient for bidding and construction purposes, and that from its own observations, Contractor has satisfied itself as to the nature and locations of the Work, the character, quality and quantities of materials and labor required, the difficulties likely to be encountered, and all other items that may affect its performance.
- .O Contractor, having assured itself of the adequacy of the Contract Documents and the accuracy of its Proposal, agrees to execute the Work within the Contract Time(s) and Contract Sum established in the Contract Documents. Contractor further understands that construction will likely involve some clarifications and changes to the Contract Documents and modifications in Contractor's planned work procedures. Contractor acknowledges that these are expected conditions of construction.
- .P The Drawings, Project Manual and other Contract Documents issued by Owner and copies furnished to the Contractor, are for use solely with respect to the Work of this Project. They are not to be used by the Contractor or any Subcontractor, Sub-Subcontractor or Supplier on other projects, nor for additions to this Project outside the scope of the Work without the specific written consent of Owner. The Contractor, Subcontractors, Sub-Subcontractors and Suppliers are granted permission to use and reproduce applicable portions of the Drawings, Project Manual and other Contract Documents issued by Owner appropriate to, and for use in, the execution of their Work pursuant to the requirements of the Contract Documents.
- .Q Paragraphs titled "Section Includes" are not intended to "scope" the Section nor imply a trade responsibility, but serve merely as a listing of significant items in the Section to allow the reader to quickly assess the Section content. Similarly, Paragraphs titled "Related Sections" or "Related Requirements" or "Related Documents" are not intended to coordinate the Contractor's work, but merely indicate where certain other significant items that may be related to the Work of the Section are specified.
- .R Unless otherwise indicated, **highlighted**, **emboldened**, *italicized*, or underlined text is not indented to imply special significance but serves merely as an aid to the reader to distinguish or quickly reference selected text.
- .S By submitting a Proposal, Contractor represents to the Owner that Contractor has verified the availability of Named Products and the Named Products including sole source Products are currently available. Contractor also represents that Named Products, including sole source Products can be obtained, delivered, and installed within the Contract Time(s) stated in the Contract Documents.

1.03 ORGANIZATION OF PROJECT MANUAL

- .A The Project Manual is organized in general compliance with the Construction Specifications Institute (CSI) MasterFormat. The names of the various levels of the MasterFormat hierarchy as used in this Project Manual are specifically defined as follows:
 - .1 Contracting Requirements
 - .a Document
 - .b Article
 - .c Part
 - .d Sub-Part(s)
 - .2 Division (1-16)

- .a Section
 - .b Part
 - .c Paragraph(s)
- .B Hierarchal levels below Sub-Part or Paragraph are referenced as Sub-Part or Paragraph.
- .1 Example 1: “General Conditions - Sub-Part 6.08.B.1.a” or “General Conditions.6.08.B.1.a” or “00700.6.08.B.1.a” refer to:
 - .a General Conditions (General Conditions)
 - .b Article 6 (Changes in the Work)
 - .c Part 8 (Force Account Work)
 - .d Sub-Part B (Labor)
 - .e Sub-Part .1.a (Actual Wages)
 - .2 Example 2: “Division 1 - Section 01320.3.03.C.4” or “Section 01320.3.03.C.4” or “01320.3.03.C.4” refer to:
 - .a Division 1 (General Requirements)
 - .b Section 01320 (Construction Progress Documentation)
 - .c Part 3 (Execution)
 - .d Paragraph 03 (Schedule Orientation Meeting)
 - .e Paragraph .C.4 (Resource loading)

1.04 CAPITALIZATION AND CAPTIONS

- .A Terms capitalized in the Contract Documents include those that are:
 - .1 Specifically defined; or
 - .2 Titles and captions of Documents or numbered Articles, Parts, Sub-Parts, Sections, or Paragraphs; or
 - .3 Titles of other documents.
- .B The titles and captions of the Documents, Articles, Parts, Sub-Parts, Sections, or Paragraphs are for convenience only and will not be deemed relevant in resolving any question of interpretation or construction of any such Documents, Articles, Parts, Sub-Parts, Sections, or Paragraphs.

1.05 CONFLICTS IN THE CONTRACT DOCUMENTS

- .A The Contract Documents govern in the following order:
 - .1 Addenda will govern over the RFP Documents to the extent specifically noted; subsequent Addenda will govern over prior Addenda only to the extent specified.
 - .2 The General Conditions govern over the General Requirements and Technical Specifications.
 - .3 Modifications last in time are first in precedence, in accordance with the governing order specified above.
- .B Resolution of conflicts in the Contract Documents
 - .1 In case of conflict between the Drawings and the Project Manual, the Drawings will govern in matters of quantity, the Project Manual in matters of quality. In case of conflict within the Drawings involving quantities or within the Project Manual involving quality, the greater quantity and the higher quality must be provided.
 - .2 In the case of conflict within the Drawings, the following will govern:
 - .a Schedules, when identified as such, will govern over all other portions of the

Drawings.

- .b Specific notes will govern over General Notes, all other notes, and all other portions of the Drawings, except schedules described in the preceding clause.
- .c Figured dimensions will have precedence over undimensioned items.
- .d Larger scale Drawings will govern over smaller scale Drawings (for example, $\frac{1}{4}" = 1'-0"$ governs over $\frac{1}{8}" = 1'-0"$).
- .e Detail Drawings govern over standard plates included in the Project Manual.

.C Omissions

- .1 If the Contract Documents are not complete as to any minor detail or required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists accepted trade standard for good and workmanlike construction, such detail will be deemed to have been included by the requirements of the Contract Documents in accordance with such standard.

1.06 REQUESTS FOR INFORMATION

.A Requests for Information (RFI): If the Contractor discovers conflicts, omissions, or errors in the Contract Documents, or has any questions concerning interpretation or needs clarification of Contract Documents, the Contractor must immediately submit to the Owner, in writing, an RFI that complies with the following requirements:

- .1 All RFI's, whether by the Contractor, a Subcontractor or Supplier at any tier, must be submitted by the Contractor to the Owner.
- .2 RFI's must be numbered sequentially and be presented in the format furnished by or acceptable to the Owner's Project Manager. The Contractor must append an alpha character to the initial RFI number to identify RFI resubmissions. (The first iteration of follow-up RFIs starts by appending an "A", the second iteration would be assigned a "B", and so on for as much follow-up iteration as are necessary to resolve the issue.)
- .3 The Contractor must clearly and concisely set forth the issue for which interpretation or clarification is sought, indicating Specification Division, Section, Part, and Paragraph number, or the Document, Article, Part, and Sub-Part numbers, Contract Drawing number, activity number from the Official Progress Schedule, details or other pertinent items involved, and state why a response is required.
- .4 Each RFI must be limited to one issue requiring response from the Owner.
- .5 In each RFI the Contractor must set forth its own interpretation or understanding of the requirements, along with reasons why it has reached such an understanding.
- .6 RFIs must be submitted in a timely manner in order that they may be adequately researched and answered before the response affects any Critical Path Activity of the Work.
- .7 All RFIs must be submitted by the Contractor to the Owner before 3:00p.m. RFIs received after 3:00p.m. will be date stamped as received the following workday.
- .8 Responses to RFIs will be issued by the Owner's Project Manager within 14 Days unless the Owner notifies the Contractor in writing that a response will take longer. The 14 Day response time will begin when the RFI is received and date stamped as received by the Owner.
- .9 RFI responses will not change any requirement of the Contract Documents.

- .10 Should the Contractor contend that a response to a RFI causes a change to the requirements of the Contract Documents, the Contractor must, before proceeding, give written notice to the Owner indicating that the Contractor considers the response to the RFI to be a change to the requirements of the Contract Documents. Failure to give such written notice within seven (7) Days of receipt of the Owner's response to the RFI waives the Contractor's right to seek an adjustment in the Contract Time or Contract Sum according to General Conditions - Article 6, "Changes in the Work", for costs or time incurred in connection with the Work described in the RFI.

1.07 ADDITIONAL DETAILED INSTRUCTIONS

- .A Owner may furnish additional detailed written and/or graphic instructions to explain the Work more fully, and such instructions become a part of the requirements of the Contract Documents. Should Additional Detailed Instructions, in the opinion of the Contractor, constitute Work in excess of the requirements of the Contract Documents, the Contractor must submit written notice to the Owner within seven (7) Days following receipt of such instructions, and in any event prior to commencement of the Work thereon. If in the Owner's judgment the Additional Detailed Instructions constitute Work in excess of the requirements of the Contract Documents, the Additional Detailed Instructions will be revised or the extra Work will be added by Change Order.

END ARTICLE 1 of GENERAL CONDITIONS

ARTICLE 2 — ADMINISTRATION OF THE CONTRACT

2.01 AUTHORITY OF OWNER'S AUTHORIZED REPRESENTATIVE

- .A Owner's Authorized Representative will decide all questions regarding the interpretation and fulfillment of the Contract, the prosecution, progress, quality and acceptability of Work and materials; will implement and enforce decisions by issuing Orders, Directives, instructions and notices, and will Approve all changes in Contract Sum and Contract Time.

2.02 INFORMATION AND/OR SERVICES FURNISHED BY OWNER

- .A Information and/or services required of Owner will be furnished by Owner in accordance with the Contract Documents.
- .B The Owner will furnish the Contractor with copies of the Drawings and Project Manuals as specified in the Contract Documents.

2.03 ADMINISTRATION OF THE CONTRACT

- .A The Owner will administer the Contract during construction and during the Warranty/Guarantee period.
- .B Unless otherwise specified in the Contract Documents, the Owner will not control the construction means, methods, techniques, sequences, procedures, safety precautions and programs in connection with the Work.
- .C The Owner is not responsible for the Contractor's failure to carry out the Work in accordance with the requirements of the Contract Documents.
- .D The Owner is not responsible for acts, errors, or omissions of the Contractor, a Subcontractor, Sub-subcontractor or anyone directly or indirectly employed by any of them, or of any other persons performing portions of the Work.
- .E Unless otherwise specified in the Contract Documents or when the Owner's Project Manager has specifically authorized direct communications with its Consultants, Contractor communications by and with the Owner's Consultants must be through the Owner's Project Manager.
- .F Subcontractors, Sub-Subcontractors and Supplier communications with the Owner or its Consultants must be through the Contractor.
- .G Unless otherwise specified in the Contract Documents or when the Owner's Project Manager has specifically authorized direct communications with other contractors working at the Project Site, Communications by and with separate contractors must be through the Owner's Project Manager.
- .H If the Owner observes Work that appears non-compliant with the requirements of the Contract Documents, the Owner has the authority to reject the Work.
- .I Whenever Owner considers it necessary or advisable for implementation of the intent of the Contract Documents, Owner may require additional inspection and testing of the Work, whether or not such Work is Fabricated, Installed, or completed.
- .J The Design Professional of Record will review Contractor's submitted Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. Review of Submittals is not conducted for determining the accuracy and completeness of other details, such as dimensions and quantities, nor for substantiating instructions for installation or performance of equipment or systems, all of which are and remain the responsibility of the Contractor.

- .K Owner, Owner's Consultants, and Owner's Project Inspector as appropriate, will conduct periodic quality assurance inspections to determine the Contractor's compliance with the requirements of the Contract Documents.
- .L Unless otherwise stated in the Contract Documents, Contractor must sequentially number all Contractor correspondence to the Owner in a format acceptable to the Owner's Project Manager.

2.04 BREACHES, DEFAULTS AND TERMINATION FOR CAUSE

- .A If Contractor fails to begin delivery of material and equipment, to commence Work or a designated portion of the Work within the time specified, to maintain the rate of delivery of material, to execute the Work or designated portion of the Work in the manner and at the specified location(s), or fails to maintain a work program which will ensure Owner's interest, or, if Contractor is not carrying out the intent of the Contract, Owner's written notice may be served upon Contractor and Surety on its faithful performance bond demanding satisfactory compliance with the requirements of the Contract Documents.
- .B If the Owner deems that the Contractor has persistently or repeatedly refused or failed to supply an adequate workforce, or material of proper quality, or otherwise refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure its completion within the Contract Time(s) specified in the Contract Documents or authorized extension thereof, or if Contractor should fail to make prompt payment to Subcontractors or Suppliers, or persistently disregards laws, ordinances, or Owner's written Directions, or has failed in any other respect to prosecute the Work with the diligence and resources required by the Contract Documents, the Owner may, after providing at least 7 Days prior written notice to the Contractor identifying the defaults to be remedied, and the Contractor's continued failure to remedy the default(s):
 - .1 provide any such labor and/or materials required to perform the Work or designated portion of the Work and deduct the cost from any money due or to become due to the Contractor; or
 - .2 if the Owner considers that the default(s) constitute sufficient basis for such action, provide the Contractor and the Contractor's Sureties with an additional 7 Days written notice, that if the defaults are not remedied, the Contractor's control of the Work or designated portion of the Work will be terminated.
 - .3 If the Owner makes a claim for performance under the Performance Bond, the Performance Bond Surety may not tender the Contractor to complete the Work, but must tender an alternative contractor licensed and qualified to complete the Work.
- .C Should Owner exercise its rights to terminate Contractor's control of the Work or designated portion of the Work as noted in this General Conditions.2.04, "Breaches, Defaults, and Termination for Cause", Owner may, without prejudice to any other rights or remedies of Owner and subject to any rights or obligations of the Surety:
 - .1 terminate Contractor's control of the Work or designated portion of the Work;
 - .2 take possession of the Project Site or designated portion of the site and all or any of the Contractor's materials, equipment, tools, appliances, and construction equipment and machinery owned by the Contractor as may be on the site and necessary for the performance of the Work or designated portion of the Work;
 - .3 accept assignment of any and/or all Subcontractor, Supplier, and/or rental agreements; and/or
 - .4 complete the Work or designated portion of the Work by whatever reasonable method(s) Owner may deem expedient and appropriate.

- .D If Owner terminates the Contractor's control of the Work or portion of the Work for reasons provided in this General Conditions.2.04, "Breaches, Defaults, and Termination for Cause", the Contractor will not be entitled to receive any further payments until the entire Work or designated portion of the Work is completed and Accepted. Contractor and its Sureties are liable to Owner for any additional cost of completing the Work or designated portion of the Work, including compensation for additional managerial, administrative and consulting services, plus the assessment of Liquidated Damages assessed pursuant to General Conditions.7.03, "Liquidated Damages."
- .E If the costs incurred by Owner as the result of termination of Contractor's control of the Work or a portion of the Work pursuant to this General Conditions.2.04, "Breaches, Defaults, and Termination for Cause", exceed the unpaid Contract Sum, the Contractor must pay the difference to Owner.
- .F Upon Completion and Acceptance of the entire Work, Contractor is entitled to the return of all unused materials and its equipment, tools, and appliances, except that Contractor will have no Claim on account of usual and ordinary depreciation, loss, wear and tear.
- .G If Owner terminates Contractor's control of the Work for cause, and if it is later determined that the termination was wrongful, such default termination will automatically be converted to and be treated as a termination for convenience. In such event, Contractor will be entitled to receive only the amounts payable pursuant to General Conditions.2.05, "Termination for Owner's Convenience", and Contractor specifically waives any Claim for any other amounts or damages, including, but not limited to, any Claim for consequential damages or lost profits.

2.05 TERMINATION FOR OWNER'S CONVENIENCE

- .A Owner reserves its right to terminate this Contract or any part thereof, when conditions encountered during the Work make it impossible or impracticable to proceed, or when Owner is prevented from proceeding with the Contract by act of God, by law, national emergency, or by official action of a public authority, or for its sole convenience, upon written notice to Contractor. In the event of such termination, the Contractor must immediately suspend all Work hereunder and must immediately cause any and all of its Subcontractors, Sub-Subcontractors and Suppliers to cease work. The Contractor will not be paid for any work performed or costs incurred that reasonably could have been avoided.
- .B The Contractor will be paid in accordance with the provisions of General Conditions.8, "Payments", except that the amount due the Contractor will be based upon the Owner's estimate of the Work completed, or acceptable materials provided but not used, to the date of suspension of the Work, less any amounts required to be withheld pursuant to General Conditions.8, "Payments", and less any prior payment(s) made to, or on the account of the Contractor.

2.06 CONTRACTOR'S RIGHT TO SUSPEND, STOP, OR TERMINATE THE WORK

- .A Contractor may upon fifteen (15) Days' written notice to Owner, stop Work or terminate the Contract and recover from Owner payment for all Work executed to date of termination if:
 - .1 The Work is stopped pursuant to an order of any court or other public authority for a period of three (3) months, through no act or fault of Contractor or of anyone employed by Contractor; or,
 - .2 Owner, without justification or good cause, fails to pay Contractor within sixty (60) Days after a complete payment application has been received and Approved by Owner's Authorized Representative.

- .B Work stoppage or termination by Contractor in accordance with this General Conditions.2.06, "Contractor's Right to Suspend, Stop, or Terminate Work", does not excuse or relieve Contractor from any of its obligations pertaining to Work in place or completed.
- .C The provisions of this General Conditions.2.06, "Contractor's Right to Suspend, Stop, or Terminate Work", are in addition to all other rights and remedies available to Contractor by law.
- .D Contractor does not have the right to suspend the Work without Owner's written approval, and must resume Work promptly when notified by Owner.

2.07 SUSPENSION BY OWNER FOR CONVENIENCE

- .A Owner's Authorized Representative may Order Contractor in writing to suspend, delay or interrupt all or any part of the Work for such periods of time as Owner's Authorized Representative may determine to be appropriate for Owner's convenience or any other reason.
- .B Contractor must immediately comply with Owner's written Order to suspend, delay or interrupt Work or any part thereof.
- .C If it should become necessary to suspend Work for an indefinite period:
 - .1 Contractor must store all materials in such manner that they will not be or become an obstruction;
 - .2 Contractor must take every precaution to prevent damage or deterioration of the Work performed;
 - .3 Contractor must Provide suitable drainage and erect temporary structures where necessary to protect the Work;
 - .4 Contractor must take all prudent measures to mitigate costs associated with suspension of the Work.
- .D An adjustment will be made for increases in the cost and time for performance of the Work, including profit on the increased cost of performance caused by suspension, delay or interruption. No adjustment will be made to the extent that:
 - .1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
 - .2 an equitable adjustment is made or denied pursuant to another provision of the Contract Documents.

2.08 ASSIGNMENT

- .A The Contractor binds the Contractor, the Contractor's partners, successors, assigns and legal representatives to Owner in respect to covenants, agreements and obligations contained in the Contract Documents. Contractor must not assign the Contract as a whole or in part without written consent of the Owner. If Contractor makes such an assignment without Owner's written consent, Contractor will remain legally responsible for all Contractors' obligations in the Contract Documents.
- .B No assignment by the Contractor will be valid unless it contains a provision that the funds to be paid to the assignee pursuant to the assignments are subject to prior claims for payment for services rendered or material supplied for performance of the Work called for pursuant to the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such materials.
- .C Owner will not consent to an assignment that would relieve the Contractor or the Contractor's Surety(s) of their responsibilities pursuant to the Contract.

- .D Subcontracts, purchase orders, and rental agreements entered into by Contractor must contain provisions permitting assignment to Owner, and providing for termination pursuant to the terms of this Agreement. To the extent that Owner elects to take legal assignment, the Contractor must execute and deliver all documents and take all such steps, including the legal assignment of such contracts and exercise other contractual rights of the Contractor, as Owner may require for the purpose of fully vesting in Owner the rights and benefits of the Contractor pursuant to such contracts.
- .E The Contractor may assign moneys due or to become due pursuant to the Contract, through an amendment to the Contract. Any assignment of moneys earned by the Contractor is subject to all proper withholdings and Retention in favor of Owner provided for in the Contract Documents. All moneys withheld, whether assigned or not, are subject to being used by Owner to the extent permitted by law, for the Completion of the Work in the event that the Contractor is in default of the Contract.

2.09 NOTICE

- .A Any notice from one party to the other must be dated and signed by the party giving such notice or by a duly authorized representative of such party. No notice is effective for any purpose unless served in the following manner:
 - .1 If the notice is provided to Owner, it must be by personal delivery to Owner's Authorized Representative or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to the Owner at the address stated in the Contract Documents, first class postage prepaid.
 - .2 If the notice is provided to Contractor, it must be by personal delivery thereof to Contractor, or to Contractor's Authorized Representative at the Project Site, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to Contractor at its regular place of business or at such other address as may have been established for the conduct of the Work, first class postage prepaid.
 - .3 If the notice is provided to the Surety or any other person, by personal delivery to such Surety or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to such Surety or person at the address of such Surety or person as stated in the Bond documents.
 - .4 Deposit of notice in the United States mail will be deemed the date of receipt thereof.

2.10 AUDITS AND ACCESS TO RECORDS

- .A The Contractor must maintain all electronic records, books, records, documents, and other evidence directly pertinent to the performance of the Work in accordance with generally accepted accounting principles and practices consistently applied. The Contractor must also maintain all financial information and data used by the Contractor in the preparation or support of any cost submission, including the Contractor's Proposal estimate, any Change Order, Dispute, Claim, Pay Application, or other request for equitable adjustment. Owner and its representatives will have access upon 24 hours advanced written notice, at all times during normal business hours, to all Contractors books, summary reports, records, accounts, estimates, documents, detailed financial information, certified payroll records, and all other relevant information and documentation for the purposes of inspection, audit, and copying. The Contractor will, at no cost to Owner, provide proper facilities for such access, inspection and copying purposes.
- .B Contractor agrees to include and make the requirements of General Conditions - Sub-Part 2.10.A applicable to all Subcontracts and Sub-subcontracts or purchase orders in excess of \$10,000, at any tier.

- .C Audits conducted pursuant to General Conditions - Sub-Part 2.10.A will be in accordance with general accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.
- .D The Contractor agrees to provide all information and reports resulting from access to records to Owner and other affected parties.
- .E Records must be maintained and made available during the performance of the Work and for five (5) years after Final Payment, and until final settlement of all Disputes, Claims, or litigation, whichever occurs later. In addition, those records which relate to any portion of this Contract, to any Change Order, to any Dispute, to any litigation, to the settlement of any Claim arising out of such performance, or to the cost or items to which an audit exception has been taken, must be maintained and made available until Final Payment or final resolution of such Dispute, litigation, Claim, or exception, whichever occurs later.
- .F The right of access provisions of General Conditions - Sub-Part 2.10.A applies to all financial records pertaining to this Contract:
 - .1 to the extent the records pertain directly to Contract performance;
 - .2 to the extent required for verification of the costs incurred where such costs are the basis for billings pursuant to this Contract including Change Orders;
 - .3 to the extent there is any indication of violation of the California False Claims statute or that fraud, gross abuse, or corrupt practices may be involved;
 - .4 if the Contract is terminated for default or convenience.
- .G Access to records is not limited to the required retention periods. Owner's Authorized Representative or designee will have access to records at any reasonable time for as long as the records are maintained.

2.11 GOVERNING LAW

- .A This Contract will be interpreted and enforced in accordance with the laws of the State of California. Pursuant to California Code of Civil Procedure §394, proper venue for legal action arising out of this Agreement is in the County of Santa Clara. Both parties hereto agree that personal and subject matter jurisdiction is proper in Santa Clara County, California.

END ARTICLE 2 of GENERAL CONDITIONS

ARTICLE 3 — CONTRACTOR'S RESPONSIBILITIES

3.01 GENERAL RESPONSIBILITIES

- .A Contractor must supervise and direct the Work, using its best skill and attention.
- .B Contractor is solely responsible for all construction means, methods, techniques, operations, sequences and procedures, and for coordinating all portions of the Work.
- .C Contractor is responsible to Owner for the acts and omissions of Contractor's employees, Subcontractors, Suppliers, their agents and employees, and all other persons performing any Work pursuant to a contract with Contractor.
- .D Contractor will not be relieved from its obligations to perform the Work in accordance with the requirements of the Contract Documents, either by the activities or duties of Owner or Owner's Consultants in their administration of the Contract, or by inspections, tests, acceptance, or approvals required or performed by persons other than Contractor.
- .E Contractor must at all times enforce good order and discipline among its employees and must not employ on the Work anyone not skilled in the task assigned.
- .F Contractor warrants to Owner that all materials and equipment provided pursuant to the Contract are new unless otherwise specified, and that all Work is of good quality, free from faults and defects and in conformance with the requirements of the Contract Documents. All Work not conforming to these requirements, including substitutions not properly accepted and authorized by Owner's Authorized Representative may be considered defective. Upon request at any time, Contractor must furnish evidence, satisfactory to Owner, demonstrating the quality of installed materials and equipment.
- .G Unless otherwise provided in the Contract Documents, the Contractor must provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- .H Contractor has charge and care of all Work and all materials to be used therein (including materials for which Contractor has received partial payment or materials which have been furnished by Owner) until Acceptance of the Work. Contractor bears the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the performance or nonperformance of the Work, except as otherwise expressly provided.
- .I Contractor must rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the Work or the materials by any cause before Completion and Acceptance.
- .J Contractor must Provide suitable drainage and erect such temporary structures as are necessary to protect the Work or materials from damage. Suspension of the Work from any cause whatever will not relieve Contractor of responsibility for the Work and materials as herein specified.
- .K Contractor must properly store materials which have been partially paid for by Owner or which have been furnished by Owner. Such storage by Contractor is on behalf of Owner who shall at all times be entitled to the possession of such materials. Contractor must promptly return such materials to the Project Site when requested. Contractor must not dispose of any of the materials so stored except upon Owner's written authorization.

3.02 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE CONTRACTOR

- .A The Contractor must carefully study and compare the requirements of the Contract Documents with each other and must advise the Owner, in writing, of any errors, inconsistencies or omissions discovered. If the Contractor performs any Work knowing it involves a recognized error, inconsistency or omission in the requirements of the Contract Documents, without such notice to the Owner, the Contractor assumes responsibility for such performance and will bear the cost for correction.
- .B The Contractor must take field measurements and verify field conditions and must compare such field measurements, conditions and other related information known to the Contractor with the requirements of the Contract Documents before beginning the Work.
- .C When the Work involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, the Contractor must promptly, and before such conditions are disturbed, notify the Owner in writing of:
 - .1 Material that the Contractor believes may be material that is hazardous waste, as defined in §25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with applicable laws.
 - .2 Subsurface or latent physical conditions at the site differing from those indicated.
 - .3 Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents.
- .D Owner will respond to Contractor's notice pursuant to General Conditions.6.04
 - .1

3.03 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

- .A The Contractor must maintain at the Project Site one (1) copy of the Record Documents including, but not limited to Drawings, Project Manual, Addenda, Change Orders, Requests for Information, Field Modifications, and Additional Detailed Instructions.
- .B The Contractor must maintain the Record Documents in good and current condition and post all changes and clarifications to the Contract Documents on a daily basis as they occur.
- .C The Contractor must mark the Record Drawings and Project Manual to record Addenda, Change Orders, Requests for Information, Field Modifications, Additional Detailed Instructions, and actual field dimensions of installed Work.
- .D The Contractor must maintain a Record Project Manual in good order and indicate by marking in the appropriate section of the Project Manual, the selected product or material that was approved for incorporation in the Work.
- .E At least one (1) copy of all Owners accepted Shop Drawings, Product Data, Samples and similar Submittals must be maintained at the Project Site in good and current condition and made available to Owner upon request.
- .F The Contractor and each Subcontractor must prepare and maintain Daily Reports to document the progress of the Work. Daily Reports must be in a format prescribed or approved by the Owner's Project Manager and completely filled out on a daily basis. One (1) copy of each daily report must be submitted to Owner's Project Manager the following workday or as otherwise Directed by the Owner's Project Manager. The corresponding activity numbers from the Official Progress Schedule must identify Work activities on the Daily Reports. It is the responsibility of the Contractor to gather all daily reports and submit to Owner's Project Manager as one package.

- .G The Contractor and each Subcontractor must prepare and maintain incident reports to document unusual occurrences including but not limited to breaches of on-site security, altercations, vehicle or construction equipment accidents, and complaints from neighbors, etc. Incident reports must be in a format prescribed or approved by the Owner's Project Manager, completely filled out at or about the time of the occurrence of the incident. Three (3) copies of the incident report must be submitted to Owner's Project Manager within 24 hours of the incident. Information related to follow-up investigation(s) of the incident must be submitted to the Owner's Project Manager upon request.
- .H The Contractor and each Subcontractor must prepare accident reports to document all reportable accidents at the Project Site. Accident reports must be in a format prescribed or approved by the Owner's Project Manager, completely filled out at or about the time of the occurrence of the accident. Three (3) copies of the accident report must be submitted to Owner's Project Manager within 24 hours of the accident. Information related to follow-up investigation(s) of the accident must be submitted to the Owner's Project Manager upon request.
- .I The Contractor must arrange for the review or selection of any heavy or large material (or color) samples to be made at vendor shops or facilities and, after being suitably tested and accepted, must arrange for samples of the selected material (or colors) to be maintained at the job-site in a secure location for use during construction to verify the acceptability of materials and/or work.

3.04 ACCESS TO WORK

- .A The Contractor must provide Owner continuous access to the Work.

3.05 USE OF PROJECT SITE

- .A Contractor must confine operations at the Project Site to areas permitted by law, ordinances, permits and the Contract Documents, and must not unreasonably encumber the Project Site with any materials, equipment, temporary structures, or temporary measures.
- .B Contractor's employees, or others subject to the Contractor's control, are not permitted to reside on the Project Site in temporary living facilities.

3.06 WORKPLACE ENVIRONMENT

- .A The use or possession of alcohol, weapons, or illegal controlled substances by the Contractor, or others subject to the Contractor's control, on Owner property is prohibited.
- .B The Contractor must ensure and maintain a workplace environment free of personal harassment and intimidation.
- .C Conduct that creates an intimidating, hostile, or offensive workplace environment is prohibited. Such conduct includes, but is not limited to, the following:
 - .1 Verbal harassment, e.g., epithets, derogatory comments or slurs;
 - .2 Physical harassment, e.g., assault, impeding or blocking movement, gestures, staring, or any physical interference with normal work or movement;
 - .3 Visual forms of harassment, e.g., derogatory posters, letters, poems, graffiti, cartoons, or drawings.
- .D Unwelcome and unwanted sexual advances constitute sexual harassment that is prohibited. For example, requests for sexual favors and verbal or physical conduct of a sexual nature are prohibited.
- .E It is the responsibility of the Contractor to:

- .1 Inform its employees and Subcontractors that behavior that creates an intimidating, hostile, or offensive workplace environment is prohibited;
 - .2 Create a workplace environment that is free from harassment; and,
 - .3 Take corrective action to stop prohibited behavior/conduct.
- .F If in the opinion of the Owner's Authorized Representative, any employee of the Contractor or Contractor's Subcontractors violate the prohibitions of this General Conditions.3.06, "Workplace Environment", Contractor must immediately remove that person or Subcontractor from the Project upon Owner's request, and such person or Subcontractor must not be permitted to perform further Work on the Project Site.

3.07 SUPERVISION

- .A Prior to Contractor mobilization to the Project Site, Contractor must submit to the Owner in writing naming the Contractor's Authorized Representative who will have the authority to represent and act for Contractor at the Project Site. Communications provided to the Contractor's Authorized Representative will be as binding as if provided directly to the Contractor.
- .B In the event of promotion, turnover or transfer of the Contractor's Authorized Representative, Contractor will provide a replacement with an individual with at least comparable experience who is acceptable to the Owner. In the event replacement of Contractor's Authorized Representative is necessary, Contractor will provide Owner with a resume setting forth the qualifications of the proposed replacement. Owner may reject a designated replacement if Owner reasonably believes the proposed replacement does not possess the necessary experience.
- .C When Contractor is comprised of two (2) or more persons, firms, partnerships, or corporations functioning as a joint venture, Contractor must submit a letter to the Owner, before starting Work, stating the name of one (1) authorized representative who has the authority to represent and act for Contractor.
- .D Contractor's Authorized Representative must be present at the Work site at all times while any Work is in progress. When Work is not in progress and during periods when Work is suspended, the Contractor's Authorized Representative must nevertheless keep the Owner's Project Manager advised of their whereabouts and the whereabouts of the Contractor's site superintendents so that they may readily be reached and available for consultation at the Project Site at any time.
- .E Prior to Contractor mobilization to the Project Site, Contractor must submit to the Owner the telephone, cell phone, and/or pager numbers at which the Contractor's Authorized Representative can be reached at all times. In the event it is necessary for the Contractor's Authorized Representative to be absent from the Project Site, the Contractor's Authorized Representative will, except in the case of personal emergency, give written notice to the Owner's Project Manager designating an acting representative. The absence must not exceed 48 hours without prior written approval of the Owner's Project Manager.
- .F The Contractor must supervise and direct the Work. The Contractor is responsible for, and has control of, construction means, methods, techniques, sequences, procedures, safety precautions and programs in connection with the Work, and for coordinating the Work unless otherwise noted or specified in the Contract Documents.
- .G The Contractor is responsible for acts and omissions of the Contractor's employees, Subcontractors, Sub-Subcontractors or Suppliers and their agents and employees, and other persons performing portions of the Work pursuant to a direct or indirect contract with the Contractor or at its direction.

- .H If any person or Subcontractor working at the direction or subject to the control of the Contractor refuses or fails to carry out a properly given Order by the Owner's Authorized Representative or is, in the Owner Representative's opinion, incompetent, disorderly, or acting in an improper manner, Contractor must immediately remove that person or Subcontractor from the Project upon Owner's written request, and such person or Subcontractor must not be permitted to perform further Work on the Project.

3.08 DISRUPTION OF OWNER'S NORMAL OPERATIONS

- .A Contractor must give timely advance notice to Owner of Work that is likely to be disruptive to Owner's normal operations at or near the Project Site. If Contractor does not so advise Owner, Owner has the right to temporarily suspend Contractor's Work or to require Contractor to modify its Work operations to eliminate any disruption, and Contractor is not entitled to any adjustment in the Contract Sum or Contract Time for any delay or additional costs associated therewith.

3.09 LABOR

- .A Hours of Labor
 - .1 Eight hours labor constitutes a legal day's work. Contractor shall forfeit as a penalty to Owner, \$25.00 for each worker employed in the execution of the Contract by Contractor or any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one calendar week in violation of the provisions of the California Labor Code, and in particular, §1810 through §1815 thereof, except that work performed by employees of Contractor or any Subcontractor in excess of eight (8) hours per day, or forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day, or forty (40) hours per week, at not less than one and one-half (1-1/2) times the basic rate of pay, as provided in §1815.

3.10 SATURDAY, SUNDAY, HOLIDAY, AND OVERTIME WORK

- .A Unless otherwise required in the Contract Documents, no construction Work shall be done on Saturdays, Sundays or holidays recognized by the Owner and no Work shall be performed outside of Normal Hours Of Work without the prior consent of the Owner's Project Manager.
- .B Whenever the Contractor intends to perform overtime work or work on Saturday, Sunday, or a holiday recognized by the Owner, the Contractor must request permission by giving written notice to the Owner's Project Manager at least 2 workdays prior to performing the Work.
- .C Unless specifically provided or required by the Contract Documents, Contractor shall receive no additional compensation for any overtime work (i.e., work in excess of: Eight (8) hours in any one Day; forty (40) hours in any one calendar week; or evening, night, legal holidays observed by Owner, or weekend work).
- .D Prior to the start of such Work, when necessary, the Contractor must arrange with the Owner for the continuous or periodic inspection of the Work.
- .E Should the Contractor find it necessary in order to complete the Work according to the Official Progress Schedule to perform certain of Contractor's operations on Saturdays, Sundays, holidays or during other overtime hours, these operations will be performed as part of the Work included in the Contract Sum and do not constitute a basis for additional compensation. At the Owner's option the Contractor may be required to compensate the Owner for inspection, testing, security, or management costs during Work performed outside of Normal Hours of Work. Owner has the right and authority to deduct the cost of all such inspections, testing, security, or

management costs from any payments due or that become due Contractor.

- .F The Owner has the right to Order Contractor to perform Work outside Normal Hours Of Work. Owner will issue such Order in writing. If the Owner Orders the Contractor to perform Work outside Normal Hours Of Work, the Contractor must make all arrangements to supply an adequate Work force for the task to be accomplished and will be compensated for the premium portion of the wages paid, plus labor burdens applicable to the premium portion only of the wages paid. Contractor must submit copies of Contractor's payrolls indicating the premium wages actually paid, and the Owner will issue a Change Order to reimburse the Contractor for Contractor's actual costs only. Allowable equipment costs are only the cost of added equipment mobilized to the site to accomplish the Work performed outside Normal Hours Of Work.

3.11 NORMAL HOURS OF WORK

- .A Normal Hours of Work for Contractor's operations, which are located within city limits, must comply with city ordinances or requirements of the city. Contractor's operations in the County's unincorporated areas or areas which border a city, town or other county must comply with requirements of Santa Clara County or requirements adopted by other jurisdictions, whichever are more stringent. In case of conflict between the requirements of a city, the County, and the requirements of the Contract Documents, the most restrictive requirements will govern.

3.12 ORDER OF WORK

- .A Contractor must follow any sequence of operations required by the Contract Documents.
- .B Full compensation for conforming to such requirements will be considered as included in the prices paid for the various Contract items of Work and no additional compensation will be allowed therefore.

3.13 CLEANUP

- .A Contractor must continuously keep the Project Site and surrounding areas free from waste materials and/or rubbish caused by its operations or rubbish from any source that accumulates within the Project Site and any other area designated by the Owner's Project Manager for use by the Contractor.
- .B Contractor must, before certifying that the entire Work of the Project is complete and/or requesting Milestone Completion inspection, clean material storage sites and all ground occupied or affected in connection with the Work or designated portion of the Work, and must leave all parts of the Project in a neat and presentable condition satisfactory to Owner's Project Manager.
- .C Upon completion of the Work or any designated part thereof, Contractor must promptly remove all its waste materials, rubbish and debris, and all its tools, construction equipment, machinery and surplus materials from the Project area or the completed part.
- .D If the Contractor fails to clean up as required by the Contract Documents, Owner may do so and the cost thereof will be charged to the Contractor and deducted from progress payments due or to become due to the Contractor.

3.14 TRANSPORT/DISPOSAL OF MATERIAL OUTSIDE PROJECT AREA

- .A Contractor is responsible for making all arrangements and paying all costs for recycling and disposal of materials outside the Project area.

- .B When any material is to be transported or disposed of outside the Project area, at other than a public disposal/recycling site, Contractor must first obtain a written permit from the property owner of the proposed site, and furnish Owner said permit or certified copies thereof together with a written release from the property owner absolving Owner from any and all responsibility in connection with the disposal of said material on said site. Before any material is disposed of on said site, Contractor must obtain written permission from the Owner to dispose of the material at the location designated in said permit.
- .C Disposal of Hazardous Materials must comply with all legal requirements, including but not limited to containerization, labeling, manifesting, transportation, disposal site, and use of properly trained personnel. No later than 15 Days after Contractor's request for Final Inspection, Contractor must submit copies of all Hazardous Waste Manifests signed by Toxic Substances Disposal Facilities ("TSDF's") and certificates of disposal, to prove that Contractor has legally disposed of such materials. Submit four (4) copies of each manifest.
- .D Contractor will maintain records of material recycled and disposed of, including dump site tickets.

3.15 HAZARDOUS MATERIALS

- .A Contractor must comply with all Federal, State, County and local laws, statutes, ordinances and other regulations covering the use, storage, transportation and disposal of any Hazardous Materials on the Project. Contractor must obtain all permits and pay all fees and taxes for all services and materials required to perform the Project.
- .B The term "Hazardous Materials" as used herein means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace of the environment.
- .C Prior to starting Work, Contractor must submit to Owner three (3) copies of a list of all Hazardous Materials expected to be used on the Project. Contractor must keep a copy of the list at the Project Site. This list must include but not be limited to any cleaners, solvents, paints or explosive charges used in the Work. Contractor must submit one (1) copy of OSHA Form 20 – Material Safety Data Sheet ("MSDS") for each material listed and must advise every person at or near the Project Site of these materials, of proper handling, and of proper action in case of accident or exposure.
- .D Contractor must safely contain and store all its Hazardous Materials, and in the event of spill or discharge, must immediately notify all required Federal, State, County and local agencies including the fire department. Contractor must protect personnel from exposure and provide treatment as necessary.
- .E Contractor must immediately advise Owner of any potentially Hazardous Materials encountered at the Project Site and must take all necessary action to prevent exposure of personnel until the material is identified and proper action can be taken.
- .F Contractor must not store or use any Hazardous Materials near air intakes or doors and windows serving persons on or off the Project Site without proper protection and safeguards to prevent exposure.
- .G Contractor must exercise all required precautions and safeguards in the storage, use and disposal of Hazardous Materials. Nothing in this General Conditions.3.15, "Hazardous Materials", relieves Contractor of responsibility for compliance with all applicable laws and statutes, or other provisions of the Contract, particularly Contractor's responsibility for damage and preservation of life and property

3.16 SAFE USE OF PESTICIDES

- .A Contractor must comply with all Federal, State and local rules and regulations governing pesticides that are required or used in performing Work.
- .B The term pesticide includes, but is not limited to: herbicides, insecticides, fungicides, rodenticides, germicides, nematocides, bactericides, inhibitors, fumigants, defoliants, desiccants, soil sterilants, repellents, and any substance or mixture of substances intended for preventing, repelling, mitigating, or destroying weeds, insects, diseases, rodents, or nematodes, and any substance or mixture of substances intended to use as a plant regulator, defoliant, or desiccant.

3.17 TRENCHING AND EXCAVATION

- .A Before any excavation, Contractor must, pursuant to Cal/OSHA 8CCR1540, outline the excavation in white paint (preferably chalk or water base), provide two workdays notice to Underground Service Alert (1-800-227-2600), obtain a locator number, and follow all necessary procedures to avoid underground facility damage.
- .B Before any excavation five feet or more in depth:
 - .1 Contractors must, pursuant to California Labor Code §6705, submit to Owner specific plans showing details of provisions for worker protection from caving ground. This in no way relieves Contractor from the requirement of maintaining safety in all operations performed by Contractor or Subcontractors. Submit eight (8) copies of the plans.
 - .2 The detailed plans showing design of all shoring, bracing, sloping or other provisions shall be prepared at Contractor's sole expense by a California registered Civil or Structural Engineer. Owner's acceptance only constitutes acknowledgment of the submission and does not constitute review or approval of the designs, design assumptions, criteria, accuracy, completeness, suitability for use, implementation, or any other quality of the plans, which are solely the responsibility of Contractor and Contractor's Engineer.

3.18 AIR POLLUTION CONTROL

- .A Contractor and each Subcontractor must comply with all air pollution control rules, regulations, ordinances, statutes, and Project specific permit requirements of the Bay Area Air Pollution Control District and all other regulatory agencies that apply to any Work performed. If there is a conflict between the Bay Area Air Pollution Control District rules, regulations, ordinances, and statutes and the rules, regulations, ordinances, and statutes of other regulatory agencies, the most stringent shall govern.
- .B Contractor must not discharge smoke, dust or any other air contaminants into the atmosphere in such quantity as will violate any regulations.
- .C Contractor must minimize dust nuisances resulting from performance of the Work, both inside and outside the Project limits, by applying either water or dust palliative, or both.

3.19 WATER POLLUTION CONTROL

- .A Contractor must comply with all Federal, State and local water pollution prevention and storm drain pollution prevention rules, regulations, ordinances, statutes, guidelines, and Project specific permit requirements.
- .B If required by law, ordinance, regulation, code, permit or the requirements of the Contract Documents, Contractor must prepare a Project Specific Storm Water Pollution Prevention Program (SWPPP).
- .C Contractor must exercise every reasonable precaution to protect storm drains, channels and all bodies of water from pollution, and must conduct and schedule operations so as to avoid or minimize muddying and silting of any waters. Contractor

must construct whatever facilities are necessary or requested by Owner to provide prevention, control and abatement of water pollution.

- .D No provision of the Contract Documents relieves Contractor of responsibility for compliance with California Fish and Game Code §5650 et seq, and §12015 et seq, and applicable regulations of the Regional Water Quality Control Board, Santa Clara County flood control and water district requirements, or other applicable statutes relating to prevention and removal of water pollution.
- .E Compliance with water pollution requirements does not relieve Contractor from responsibility to comply with all provisions of the Contract Documents, particularly Contractor's responsibilities for damage and preservation of property.

3.20 SOUND CONTROL

- .A The Contractor must comply with all OSHA requirements.
- .B The Contractor must comply with all local sound control and noise level rules, regulations, and ordinances that apply to any Work performed pursuant to the requirements of the Contract Documents.
- .C Each internal combustion engine, used for any purpose on the Project or related to the Project, must be equipped with a muffler of a type recommended by the Manufacturer. No internal combustion engine shall be operated on the Project without said muffler
- .D Noise level from and hours of Contractor's operations, that are located within city limits, must comply with city ordinances or requirements. Contractor's operations in the County's unincorporated areas or areas which border a city, town or other county must comply with the noise level requirements per the Santa Clara County Ordinance Code or requirements adopted by other jurisdictions, whichever are more stringent.
- .E Noise level requirements apply to all equipment used in the Project including, but not limited to, trucks, transit mixers, generators, air-tools, or equipment that may or may not be owned by the Contractor. The use of loud sound signals must be avoided in favor of warning lights except those required by safety laws for the protection of personnel.

3.21 WORKER'S SANITARY PROVISIONS & USE OF OWNER'S FACILITIES

- .A Contractor must conform to the rules and regulations for sanitary provisions established by the State, the County of Santa Clara, and any other applicable jurisdictions.
- .B Contractor must Provide and maintain toilets for use by its employees and the employees and representatives of the Owner. These accommodations must be maintained in a neat and sanitary condition, and must comply with all applicable laws, ordinances and regulations pertaining to public health and sanitation.
- .C Contractor's personnel must not use Owner's facilities without Owner's express written permission, which will be at Owner's sole discretion. Such Owner's facilities include but are not limited to toilet facilities, food service facilities (cafeteria and coffee shop), utilities services of any kind, carts, fire extinguishers (except in emergencies), parking, storage space and any other facilities and services.

3.22 CUTTING AND PATCHING

- .A Contractor is responsible for all cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.
- .B Contractor must not damage or endanger any portion of the Work, or the work of Owner or any separate contractors, by cutting, patching or otherwise altering any work.

- .C Contractor must not cut or otherwise alter the work of Owner or any separate contractor except with the written consent of Owner and such separate contractor. Contractor must not unreasonably withhold from Owner or any separate contractor its consent to cutting or otherwise altering the Work.
- .D Cutting and Patching by Others: The Contractor is responsible for any and all cutting, fitting and patching required to complete Contractor's Work or join its Work with the work of others, except as otherwise specifically provided for in the Contract Documents.

3.23 TESTS AND INSPECTIONS

- .A The Contractor must at all times permit Owner, its agents, officers, employees, Consultants and representatives to visit the Project Site and inspect the Work, including shops where Work is in preparation. This obligation includes maintaining proper facilities and safe access for such inspection. When the Contract Documents require a portion of the Work be tested, such portion of Work must not be covered up until inspected and accepted by Owner. The Contractor is solely responsible for notifying Owner's Project Inspector where and when the Work will be ready for inspection and testing. Should any Work be covered without the required testing and acceptance, such Work must be uncovered and recovered at the Contractor's expense.
- .B If Owner determines that portions of the Work require additional testing, inspection or acceptance not included in the requirements of the Contract Documents, the Owner will Direct the Contractor, in writing, to make arrangements for additional testing, inspection or acceptance by an entity acceptable to the Owner, and the Contractor must give 48 hours written notice to Owner of where and when tests and inspections will be conducted so that Owner may observe the procedures. Owner will bear the costs except as provided in General Conditions - Sub-Part 3.23.C.
- .C If procedures for additional testing, inspection or acceptance required by General Conditions - Sub-Part 3.23.B reveal failure of a portion(s) of the Work to comply with the requirements of the Contract Documents, the Contractor will bear all costs made necessary by such failure(s) including those of repeated procedures and compensation for Owner's services and expenses.
- .D Certificates of testing, inspection, acceptance, or approval will, unless otherwise required by the Contract Documents, be secured by the Contractor and submitted to the Owner's Project Inspector within two (2) Days after completion of each test, inspection, acceptance or approval.
- .E The Contractor will not be relieved of its obligations to perform the Work in accordance with the requirements of the Contract Documents by tests, inspections, acceptance or approvals required or performed by persons other than the Contractor.
- .F The Contractor is responsible for inspections of portions of its Work and the work of others already completed to determine that such portions are in proper condition to receive subsequent Work.
 - .1 If the Contractor determines that Work performed on the Project does not comply with the requirements of the Contract Documents, Contractor must repair or replace such defective Work at the Contractor's sole expense.
 - .2 If Contractor determines that completed work of others is not in proper condition to receive its Work, Contractor must immediately notify the Owner in writing and must not proceed with the affected portion of its Work without Direction from the Owner.

3.24 OFFICIAL PROGRESS SCHEDULE

- .A The Contractor must submit Progress Schedules prepared in accordance with the

requirements of the Contract Documents.

- .B The Owner's review and acceptance of the Contractor's Progress Schedule is for compliance with the requirements of the Contract Documents only. Review and acceptance by the Owner of the Contractor's Progress Schedule(s) does not mean approval of the sequence or duration of the tasks shown, and does not relieve the Contractor of any of the Contractor's responsibility for the accuracy or feasibility of the Official Progress Schedule, or of the Contractor's obligation to meet the interim Project Milestone Completion dates and the date of final Project Completion.
- .C The Owner's review and acceptance of the Contractor's Progress Schedule does not expressly or implicitly warrant, acknowledge or admit the reasonableness of the logic, durations, cost, manpower or equipment loading indicated in the Official Progress Schedule.

3.25 CONTRACTOR RECYCLING-

- .A The Contractor will use best efforts to recycle all recyclable materials

3.26 SUBMITTALS

- .A General
 - .1 Shop Drawings, Product Data, Samples and similar Submittals are not Contract Documents. Their purpose is to demonstrate those portions of the Work for which Submittals are required and the way the Contractor proposes to conform to the information provided and the design concept expressed in the Contract Documents.
 - .2 All Submittals are instruments of Contractor. By submitting Shop Drawings, Product Data, Samples and similar Submittals, Contractor represents that the Contractor has determined and verified materials, construction methods, field measurements and related field construction criteria, coordinated the Work of the Subcontractors, and has checked and coordinated the information contained within the Submittal with the requirements of the Contract Documents and other Submittals.
 - .3 Owner's review of Submittals is for general compliance with the requirements of the Contract Documents. Contractor is solely responsible for all quantities, dimensions, weights, gauges, materials, Fabrication processes, construction methods, coordination with the Work of other trades, and construction safety precautions. Owner's review does not relieve the Contractor of responsibility for errors and omissions in the Submittals or from responsibility for proper fitting and construction of the Work, nor from furnishing materials and Work required by Contract Documents that may not be indicated or shown on the Submittal(s).
 - .4 Owner's review of Contractor's Submittal(s) does not relieve Contractor of any responsibilities for the successful completion of the Work in conformity with the requirements of the Contract Documents. The Owner may reject any defective Work notwithstanding any review or previous acceptance of a Submittal associated with the Work.
 - .5 The Contractor is not relieved of the responsibility for any deviation from the requirements of the Contract Documents by Owner's review of Submittals unless the Contractor has explicitly informed Owner, in writing, of such deviation at the time of Submittal, and Owner has provided specific written consent to each specific deviation. Making notations on the Submittal of proposed deviation is not sufficient to satisfy this requirement. Each proposed deviation must be clearly noted on the Submittal and separately itemized and explained in writing in the transmittal accompanying the Submittal. For each Submittal, the Contractor must indicate that the Submittal contains "**No Deviations**" or itemize the proposed

deviations on the transmittal accompanying the Submittal. This written list of deviations is in addition to any indications or marks on the Shop Drawings, Product Data, Coordination Drawings, Samples, or other Submittals indicating the proposed deviations.

- .6 No Work requiring Submittals shall be performed until Owner has accepted the pertinent Submittals. Where a Submittal is required, any related Work performed before the Owner's review and acceptance of the Submittal will be at Contractor's sole risk, expense and responsibility.
 - .7 When certification of materials, systems or equipment is required by the Contract Documents, Design Professional and Owner are entitled to rely upon the accuracy and completeness of such certifications and the calculations and other professional analysis supporting the certifications.
 - .8 When descriptive catalog designations, including Manufacturer's name, product brand name, or model number(s) are referred to in the Contract Documents, such designations shall be considered as being those found in industry publications of current issue at date of Contract execution unless a different industry publication is cited in an Addendum issued during the Proposal Period.
 - .9 Contractor must allow sufficient time for reviews, revisions and resubmittals to avoid delays in the Work. No extension of the Contract Time will be authorized because of failure to transmit Complete Submittals enough in advance of the Work to permit processing within the timeframes allowed by Contract. Contractor is responsible for all costs of delays caused by Submittals that are tardy or are not Complete Submittals.
 - .10 Submittals not required by the Contract Documents will not be reviewed and will be "Returned Without Action" or may be discarded.
 - .11 If a returned Submittal is required to be resubmitted more than once due to Contractor's failure to comply with the Submittal requirements, Contractor may be charged all costs associated with re-review of the Submittal. The charges may be deducted from progress payments due or to become due to the Contractor.
 - .12 Do not highlight pertinent Submittal information with markings that turn opaque when copied. Improperly highlighted Submittals may be returned to Contractor "Returned Without Action."
- .B Contractor's Responsibilities
- .1 Contractor must, at its own expense, provide for Owner's review all Submittals required by the Contract Documents.
 - .2 If a Submittal deadline submission date is not stated in the Contract Documents for a specific Submittal or group of Submittals, make the Submittal or group of Submittals far enough in advance to avoid any Critical Path delay to the Official Progress Schedule.
 - .3 Before submission, Contractor must:
 - .a Determine and verify all field dimensions and conditions
 - .b Verify and correlate all dimensions in the Contract Documents with field dimensions and conditions
 - .c Verify materials, catalog numbers and similar data.
 - .d Coordinate the Work of Subcontractors with the Work of Contractor.
 - .e Coordinate the Work of the Subcontractors Work with that of each other.

- .f Review and coordinate all Subcontractors' Submittals with the requirements of the Contract Documents
 - .g Review and coordinate all Submittals with Submittals previously accepted by the Owner
 - .h Coordinate as required with all public agencies involved.
 - .i Secure necessary approvals from public agencies and others and signify by stamp or other means that they have been secured.
 - .j Verify the feasibility of the construction methods
 - .k Coordinated the Submittal with Construction safety precautions
 - .l Review and coordinate all Contractor's Submittals with the requirements of the Contract Documents
- .4 Submittals must be provided to the Owner as Complete Submittal(s) for each Definable Feature of Work and must not be Submitted piecemeal. Owner has the right to withhold action on partial Submittals until the missing Submittal items are received, or return the partial Submittal to the Contractor "Returned Without Action." At Owner's sole discretion, the Owner may agree to review a Contractor's partial Submittal. If the Owner agrees to review a Contractor's partial Submittal, and the submittal is marked "No Exceptions Taken," or "Make Corrections Noted" the Owner's acceptance of the partial Submittal subject to its compatibility with future Submissions and additional partial Submissions for portions of the Work not covered in the reviewed partial Submission and does not constitute acceptance of the deletion of specified or required items not shown in the partial Submission.
 - .5 Coordinate submission of Submittals for related parts of the Work so the Submittals may be reviewed concurrently. Owner has the right to withhold action on a Submittal requiring coordination with other Submittals until related Submittals are received.
 - .6 Prior to Submission to the Owner, Contractor must certify all Submittals for compliance with the requirements of the Contract Documents. The Owner and Owner's Consultants are entitled to rely upon the Contractor's certification and the accuracy and completeness of the Contractor's efforts supporting such certification.
 - .7 Contractor must resubmit Submittals as required until Owner's acceptance is obtained.
 - .8 Contractor must make any required corrections and resubmit corrected Submittals until achieving acceptance.
 - .9 Unless otherwise specifically stated in the Contract Documents, Contractor must resubmit Submittals requiring resubmission within twenty-one (21) Days of return of Submittal by Owner.
 - .10 On resubmittals, clearly indicate all revisions, changes, and deviations from the original Submittal. This includes directing specific attention, in writing, to revisions other than those requested by the Owner on previous Submittals.
 - .11 Contractor must include answers to any questions or clarifications required by Subcontractors and/or Suppliers.
- .C Submittal Copies
 - .1 Generally, the number of required copies of Submittals is established or summarized in Section 01330, "Submittal Procedures"

- .2 If the required number of Submittal copies are not specifically established or summarized in Section 01330, "Submittal Procedures", Contractor must provide the number of copies indicated below:
 - .a One (1) reproducible copy and three (3) prints of each:
 - .1 Shop Drawing
 - .2 Coordination Drawing
 - .3 Erection plan
 - .4 Equipment installation plan
 - .5 Record Drawings (as-built)
 - .b Five (5) copies of each:
 - .1 Product Data sheet
 - .2 Manufacturer, Vendor, or Subcontractor Certification
 - .3 Catalog cut
 - .4 Operation and Maintenance Data
 - .5 Qualifications
 - .6 Laboratory Test Reports
 - .7 Owner Demonstration and Training Materials including Videotapes
 - .8 Quality Control Plan
 - .9 Solid Waste Management Plan
 - .10 Storm Water Pollution Prevention Plan (SWPPP)
 - .c Three (3) of each:
 - .1 Fire Protection Plan
 - .2 Incident Reports
 - .3 Accident Reports
 - .d Four (4) of each:
 - .1 Progress Schedules (plus one (1) electronic copy in CD format)
 - .2 Project Manual (as-built)
 - .3 Hazardous Waste Manifests
 - .4 Permits
 - .5 Cost Breakdown (plus one (1) electronic copy in CD format)
 - .6 Survey Records
 - .7 Dispute documentation (plus one (1) electronic copy in CD format)
 - .8 Certified Claim (original signature required on each claim certification)
 - .9 Payment Application
 - .10 Material On Hand Payment Request
 - .e Two (2) of each:
 - .1 Sample

- .2 Meeting Minutes (plus one (1) copy to each meeting participant and one (1) electronic copy)
 - .f Four (4) of all other Submittals
- .D Minimum Submittal Review Times
 - .1 Time for review shall commence on Owner's receipt of a Complete Submittal.
 - .2 Time for review shall end on Owner's return of Submittal.
 - .3 Allow at least twenty-one (21) Days for Owner's review and return following Owner receipt of a Complete Submittal.
 - .4 Allow additional time if processing must be delayed to permit coordination with subsequent Submittals. Owner will advise Contractor when a Submittal being processed must be delayed for coordination.
 - .5 Allow at least twenty-one (21) Days for Owner's review and response to resubmittals.
- .E Action & Distribution
 - .1 When "No Exceptions Taken" is indicated, Contractor may proceed with Fabrication, Manufacture, or construction, providing such Work complies with the requirements of the Contract Documents.
 - .2 When "Make Corrections Noted" is indicated, Contractor may proceed with Fabrication, Manufacture, or construction, providing such Work complies with the requirements of the Contract Documents and the corrections noted. The above two categories are considered as accepted Submittals. When other notations are indicated, Contractor is advised that no Work shall be Fabricated, Manufactured, or constructed, and Contractor must make a revised submission.
 - .4 Contractor must promptly distribute copies of the accepted Submittals to its Subcontractors, Suppliers, vendors, Fabricators, Manufacturers, Governing Authorities, and others as required or needed.
 - .5 Submittals received from sources other than through Contractor's office will be "Returned Without Action" or may be discarded.
 - .6 Submittals that are not required by the Contract Documents will not be reviewed and will be returned to the Contractor "Returned Without Action" or may be discarded.
 - .7 Informational Submittals, on which Owner is not required to take action, will not be returned to the Contractor.
- .F Use for Construction
 - .1 Use only final Submittals with mark(s) indicating acceptance by Owner or Designer of Record.
 - .2 No portion of Work requiring Submittals shall be commenced until Owner or Designer of Record, on the Owner's behalf, has accepted the Submittal.
 - .3 Contractor must Fabricate, construct and furnish all Work in accordance with the accepted Submittals.
 - .4 Contractor must immediately upon receipt from Owner, distribute Owner accepted Submittals to all parties concerned.
 - .5 Contractor must keep at least one (1) copy of each accepted Submittal at the job site as part of the "Record Set."

3.27 SHOP DRAWINGS

- .A Contractor must furnish Shop Drawings for temporary work and methods of construction such as formwork, false work, and for other temporary work and methods of construction Contractor proposes to use.
- .B Contractor must Furnish scaled drawings showing how the Work of all trades (HVAC, plumbing, fire protection, electrical, etc.) will coordinate to form a complete Installation, and where Work affects existing buildings or parts thereof, and/or existing utilities.
- .C Present Shop Drawings in a clear and thorough manner. Identify details by reference to sheet and detail, schedule, and room numbers shown on Drawings.

3.28 COORDINATION DRAWINGS

- .A The Contract Documents indicate general arrangement and location of the various systems and elements of Work. Final locations, elevations, clearances, etc., are governed by actual equipment and material Provided by Contractor and by actual building conditions.
- .B Before Work is Installed, Contractor must carefully examine the Contract Documents, Submittals, and Shop Drawings relating to the entire Work with each other and the actual building conditions and verify that the Work will be accommodated in spaces provided.
- .C Contractor must prepare Coordination Drawings when:
 - .1 Limited space is available for installation of different components
 - .2 Coordination is required for installation of products and materials Fabricated by separate entities.
 - .3 The relationship of components is shown on separate Shop Drawings.
 - .4 Coordination Drawings are specifically required by other sections of the Project Manual.

3.29 SAMPLES

- .A Contractor must submit without charge such Samples as may be required by the Contract Documents.
- .B Unless a greater quantity is required elsewhere in the Contract Documents, three (3) of each required Sample must be Submitted
- .C Tags or labels shall be securely affixed to samples and contain as a minimum, the following information: Project Name, Contractor's Name, Contract Title and Number, Date, Transmittal Number, Product Manufacturer's or Fabricator's Name, trade name, lot style, color, model, etc., locations of use, and Contract Document reference.
- .D Owner will retain one of each Sample.
- .E Contractor must not use any materials or equipment for which Samples are required to be submitted until Owner has performed such Submittal review, save only at Contractor's risk and expense.
- .F Owner's review of any Sample is only for the characteristics thereof or for the uses named in such review and no other. Owner's acceptance of any Sample is not a modification or change of any requirements of the Contract Documents. Upon Owner's acceptance of any Sample or material, no additional Sample of that material will be considered and no change in brand or make is permitted.
- .G Where variation in color, pattern, texture or other characteristic is inherent in the material or product to be Provided, the Contractor must Submit at least 3 multiple units that show approximate limits of the variations. Installed items or materials

exceeding the variation of the accepted samples are considered defective Work.

3.30 SUBSTITUTIONS

- .A Whenever in the Contract Documents any material, product, thing, or service is indicated or specified by grade, patent, brand, trade or proprietary name, or by Manufacturer, such specifications shall be deemed to be followed by the term "Or Equal" unless the Contract Documents provide that use of the item specified is necessary in the public interest or to match other such items in use or to be used.
- .B The Contractor may submit a proposal for Alternative material, product, thing, or service up to ten (10) Days before Proposals are due or at any time within thirty-five (35) Days after the official start date stated in the Notice to Proceed. At the sole discretion of the Owner's Authorized Representative, Owner may give written consent to the submission of a Product Substitution request after expiration of the thirty-five (35) Day time limit.
- .C If the material, product, thing, or service offered by Contractor is not, in the opinion of the Owner's Authorized Representative, substantially equal or better than that specified, then Contractor must furnish that material, product, thing, or service specified or one that in the opinion of the Owner's Authorized Representative is substantially equal or better in every respect.
- .D The burden of proof as to the equality of any material, product, thing, or service Contractor proposes for Product Substitution is the responsibility of the Contractor.
- .E The opinion of the Owner's Authorized Representative of the substantial equality or superiority of any material, product, thing, or service proposed for substitution will be based on but not be limited to consideration of such factors as: physical characteristics of weight, gauge, composition, hardness, toughness, ductility, durability, brittleness, etc., as compared to the specified item, or as delineated in the Contract Documents; dimensional compatibility with the materials it combines with to produce a unified design system; compatibility with products in use by Owner elsewhere; all aspects of finished appearance including form, texture and color, that may affect other design elements; performance, functionality, and ease and economy of maintenance and operation. Owner's Authorized Representative will review and respond in writing to substitution submittals within twenty-one (21) Days after receipt of all information Owner requires to make a final determination.
- .F Owner will consider proposals for substitution of materials, Products, things, or services only when such proposals are accompanied by full and complete technical data, and all other information requested by the Owner is submitted, in order to evaluate the proposed Product Substitution. Owner may require substantiating documents to prove quality, delivery time, and cost. Burden of proof as to comparative quality, suitability, and performance of offered materials, Products, things, or services is the responsibility of the Contractor. Owner's Authorized Representative, after recommendation from Design Professional(s), will be the sole judge as to such matters. In the event Owner's Authorized Representative rejects the use of such Alternative(s) submitted, then one of the particular materials, Named Products, things, or services originally specified in the Contract Documents must be provided.
- .G Contractor is responsible for all design and engineering costs, Submittal and resubmittal costs, and costs of associated changes, for the review and acceptance of all proposed and accepted Product Substitutions. Costs incurred by Owner for additional Design Professional and/or CM services to process, design, engineer or adapt Product Substitutions may be deducted from payments to Contractor.
- .H Installation of Substitutions

- .1 Contractor must replace any substitution(s) installed without Owner's consent with the specified item(s) at Contractor's expense.
- .2 Contractor must not proceed with any Product Substitution or change until Owner's Authorized Representative has completed all reviews, made recommendations and granted consent.
- .3 If Owner's Authorized Representative accepts a Product Substitution, Contractor must make all changes in the Work including changes to Contract and Record Documents at no additional cost to Owner.
- .4 If an accepted Product Substitution is more expensive than the specified material, process, or article Contractor must bear all additional costs of such material, process, or article so Provided.
- .5 If mechanical, electrical, structural, or other changes are required for the Installation or fit of Alternative materials, articles, or equipment, or because of deviations from Contract Drawings and Specifications, such changes must not be made without written consent of the Owner's Authorized Representative, and must be made without additional cost to Owner.

3.31 COMPLIANCE WITH LAWS AND REGULATIONS

- .A Contractor must keep informed of governmental regulations that may affect the Work. Contractor must observe and comply with, and must cause all agents, employees, Subcontractors and Suppliers to observe and comply with said regulations. Contractor shall hold harmless and indemnify Owner and all its officers, employees and consultants against any liability or claim arising from or based upon the violation of any such regulations by Contractor, its agents, employees, representatives or Subcontractors and Suppliers.

3.32 TAXES, UTILITIES, PERMITS, AND FEES

- .A Taxes: Contractor must pay any or all taxes imposed by Federal, State, or local governments, that were legally enacted as of the Proposal date or subsequently enacted during the Contract Time, including but not limited to Federal excise tax and all State and local sales and use taxes. Owner will not furnish any tax exemption certificate or any document designed to exempt Contractor from payment of any tax on labor, services, materials, transportation, or any other items Provided by Contractor pursuant to the Contract Documents.
- .B Utilities: Unless otherwise stated in the Contract Documents, Contractor must arrange and pay for utility companies to provide and install permanent utility services and metering devices. Contractor must also pay for all utility usage charges until Owner's Authorized Representative recommends final Acceptance of the Work to the Owner.
- .C Permits & Fees: Contractor will obtain and pay (subject to Owner reimbursement at cost) for all building permits, encroachment permits, and all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work, unless otherwise provided in the Contract Documents.
 - .1 Contractors must give all necessary notices and comply with all laws, ordinances, rules, regulations and lawful Orders relating to the Work, and to the preservation of the public health and safety.
 - .2 If Contractor performs any work contrary to such laws, ordinances, Orders, rules and regulations, Contractor shall bear all costs attributable thereto.

- .D Royalties & License Fees: Contractor must pay all royalties and license fees, and must defend all suits or claims for infringement of any patent rights and save Owner and its Consultants on this Project harmless from loss on account thereof.

3.33 EQUAL OPPORTUNITY REQUIREMENTS

- .A Contractor must comply with all applicable Federal, State, and local laws. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (§503 and 504); California Fair Employment and Housing Act (Government Code §12900 et seq.); California Labor Code §1101 and §1102. Contractor must not discriminate against any Subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff rates of pay or other forms of compensation.

3.34 PATENTS

- .A Contractor must assume all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the Work, and must indemnify and hold harmless Owner and Owner's authorized representatives and Consultants, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices or processes.

3.35 NON-WAIVER

- .A Neither Acceptance of, nor payment for the Work or any part thereof, nor any extension of the Contract Time, nor any possession or use by Owner, will operate as a waiver of any of the provisions of the Contract, nor will a waiver of any breach of the Contract be held to be a waiver of any other or subsequent breach.
- .B Conformance with any provisions in one part of the Contract Documents will not relieve Contractor from its responsibilities as set forth elsewhere in the Contract Documents.

3.36 RESERVED

3.37 STANDARDS FOR WORK & MATERIALS

- .A Work: The Work must comply with all governing codes, including standards referred to by such codes and the Contract Documents, except said requirements are considered as minimum. When the Contract Documents call for materials of higher quality or performance, or larger sizes or capacity than required by said codes or standards, the requirements of the Contract Documents take precedence. This requirement does not operate to allow deviations from minimum code requirements.
- .B Material: Material specified by reference to the number, symbol or title or a specific standard, such as a commercial standard, a trade association standard, or other similar standard, must comply with the requirements thereof.
- .C References: Standards referred to, except as modified in the Contract Documents, have full force and effect as though printed in the Contract Documents. Standards are not repeated, because Contractor and its Subcontractor and Suppliers are expected to be familiar with requirements governing or applicable to their work.
- .D Intent: The Work of this Contract includes the furnishing of all labor, materials, equipment, tools, supervision, services and all other items needed to complete all the Work in accordance with the requirements of the Contract Documents. The Work encompasses all materials, labor, etc., not specifically mentioned in nor depicted by

the Contract Documents, but that can reasonably be inferred as being necessary for complete performance of the Work.

3.38 CONFORMITY WITH CONTRACT DOCUMENTS & ALLOWABLE DEVIATIONS

- .A The Contract Documents show such information as reasonably needed to convey a comprehensive idea of the Work contemplated. All authorized alterations affecting the requirements and information in the Contract Documents must be in writing.
- .B Work and materials must conform to the requirements of the Contract Documents including but not limited to the lines, grades, cross sections, dimensions and material requirements, including tolerances, shown on the Drawings or indicated in the Project Manual. Although measurement, sampling, and testing may be considered evidence as to such conformity, Owner's Authorized Representative is the sole judge as to whether the Work or materials deviate from the requirements of the Contract Documents, and the decision of the Owner's Authorized Representative as to any allowable deviation therefrom is final.
- .C If Owner notifies Contractor of any observed noncompliance with the requirements of the Contract Documents, Contractor must take immediate corrective action upon receipt of such notice. Such notice, when delivered to Contractor at the Project Site, is sufficient for the purpose of notification.
- .D If Contractor fails or refuses to promptly comply with any notice of noncompliance, Owner may, in addition to other remedies provided by law and/or the Contract Documents, issue an Order to the Contractor to suspend part or all of the Work until Contractor has taken satisfactory corrective action. No part of the cost or time expended by Contractor or its Subcontractors due to such Order to suspend Work shall be made the subject of a Dispute or Claim against Owner for extension of the Contract Time, Contract Sum, or for excess costs or damages of any kind.
- .E Contractor must follow any required sequence of operations set forth in the Contract Documents.

3.39 CONTROL OF MATERIALS

- .A General Requirements
 - .1 Contractor must not purchase any materials, supplies, or equipment for the Work subject to any chattel mortgage or subject to a conditional sale or other agreement by which any interest therein or in any part thereof is retained by the seller or the Supplier.
 - .2 Contractor warrants free and clear title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon Completion of the Work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by Contractor, to Owner free from any claims, liens or charges of any kind. Contractor nor any person, firm, or corporation furnishing materials, labor or services for any Work has the right to place a lien upon the premises or any improvement or appurtenances therein.
 - .3 Nothing contained herein shall defeat or impair the right of persons furnishing materials, labor or services covered by any bond provided by Contractor for their protection, or any rights pursuant to any law permitting such persons to look to funds due Contractor held by Owner.
 - .4 **The provisions of this General Conditions.3.39.A, "General Requirements", must be inserted in all Subcontracts and material contracts** and notice of its provisions must be provided to all persons furnishing material for the Work when no formal contract is entered into for such material.
- .B Source of Supply & Quality of Materials

- .1 Contractor must furnish all materials required to complete the Work, except materials that are designated in the Contract Documents to be furnished by Owner, or furnished by Owner in the performance of extra Work.
 - .2 Contractor must incorporate in the Work only materials conforming to the requirements of the Contract Documents.
 - .3 All materials Provided must be new, except as may be specifically provided in the Contract Documents.
 - .4 Inspections and tests may be made by Owner or its designated representatives, but such inspections and tests shall not be considered as a guaranty of acceptance of such material nor of continued acceptance of material offered as similar to that which may have been inspected or tested.
 - .5 All Owner performed inspections and tests are for Owner's benefit and are not a substitute for Contractor's own quality control program.
- .C Owner Furnished Items
- .1 Owner Furnished Items will be available at the dates and at the locations designated in the Contract Documents or, if not so designated, will be established by the Owner at the written request of the Contractor.
 - .2 Contractor is responsible for all items furnished by Owner in Contractor's custody. Contractor must pay all demurrage and storage charges. Once Owner Furnished Items are furnished to Contractor, loss or damage from any cause whatsoever must be remedied by Contractor who will be liable for the cost of replacing and/or repairing Owner Furnished Items and such costs may be deducted from any monies due or to become due to Contractor.
 - .3 Within twenty-eight (28) Days from the official Contract start date stated in the Notice to Proceed, Contractor must submit for Owner's review, a delivery log identifying the date when Contractor needs each Owner furnished item to enable Contractor to progress with the Work without impacting the Critical Path of the Contractor's proposed Progress Schedule. Said log must also identify when Shop Drawings and/or Product Data for Owner Furnished Items are required from Owner to enable Contractor to progress with the Work without impacting the Critical Path of the Contractor's proposed Progress Schedule. Contractor's log must not show dates for the delivery of Owner Furnished Items, shop drawings, or product data that are earlier than the dates stated in the Contract Documents for delivery of Owner Furnished Items, shop drawings, or product data to the Contractor. Submit four (4) paper copies and corresponding electronic data files.
- .D Foreign Materials & Assemblies
- .1 Contractor must deliver materials or assemblies which are Manufactured or Fabricated outside of the United States ("Foreign Materials & Assemblies") to a location in Santa Clara County unless otherwise Directed in the Contract Documents, where they must be retained for sufficient time to permit inspection, sampling, and testing.
 - .2 Contractor, at no cost to Owner, must supply all facilities and arrange for all testing required by Owner. All testing by Contractor is subject to witnessing by Owner.
 - .3 Contractor must furnish Owner a Certificate of Compliance from the Manufacturer or fabricator of any Foreign Materials or Assemblies in accordance with General Conditions.3.39.G, "Certificate of Compliance." In addition, Contractor must furnish certified mill test reports clearly identifiable to the lot of material where required in the Project Manual or otherwise requested by Owner.

- .4 All documents pertaining to the Contract, including but not limited to, correspondence, Contract Documents, Shop Drawings, Product Data, Record Documents, Requests for Information, and all other Submittals and data must be written in the English language and all numerical data must use the foot-pound-second system of measurement.
 - .5 Attention is directed to General Conditions.7.03, "Liquidated Damages." Contractor is not entitled to an extension of Contract Time for acts or events occurring outside of the United States, and it is Contractor's responsibility to deliver Foreign Materials & Assemblies into the continental United States in sufficient time to permit timely receipt at the Project Site.
- .E Defective Materials
- .1 All materials that Owner has determined do not conform to the requirements of the Contract Documents will be rejected whether in place or not. Contractor must remove all rejected materials immediately from the Project Site, unless otherwise permitted by Owner's Project Manager. No rejected material, or repaired defective material, shall be used in the Work, without Owner's written acceptance.
 - .2 Upon Contractor's failure to comply promptly with any Order of Owner made pursuant to the provisions in this General Conditions.3.39.E, "Defective Materials", Owner has the right and authority to cause the removal and replacement of rejected material and to deduct the cost thereof from any monies due or to become due to Contractor.
- .F Inspection at Source of Supply
- .1 Owner may inspect the production of any material, or the Manufacture of any product at the source of supply. Such inspection, however, will not be undertaken until Owner is assured of the cooperation and assistance of both Contractor and producer. Owner or its authorized representatives shall have free entry at all times to the parts of the plant Manufacturing or producing such materials. Adequate facilities must be provided free of charge to make the necessary inspections. Owner assumes no obligation to inspect materials at source of supply.
- .G Certificate of Compliance
- .1 Owner may permit the use of certain materials or assemblies before sampling and testing if accompanied by a Certificate of Compliance stating that the materials comply in all respects with the requirements of the Contract Documents. The Manufacturer of the material or assembly must sign the Certificate of Compliance. A Certificate of Compliance must be submitted with each lot of material delivered to the Project and the lot so certified must be clearly identified in the Certificate of Compliance.
 - .2 Owner may sample and test all materials used pursuant to a Certificate of Compliance at any time. The fact that material is used pursuant to a Certificate of Compliance does not relieve Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the Contract Documents; and any such material not conforming to such requirements will be subject to rejection whether in place or not.
 - .3 Owner reserves the unrestricted right to refuse to permit the use of material pursuant to a Certificate of Compliance.
 - .4 Owner will set the form of the Certificate of Compliance and its disposition.
- .H Testing

- .1 Contractor must furnish without cost to Owner, adequate samples of all materials necessary for testing.
 - .2 Tests must be by a Laboratory accepted by Owner and paid for by Contractor.
 - .3 Contractor must pay all costs of all tests.
 - .4 If a test fails, Contractor must pay for subsequent tests until passage.
 - .5 The Laboratory must submit certified copies of all test reports directly to Owner and Contractor by 10 a.m. of the second workday after performing each test.
- .I Property Rights in Materials
- .1 Nothing in the Contract Documents shall be construed as vesting in Contractor any right of property ownership in the materials used in the Work after they have been attached or affixed to the Work or the soil, or after payment has been made for ninety percent (90%) of the value of materials delivered to the site of the Work, or stored subject to or within the control of Owner. All such materials become the property of Owner upon being so attached or affixed or upon payment of ninety percent (90%) of the value of material delivered to the Work site or stored subject to or within the Owner's control.

**END ARTICLE 3
of
GENERAL CONDITIONS**

ARTICLE 4 — SUBCONTRACTORS

4.01 SUBLETTING AND SUBCONTRACTING

- .A The Contractor is responsible for all Work performed pursuant to the requirements of the Contract Documents, including Work Subcontracted to others. All persons engaged in the Work of the Project are the responsibility of and subject to the control of the Contractor.
- .B No Subcontractor will be recognized as such, and all persons engaged in the Work will be considered as employees of Contractor who is responsible for their work, which is subject to all the provisions of the Contract Documents.
- .C When any Subcontractor fails to execute a portion of the Work in a manner satisfactory to Owner, the Contractor must remove such Subcontractor immediately upon written notice from Owner, and the Subcontractor must not again be employed on the Project.
- .D Although the Project Manual is divided into Documents, Articles, Parts, Sub-Parts and Divisions, Sections, and Paragraphs it is not intended to provide a basis for the Bidding, assignment, or performance of the Work. Contractor is fully responsible for assigning the Work to the various Subcontractors, Suppliers and vendors that will be bidding or performing the Work. The Owner will not entertain requests to arbitrate disputes among Subcontractors or between the Contractor and Subcontractor(s) concerning responsibility for performing any part of the Work.

4.02 SUBCONTRACTUAL RELATIONS

- .A By an appropriate agreement, Contractor shall require each Subcontractor and Supplier, to the extent of that Subcontractor's or Supplier's Work, to be bound to Contractor by the terms of the Contract, and to assume toward Contractor all the obligations and responsibilities which Contractor, by these Contract Documents, assumes toward Owner.
- .B Said subcontracts and agreements must preserve and protect Owner's rights pursuant to the Contract with respect to the Subcontractor's or Suppliers Work so the subcontracting thereof will not prejudice such rights. Contractor must require each Subcontractor to enter into similar agreements with its Sub-subcontractors.
- .C Contractor must make available to each proposed Subcontractor and Supplier, prior to execution of the subcontract or agreement, copies of the Contract Documents to which the Subcontractor or Supplier will be bound and, upon written request of the Subcontractor or Supplier, identify to the Subcontractor or Supplier any terms and conditions of the proposed subcontract or agreement that may be at variance with the Contract. Each Subcontractor must similarly make copies of all such Documents available to its proposed Sub-subcontractors.

4.03 CONTROL OF SUBCONTRACTORS

- .A Contractor must:
 - .1 Schedule and coordinate the Work of all Subcontractors;
 - .2 Instruct all Subcontractors to consult with other Subcontractors to ascertain the locations of their various materials including stored materials and to familiarize themselves with their own material locations, making such changes as required to obtain the best results;
 - .3 Instruct all Subcontractors to schedule their Work and cooperate with the other Subcontractors to avoid delays, interferences, and unnecessary work, to conform to the schedule of operations as indicated in the Official Progress Schedule, and make Installations when and where directed.

- .4 Make all necessary changes, including removing and reinstalling of materials, at their sole expense if they fail to check with other Subcontractors, and their Installed Work is later found to interfere with Work of other Subcontractors.
- .5 Follow up to ensure that all Subcontractors Install their Work when and where directed.

**END ARTICLE 4
of
GENERAL CONDITIONS**

ARTICLE 5 — CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

- .A Owner has the right to perform work at any time related to the Project with its own forces and/or to Award separate contracts in connection with other portions of the Project or other work on the site pursuant to these or similar conditions of this Contract.
- .B When separate contracts are Awarded for different portions of the project or other work on the site, the term contractor in the Contract Documents in each case means the contractor who executes each separate Owner/Contractor Agreement.

5.02 COOPERATION WITH OWNER'S FORCES AND OTHER CONTRACTORS EMPLOYED BY OWNER

- .A Unless otherwise indicated in the Contract Documents, Owner will provide for the coordination of the work of Owner's own forces and of each separate contractor with the Work of the Contractor, who must cooperate therewith as provided herein.
- .B When Contractor and one or more other contractors are employed by Owner on related or adjacent work, Contractor must not cause any unnecessary delay or hindrance to the other contractors.
- .C If the performance of the Work of this Contract is likely to be interfered with by the simultaneous performance of the work of some other separate contract or contracts, the Owner will decide which contractors or Contractor may proceed.
- .D Contractor must accommodate Owner move-in activities including installation of Furniture, Fixtures, and Equipment (FF&E) by Owner or others.

5.03 MUTUAL RESPONSIBILITY

- .A The Contractor must cooperate fully with Owner and all separate contractors including utility companies with regard to the execution of their Work as follows:
 - .1 The Contractor must cooperate fully with Owner and all separate contractors with regard to introduction and storage of their materials and equipment.
 - .2 The Contractor must coordinate with Owner, all separate contractors, and all utility companies with regard to construction scheduling, sequence of operations and site access, all subject to approval of the Owner. Contractor must include activities in Contractor's Progress Schedule for all on-site activities performed by utility companies.
 - .3 The Contractor must coordinate and accommodate the concurrent installation of inserts, hangers, blocking, and all other items or embeds to be installed by others within or upon the Contractor's Work. The Contractor must coordinate and schedule the concurrent installation of these items in such a manner to cause no Critical Path delay to its Work or the work of others.
 - .4 The Contractor must include interface flags in its Progress Schedule, monitor the schedule and progress of each other contractor whose work affects its Work, and is responsible for giving timely written notice to Owner of potential problems or interface issues.
 - .5 The Contractor must properly connect the Work to the work of Owner or the separate contractors.
 - .6 The Contractor must inspect the work of Owner or other contractors affecting the Work and promptly report to the Owner in writing irregularities or defects in the separate work that render it unsuitable for reception or connection of the Work.

- .7 Failure of the Contractor to inspect and report constitutes acceptance of the other work as fit and proper to receive the Work, except as to defects that may develop in the other work after execution of the Contractor's Work.

5.04 DISPUTES BETWEEN SEPARATE CONTRACTORS

- .A Contractor is responsible to the other contractors for all damage to the other contractors' work, persons, or property caused by Contractor's operations, and for any loss suffered by such other contractors caused by Contractor's own unnecessary delays or failure to finish Work within the Contract Time(s) specified. Contractor must indemnify and hold harmless Owner for any damages and losses caused by Contractor in connection with this General Conditions.5, "Construction by Owner or by Separate Contractors."
- .B Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor must, upon due notice, resolve the claim directly with such other contractor. If such separate contractor initiates legal action or alternative dispute resolution (ADR) process, Owner will notify the Contractor who must defend Owner in such proceedings at the Contractor's sole expense.
- .C If a monetary obligation results from any lawsuit or ADR proceeding against the Owner, the Contractor is solely responsible for satisfying such obligation. In addition, the Contractor must pay Owner for all attorneys' fees, and court costs as well as administrative, professional, consultant, inspection, testing and other consulting as service costs that Owner has incurred.
- .D The Contractor must promptly remedy damage wrongfully caused by the Contractor to any completed or partially completed construction or to any property of Owner or separate contractors.

5.05 OWNER'S RIGHT TO CLEAN UP

- .A If a disagreement or Dispute arises among the Contractor, separate contractors and/or Owner as to the responsibility pursuant to their respective contracts for maintaining the Project Site and surrounding areas free from waste materials and rubbish, Owner may clean up or cause to be cleaned up the waste, materials, and rubbish and allocate the costs among those responsible, and deduct each contractor's share from progress payments due or to become due to each Contractor.

END ARTICLE 5 of GENERAL CONDITIONS

ARTICLE 6 — CHANGES IN THE WORK

6.01 GENERAL

- .A Owner may at any time, without notice to the Sureties, by written Order, make changes in the Work within the general scope of the Contract, including but not limited to additions, deletions or other revisions, changes in the Contract Documents and in the method and manner of performing the Work. Such changes will be Ordered in either of two ways, by:
 - .1 **Field Modification**, which is a written instruction, clarification or additional information communicated by Owner to Contractor Directing or Authorizing a minor adjustment in the Work or the requirements of the Contract Documents that does not change the Contract Sum or Contract Time; or by
 - .2 **Change Order**, which is a written amendment to the Contract, changing the Work, and/or the Contract Documents, and/or the Contract Sum, and/or the Contract Time, executed by the Owner, or Approved by the Owner's Authorized Representative within the limits authorized by the Owner.
- .B Timeline: Within seven (7) Days of receipt of a request for a proposed Change Order (PCO) from the Owner, Contractor must submit in a format acceptable to the Owner, four (4) copies of Contractor's proposed cost and time estimates detailing the amount to be added to or deducted from the Contract Sum and Contract Time due to the proposed change. The Contractor's proposal must include:
 - .1 Detailed estimates and other documentation supporting the proposed cost; and
 - .2 Proposed adjustments of the Contract Time that is known by the Contractor to be directly or indirectly attributable to the proposed Change Order. All requests for adjustment to the Contract Time must be supported by a detailed schedule analysis.
- .C Failure to submit cost and time estimate: If Contractor fails to submit the required information and documentation within the 15-Day time limit, Owner has the right to issue a unilateral Change Order. The Contract Sum and Contract Time will be changed in accordance with the Owner's estimate of cost and time, unless, within 15 Days following completion of the added Work or with written notice to delete the Work, the Contractor submits to the Owner written proof that the Owner's estimate is in error.
- .D If, after the Contractor has submitted their cost and time proposal, the Owner and the Contractor fail to successfully negotiate and agree on a time and/or cost for the proposed Change Order, the Owner may issue a unilateral Change Order to the Contractor and the Contractor must proceed with the changed Work. If the Contractor disputes any portion of the unilateral Change Order, the Contractor must maintain time and materials records as specified in General Conditions.6.08, "Force Account Work." If the Contractor fails to maintain such records or fails to submit such records within 15 Days following completion of the added Work, Owner's estimate will be used for the purpose of final adjustment in Contract Time and Contract Sum.
- .E Adjustment of the Contract Sum and/or Contract Time will be determined in accordance with General Conditions.6.05, "Contract Modifications."

6.02 UNIT PRICE WORK

- .A Contractor must include in each unit price an amount considered by Contractor to be adequate to cover all Contractors' costs plus overhead and profit for each separately identified unit price item.
- .B If there is any variance of less than twenty-five percent (25%) between the Owner's estimated number of units of Work stated on the Proposal Form and the actual number of units of authorized Work performed, there shall not be an adjustment of

unit prices by reason of overruns or underruns; each unit of authorized Work performed will be paid for at the Contract unit price for that item of Work.

- .C If the final quantity of any item of authorized Work varies from the Owner's estimated quantity for that item of Work by twenty-five percent (25%) or more, the unit price for that item of work will be adjusted by Change Order.
- .D All changes in Contract Sum and Contract Time due to quantity variations in unit price Work accepted by Owner's Authorized Representative are subject to Approval by the Owner upon Completion of the Contract by Approval of a final balancing Change Order.

6.03 DELETED WORK

- .A When Work is deleted, the Owner is entitled to a credit for the deleted Work.
- .B The adjustment to the Contract Sum for deleted Work will be computed in accordance with General Conditions.6.05, "Contract Modifications."
- .C If Contractor has ordered acceptable material for the deleted Work before the date of notification of such deletion by Owner, and if orders for such material cannot be canceled, such material will be paid for by Owner at Contractor's actual cost. In such case, the material paid for will become Owner's property and Owner will pay the actual cost of any further handling. If the material is returnable to the vendor and if Owner so Directs, Contractor must return the material and Owner will pay the actual costs of returning the material, including reasonable and verifiable handling and restocking charges. The actual costs or charges to be paid by Owner to Contractor for deleted materials as provided in this paragraph will be computed in the same manner as if the Work were to be paid for on a Force Account basis as provided in General Conditions.6.08, "Force Account Work".

6.04 DIFFERING SITE CONDITIONS

- .A Contractor must immediately, and in any event no later than twenty-four (24) hours after discovery, and before such conditions are disturbed, notify Owner in writing of:
 - .1 Subsurface or latent physical conditions at the Project Site which Contractor asserts differ materially from those indicated in the Contract Documents; or
 - .2 Unknown physical conditions at the Project Site, of an unusual nature, which Contractor asserts differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
- .B Owner will promptly investigate the conditions. If Owner finds that such conditions do materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work pursuant to this Contract, whether or not changed as a result of such conditions, an equitable adjustment will be made in accordance with General Conditions.6.05, "Contract Modifications."
- .C Contractor has no right to an increase in the Contract Sum pursuant to this General Conditions.6.04, "Differing Site Conditions", unless Contractor submitted the notice required in General Conditions - Sub-Part 6.04.A, except that Owner may extend the notification time upon Contractor's written request in order to obtain additional relevant information.

6.05 CONTRACT MODIFICATIONS

- .A The methods for Contract modification are:
 - .1 By negotiation based on estimates of increase or decrease in, Contract Time and/or Contract Sum. Upon Owner's written request, Contractor must furnish a detailed estimate of increase or decrease in costs and/or time, together with cost and schedule breakdowns and other support data within the time specified in such request. The Contractor is responsible for any additional costs caused by the Contractor's failure to submit the estimates of cost and/or time within the time specified.
 - .2 By Owner, whether or not negotiations are initiated as provided above, based on Owner's estimate of increase or decrease in Contract Time and/or Contract Sum.
 - .3 By Owner, whether or not negotiations are initiated as provided above, by Force Account in accordance with General Conditions.6.08, "Force Account Work." Beginning with the first Day and at the end of each Day, the Contractor must furnish to the Owner detailed hourly records for labor, construction equipment, and services, and itemized records of materials and equipment used that Day in performance of the changes. Such records must be on a form furnished by or acceptable to Owner. Such records must be signed by the Contractor and verified by the Owner on a daily basis.
 - .4 By Unit Prices stated in the Contract Documents or subsequently agreed upon in writing by Change Order.
- .B Adjustment of Contract Sum and use of will be based upon (collectively referred to as "compensation"):
 - .1 Labor: Compensation for labor includes the necessary payroll cost for labor, including the first level supervision, directly engaged in performance of the change. Wages shall not exceed current prevailing wages in the locality where the change is performed. Use of a classification that would increase labor cost will not be permitted. Exceptions to the above will be permitted only if Contractor establishes to the satisfaction of Owner the necessity for payment at higher rates or classification.
 - .2 Materials and Equipment: Compensation for materials and equipment includes the necessary cost for materials and equipment directly required for performance of the change. Cost of materials and equipment may include costs of transportation and delivery. If discounts by Suppliers are available to Contractor, they must be credited to Owner. If materials and equipment are obtained from supply or source(s) owned by, or partially owned by Contractor, payment will not exceed current wholesale price for such materials and equipment.
 - .a If, in Owner's opinion, the cost of materials and equipment is excessive, or if Contractor fails to furnish satisfactory evidence of cost from Supplier, the cost of materials and equipment shall be the lowest current wholesale price at which similar materials and equipment are available in quantities required. Owner reserves the right to furnish materials and equipment required for performance of the change(s) and Contractor has no right to Claim for costs or mark-ups on such materials and equipment furnished by Owner.
 - .3 Construction Equipment: Compensation shall be only for use of equipment directly required for performance of the change, and will be calculated as provided in General Conditions.6.08, "Force Account Work."
 - .4 Services: Compensation shall be only for the necessary cost of Approved services directly required for the performance of the change.
- .C Markups for Added or Deleted Work

- .1 General. The following markups for Subcontractor performance of changes constitute full compensation for all costs including profit, direct and indirect overhead, extended overhead, insurance, taxes and bonds:
 - .a For portions of added Work performed by Subcontractor(s), the Subcontractor(s) must compute its costs as follows:
 - .1 Labor: ten percent (10%);
 - .2 Materials, equipment, construction equipment and services markup not to exceed ten percent (10%).
 - .b When the added Work includes Work performed by Subcontractors, the total aggregate of all mark-ups for added Work, excluding the Contractor Fee, regardless of the number of tiers of Subcontractors and Sub-subcontractors used, shall be:
 - .1 Labor markup not to exceed fifteen percent (15%) ;
 - .2 Materials, equipment, construction equipment and services markup not to exceed fifteen percent (15%).
 - .c For Deleted Work: When Work is deleted, the Owner is entitled to a credit for the deleted Work. The credit must include direct labor, materials, equipment, and supervision plus overhead and profit of the Contractor and Subcontractor, as applicable for the deleted Work. Deleted overhead and profit for Subcontractors shall be computed as five percent (5%) of the direct labor, materials, equipment, and supervision. For example, if a \$10,000 direct cost item of Work were deleted, the credit to the Owner would be \$10,500.
 - .d For Combinations of Added and Deleted Work: The costs before markups of added and deleted Work must be separately estimated. If the difference between such costs results in an increase, the markups for added Work will be applied to such difference. If the difference in such costs results in a decrease, the markups for deleted Work will be applied to such difference.
- .D General Limitations: Cost to Contractor for a change that exceeds market values prevailing at the time of the change will not be allowed unless Contractor establishes that all reasonable means for performance of the change at prevailing market values have been investigated and the excess cost could not be avoided. Notwithstanding actual charges to Contractor on Work performed by Contractor or others, no markups will be paid in excess of those specified above.
- .E Disallowed Costs: Disallowed Costs include, but are not limited to:
 - .1 Interest cost of any type other than those mandated by statute;
 - .2 Claim preparation or filing costs;
 - .3 legal expenses;
 - .4 the costs of preparing or reviewing Change Order proposals
 - .5 lost revenues;
 - .6 loss of anticipated profits;
 - .7 lost income or earnings;
 - .8 Schedule preparation costs;
 - .9 Submittal preparation costs;
 - .10 costs of idled equipment when such equipment is not yet at the site or has not yet been employed on the Work;

- .11 lost earnings or interest on unpaid retainage;
 - .12 Claims consulting costs;
 - .13 the costs of corporate officers or staff visiting the site or participating in meetings with the Owner;
 - .14 any compensation due to the fluctuation of foreign currency conversions or exchange rates;
 - .15 loss of other business.
- .F Adjustment of Contract Time: There will be no adjustment of the Contract Time for changes that do not impact the Critical Path of the Official Progress Schedule. Contractor must show that the change affected the Critical Path of the Official Progress Schedule and how the change increased (or decreased) the Contract Time to complete the Work.

6.06 CONTRACTOR'S ACCEPTANCE OF CHANGE ORDERS

- .A Contractor's written acceptance of a Change Order constitutes final and binding agreement to the provisions thereof and a waiver of all Claims in connection therewith, whether direct, indirect or consequential. Contractor may specifically exclude individual Change Order items from operation of the Contractor's written acceptance of the Change Order and waiver of all Claims in connection therewith. A general statement that the Contractor reserves their right to Claim additional time and/or money at a future date for all Work associated with the Change Order is not permitted.
- .B If Contractor disagrees with any terms or conditions of a Change Order, Contractor must sign it with the statement "**Signed Under Protest**" and attach a written statement detailing the basis of the disagreement.
- .C The written statement detailing the basis of the disagreement must specifically identify each item to be excluded from the Contractor's waiver and state why the Contractor is unable to determine the time and/or money due from the Owner for the items excluded from the Contractor's release.

6.07 RESERVED

6.08 FORCE ACCOUNT WORK

- .A General
 - .1 Owner may, at any time, Order the Contractor in writing to perform Work on a Force Account (time and materials, cost not to exceed) basis. When Contractor performs Force Account Work, the labor, materials and equipment used in performing such Work are subject to Owner's Approval. As used in this General Conditions.6.08, "Force Account Work", the word "Work" means Force Account Work.
 - .2 Payment for Force Account Work
 - .a The total payment as provided in General Conditions.6.08, "Force Account Work", constitutes full compensation to Contractor for performance of Force Account Work.
 - .b Contractor will be paid the direct costs for labor, materials and equipment used in performing the Work determined as hereinafter provided except where agreement has been reached to pay in accordance with General Conditions.6.8.G, "Specialized Services." If materials and equipment are obtained from a supply or source owned in whole or in part, by the Contractor, payment for such materials and/or equipment will not exceed current wholesale prices for such materials and equipment.

- .c If, in the opinion of the Owner, the cost of materials and equipment is excessive, or if the Contractor fails to furnish satisfactory evidence of costs from Suppliers, the cost of materials and equipment will be the lowest current wholesale price at which similar materials and equipment are available in quantities required.
- .d No costs will be allowed for time while construction equipment is inoperative, idle, or on stand-by, for any reason, unless such times have been Approved in advance by the Owner.
- .3 Markups: To the total of the direct costs computed as provided in General Conditions.6.08.B, "Labor", General Conditions.6.8.C, "Materials", and General Conditions.6.08.D, "Equipment Rental", the following maximum Subcontractor markups will be added:
 - .a Ten Percent (10%) to Labor,
 - .b Ten Percent (10%) to Materials, and
 - .c Ten Percent (10%) to Equipment Rental.
- .4 The above markups constitute full compensation for all overhead costs and profit. The total payment made as provided constitutes full compensation for the Work performed.
- .5 When forces other than Contractor's organization perform Work, Contractor must reach agreement with such other forces as to the distribution of the payment made by Owner for such Work. Owner will accept no additional markups by reason of the performance of Force Account Work by a Subcontractor or other forces.
- .6 Contractor must monitor all costs and notify Owner at least seventy-two (72) hours before the cost limit will be reached or when seventy percent (70%) of the cost not-to-exceed value is reached. In no event shall Contractor exceed Owner's cost limit.
- .B Labor
 - .1 Contractors will be paid the cost of labor for the workers (including first level supervision when authorized by Owner) used in the actual and direct performance of the Work. The cost of labor, whether the employer is Contractor, Subcontractor or other forces, will be the sum of the following:
 - .a Actual Wages: The actual wages paid include any employer payments to or on behalf of workers for health and welfare, pension, vacation and similar purposes.
 - .b Labor Surcharges: To the actual wages, as defined in General Conditions.6.08.B.1.a, "Actual Wages", will be added a current labor surcharge as set forth in the California Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates" which is in effect on the date when the Work is accomplished and which is a part of the Contract. Said labor surcharge constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the Workers, other than actual wages as defined in General Conditions.6.08.B.1.a, "Actual Wages" and subsistence and travel allowance as specified in General Conditions.6.8.B.1.c, "Subsistence and Travel Allowance."
 - .c Subsistence and Travel Allowance: The actual allowance paid to such workers in compliance with labor agreements.

.C Materials

- .1 Owner Furnished: Owner may furnish such materials as it deems advisable, and Contractor has no rights to Claim for costs and markup on such materials.
- .2 Contractor Provided: Only materials provided by Contractor, necessary to and actually used in the Work will be paid for. The cost of such materials will be the cost to the purchaser, whether Contractor, Subcontractor, or other Supplier thereof, unless the following apply:
 - .a If a cash or trade discount by the actual Supplier is offered or available to the purchaser, it must be credited to Owner whether or not such discount was actually received.
 - .b If materials are procured by any method, which is not a direct purchase from an actual Supplier, the cost of such materials shall be deemed to be the price, paid to the actual Supplier as determined by Owner. No markup except for actual costs incurred in the handling of such materials will be permitted.
 - .c If materials are obtained from a supply or source owned in whole or in part by the purchaser, payment therefore will not exceed the price paid by the purchaser for similar materials provided from said source on Contract items, or the current wholesale price for such materials delivered to the Project Site, whichever price is lower.
 - .d If in Owner's opinion the cost of such materials is excessive, then the cost of such materials shall be deemed to be the lowest current wholesale price at which such materials are available in the required quantities delivered to the Project Site, less any discounts as provided in General Conditions - Sub-Part 6.08.C.2.a.
 - .e If Contractor does not furnish satisfactory evidence of the cost of such materials from the actual Supplier thereof, the cost shall then be determined in accordance with General Conditions - Sub-Part 6.08.C.2.d, above.

.D Equipment Rental

- .1 Rental Rate: Contractor will be paid for the use of equipment at the rental rate listed for such equipment in the latest edition of the California Department of Transportation, Labor Surcharge and Equipment Rental Rates, regardless of ownership and any rental or other agreement, if such may exist for the use of such equipment entered into by Contractor. If it is deemed necessary by Owner to use equipment not so listed, Owner prior to the Work being done will establish a suitable rental rate for such equipment. Contractor may furnish any cost data that might assist Owner in establishing such rental rate.
 - .a The aforesaid rental rates shall be deemed to include the cost of fuel, power, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, labor except for construction equipment operators and any and all costs to the Contractor incidental to the use of such construction equipment.
 - .b Operators of rental equipment will be paid for as provided in General Conditions.6.08.B, "Labor." All equipment must be in good working condition and suitable for the purpose for which it is to be used, as judged solely by Owner.
 - .c Unless otherwise specified, Manufacturer's ratings and Manufacturer approved modifications shall be used to classify equipment for determining applicable rental rates. A power unit of at least the minimum rating recommended by the Manufacturer shall power equipment that has no direct power unit.

- .d Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, are considered to be small tools and no rental payment will be made.
- .e Rental time will not be allowed while equipment is inoperative due to breakdowns.

.E Equipment on the Work

- .1 The rental time to be paid for equipment already on the Project Site will be the time the equipment is in operation on the Work being performed, and in addition, will include the time required to move the equipment to the location of the Work and return it to the original location, except that moving time will not be paid if the equipment is used at the Project Site for activities besides Force Account Work.
- .2 Loading and transporting costs will be allowed, in lieu of moving time, when equipment is moved by means other than its own power, except that no payment will be made if equipment is used at the Project Site for activities besides Force Account Work.
- .3 The following will be used in computing the rental time of equipment on the Work:
 - .a When hourly rates are listed, less than thirty (30) minutes of operation will be considered to be one-half (1/2) hour of operation.
 - .b When daily rates are listed, less than four (4) hours of operation will be considered to be one-half (1/2) day of operation.

.F Equipment not on the Work

- .1 For the use of equipment moved in solely to perform Force Account Work, and used exclusively for such Work, Contractor will be paid the rental rates determined as provided in General Conditions.6.08.D, "Equipment Rental", and for the cost of transporting the equipment to the Work site, all in accordance with the following provisions:
 - .a Contractors must obtain Owner's approval before transporting any equipment to the Project Site.
 - .b Owners will pay the cost of loading and unloading Approved equipment.
 - .c The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.
 - .d The cost of transporting equipment shall not exceed the applicable minimum established rates of the California Public Utilities Commission.
 - .e Should Contractor desire to return the equipment to a location other than the location from where it was transported to the Work site, Owner will pay the cost of transportation in accordance with the above provisions, provided such payment will not exceed the cost of transporting the equipment to the Work site.
 - .f Payment for transporting, loading and unloading equipment, as above provided, will not be made if the equipment is used in any other way than on Force Account Work.

.G Specialized Services

- .1 When Owner and Contractor agree that Contractor's forces or any Subcontractor cannot perform a special service or item of Work, such service or Work item may be performed by a specialist. Invoices for such service or Work item may be accepted based on the current market price thereof without complete itemization of labor, material, and equipment rental costs when it is impractical and not in

accordance with the established practice of the special service industry to provide such complete itemization.

- .2 In those instances where Contractor is required to perform Work necessitating a fabrication or machining process in a facility away from the Project Site, the charges for the Work performed in such facility may, by agreement, be accepted as a specialist billing.
- .H To the specialist invoice price, less a credit to Owner for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added a ten percent (10%) markup in lieu of the markups provided in General Conditions.6.08.A, "General."
- .I Independently Owned & Operated Equipment
 - .1 When independently owned and operated equipment is used to perform Work, Contractor will be paid for the equipment and operator, as follows:
 - .2 Payment for the equipment will be made in accordance with General Conditions.6.08.D, "Equipment Rental." Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by Contractor to other workers operating similar equipment already on the Project or, in the absence of such other workers, at the rates for such labor established by collective bargaining agreements for the type of worker and location of the Work, whether or not the owner-operator is actually covered by such an agreement.
 - .3 A labor surcharge will be added to the cost of labor described herein, in accordance with provisions in General Conditions .6.08.B.1.b., "Labor Surcharges." To the direct cost of equipment rental and labor, computed as provided herein, will be added those markups for equipment rental and labor as provided in General Conditions.6.08.A.3, "Markups."
- .J Adjustment of Contract Time
 - .1 The Milestone Completion Date(s) and Contract Completion date will not be changed because of Force Account Work unless Contractor demonstrates pursuant to General Conditions.7.06, "Delay and Time Extension", that such Work actually affected the Contract Time(s).
- .K Records
 - .1 Contractors must maintain records (daily reports) that provide a clear distinction between the performance of the Force Account Work and the performance of all other operations.
 - .2 From the above records, Contractor must furnish Owner completed daily Force Account Work reports, on forms furnished by or acceptable by Owner for each day's Force Account Work.
 - .3 The daily Force Account Work reports:
 - .a Must be submitted not later than one (1) workday following the performance of said Work.
 - .b Must itemize the materials used.
 - .c Must cover the direct cost of labor and the charges for equipment rental, whether provided by Contractor, Subcontractor, or other forces.
 - .d Must provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and the size, type and identification number of equipment and hours operated.

- .4 Before presenting the daily Force Account Work reports to Owner, Contractor must compile the estimated daily and to-date cumulative cost of the Work.
- .5 Material charges must be substantiated by valid copies of vendor's invoices. Such invoices must be submitted with the daily Force Account Work reports, or if not available, they must be submitted with subsequent daily Force Account Work reports. Should said vendor's invoices not be submitted within sixty (60) Days after the date of delivery of the material, Owner reserves the right to establish the cost of such materials at the lowest current wholesale prices at which said materials are available in the quantities concerned, delivered to the location of the Work, less any discounts provided in General Conditions - Sub-Part 6.08.C.2.a.
- .6 Contractor must sign each daily Force Account Work report.
- .7 Owner will compare Owner's records with Contractor's completed daily Force Account Work reports and make any necessary adjustments. When these daily Force Account Work reports are agreed upon and signed by both parties, said reports become the basis of payment for the Work performed, but do not preclude subsequent adjustment based on a later audit by Owner.
- .8 Contractor's cost records pertaining to the Work must be open to inspection or audit by Owner during the life of the Contract and for a period of not less than three (3) years after the Date of Acceptance thereof, and Contractor must retain such records for the period.

END ARTICLE 6
of
GENERAL CONDITIONS

ARTICLE 7 — TIME

7.01 CONTRACT TIME

- .A Time is of the essence of this Contract.
- .B Contractor must complete the entire Work of the Project and designated portions thereof within the Contract Time (s) stated in the Contract Documents, or any authorized extension(s) thereof.
- .C Failure of Contractor to include an element of the Work required for performance of this Contract in the Official Progress Schedule, or inaccuracy in the Official Progress Schedule, does not relieve Contractor from responsibility for accomplishing the Work within the Contract Time(s) designated in the Contract Documents and will not constitute grounds for delay in completion of the Work or designated portion on the Work.
- .D The Contractor must provide an adequate workforce, materials of proper quality, and equipment to properly execute the Work and to ensure completion of each part of the Work in accordance with the Official Progress Schedule.

7.02 NOTICE TO PROCEED

- .A Owner's Notice to Proceed will state the first Day of the Contract Time.
- .B Notwithstanding other provisions of the Contract Documents, Owner is not obligated to accept or to pay for Work provided by the Contractor prior to the first Day of the Contract Time designated in the Notice to Proceed, whether or not Owner has knowledge of the furnishing of such Work.
- .C Unless otherwise stated in the Contract Documents or Directed by Owner, Contractor must begin Work within 10 Days following the start date for the Work as stated in the Notice to Proceed.
- .D The Contractor will not be allowed on the site of the Work until the Contractor's Contract Bonds and insurance comply with requirements of the Contract Documents.

7.03 LIQUIDATED DAMAGES

- .A All Work and designated portions of the Work must be completed and ready for full use by Owner on, or prior to, the Contract Time(s) for the Work or designated portions of the Work specified in the Contract Documents or any authorized extension thereof.
- .B If Contractor fails to complete the Work or designated portions of the Work within the Contract Time(s) designated in the Contract Documents, or any authorized extension thereof, it is understood and agreed that Owner will suffer damage; and, it being impractical and extremely difficult to determine the amount of actual damage, it is agreed that Contractor will pay as fixed and liquidated damages, and not as a penalty, the sums set forth in the Contract Documents for each and every calendar Day of delay until the Work is completed for each and every Milestone and final Project Completion, and Contractor and its Sureties are liable for the amount thereof.
- .C Contractor acknowledges that the Liquidated Damages amounts set forth in the Contract Documents constitute a reasonable estimate of the damages Owner will actually suffer every Day during which completion of the Work or designated portion of the Work is avoidably delayed beyond the expiration of the Contract Time(s) designated in the Contract Documents
- .D Owner may withhold Liquidated Damages from payments due to Contractor as such damages accrue, or, at Owner's discretion, withhold Liquidated Damages from any payments that may become due, including retention and Final Payment.

7.04 ACCELERATION

- .A Owner reserves the right to direct the Contractor to accelerate performance of the Work or any portion of the Work. No action or direction of Owner other than an express written Order by the Owner's Authorized Representative to accelerate performance of the Work shall be construed by the Contractor to be direction to accelerate the Work.
- .B If the Contractor believes that some action or inaction on the part of Owner constitutes an acceleration directive, the Contractor must immediately notify the Owner in writing that the Contractor considers the actions or inaction an acceleration directive. This written notification must detail the circumstances of the acceleration directive.
- .C Contractor must keep Daily cost and other Project records related to the Owner's acceleration Directive separate from other Project costs and records, and must submit a written Daily record of acceleration cost to Owner at the end of each Day.
- .D Allowable labor costs are limited to overtime or shift premium costs. Allowable equipment costs are only the cost of added equipment mobilized to the site to accomplish the accelerated Work effort.

7.05 MILESTONE INSPECTIONS AND CERTIFICATION

- .A When Contractor believes the Work comprising a Milestone is complete, Contractor must submit to the Owner four (4) copies of a written certification that the Work of the Milestone is complete and request inspection by the Owner.
- .B Within 7 Days of receipt of the request, the Owner will determine if the Work of the Milestone is sufficiently complete to be inspected. If the Owner determines that the Work is sufficiently complete to be inspected, within 21 Days of the receipt of the request, unless a longer period is specified elsewhere in the Contract Documents, Owner will inspect the Work and prepare a list of deficiencies in the completed Work (Deficiency/Punch List.)
- .C If the Owner determines that Work of the Milestone is not sufficiently complete to be inspected, the Owner will issue a notice to the Contractor stating the Work of the Milestone is not sufficiently complete to be inspected. When Contractor believes the Work of the Milestone is complete, Contractor must request another Milestone Inspection, which will be processed pursuant to General Conditions - Sub-Part 7.05.B.
- .D When the Work of the Milestone including correction of all deficiencies identified in the Owner's Deficiency List is acceptable to the Owner, the Owner will send a letter acknowledging Milestone Completion to the Contractor. The Milestone Completion letter will identify the actual date of Milestone Completion.
- .E Liquidated Damages for late completion of an individual Milestone will cease to accrue on the date of actual Milestone Completion identified in the Owner's Milestone Completion letter. Such letter will not constitute Acceptance but will establish conformity with the requirements of the Contract Documents for that portion of the Work included in the Milestone and will serve to establish the date for cessation of the accrual of the Liquidated Damages associated with the Milestone.
- .F If Contractor requests more than two (2) Milestone Inspections of Work that is still incomplete, Owner may charge Contractor for the cost of inspection, and may deduct the amount from payments due or that become due to Contractor.

7.06 DELAY AND TIME EXTENSIONS

- .A The Owner will consider extensions to the Contract Time(s) for the following reasons only if they affect the Critical Path of the Official Progress Schedule.

- .1 Acts of God or of the public enemy, acts of Government, acts of Owner, fires, floods, epidemics, quarantine restrictions, sanctioned strikes, freight embargoes, unusually severe weather, or delays of Subcontractors or Suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and such Subcontractors or Suppliers.
- .2 Delays in progress due to an act of neglect by Owner only for the amount of delay time that occurs after Contractor has notified Owner in writing and the Owner has had a reasonable time to respond to the notification.
- .3 An Approved Change Order that extends the Contract Time.
- .4 Adjustments to the Contract Time(s) due to weather will be allowed only for unusually severe weather or resulting site conditions that affect the progress of activities on the Critical Path of the Official Progress Schedule.
- .5 No Contract Time extension for rain will be allowed for any month until the number of Days of rain for that month as indicated below has been exceeded. Rainfall will be considered unusually severe only when the Days of rain (defined as more than one-tenth (1/10th) of an inch of rain per Day) in any month exceed the following number of Days of rain per month:

<u>Month</u>	<u>No. of Days</u>
January	10
February	9
March	7
April	3
May	1
June	0
July	0
August	0
September	3
October	7
November	9
December	10

- .6 Contractor must exercise due diligence in protecting the Work and the Work site from the adverse impacts of weather by:
 - .a taking appropriate preventive actions before anticipated inclement weather to protect the Work and Work site from the potential adverse affects of the weather;
 - .b taking corrective action during the inclement weather to protect the Work and Work site from the actual and potential adverse affects of the inclement weather; and
 - .c taking correction action after the inclement weather to remedy, prevent, and/or mitigate the negative impacts of the adverse weather on the Work and the Work site.
- .B Within twenty-four (24) hours from the beginning of any Critical Path delay to the Official Progress Schedule, Contractor must notify Owner in writing of the causes of delay.
- .C Within fourteen (14) Days from the end of any Critical Path delay to the Official Progress Schedule, Contractor must submit two (2) hard copies and electronic data files on Compact Disks, of all supporting information to validate the impact of the delay on the Contract Time.
- .D Owner will ascertain the facts and the extent of the delay and adjust the Contract

Time(s) for completing the Work when, in Owner's judgment, the facts justify an adjustment. Owner's determination is final and conclusive.

.E Delay and Contractor's entitlement for delay will be determined as follows:

- .1 The following definitions apply to General Conditions.7.06, "Delay and Time Extension":
 - .a "**Excusable Delay**" means any delay in the Work caused by conditions beyond the control and without the fault or negligence of the Contractor.
 - .b "**Excusable Non-Compensable Delay**" means any Excusable Delay not solely the responsibility of the Contractor, such as, earthquake, fire, flood, cyclone, and inclement weather conditions that caused a delay of Work on the Critical Path. The financial inability of the Contractor or any Subcontractor, Sub-subcontractor or Supplier, or the default of any Subcontractor, Sub-subcontractor or Supplier is not a condition beyond the Contractor's control. An Excusable Non-Compensable Delay may entitle the Contractor to an extension of the Contract Time, but will not entitle the Contractor to any adjustment of the Contract Sum.
 - .c "**Excusable Compensable Delay**" means any Excusable Delay caused by a delay of the Work on the Critical Path for which the Owner is solely responsible and which delay is unreasonable given the circumstances and not within the contemplation of the parties. An Excusable Compensable Delay may entitle the Contractor to an extension of the Contract Time and an adjustment of the Contract Sum.
 - .d "**Non-Excusable Delay**" means any delay in the Work resulting from causes within the control of the Contractor or due to the fault or negligence of the Contractor or its Subcontractors or Suppliers. A Non-excusable Delay shall not entitle the Contractor to an extension of the Contract Time or an adjustment of the Contract Sum.
- .2 Whenever the Contractor foresees any delay in the prosecution of the Work, the Contractor must notify the Owner in writing of the potential delay. Such notification must specify with detail the cause asserted by the Contractor for the potential delay and provide a description of the anticipated effect of the potential delay on the most recent Updated Official Progress Schedule including identification of the activity numbers of the affected activities. Failure of the Contractor to submit such a notice within seven (7) Days after recognition of any incident or event giving rise to the potential delay will constitute a waiver by the Contractor of any request for extension of the Contract Time, and no extension of the Contract Time will be granted as a consequence of such delay.
- .3 Within twenty-four (24) hours from the beginning of any Critical Path delay to the Official Progress Schedule, Contractor must submit written notice to the Owner of the delay. The notice must include identification of the affected activities, evidence of the cause of the delay, and within 14 Days of the end of the Critical Path delay, Contractor must submit a Time Impact Analysis per General Conditions.7.06.F, "Time Impact Analysis."
- .4 Owner has no obligation to consider any request for extension to the Contract Time(s) unless the Contractor satisfies the requirements set forth in the Contract Documents for providing notice of potential delay and submission of a Time Impact Analysis establishing the impact of the delay on the Critical Path of the Official Progress Schedule.
- .5 Owner is not responsible to the Contractor for any constructive acceleration due to Contractor's failure to comply with the submission and justification requirements of the Contract Documents for Contract Time extension requests.

The Contractor's failure to perform in accordance with the Official Progress Schedule shall not be excused because the Contractor has submitted Contract Time extension requests, unless and until Owner Approves such requests.

- .6 Extension to the Contract Time(s) will not be allowed for delays on paths of activities containing Total Float Time per the latest Updated Official Progress Schedule, providing such delay does not exceed the Total Float Time(s) on paths of activities on the latest Updated Official Progress Schedule.
- .7 Any extension of Contract Time(s) granted the Contractor pursuant to this General Conditions.7, "Time", does not constitute a waiver by Owner of, nor a release of the Contractor from, the Contractor's obligation to perform the Work within the Contract Time(s) specified by the Contract Documents, as modified by the particular extension in question. Owner's decision to grant an extension of the Contract Time(s) due to one circumstance set forth in one request, shall not be construed as a grant of an extension for any other circumstance or the same circumstance occurring at some other time, and shall not be viewed by the Contractor as a precedent for any other request for extension of the Contract Time(s).
- .8 If Owner Orders the Contractor to suspend Work pursuant to General Conditions.2, "Administration of the Contract", the Contractor will not be entitled to any extension of the Contract Time(s), damages resulting from the suspension, unless the Contractor can establish that the suspension was Ordered without reasonable justification.

.F Time Impact Analysis

- .1 The time impact analysis must provide information justifying the request for extension of the Contract Time(s) and stating the extent of the adjustment requested for the alleged delay. Time impact analysis must be in form and content acceptable to the Owner and include, but not be limited to, the following:
 - .a Time impact analyses must be based on analyzing the Official Progress Schedule in effect at the time the alleged delay or impact first occurred.
 - .b The Contractor must present fragmentary Critical Path Method (CPM) type network windows (fragnets) in time scaled precedent format, illustrating how Contractor proposes to incorporate the alleged delay into the Updated Official Progress Schedule in effect at the time the alleged delay or impact first occurred.
 - .c The Contractor must identify the activities that are proposed to be amended due to the alleged delay.
 - .d The Contractor must identify the preceding and succeeding activities in the Official Progress Schedule to which the fragnet(s) is to be connected.

.G Weather Delays

- .1 Except for rain, if weather conditions are the basis for delays in the continuance or completion of the Work or any designated portion of the Work, Contractor must substantiate that the weather conditions were abnormal, based on the climatological data for the immediately proceeding 10-year period. For all weather related delay, the Contractor must establish that the adverse weather conditions could not have been reasonably anticipated.
- .2 Rain will not be considered abnormal unless it results in precipitation that exceeds the maximum daily precipitation for the cumulative number of Days per month indicated in General Conditions - Sub-Part 7.06.A.5.

- .3 When the amount of rain is considered to be abnormal, extensions to the Contract Time(s) will be granted where the condition of the site, as determined by the Owner, is such that Contractor can perform no Work identified as Critical Path Work on the current version of the Official Progress Schedule in effect at the time the delay occurred.

.H Concurrent Delays

- .1 If an *Excusable Non-Compensable Delay* and an *Excusable Compensable Delay* operate to concurrently delay completion of the Work, the maximum extension of the Contract Time will be the number of concurrent delay Days . There will be no adjustment of the Contract Sum.
- .2 If a *Non-excusable Delay* operates to concurrently delay completion of the Work with an *Excusable Non-Compensable Delay*, the maximum extension of the Contract Time will be the number of Days of concurrent delay. The entire concurrent delay is non-compensable.

END ARTICLE 7
of
GENERAL CONDITIONS

ARTICLE 8 — PAYMENTS

8.01 GENERAL

- .A Unless otherwise expressly provided for, Contractor shall accept the Contract Sum provided in the Contract as full payment for all Work.
- .B For unit price items, the quantities listed by the Owner's schedule do not govern payment. Payment to Contractor will be made only for the actual quantities of Contract items constructed in accordance with the requirements of the Contract Documents. Upon completion of construction, if the actual quantities show either an increase or a decrease from the quantities stated in the Owner's schedule, the Contract unit prices will prevail and are not subject to adjustment.
- .C Payment will not be made for: materials wasted or disposed of in a manner not called for pursuant to the Contract; rejected material of any kind; material damaged or rejected after it has been placed; and material placed outside of the Work limits shown on the Drawings. No compensation will be made for disposing of rejected or excess material.
- .D Whenever Owner performs any portion of the Work at Contractor's request, the cost thereof will be charged against Contractor, and may be deducted from any amount due or to become due from Owner.
- .E Whenever immediate action is required to prevent impending injury, death, or property damage, and precautions which are Contractor's responsibility have not been taken; Owner may, after reasonable attempt to notify Contractor, cause such precautions to be taken and charge the cost thereof to Contractor, or may deduct such cost from any amount due or become due from Owner. Owner's action or inaction given such circumstances shall not be construed as relieving Contractor or its Surety from any liability for such circumstances.
- .F Payment does not relieve Contractor from its Contract obligations pursuant to the Contract; nor is such payment to be construed to be acceptance of any of the Work. Payment shall not be construed as the transfer of ownership of any equipment or materials to Owner. Responsibility of ownership shall remain with Contractor who is obligated to store, protect, repair, replace, rebuild or otherwise restore any fully or partially completed Work for which payment has been made; or replace any materials or equipment required to be Provided pursuant to the Contract which may be damaged, lost, stolen or otherwise degraded in any way before Acceptance of the Work, except as provided in General Conditions.13.01, "Use Before Acceptance."

8.02 PROGRESS PAYMENTS

- .A General: Contractor will be paid for the actual field accepted quantities for the various items of work; however, in no event will the total payment exceed the total Contract Sum.
- .B Cost Breakdown: Contractor must prepare and submit for Owner's acceptance a Cost Breakdown of the Work totaling the Contract Sum. The Cost Breakdown must be supported by such data to substantiate its accuracy as the Owner may require. The dollar values in the Cost Breakdown will be used for determining the amount of each progress payment. A Cost Breakdown may be rejected if in Owner's opinion any item is unbalanced.
- .C Mobilization Costs: Owner will advance up to five percent of the General Requirements plus cost of Contract Bonds and insurance for Mobilization.

- .D The Owner may refuse to process Contractor's Payment Request or may withhold all or a portion of payments due Contractor until Contractor has met the requirements of General Conditions.3.24.A, "Official Progress Schedule."
- .E The Owner's Project Inspector will review the Record Documents prior to and as a condition of approving each progress payment.
- .F The Owner's Project Manager will establish the monthly pay period end dates. The Contractor must base their monthly progress payment period end dates on the dates established by the Owner.
- .G Establishing the Work completed for each monthly request for payment is an estimate only, and no inaccuracy or error in said estimates operate to release Contractor or its Sureties from damages arising from such Work or from complying with each and every provision of the requirements of the Contract Documents. Owner has the right to correct any error made in any estimate for payment.
- .H No such estimate or payment is required to be made when, in Owner's judgment, the Work is not proceeding in accordance with the requirements of the Contract Documents, or when in Owner's judgment the total value of the Work done since the last pay estimate amounts to less than \$500.
- .I Contractor is not entitled to have any payment made for Work performed so long as any lawful or proper Order concerning the Work or any portion thereof given by Owner to Contractor shall not have been followed.

8.03 RETENTIONS

- .A Owner will retain ten percent (10%) of the estimated value of the Work done, as part security for the fulfillment of the Contract requirements by Contractor, and will pay to Contractor, while carrying on the Work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be withheld or retained pursuant to the provisions of the Contract Documents or allowed or required by law. No such estimate or payment shall be construed to be an acceptance of any defective Work or improper materials.
- .B In addition to any remedy authorized by law, all or a portion of the Contract Sum due Contractor and considered necessary by the Owner to satisfy pending or reasonably anticipated suits or claims for damages, may be withheld by Owner until disposition has been made of such suits or claims.

8.04 TIMELY PROGRESS PAYMENTS & INTEREST

- .a Owner will pay Contractor as provided in 12.1.3 of the GMP Agreement.

8.05 RESERVED

8.06 RESERVED

8.07 PAYMENTS WITHHELD

- .A Owner may withhold payment(s) in whole or in part to such extent as may be necessary to protect Owner from loss from but not limited to:
 - .1 Defective work not remedied;
 - .2 Third party claims filed or reasonable evidence indicating probable filing of such claims;
 - .3 Failure of Contractor to make payments properly to Subcontractors for labor, materials or equipment;

- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, including any Liquidated Damages thereby due;
 - .5 Damage to Owner or another contractor, or damage to the Work, or damage to other work or property;
 - .6 Reasonable evidence that the Work or designated portions of the Work will not be or had not been completed within the Contract Time;
 - .7 Failure to carry out the Work in accordance with the requirements of the Contract Documents, including failure to make required Submittals;
 - .8 Failure to submit certified weekly payrolls
 - .9 Failure or refusal of Contractor to fully comply with the Contract requirements; or
 - .10 Amounts deemed necessary by the Owner to satisfy pending or reasonable anticipated suits or claims for damages
- .B Whenever Owner withholds any monies otherwise due Contractor, Owner will furnish written notice of the amount withheld and the reasons therefore to Contractor.

END ARTICLE 8
of
GENERAL CONDITIONS

ARTICLE 9 — PROTESTS, DISPUTES & CLAIMS

9.01 DECISIONS BY OWNER'S AUTHORIZED REPRESENTATIVE

- .A Protests, Disputes and Claims of Contractor arising from the Contract will be decided by Owner's Authorized Representative who will furnish the decision to Contractor in writing.

9.02 NOTICE OF POTENTIAL CLAIM

- .A Contractor is not entitled to additional compensation for any cause unless Contractor submits to the Owner a written notice of the potential Claim as hereinafter specified. Contractor's notice is material to Owner's ability to mitigate damages, provide direction and avoid delay and cost, and for this reason, Contractor's failure to provide such notice constitutes a waiver of the Claim.
- .B The written notice of potential Claim must set forth the reasons for which Contractor believes additional compensation and/or time will or may be due, the nature of the costs and/or time involved, and, insofar as possible, the amount of the potential Claim. The said notice as above required must have been submitted to Owner before Contractor performs the Work giving rise to the potential Claim for additional compensation and/or time, if based on an act or failure to act by Owner, or in all other cases within fourteen (14) Days after the happening of the event, thing or occurrence giving rise to the potential Claim.
- .C Compliance with the foregoing shall not be a prerequisite to any Claim that is based on differences in measurement or errors of computations as to Contract quantities.

9.03 CONTEMPORANEOUS DOCUMENTATION

- .A Contractor must contemporaneously generate full and complete records of the cost and time incurred to perform Disputed Work.
- .B Beginning with the first day on which any Disputed Work is performed, and each following Day, Contractor must maintain detailed hourly records of labor, construction equipment, and services, and itemized records of materials and equipment used each Day in the performance of the Disputed Work. Such records must be of a form acceptable to Owner, must be signed by Contractor, and are subject to verification by Owner.

9.04 PROTESTS

- .A If Contractor contends that it was directed by Owner to perform Work outside the requirements of the Contract Documents, or if Contractor considers any direction, instruction or decision of Owner to be incorrect or improper, Contractor must immediately notify Owner's Authorized Representative in writing before proceeding with such Work.
- .B If Contractor proceeds with such Work without complying with the requirements of General Conditions - Sub-Part 9.04.A above, providing advance written notification, Contractor will be deemed to have assented that the Work is within the Contract's requirements, and Contractor will have forfeited any right to a protest or Claim.

9.05 DISPUTES

- .A A Dispute is a written disagreement submitted by the Contractor seeking adjustment of Contract terms, payment of money, extension of Contract Time or other relief with respect to the terms of the Contract.
- .B A Dispute is not a Claim.
- .C Each Dispute must involve only one issue to be decided by the Owner

- .D Dispute documentation must be complete when submitted.
- .E The evaluation of the Contractor's position will be based on Owner's records and the Dispute documentation submitted by Contractor.
- .F Contractor must furnish Dispute documentation in the following format:
 - .1 Introduction and Issue Identification
 - .2 Background
 - .3 Chronology
 - .4 Contractor's Position (Reason for Owner's potential liability)
 - .5 Supporting documentation of merit
 - .6 Supporting documentation of damages
 - .7 Schedules (if appropriate)
 - .8 Productivity exhibits (if appropriate)
- .G Supporting documentation of merit must be cited by reference, photocopies, or explained. Supporting documentation may include, but not be limited to General Conditions, General Requirements, Technical Specifications, Drawings, correspondence, conference notes, Shop Drawings and other Submittals, Submittal logs, survey books, inspection reports, delivery schedules, test reports, daily reports, subcontracts, fragmentary Critical Path method schedules, photographs, technical reports, Requests for Information, field instructions, and other related records necessary to support the merit of Contractor's position.
- .H Supporting documentation of damages must be cited, photocopied, or explained. Supporting documentation may include but not be limited to any or all documents related to the preparation and submission of the bids; Subcontractor, Supplier or vendor files and cost records; certified payroll reports, materials, equipment, and construction equipment and services costs; purchase orders; invoices; project as-planned and as-built costs; Subcontractor and Supplier payment documentation; quantity reports; other related records; general ledger and any other accounting materials necessary to support the Contractor's position.
- .I The Owner may elect to enter into discussions and/or negotiations with the Contractor for the purpose of resolving the Dispute. Negotiations on Disputed Work are for settlement purposes only and are not binding.
- .J Owner's Authorized Representative will decide Disputes and Claims. The Contractor will be furnished with a written copy of the Owner's decision.

9.06 CLAIMS

- .A A Claim is a separate unresolved Dispute by the Contractor for:
 - .1 a Contract Time extension;
 - .2 payment of money or damages arising from Work done by, or on behalf of, the Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or
 - .3 an amount the payment of which is disputed by the Owner.
- .B If a Dispute or Disputes have not been resolved to the satisfaction of the Contractor, the Contractor may submit a Claim along with detailed documentation supporting the Claim.
- .C A single Claim may include multiple issues. However, each issue in a Claim must be separately identified and supported.
- .D Contractor must submit certified copies of the Claim documentation. Certification must be provided in accordance with General Conditions - Sub-Part 9.06.J.
- .E All Claim documentation must be complete when submitted.

- .F Each issue to be decided by the Owner must be clearly identified in the Claim. Issues not clearly identified and included in the certified Claim will not be considered.
- .G The evaluation of the Contractor's Claim will be based on Owner's records and the certified Claim documentation submitted by Contractor.
- .H Claim Documentation: Claim documentation must conform to generally accepted auditing standards and must be in the following format:
 - .1 Introduction
 - .2 General Background Discussion
 - .3 Summary of Issues and Damages
 - .4 Issues
 - .a Index of Issues
 - .b For Each Issue (Begin each issue on a new page)
 - .1 Background
 - .2 Chronology
 - .3 Contractor's Position (Reason for County's potential liability)
 - .4 Supporting Documentation of Merit
 - .5 Supporting Documentation of Damages
 - .6 Schedules (if appropriate)
 - .7 Productivity exhibits (if appropriate)
 - .5 Supporting documentation of merit must be cited by reference, photocopies, or explained. Supporting documentation may include, but not be limited to General Conditions, General Requirements, Technical Specifications, Drawings, correspondence, conference notes, Shop Drawings and other Submittals, Submittal Logs, survey books, inspection reports, delivery schedules, test reports, daily reports, subcontracts, fragmentary Critical Path method schedules, photographs, technical reports, Requests for Information, field instructions, and other related records necessary to support the merit of Contractor's position
 - .6 Supporting documentation of damages must be cited, photocopied, or explained. Supporting documentation may include but not be limited to any or all documents related to the preparation and submission of the bid; Subcontractor, Supplier or vendor files and cost records; certified payroll reports, materials, equipment, and construction equipment and services costs; purchase orders; invoices; project as-planned and as-built costs; Subcontractor and Supplier payment documentation; quantity reports; other related records; general ledger and any other accounting materials necessary to support the Contractor's position.
- .I Each original copy of the Claim must include the following certification, signed in the same manner as the Agreement was signed:

.1 Under the penalty of law for perjury or falsification, the undersigned,

Name: _____

Title: _____

Company _____

hereby certifies that this Claim is made in good faith, is a true statement of the actual costs incurred and time sought, is fully supported pursuant to the Contract between parties, that the supporting documentation is accurate and complete to the best of my knowledge and belief, and that the amount requested accurately reflects the Contract adjustments for which Owner is responsible.

Dated _____

Signed _____

Subscribed and sworn before me this _____ day of _____

(Notary Public)

My Commission Expires _____

- .J Failure to submit the notarized certification will be sufficient cause for rejecting the Claim submission.
- .K If Contractor is unable to support any part of a certified Claim and it is determined that such inability is attributable to falsity of such certification or misrepresentation of fact or fraud by Contractor, Contractor shall be liable to Owner for three (3) times the amount of damages which Owner sustains, plus the cost of civil action, and may be liable to Owner for a civil penalty of up to Ten Thousand Dollars (\$10,000) for each false claim.

9.07 RESERVED

9.08 MEDIATION

- .A Authorizations: In the event of a Claim that is not resolved by negotiation, Owner and Contractor agree to attempt to resolve it by Mediation. Mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable solution. These provisions relating to voluntary Mediation are not be construed or interpreted as mandatory arbitration.
- .B Initiation of Mediation: Either party to a Dispute or Claim may initiate Mediation by notifying the other party or parties in writing.
- .C Request for Mediation: A Request for Mediation must set forth a brief statement of the nature of the Claim, the names, addresses, and phone numbers of the parties, and identify their authorized representative, if any, in the Mediation.
- .D Selection of Mediator: Upon receipt of a Request for Mediation, within fourteen (14) Days, the parties will meet and confer to select an appropriate Mediator agreeable to all parties. If the parties cannot agree on a Mediator, they hereby agree to accept a Mediator appointed by a recognized association such as the American Arbitration Association.
- .E Conflict of Interest of Mediator: No person may serve as a Mediator in any Dispute in which that person has any financial or personal interest in the outcome of the Mediation. Before accepting an appointment, the prospective Mediator must disclose any circumstances likely to create a presumption of bias. Upon receipt of such information, the parties will meet and confer and decide whether or not to select another Mediator.
- .F Vacancies: If the Mediator is unwilling or unable to serve, another Mediator will be selected unless the parties agree otherwise.
- .G Representations: Any party may be represented by persons of their choice who must have full authority to negotiate. The names and addresses of such persons must be communicated in writing to all parties and to the Mediator.
- .H Times and Place of Mediation: The Mediator sets the time of each Mediation session. The Mediation will be held at any convenient location agreeable to the Mediator and the parties, as the Mediator determines. All reasonable efforts will be made by the parties and the Mediator to schedule the first session within sixty (60) Days after selection of the Mediator.

- .I Briefing Schedule: As directed by the Mediator, each party must provide the Mediator with a brief setting forth its position with regard to the issues that need to be resolved. At the discretion of the Mediator, the parties may mutually exchange the briefs.
- .J At the first session, the parties will be expected to produce all information reasonably required for the Mediator to understand the issue presented. The Mediator may require each party to supplement such information.
- .K Authority of Mediator: The Mediator does not have authority to impose a settlement upon the parties but will attempt to help the parties reach a satisfactory resolution of their Dispute. The Mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the Mediator may obtain expert advice concerning technical aspects of the Dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice will be made by the Mediator or the parties, as the Mediator shall determine. The Mediator is authorized to end the Mediation whenever, in the Mediator's judgment, further efforts at Mediation would not contribute to a resolution of the Dispute between the parties.
- .L Privacy: Mediation sessions are private. The parties and their representatives may attend Mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the Mediator.
- .M Confidentiality: Confidential information disclosed to a Mediator by the parties or by witnesses in the course of the Mediation will not be divulged by the Mediator. All records, reports, or other documents received by a Mediator while serving as Mediator are confidential. The Mediator is not compelled to divulge such records or to testify in regard to the Mediation in any adversary proceeding or judicial forum.
- .N The parties shall maintain the confidentiality of the Mediation and shall not rely on, or introduce as evidence in any arbitration, judicial or other proceedings: (a) views expressed or suggestions made by the other party with respect to a possible settlement of the Dispute; (b) statements made by the other party in the course of the Mediation proceedings; (c) proposals made or views expressed by the Mediator; (d) whether the other party had or had not indicated willingness to accept a proposal for settlement made by the Mediator.
- .O No Stenographic Record: there will be any stenographic record of the Mediation.
- .P Termination of Mediation: The Mediation may be terminated: (a) by the execution of a settlement agreement by the parties; (b) by a written declaration of the Mediator to the effect that further efforts at Mediation are no longer worthwhile; or (c) by a written declaration of a party or parties to the effect that the Mediation proceedings are terminated.
- .Q Exclusion of Liability: No Mediator is a necessary party in judicial proceedings related to the Mediation. No Mediator is liable to any party for any act or omission in connection with any Mediation conducted hereunder.
- .R Interpretation and Application of Mediation Provisions: The Mediator will interpret and apply these Mediation provisions insofar as they relate to the Mediator's duties and responsibilities.
- .S Expenses: The expenses of witnesses for the parties will be paid by the party producing the witnesses. All other expenses of the Mediation, including required traveling and other expenses of the Mediator, the expenses of any witness called by the Mediator, and the cost of any proofs or expert advice produced at the request of the Mediator, will be apportioned as the Mediator finds appropriate or as otherwise agreed to by the parties.

9.09 UNSUCCESSFUL NEGOTIATIONS

- .A Unsuccessful negotiations to resolve Claims or Disputes are for settlement purposes only and are not binding.

END ARTICLE 9 of GENERAL CONDITIONS

ARTICLE 10 — PROTECTION OF PERSONS AND PROPERTY

10.01 SAFETY PROVISIONS

- .A Contractor is solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of work. This requirement applies continuously and is not limited to Normal Hours of Work. No act, service, drawing or construction review, acceptance or other act by Owner, Owner's Project Inspector, Consultant or any other representative of Owner is intended to include review of the adequacy of Contractor's safety measures at or near the Project Site, at any place of Fabrication, or anywhere else.
- .B Contractor must take all necessary precautions on the Work for the safety of its workers, of Owner's employees and the public, and must comply with all applicable Federal, State, and local safety laws and codes to prevent accidents or injury to persons on, about, or adjacent to where the Work is being performed.
- .C Contractor must erect and properly maintain at all times, as required by the conditions and progress of the Work, all appropriate safeguards for the protection of workers and the public, and post danger signs warning against construction hazards, such as fire, toxics, pesticides, chemicals, odors, noise, vibration, equipment operations, obstructions, falling objects, falls and all other construction related hazards.
- .D Contractor must designate a responsible member of its organization who will be present on the Project Site and who has the duty for prevention of accidents. Prior to starting Work, Contractor must submit a letter to the Owner providing the name and position of the person so designated.

10.02 CONFINED SPACE ENTRY PROGRAM

- .A Contractor must comply with all State and Federal OSHA requirements, and all of Owner's requirements regarding entry into confined spaces including but not limited to the following:
 - .1 Before starting any Work, submit for Owners review and acceptance six (6) copies of a Confined Space Entry Program applying to all existing permit-required confined spaces identified by Owner in the Contract Documents, or defined by regulations, and any confined spaces identified or created by Contractor or Owner during the Contract Time. Owner has the right to identify additional spaces to be treated as confined spaces by Contractor at any time during the Contract Time, without changing the Contract Sum or Contract Time if such additional spaces were created by Contractor.
 - .2 Maintain written records of all entries into confined spaces and all activities conducted in confined spaces.
 - .3 Coordinate all entry operations with Owner when both Contractor's personnel and Owner's personnel will be working in or near a confined space in the Project area. Owner will endeavor to give Contractor at least twenty-four (24) hours advance notice of such entry except in unforeseen situations and emergencies.
 - .4 Inform Owner in writing at the conclusion of entry operations regarding the permit space program followed and any hazards confronted or created in permit spaces during entry operations.

10.03 PUBLIC SAFETY AND CONVENIENCE

- .A Contractor must provide for the safety of the public during construction and conduct its operations to minimize the amount of work posing potential hazards to the public.
- .B Contractor must pave pedestrian openings through false work or Provide full width continuous wood walks and keep all walkways clear. Contractor must protect

pedestrians from falling objects and water runoff. Overhead protection for pedestrians must extend not less than four (4) feet beyond the edge of a structure.

- .C Contractor's equipment must enter and leave the Project area via access routes designated or accepted in writing by Owner, and move in the direction of public traffic at all times. All movements on or across public traveled ways must not endanger public traffic.
- .D Contractor must immediately remove any spillage, debris, dirt, or mud resulting from hauling operations along or across any public traveled way.
- .E Contractor must minimize inconvenience or obstruction to the public. When Contractor's operations create a condition hazardous to the public, Contractor must furnish, erect, and maintain such Temporary Fencing, barricades, lights, signs, and other devices as are necessary for direction of the public or to avoid accidents, damage, or injury to the public. Contractor must furnish such flagmen and guards as are necessary to direct the public or to give adequate warning of any hazardous conditions.

10.04 PROTECTION AND RESTORATION OF PROPERTY

- .A California Civil Code §832 provides requirements relating to notification of adjacent property owners (30 Day notification required) and protection of adjacent property when performing excavation that may adversely impact the lateral and subjacent support to adjoining land or structures. In addition to these requirements and any other requirements imposed by law, Contractor must shore up, brace, underpin, and protect as may be necessary, all foundations and other parts of all existing structures adjacent to and adjoining the site of the Work which are in any way affected by the excavations or other operations connected with the Work pursuant to this Contract. Whenever any notice is required to be furnished by Owner or Contractor to any adjoining or adjacent landowner or other party before commencement of any Work pursuant to this Contract, Contractor must provide such notice. Contractor must indemnify and hold Owner harmless from any damages for which Owner may become liable in consequence of such injury or damage to adjoining or adjacent structures and premises.
- .B Contractor must immediately repair any damage, arising from or in consequence of the performance of the Contract, to improvements or property, whether above or below the ground, private or public, within or adjacent to the Project. If, in Owner's opinion, Owner's best interests require such repair to be made before execution of any part of the Work included in this Contract, Owner will so notify Contractor who will delay or discontinue the performance of that part of the Work until the necessary repair has been made. Such delay shall not be considered unavoidable, and no extension of the Contract Time shall be allowed.
- .C When Ordered by Owner to make any repair, Contractor must start work thereon within four (4) hours and must prosecute the same with diligence to completion. Upon Contractor's failure to comply with such Order, or upon Contractor's failure to make immediate Emergency repairs which are necessary in the best interests of Owner or the public, Owner may cause such repairs to be made and deduct the costs thereof from any money due, or that may become due Contractor.
- .D In an Emergency affecting the safety of life or property, including adjoining property, Contractor is authorized to act at its discretion, without special instructions or authorization from Owner, to prevent such threatened loss or injury, and Contractor must act whether or not instructed by Owner. Contractor must maintain adequate protection against damage to life and property involved in Project and on property adjacent thereto until Acceptance and must Provide all necessary guards, barricades, night lights, facilities, tools, equipment, materials and other needed or required protective devices.

- .E Contractor will until Acceptance maintain adequate protection of all its Work and work performed by others pursuant to the Contract Documents from damage, loss, or defacement. Contractor must repair or replace any such damage and remove any damaged or defaced material or equipment from the premises at no extra cost to Owner except as may be due directly to errors in the Contract Documents or caused by Owner.
- .F The Contractor must ensure the limits of Work to be free of graffiti or other similar defacements during the entire Contract Time; if such defacement occurs, the Contractor must promptly remove, repair, or correct the affected area(s). The Contractor must protect all exposed finished surfaces within the limits of Work (both temporary and final), with anti-graffiti coatings, and maintain such protection continuously during the entire Contract Time.

10.05 PRESERVATION OF CULTURAL RESOURCES

- .A Pursuant to the National Historic Preservation Act of 1966, State laws and County ordinances, the following procedures are implemented to ensure historic preservation and fair compensation to Contractor for construction delays that may occur due to cultural resources discoveries.
- .B In the event potentially historical, architectural, archaeological or cultural resources (hereinafter "resources") are discovered during subsurface excavations at the Project Site, the following procedures apply:
- .C Owner will issue a "Cultural Resources – Suspend Work Order" Directing Contractor to temporarily suspend all operations at the location of such potential resources.
- .D Such "Cultural Resources – Suspend Work Order" will be effective until such time as a qualified Consultant can assess the value of such resources and make recommendations. Any "Cultural Resources – Suspend Work Order" will contain the following:
 - .1 A description of the potential resource, its location, and the area where Contractor's Work is suspended;
 - .2 A description of what part or all of Contractor's Work is suspended;
 - .3 Instructions regarding suspension of orders by Contractor for materials and services;
 - .4 Guidance regarding action to be taken by Subcontractors;
 - .5 Estimated duration of the temporary suspension.
- .E If the Consultant determines that the potential find is indeed a cultural resource, Owner will, as expeditiously as possible, advise Contractor in writing of the action to be taken regarding the find, and the anticipated time frame and extent of any Work suspension.
- .F Documentation
 - .1 Beginning with the first Day of suspension, and for each following Day, Contractor must maintain detailed hourly records of the labor and equipment idled by such suspension, plus substantiation as to why such labor and equipment could not be used on other parts of the Work if such were the case. Such records must be of a form acceptable to Owner, signed by Contractor, and are subject to verification by Owner.
 - .2 Failure by Contractor to furnish the aforesaid records constitutes a waiver of Contractor's right to an adjustment in the Contract Sum.

**END ARTICLE 10
of
GENERAL CONDITIONS**

ARTICLE 11 — INDEMNIFICATION AND INSURANCE

.A See Exhibit I Insurance Requirements

**END ARTICLE 11
of
GENERAL CONDITIONS**

ARTICLE 12 — UNCOVERING AND CORRECTION OF WORK

12.01 GENERAL

- .A The Contractor must notify the Owner two (2) days prior to covering any Work.
- .B If a portion of the Work is covered prior to Owner's review, it must, if requested in writing by the Owner, be uncovered for Owner observation and replaced at the Contractor's expense without change in the Contract Time.

12.02 CORRECTION OF WORK

- .A The Contractor must promptly correct Work rejected by Owner or Work failing to conform to the requirements of the Contract Documents, whether or not Fabricated, Installed or completed. The Contractor bears the costs of correcting such rejected Work, including additional testing and inspections required and compensation for Owner services and expenses made necessary thereby. Contractor must submit four (4) copies of a Corrective Action Plan to the Owner by 10 a.m. of the third workday following receipt of a notice of non-conformance from the Owner.
- .B Notwithstanding General Conditions - Sub-Part 12.02.A, in the event of an Emergency constituting an immediate hazard to the health or safety of Owner's employees, agents, representatives, property, or licensees, Owner may undertake, at the Contractor's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it was caused by work of the Contractor not being in accordance with requirements of the Contract Documents.
- .C The Contractor must remove from the Project Site portions of the Work that are not in accordance with the requirements of the Contract Documents, and are neither corrected by the Contractor nor accepted by the Owner.
- .D If the Contractor fails to correct nonconforming Work, as per General Conditions - Sub-Part 12.02.A, or fails to remove nonconforming work, as per General Conditions - Sub-Part 12.02.C, Owner may correct or remove the nonconforming Work per General Conditions - Sub-Part 12.02.E.
- .E If the Contractor does not submit a Corrective Action Plan or proceed with correction or removal of nonconforming Work, within such time fixed by the Contract Documents or written notice from Owner, Owner may remove and store the salvable materials, articles and/or equipment at the Contractor's expense. If the Contractor does not pay all costs of such removal and storage within 14 Days after written notice, Owner may, upon 14 additional Days written notice, sell such materials articles and/or equipment at an auction or private sale, and shall account for the proceeds thereof, after deducting costs and damages that would have been borne by the Contractor, including compensation for Owner services and expenses made necessary thereby. If the proceeds of a sale do not cover all costs that the Contractor would have borne, the Contract Sum will be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor must pay the difference to Owner.
- .F The Contractor bears the cost of correcting destroyed or damaged Work, which is caused by the Contractor's correction, or removal of Work that is not in accordance with requirements of the Contract Documents, including work performed by Owner or separate contractors that is damaged or destroyed by the Contractor during the Contract Time or Guarantee period.
- .G Nothing contained in this General Conditions.12.02, "Correction of the Work", establishes a period of limitation with respect to other obligations that the Contractor might have in the Contract Documents. Establishment of the Warranty/Guarantee

period(s), as described in General Conditions.13.11, "Warranties & Guarantees", relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with requirements of the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.03 ACCEPTANCE OF NONCONFORMING WORK

- .A If Owner prefers to accept any or all of the Work that is not in accordance with requirements of the Contract Documents, Owner may do so instead of requiring its correction and/or removal, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not Final Payment to the Contractor has been made.

END ARTICLE 12 of GENERAL CONDITIONS

ARTICLE 13 — FINAL COMPLETION AND ACCEPTANCE

13.01 USE BEFORE ACCEPTANCE

- .A Owner has the right to utilize or place into service any item of equipment or other usable portion of the Work before Acceptance of the entire Project. Whenever Owner plans to exercise said right, Owner's Authorized Representative will notify Contractor in writing, identifying the specific portion or portions of the Work to be so utilized or otherwise placed into service, hereinafter referred to as "Use Before Acceptance".
- .B Until Owner's Authorized Representative issues such written notification, Contractor is responsible for all care and maintenance of all items or portions of the Work.
- .C Upon Owner's issuance of written notice of Use Before Acceptance, Owner accepts responsibility for the protection and maintenance of all such items or portions of the Work described in the written notice, excepting any injury or damage resulting from Contractor's actions or negligence.
- .D If, by reason of Owner's Use Before Acceptance, the premium for the Contractor's bodily injury and property damage insurance is increased, Owner will reimburse the Contractor for the additional amount necessarily incurred, allocable to the area and the period of Owner's occupancy, up to the Date of Acceptance of the Work.
- .E Owner's Use Before Acceptance does not constitute Acceptance of the Work, or any portion of the Work, by Owner, nor will it relieve the Contractor of responsibility for correcting defective and/or Deficient Work or materials found at any time before Acceptance of the Work or during the Guarantee period after Owner's Acceptance. However, when the Project includes separate buildings, and one or more of the buildings is entirely occupied by Owner, then upon written request by the Contractor and by written consent from Owner, the Guarantee period on the building entirely occupied by Owner will commence to run from the date of Owner occupancy of such building or buildings.
- .F Notwithstanding any Use Before Acceptance, Contractor retains full responsibility for fulfillment of all the requirements of the Contract Documents.
- .G Should the Owner elect to partially occupy or use portions of the Work prior to Acceptance, Contractor must perform final cleaning for those portions of the Work prior to their being so occupied or used.

13.02 CONTRACTOR'S LIST OF INCOMPLETE WORK

- .A Near the final completion of the entire Work of the Project, but not less than ninety (90) Days prior to anticipated date of Final Inspection, Contractor must conduct a detailed inspection of the Project, and submit four (4) copies of a list of Incomplete Work with a schedule for final completion thereof to Owner's Project Manager.
- .B Within 60 Days after receipt of Contractor's list of Incomplete Work and schedule for final completion, Owner's Project Manager will determine appropriate (tentative) dates for a Preliminary Walk-Through inspection and the Final Inspection. The Preliminary Walk-Through Inspection and Final Inspection will not be conducted until:
 - .1 The entire Work of the Project is complete.
 - .2 Final Cleaning has occurred
 - .3 Deficient Work identified in all outstanding non-conformance notices has been corrected.

- .C Contractor must include activities for submission of Contractor's List of Incomplete Work, Preliminary Walk-Through Inspection, and Final Inspection in Contractor's Progress Schedule.

13.03 CONTRACTOR'S CERTIFICATION THAT ALL WORK OF THE PROJECT IS COMPLETE

- .A When all Work is complete and after the Contractor has performed the final cleaning, Contractor must so certify to Owner's Project Manager and request a Preliminary Walk-Through Inspection.
- .B If the Contract Documents include a Milestone for the completion of the entire Work of the Project, four (4) copies of the Milestone Completion certification must be submitted concurrently with the Contractor's certification that all the Work of the Project is complete as required by General Conditions - Sub-Part 13.03.A.

13.04 PRELIMINARY WALK-THROUGH INSPECTION

- .A Within seven (7) Days of receipt of Contractor's certification that all Work is complete, Owner's Project Inspector will make a Preliminary Walk-Through Inspection with Contractor to verify that the Project is complete and ready for Final Inspection.
- .B If Owner's Project Manager determines that the Work is not complete, Contractor will be notified in writing. Contractor must complete the Work and re-initiate procedures for another Preliminary Walk-Through Inspection. At Owner's discretion, any costs to Owner for more than two (2) Preliminary Walk-through Inspections may be charged to the Contractor.

13.05 FINAL INSPECTION

- .A The Final Inspection will occur within twenty-one (21) Days of the Contractor's certification of final completion if the Owner's Project Manager agrees with the Contractor's certification.
- .B If Owner's Project Manager determines the completed Work is deficient, Contractor will be furnished with a Punch list identifying the observed deficiencies in the completed Work. After all deficiencies have been corrected, Contractor must initiate procedures for another Final Inspection. If Contractor requests more than two (2) Final Inspections, at Owner's discretion, any costs to Owner for additional Final Inspections may be charged to the Contractor.
- .C Contractor's Progress Schedule must include activities for Final Inspection.

13.06 RECOMMENDATION FOR ACCEPTANCE

- .A After Final Inspection, the Owner's Authorized Representative will recommend that the Owner formally Accept the Work if the Contractor has satisfactorily:
 - .1 Corrected all deficiencies observed during the Final Inspection and no new deficiencies have been observed
 - .2 Submitted required copies of Record Documents (As-Builts)
 - .3 Submitted copies of all documents required by General Conditions.3.14, "Transport/Disposal of Materials Outside Project Area" and General Conditions.3.15, "Hazardous Materials"
 - .4 Submitted four (4) copies of satisfactory evidence to Owner that all payrolls, material bills and other indebtedness connected with said Work have been paid
 - .5 Submitted all other required contract deliverables.

13.07 ACCEPTANCE OF THE WORK

- .A Acceptance of the Work will be made by the Owner and evidenced by an executed and recorded Notice of Completion.
- .B Owner's Acceptance establishes conformity with the Contract except for delays in completion, latent defects, fraud, or such gross errors as amount to fraud, willful misconduct, or gross negligence, and subject to any Guarantee and Warranty, express or implied.
- .C Determinations by Owner's Authorized Representative that the Work is complete or Acceptance of the Work by the Owner does not bar any action by the Owner against the Contractor pursuant to General Conditions.13.11, "Warranties & Guarantees"

13.08 FINAL PAYMENT

- .A Provided that Owner has recorded a Notice of Completion, thirty-five (35) Days after the date of recording of the Notice of Completion by the County Recorder, Owner's Project Manager will process the request for Final Payment for the Work. Owner will withhold from Final Payment such amounts that are in Dispute between Owner and Contractor, amounts subject to offset/setoff, and all other amounts that must be withheld by law (such as Stop Notice sums.)
- .B All estimates and payments made, including the final estimate and payment, are subject to correction and adjustment for clerical errors in the calculations involved in the determination of quantities and payments. Contractor and Owner agree to pay to the other any sum hereby due.
- .C Contractor has no right to an adjustment in Contract Time or Contract Sum after accepting Final Payment pursuant to this Contract.

13.09 CONTRACTOR'S DUTIES AND RESPONSIBILITIES AFTER ACCEPTANCE

- .A After Acceptance of the Work by the Owner, Contractor is relieved of the duty of maintaining and protecting the entire Work, and Contractor is not required to perform any further Work thereon, except as otherwise required by law or the Contract Documents.
- .B Contractor is relieved of responsibility for injury to persons or property or damage to the Work that occurs after Owner's Acceptance, provided that such injury/damage is not in any way caused by Contractor.
- .C Owner's Acceptance does not relieve Contractor of responsibility for faulty materials or workmanship or of complying with the requirements of Warranties and Guarantees.

13.10 RETENTION PROCEEDS, WITHHOLDING AND DISBURSEMENT

- .A In the event of a Dispute between Owner and Contractor, Owner may withhold from the Final Payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount.
- .B For purposes of release of retention, "completion" means any of the following:
 - .1 The occupation, beneficial use, and enjoyment of the entire Work, accompanied by cessation of labor on the work of improvement.
 - .2 The Acceptance by Owner of the Work.

- .3 After the commencement of Work, a cessation of labor on the Work for a continuous period of one-hundred (100) Days or more, due to factors beyond Contractor's control.
- .4 After the commencement of Work, a cessation of labor on the Work for a continuous period of thirty (30) Days or more, if Owner records a Notice Of Cessation or a Notice Of Completion with the County Recorder.
- .C Subject to General Conditions - Sub-Part 13.10.D below, within seven (7) Days from the time that all or any portion of the retention proceeds are received by Contractor, Contractor must pay each of its Subcontractors from whom retention has been withheld, each Subcontractor's share of the retention received. However, if a retention payment received by Contractor is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor, if the payment is consistent with the terms of the Subcontract.
- .D Contractor may withhold from a Subcontractor its portion of the retention proceeds if a bona fide dispute exists between the Subcontractor and Contractor. The amount withheld from the retention payment shall not exceed one hundred fifty percent (150%) of the estimated value of the disputed amount.

13.11 WARRANTY & GUARANTEES

- .A Neither the final Acceptance, nor payment, nor any provision in the Contract Documents relieves Contractor of responsibility for faulty materials or workmanship.
- .B Contractor must guarantee all workmanship and materials for a period of **one year**, or as specified in the Contract Documents, from and after the Date of Acceptance of the Work by the Owner.
- .C Contractor may also be required to furnish a written Guarantee covering all or certain items of Work for longer periods of time from the Date of Acceptance of the Contract. The Work to be Guaranteed, the form, and the time limit of the Guarantee will be specified in the Contract Documents. Said Guarantee must be signed and submitted to Owner before Acceptance of the Work.
- .D The Warranty/Guarantee period begins at the Date of Acceptance of the Work by the Owner.
- .E Contractor must repair or replace all defective Work, together with any other Work affected by the repair or replacement during said Guarantee period without expense whatsoever to Owner.
- .F The aforesaid one-year Warranty/Guarantee period does not in any way limit or waive Owner's rights to legal recourse for latent construction defects, pursuant to California Civil Code of Procedure §337.15 nor for patent construction defects pursuant to §337.1.
- .G Approximately ninety (90) Days before completion of the entire Work of the Project, Contractor must meet with Owner regarding Warranty/Guarantee requirements. Owner will establish communication procedures for notifying Contractor of Warranty defects, priorities regarding the type of defect, time required for Contractor response, and other details deemed necessary by Owner for execution of the Warranty/Guarantee.
- .H In the event of Contractor's failure to comply with the requirements of any Warranty/Guarantee required by the Contract Documents within three (3) calendar Days after being notified in writing, Owner may proceed to have the defects repaired and made good at the expense of Contractor who must pay all costs and charges immediately upon demand.

- .I No later than fifteen (15) Days from Contractor's certification that the entire Work of the Project is complete, Contractor must submit a Warranty/Guarantee register (master list of Warranties/Guarantees), indicating the individual item of equipment and system for which a warranty or guarantee is required (roofing, doors, sealants, etc.), the pertinent section in the Contract Documents, length of each Warranty/Guarantee, effective dates, Contractor/Subcontractor name, contact person and telephone number.

13.12 WARRANTY/GUARANTEE FORM

Contractor must sign and submit to the Owner the following Guarantee in the form shown below:

[Contractor's Name] hereby unconditionally Guarantees that the project commonly known as the [Renovation of "WORK"] has been completed in accordance with the requirements of the Contract Documents and further Guarantees the Work to be free of defects in workmanship, equipment and materials and to remain free of such defects for a period of one (1) year from the Date of Acceptance of the Work by the Owner, per General Conditions.13.11, "Warranties & Guarantees", unless a longer/shorter period(s) is called for by the Contract Documents. The Contractor hereby agrees to repair or replace any and all components of the Work, together with any adjacent work that may have been damaged or displaced in so doing, that may prove to be not in accordance with the requirements of the Contract Documents or that may be defective in its workmanship or materials within the period specified, without any expense whatsoever to Owner, ordinary wear and tear and unusual abuse and neglect excepted. The Contractor has provided Contract Bonds that will remain in full force and effect during the Guarantee period.

The Contractor further agrees that within three (3) calendar Days after being notified in writing of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work, it will commence and prosecute with due diligence all work necessary to fulfill the terms of this Guarantee, and to complete the Work within a reasonable period of time. In the event Contractor fails to so comply, Contractor does hereby authorize Owner to proceed to have such Work done at the Contractor's expense and Contractor will pay the cost thereof upon demand. Owner will be entitled to all costs, including reasonable attorneys' fees, necessarily incurred upon the Contractor's refusal to pay the above costs.

Notwithstanding the foregoing paragraph, in the event of an Emergency constituting an immediate hazard to the public health or safety or the health or safety of Owner's employees, Owner may undertake at the Contractor's expense without prior notice, all work necessary to correct such hazardous condition when it was caused by the Work of the Contractor not being in accordance with the requirements of this Contract, or being defective, and to charge the same to the Contractor as specified in the preceding paragraph.

The Guarantee set forth herein is not intended by the parties, nor shall it be construed, as in any way limiting or reducing Owner's rights to enforce all terms of the Contract Documents referenced hereinabove or the time for enforcement thereof. This Guarantee is provided in addition to, and not in lieu of, Owner's rights on such Contract.

The one-year Warranty/Guarantee period set forth herein does not in any way limit or waive the Owner's rights to pursue legal action for latent construction defects, in accordance with California Code of Civil Procedure §337.15, nor for patent construction defects in accordance with California Code of Civil Procedure §337.1.

By: _____ Title: _____ Date: _____

CONTRACTOR'S SIGNATURE

(Corporate Seal)

ARTICLE 14 — MISCELLANEOUS PROVISIONS

14.01 CONTRACTOR'S USE OF COMPUTER SOFTWARE

- .A Contractor certifies that it has appropriate systems and controls in place to ensure that Owner funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

14.02 RIGHTS IN LAND AND IMPROVEMENTS

- .A Nothing in the Contract shall be construed as allowing Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the physical limits of the Project for any purpose whatsoever, either with or without compensation, nor act in conflict with any agreement between Owner and any owner, former owner, or tenant of such land, structure, or building.
- .B Contractor must not occupy Owner's property outside the Project limits as shown on the Plans or on maps available in Owner's offices, unless Contractor enters into a written agreement with Owner.