**Sample Contract Provisions**

**Keyed to JBCM Chapter 8, Appendix B**

|  |  |  |
| --- | --- | --- |
| 1 | Termination due to nonavailability of funds  | The JBE’s payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. Upon notice, the JBE may terminate this Agreement in whole or in part, without prejudice to any right or remedy of the JBE, if expected or actual funding is withdrawn, reduced, or limited in any way. If this Agreement is terminated for nonavailability of funds, the JBE will pay Contractor for the fair value of work satisfactorily performed prior to the termination, not to exceed the total Agreement amount.  |
| 2 | Loss leader | Contractor shall not sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code. |
| 3 | Antitrust claims | Contractor shall assign to the JBE all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the JBE. Such assignment shall be made and become effective at the time the JBE tenders final payment to Contractor. If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the JBE shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the JBE has not been injured thereby, or (b) the JBE declines to file a court action for the cause of action.  |
| 4 | Recycled products/post-consumer material | If Contractor will sell to the JBE, or use in the performance of this Agreement, goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), then with respect to those goods: (i) Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible, and (ii) upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.  |
| 5 | Priority hiring | Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.  |
| 6 | DVBE commitment | This section is applicable if Contractor received a disabled veteran business enterprise (“DVBE”) incentive in connection with this Agreement. Contractor’s failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the JBE approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must complete and return to the JBE a post-contract certification form (https://www.courts.ca.gov/documents/JBCM-Post-Contract-Certification-Form.docx), promptly upon completion of the awarded contract, and by no later than the date of submission of Contractor’s final invoice to the JBE. If the Contractor fails to do so, the JBE will withhold $10,000 from the final payment, or withhold the full payment if it is less than $10,000, until the Contractor submits a complete and accurate post-contract certification form. The JBE shall allow the Contractor to cure the deficiency after written notice of the Contractor’s failure to complete and submit an accurate post-contract certification form. Notwithstanding the foregoing and any other law, if after at least 15 calendar days, but no more than 30 calendar days, from the date of the written notice the Contractor refuses to comply with these certification requirements, the JBE shall permanently deduct $10,000 from the final payment, or the full payment if less than $10,000. The post-contract certification form shall include: (1) the total amount of money Contractor received under the Agreement; (2) the total amount of money and the percentage of work each Contractor committed to provide to each DVBE subcontractor; (3) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (4) the amount of money each DVBE subcontractor actually received from Contractor in connection with the Agreement, and the corresponding percentage this payment comprises of the total amount of money Contractor received under the Agreement; and (5) that all payments under the Agreement have been made to the applicable DVBE subcontractors. Upon request by the JBE, the Contractor shall provide proof of payment for the work. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. The Contractor will comply with all rules, regulations, ordinances and statutes that govern the DVBE program, including, without limitation, Military and Veterans Code Section 999.5. |
| 7 | Small business preference commitment | This section is applicable if Contractor received a small business preference in connection with this Agreement. Contractor’s failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Contractor must within sixty (60) days of receiving final payment under this Agreement report to the JBE the actual percentage of small/micro business participation that was achieved. If Contractor is a nonprofit veteran service agency (“NVSA”), Contractor must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement. |
| 8 | Union activities | ***THREE OPTIONS:*** **1. If the Agreement is $50,000 or under, and allows for the reimbursement of Contractor expenses:**Contractor must include with any request for reimbursement from the JBE a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the JBE was sought for these costs, and Contractor will provide those records to the Attorney General upon request. **2. If the Agreement is over $50,000, and allows for the reimbursement of Contractor expenses:**Contractor must include with any request for reimbursement from the JBE a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. No JBE funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term). If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no JBE funds were used for those expenditures and no reimbursement from the JBE was sought for these costs. Contractor will provide those records to the Attorney General upon request. **3. If the Agreement is over $50,000, but does not allow for the reimbursement of Contractor expenses.**No JBE funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term). If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no JBE funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.  |
| 9 | Insurance | 1. **Insurance. *[SPECIAL INSTRUCTIONS: These provisions may need to be modified or tailored, as necessary, for high dollar amount, high risk or complex projects.]***
	1. **General Requirements.**
		1. By requiring the minimum insurance set forth in this Agreement, the JBE shall not be deemed or construed to have assessed the risks that may be applicable to Contractor under this Agreement. Contractor shall assess its own risks and if it deems appropriate or prudent, maintain higher limits or broader coverage.
		2. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Contractor; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement, whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to the JBE in compliance with the insurance requirements set forth in this Agreement. The JBE may, in its sole discretion, accept self-insurance or risk-pool coverage as a substitute for any of the required insurance policies under this Agreement. No representation is made by the JBE that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Contractor under this Agreement.Contractor shall obtain and maintain the required insurance for the duration of this Agreement with an insurance company or companies acceptable to the JBE, in its sole discretion, and that are rated “A-VII” or higher by A. M. Best’s key rating guide and are authorized to do business in the state of California.
		3. For all insurance policies required under this Agreement, no deductible shall exceed five (5) percent of the minimum limit of insurance required under this Agreement unless authorized in writing by the JBE. Any Contractor deductible must be clearly stated on the appropriate certificate of insurance.

Self-Insured retentions (SIR) must be declared to and approved in writing by the JBE. The JBE may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or JBE. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to Judicial Branch Entities or Judicial Branch Personnel. JBE may deduct from any amounts otherwise due Contractor to fund the SIR. Policies shall NOT contain any SIR provisions that limit the satisfaction of the SIR to the named insured. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the SIR. JBE reserves the right to obtain a copy of any policies and endorsements for verification.* + 1. Contractor is responsible for and may not recover from the State of California, Judicial Council, or the JBE any deductible or self-insured retention that is connected to the insurance required under this Agreement. If self-insured, Contractor warrants that it will maintain funds to cover losses required to be insured against by Contractor under the terms of this Agreement.
		2. Contractor, prior to commencing performance under this Agreement, shall provide JBE with certificates of insurance and signed insurance policy endorsements, on forms acceptable to JBE, as evidence that the required insurance is in full force and effect. The insurance required under this Agreement, and any excess liability or umbrella liability insurance, that Contractor maintains in compliance with the terms of this “General Requirements” subsection (with the exception of Professional Liability Insurance, if required) must be endorsed to include the State of California; Judicial Council of California; the JBE, and their respective elected and appointed officials, judicial officers, officers, employees, and agents as additional insureds. No payments will be made to Contractor until all required current and complete certificates of insurance and signed insurance policy endorsements are properly endorsed and on file with the JBE.
		3. The insurance required under this Agreement, including all required additional insured coverages, must be endorsed to be primary and non-contributory to any insurance or self-insurance maintained by the State of California, the Judicial Council, or the JBE. Contractor’s liabilities under this Agreement shall not be limited in any manner to the insurance coverage required.
		4. Failure to provide the documentation as required prior to the commencement of Work shall not constitute or be construed as a waiver of the obligation to provide such documentation.
		5. The Certificates of Insurance must be addressed and mailed to:

[*Provide name and address*]* + 1. All insurance policies required under this Agreement must remain in force for the entire duration of this Agreement. If the insurance expires during the Term of this Agreement, Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsement(s), or Contractor will be in breach of this Agreement, and the JBE may direct the Contractor to stop work or may take other remedial action. Contractor must provide renewal insurance certificates and signed policy endorsements to JBE on or before the expiration date of the previous insurance certificates and signed policy endorsements. Any new insurance procured by Contractor must conform to the requirements of this Agreement.
		2. In the event Contractor fails to keep the specified insurance coverage in force at all times required under this Agreement, JBE may, in addition to and without limiting any other remedies available to it, (i) order the Contractor to stop work, or (ii) terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
		3. Contractor, and each insurer providing insurance required under this Agreement, expressly waives all rights of recovery and subrogation rights it may have against the State of California, Judicial Council, the JBE, and their respective elected and appointed officials, judicial officers, officers, employees, and agents for direct physical loss or damage arising from Contractor’s performance of this Agreement, and for any liability arising out of or in connection with Contractor’s performance of this Agreement or arising out of or in connection with Contractor’s breach of this Agreement. This provision does not apply to professional liability insurance policies.
		4. Contractor shall provide the JBE with written notice within TEN (10) calendar days of becoming aware of a material change or cancellation of the insurance policies required under this Agreement. In the event of expiration or cancellation of any insurance policy, Contractor shall immediately notify the JBE’s Project Manager.
		5. JBE reserves the right to request certified copies of any of the insurance policies required under this Agreement, which must be provided by Contractor within ten (10) business days following the request by JBE.
		6. Contractor must require insurance from its Subcontractors in substantially the same form as required of the Contractor herein and with limits of liability that are sufficient to protect the interests of the Contractor, State of California, the Judicial Council, and the JBE.
	1. **Individual Policy Requirements**
		1. Commercial General Liability

Commercial General Liability Insurance shall be written on an occurrence form with limits of not less than one million dollars ($1,000,000) per occurrence for bodily injury and property damage and two million dollars ($2,000,000) annual aggregate. The policy shall include coverage for liabilities arising out of or in connection with premises, operations, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom a claim is made or suit is brought. The products and completed operations liability shall extend for not less than three (3) years past the completion of Contractor’s performance under this Agreement or the termination of this Agreement, whichever occurs first.* + 1. Commercial Automobile Liability

Commercial Automobile Liability Insurance shall have limits of not less than one million dollars ($1,000,000) per accident. This insurance must cover liability arising out of or in connection with the operation, use, loading, or unloading of a motor vehicle assigned to or used in connection with the Contractor’s performance under this Agreement, including, without limitation, owned, hired, and non-owned motor vehicles.* + 1. Workers’ Compensation & Employers’ Liability Insurance

If Contractor has employees, it shall maintain workers’ compensation insurance as required by law. Employer’s liability limits shall be not less than one million dollars ($1,000,000) for each accident, one million dollars ($1,000,000) as the aggregate disease policy limit, and one million dollars ($1,000,000) as the disease limit for each employee. If Contractor does not have employees, it shall provide a letter, on company letterhead, to the JBE certifying, under penalty of perjury, that it does not have employees. Upon the JBE’s receipt of the letter, Contractor shall not be required to maintain workers’ compensation insurance.* + 1. Professional Liability Insurance

Professional Liability Insurance shall include coverage for any negligent act, error, or omission committed or alleged to have been committed which arises out of rendering or failure to perform its obligations as required under the terms of this Agreement. The policy shall provide limits of not less than one million dollars ($1,000,000) per claim or per occurrence and two million dollars ($2,000,000) annual aggregate. If the policy is written on a “claims made” form, Contractor shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement. The retroactive date or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that Contractor commences performance pursuant to the Agreement.* + 1. Cyber Liability Insurance

Cyber Liability Insurance, with limits not less than two million dollars ($2,000,000) per occurrence or claim, two million dollars ($2,000,000) aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Contractor in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.* + 1. Technology Professional Liability Errors & Omissions

Technology professional liability errors and omissions insurance appropriate to the Contractor’s profession and work hereunder, with limits not less than two million dollars ($2,000,000) per occurrence, and two million dollars ($2,000,000) per annual aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by the Contractor pursuant to this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties, as well as credit monitoring expenses.The technology professional liability errors and omissions insurance policy shall include, or be endorsed to include, *property damage liability coverage* for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the JBE in the care, custody, or control of the Contractor. If not covered under Contractor’s technology professional liability errors and omissions insurance, such “property” coverage of the JBE must be endorsed onto the Contractor’s Cyber Liability Policy. * + 1. Builders Risk/Installation

Builders Risk/Installation Coverage Policy shall be written on an all-risk basis and that covers the work to be performed under this Agreement for direct physical loss or damage while in the course of transportation, erection, installation, and completion with limits of liability equal to the final completed value of the project.* + 1. Contractor’s Equipment Insurance

Contractor shall maintain equipment insurance covering its business property, equipment, and tools used in the performance at the project site that are not intended to become a permanent part of the work. The JBE shall not be responsible for loss or damage to or obtaining and/or maintaining in force insurance on temporary structures, construction equipment, tools, or personal effects, owned or rented to or in the care, custody, and control of a Contractor of any tier.* + 1. Commercial Crime Insurance

This policy is required if Contractor handles or has regular access to JBE’s funds or property of significant value to the JBE. This policy must cover dishonest acts including loss due to disappearance or destruction of money, securities, and property; forgery and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be one million dollars ($1,000,000).* 1. Umbrella Policies

Contractor may satisfy basic coverage limits through any combination of primary, excess, or umbrella insurance.  |
| 10 | BSA audit provision | This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment. |
| 11 | General audit and records provision | Contractor must allow the JBE or its designees to review and audit Contractor’s (and any subcontractors’) documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement, Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the JBE five percent (5%) or more during the time period subject to audit, Contractor must reimburse the JBE in an amount equal to the cost of such audit.  |
| 12 | Indemnification by contractor | Contractor will defend (with counsel satisfactory to the JBE or its designee) indemnify and hold harmless the JBE, other California judicial branch entities, and their officers, agents, and employees from and against all claims, losses, and expenses, including attorneys’ fees and costs, that arise out of or in connection with (i) a latent or patent defect in any goods, (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any goods, services, or deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the JBE’s prior written consent, which consent shall not be unreasonably withheld; and the JBE shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor’s duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party. |
| 13 | Independent contractor provision | Contractor is an independent contractor to the JBE. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JBE. Contractor has no authority to bind or incur any obligation on behalf of the JBE. If any governmental entity concludes that Contractor is not an independent contractor, the JBE may terminate this Agreement immediately upon notice.  |
| 14 | Termination for cause | The JBE may terminate this Agreement, in whole or in part, immediately “for cause” if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following notice of default (or, in the opinion of the JBE, is not capable of being cured within this cure period); (ii) Contractor or Contractor’s creditors file a petition as to Contractor’s bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading. If the JBE terminates this Agreement in whole or in part for cause, the JBE may acquire from third parties, under the terms and in the manner the JBE considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the JBE for any excess costs for those goods or services. |
| 15 | Termination by JBE for convenience  | The JBE may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days notice. |
| 16 | Effect of expiration or termination; survival provisions | Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration. |
| 17 | Prohibition on assignment and subcontracting | Contractor may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the JBE. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect.  |
| 18 | Binding on successors | This Agreement will be binding on the parties and their permitted successors and assigns. |
| 19 | Personnel and background checks | Contractor shall cooperate with the JBE if the JBE wishes to perform any background checks on Contractor’s personnel by obtaining, at no additional cost, all releases, waivers, and permissions the JBE may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the JBE of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the JBE and performed by Contractor. Contractor shall ensure that the following persons are not assigned to perform services for the JBE: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Contractor or that, after disclosure to the JBE, the JBE advises are unacceptable to the JBE. |
| 20  | GAAP compliance | Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.  |
| 21 | Ownership of results, rights in work product | Contractor irrevocably assigns to the JBE all right, title and interest worldwide in and to the materials created under this Agreement, and all applicable intellectual property rights related to the materials created under this Agreement, including copyrights, trademarks, trade secrets, moral rights, and contract and licensing rights. Contractor grants to the JBE a nonexclusive, transferable, sublicenseable (through multiple tiers), worldwide, perpetual, irrevocable, fully-paid and royalty-free license to use, reproduce, make derivative works of, perform, display, and distribute any portion of the materials delivered by Contractor but not created under this Agreement. Upon the expiration or termination of this Agreement, or upon the JBE’s notice at any time, Contractor shall give all materials to the JBE or to another party at the JBE’s direction. |
| 22 | Confidentiality | During the term of this Agreement and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the JBE’s express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The JBE owns all right, title and interest in the Confidential Information. Contractor will notify the JBE promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the JBE to protect such Confidential Information. Upon the JBE’s request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the JBE or, if so directed by the JBE, destroy all Confidential Information (in every form and medium), and (b) certify to the JBE in writing that Contractor has fully complied with the foregoing obligations.“Confidential Information” means: (i) any information related to the business or operations of the JBE, including information relating to the JBE’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the JBE (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the JBE’s satisfaction that: (a) Contractor lawfully knew prior to the JBE’s first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.  |
| 23 | Publicity | Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the JBE.  |
| 24 | Choice of law (California)  | California law, without regard to its choice-of-law provisions, governs this Agreement.  |
| 25 | Amendment | Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the JBE.  |
| 26 | Waiver | A waiver of enforcement of any of this Agreement’s terms or conditions by the JBE is effective only if expressly agreed in writing by a duly authorized officer of the JBE. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. |
| 27 | Severability | If any part of this Agreement is held unenforceable, all other parts remain enforceable.  |
| 28 | Time of the essence | Time is of the essence in Contractor’s performance under this Agreement.  |
| 29 | Negotiated agreement | This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.  |
| 30  | Headings | All headings are for reference purposes only and do not affect the interpretation of this Agreement.  |
| 31 | Counterparts | This Agreement may be executed in counterparts, each of which is considered an original.  |
| 32 | Entire agreement | This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.  |
| 33 | Informal dispute resolution | The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. |
| 34 | Suspension of work | The JBE may issue a written order to Contractor to suspend, delay, or interrupt all or any part of the work for the period of time that the JBE determines appropriate. The JBE shall not be liable to Contractor for loss of profits arising out of such written order. After the period of time specified in the written order has elapsed, the work covered by the written order shall resume unless the JBE terminates the work covered by the written order. |