



Attachment G

General Conditions of the Agreement for Construction

New Yuba City Courthouse

Superior Court of California

County of Sutter



**ADMINISTRATIVE OFFICE
OF THE COURTS**

JUDICIAL AND COURT OPERATIONS
SERVICES DIVISION

JUDICIAL BRANCH CAPITAL PROGRAM OFFICE

DOCUMENT 00 70 00

GENERAL CONDITIONS OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS:

- 1.1 DEFINITIONS:** If and when the following terms appear in the Contract, they shall have the following meaning:
- 1.1.1. Acceptance of the Work:** Written acceptance of the Work in compliance with the Agreement by the Director or the Director's designee.
 - 1.1.2. Addendum (Addenda):** A document issued by the AOC during the procurement period which modifies, supersedes or supplements the Contract Documents.
 - 1.1.3. Adverse Weather:** Weather that satisfies all of the following conditions:
 - 1.1.3.1.** Unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred as determined by a source mutually agreed to by the AOC and the General Contractor or, if none can be mutually agreed upon, as indicated at <http://countrystudies.us/united-states/weather/California>;
 - 1.1.3.2.** Unanticipated; and
 - 1.1.3.3.** Occurring at the Project Site.
 - 1.1.4. Allowance(s):** Amount(s) indicated in the Agreement as part of the Contract Sum for specific scopes of work for which the General Contractor may bill its time, materials, and other items in the identical structure as a Change Order.
 - 1.1.5. AOC or "Owner" or State":** The State of California acting through the Judicial Council of California/Administrative Office of the Courts.
 - 1.1.6. Applicable Codes:** Include, but are not limited to, applicable laws, statutes, regulations, rules, building and other codes, ordinances, rulings, and lawful orders of all public authorities having jurisdiction over the AOC, the General Contractor, Subcontractors, the Project, the Work, or the prosecution of the Work.
 - 1.1.7. Architect or Engineer:** The architect(s), engineer(s) and other professional consultant(s) under contract to the AOC as the designer of record responsible for the preparation and coordination of the Drawings and technical sections for the Project and to provide design and construction documentation, and construction administration services for the Project.
 - 1.1.8. Change Order:** A written order approved by the AOC on an AOC agreed-upon form and signed by the AOC, the Architect and the General Contractor that alters the Contract Documents. All Change Orders shall identify all of the following :
 - 1.1.8.1.** A change in the Work due to:
 - 1.1.8.1.1.** Additional scope of Work;
 - 1.1.8.1.2.** Changes mandated by agencies having authority over the Project;
 - 1.1.8.1.3.** Unforeseen Site Conditions;

- 1.1.8.2. A change in the Contract Sum;
 - 1.1.8.3. The extent of the adjustment in the Contract Time; and/or
 - 1.1.8.4. An adjustment to the Contract terms.
- 1.1.9. **Claim:** A Claim is a Dispute (see definition below) that remains unresolved after conclusion of the Dispute Resolution Process identified below. Individual unresolved Disputes may be aggregated into one or more Claim(s).
- 1.1.10. **Completion:** When the entire Work is completed in accordance with all Contract requirements, as determined by the AOC.
- 1.1.11. **Construction Manager:** A consultant firm, retained for this Project by Owner to assist the Administrative Office of the Court.
- 1.1.12. **Construction Supervisor/Inspector:** The person(s) authorized by the AOC to provide inspection services, field coordination and quality control during construction.
- 1.1.13. **Contract or “Agreement”:** The written and fully executed AOC Standard Agreement form, including all of its Exhibits. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all previous modifications, agreements, proposals, negotiations, representations, and commitments, both oral and written, between the parties. The Contract may be amended or modified only by a Change Order executed by both parties. The Contract shall not be construed to create a contractual relationship of any kind between any persons or entities other than the AOC and the General Contractor.
- 1.1.14. **Contract Documents:** The Contract Documents include the Agreement as well as any other documents incorporated therein, and also includes any Payment and Performance Bonds; any Change Orders referred to herein that are authorized hereunder and any documents referred to under such Change Orders; and all Design Documents.
- 1.1.15. **Contract Sum:** The Contract Sum is stated on the face of the Agreement Form and, including authorized adjustments by Change Order, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract.
- 1.1.16. **Contract Time:** The Contract Time is the period of time, including authorized adjustments, allotted in the Contract for Completion of the Work.
- 1.1.17. **Court:** The Superior Court that is the subject of the Project.
- 1.1.18. **Day:** Calendar day, unless otherwise specifically defined.
- 1.1.19. **Design Document(s):** Written documents including all Drawings and Specifications specifying the attributes, characteristics, and requirements of the building to be constructed, including its site, as further developed and elaborated upon by the AOC’s Architect or Engineer. All Design Document(s) are incorporated and included as part of the Contract Documents.
- 1.1.20. **Director:** The Director of the Judicial Branch Capital Program Office of the Judicial Council of California, Administrative Office of the Courts, or the Director’s designee.
- 1.1.21. **Dispute:** A Dispute is a request, demand or assertion by General Contractor during performance of the Work regarding money and/or time adjustments with which the AOC does not agree. A Dispute is not a Claim.

- 1.1.22. Drawings:** The graphic and pictorial portions of the Contract Documents, illustrating the design, location and dimensions of the Work, generally including but not limited to, plans, elevations, sections, details, schedules and diagrams.
- 1.1.23. 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.
- 1.1.24. Equal or “Approved Equal” or “Or Equal”:** Material, equipment, or method approved by the AOC for use in the Work, as being acceptable as an equivalent alternative in essential attributes to the material, equipment, or method specified in the Contract Documents.
- 1.1.25. Float:** The measure of leeway in starting and completing an activity. Float or slack is not for the exclusive use of or benefit of either the AOC or the General Contractor, but its use shall be determined solely by the AOC. “Free Float” is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity. “Total Float” is the measure of leeway in starting or completing an activity without adversely affecting the planned Project Completion date.
- 1.1.26. Force Majeure:** A force majeure event is one or more of the following events that adversely impacts the AOC’s or the General Contractor performance: acts of God, acts of a public enemy, fires, floods, windstorms, tornadoes, earthquakes, wars, riots, insurrections, epidemics, quarantine restrictions, strikes, lockouts, fuel shortages, or freight embargoes.
- 1.1.27. General Contractor:** The individual, partnership, corporation, association, joint venture, or any combination thereof, who has entered into a contract with the Owner to do the Work, identified as such in the Contract, and referred to throughout the Contract as if singular in number. The term "General Contractor" means the General Contractor or the General Contractor's representative.
- 1.1.28. 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.
- 1.1.29. Guarantee:** The General Contractor assurance that the Project complies with the requirements of the Contract Documents.
- 1.1.30. LEED: The Leadership in Energy and Environmental Design (LEED) Green Building Rating System™** of the United State Green Building Council (USGBC), a nationally accepted benchmark for the design, construction, and operation of high performance green buildings.
- 1.1.31. Notice to Proceed:** A notice provided by the AOC to the General Contractor, authorizing and directing the General Contractor to begin the Work, to the extent described in the Notice to Proceed and pursuant to the time frames indicated in the Notice to Proceed. The AOC may issue separate Notices to Proceed for separate phases or portions of the Work.
- 1.1.32. OCIP.** A project specific insurance program initiated and administered by the AOC to provide any or all of the insurance requirements set forth herein that will insure the interest of the General Contractor, any Subcontractor or Sub-subcontractor performing Work at or incidental to the Project site.
- 1.1.33. Product Data:** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the General Contractor to illustrate materials or equipment for some portion of the Work.

- 1.1.34. Project:** The total construction of the Work performed under the Contract.
- 1.1.35. Project Manager:** Person(s) authorized by the AOC to oversee the design and construction of the Project.
- 1.1.36. Project Manual:** The volume(s) assembled for the Work which includes the Introductory Information, Bidding Requirements, Contracting Requirements, Specifications, OCIP Program Manual, OCIP Safety Manual and other information as may be listed in the Project Manual Table of Contents.
- 1.1.37. Record Documents:** The Drawings, amended to show the Project as it was constructed. Record Documents include any significant changes or clarifications to the Drawings resulting from the construction process.
- 1.1.38. Request for Information (RFI):** A written request by the General Contractor submitted in an AOC provided format for information regarding Project specific issues.
- 1.1.39. Retention:** A percentage of the Contract Sum that the AOC shall withhold until Completion of the Work.
- 1.1.40. Samples:** Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 1.1.41. Schedule or "Project Schedule" or "Master Project Schedule" or "Progress Schedule":** A schedule document, an updated schedule document, or a progress schedule provided by the General Contractor as required by the Contract Documents and approved by the AOC.
- 1.1.42. Schedule of Values:** A document furnished by the General Contractor to the AOC reflecting the portions of the Contract Sum allotted for the various parts of the Work, and used as the basis for reviewing the General Contractor's applications for progress payments.
- 1.1.43. Shop Drawings:** Drawings, diagrams, schedules, and other data specially issued for the Work by the General Contractor or a Subcontractor, Sub-subcontractor, and material suppliers to illustrate some portion of the Work.
- 1.1.44. Site:** The Project site as shown on the Drawings.
- 1.1.45. Specifications or "Technical Specifications":** That portion of the Contract Documents (Division 2 through Division 49) consisting of the written requirements for materials, standards, equipment, construction systems, and standards of workmanship for the Work, and performance of related services.
- 1.1.46. Stop Services Order:** A written notice, delivered in accordance with this Agreement, by which the AOC may require the General Contractor to stop all, or any part, of the Services under this Agreement, for the period set forth in the Stop Services Order. The Stop Services Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Services provision herein.
- 1.1.47. Subcontractor:** An individual, partnership, corporation, association, joint venture, or any combination thereof, who has a direct contract with the General Contractor to perform work or labor or render service in or about the Work. The term "Subcontractor" is referred to as if singular in number and means a Subcontractor or a representative of the Subcontractor. The term "Subcontractor" shall not include those who supply materials only or a separate contractor or subcontractors of a separate contractor,

- 1.1.48. Sub-subcontractor:** A person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the work. The term "Sub-subcontractor" is referred to as if singular in number and means a Sub-subcontractor or a representative of the Sub-subcontractor.
- 1.1.49. Substitution:** A material and/or process offered by the General Contractor in lieu of the specified material and/or process, and accepted by the AOC in writing as being equivalent (equal) to the specified material and/or process.
- 1.1.50. Surety or Sureties:** The person, firm, or corporation that executes as surety the General Contractor's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.
- 1.1.51. SWPPP:** The AOC's Storm Water Pollution Prevention Plan.
- 1.1.52. Unforeseen Site Conditions:** Conditions actually encountered on the Project Site that were reasonably unforeseeable based on all the information available to the General Contractor prior to finalizing the Contract Sum, that are one or more of the following:
- 1.1.52.1.** Subsurface or latent physical conditions at the Site differing materially from those indicated; or
 - 1.1.52.2.** Unknown physical conditions at the Site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract; or
 - 1.1.52.3.** Unknown hazardous materials on the Site.
- 1.1.53. Warranty:** A manufacturer's or material supplier's assurance that products and services provided meet the requirements of the Contract Documents.
- 1.1.54. Work:** Construction required by the Contract Documents, including all labor, materials, and equipment provided, or to be provided, by the General Contractor to fulfill the General Contractor's obligations under the Contract.

1.2 EXECUTION, CORRELATION AND INTENT

- 1.2.1.** The Contract will not be binding on the AOC until fully executed by the appropriate authorized representatives of the General Contractor and the AOC. The parties signing the Contract certify that they have the proper authorization to do so.
- 1.2.2.** Execution of the Contract by the General Contractor is a representation that the General Contractor is familiar with the methodology under which the work is to be performed and has correlated personal observations with requirements of the Contract Documents.
- 1.2.3.** The intent of the Contract Documents is to include all items necessary for completion of the Work by the General Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the General Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.
- 1.2.4.** Organization of the Specifications into Documents, Divisions, Sections and Articles, and arrangement of Drawings shall not control the General Contractor in dividing the Work among Subcontractors, nor in establishing the extent of work to be performed by any trade.

- 1.2.5. When standards of the Federal Government, trade societies, or trade associations are referred to in the Contract Documents by specific date of issue, these shall be considered as part of the Contract Documents. When such references do not bear date of issue, current published edition at the date of the first solicitation shall be considered as part of the Contract Documents.
- 1.2.6. Unless otherwise stated in the Contract Documents, words and terms which have well-known or commonly accepted technical or construction industry meanings shall be used in the Contract Documents in accordance with such recognized meanings.
- 1.2.7. Every part of the Work shall be accomplished in workmanship-like manner by workers, laborers, or mechanics specially skilled in the class of work required. Any person the AOC may deem incompetent or disorderly shall be promptly removed from the Project by the General Contractor upon written notice from the AOC, and shall not be re-employed.

1.3 USE OF THE AOC'S DRAWINGS AND OTHER DOCUMENTS. The Drawings, Contract Documents and other documents issued by the AOC, and copies furnished to the General Contractor, are for use solely with respect to this Project. They are not to be used by the General Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects, nor for additions to this Project outside the scope of the Work without the specific written consent of the AOC. The General Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Contract Documents and other documents issued by the AOC appropriate to, and for use in, the execution of their work under the requirements of the Contract Documents.

1.4 CAPITALIZATION

- 1.4.1. Terms capitalized in these General Conditions include those which are:
 - 1.4.1.1. Specifically defined; or
 - 1.4.1.2. Titles of numbered Articles; or
 - 1.4.1.3. References to Paragraphs, Subparagraphs and Clauses; or
 - 1.4.1.4. Titles of other documents.

1.5 CONFLICTS IN THE CONTRACT DOCUMENTS

1.5.1. In the event of conflict in the Contract Documents, the following order of precedence shall prevail:

- 1.5.1.1. AOC-approved modifications, beginning with the most recent (if any);
- 1.5.1.2. The Agreement;
- 1.5.1.3. The Special Conditions (if any);
- 1.5.1.4. Any Supplemental Conditions (if any);
- 1.5.1.5. These General Conditions;
- 1.5.1.6. The remaining Contract Documents;
- 1.5.1.7. The Division 1 Documents (Document 00 10 00 through Document 01 91 13);
- 1.5.1.8. The Technical Specifications (Division 2 through Division 49);and
- 1.5.1.9. The Drawings.

1.5.2. In the case of conflict within the Drawings, the following shall govern:

- 1.5.2.1. Schedules, when identified as such, shall govern over all other portions of the Drawings;
- 1.5.2.2. Specific notes shall govern over all other notes and all other portions of the Drawings, except schedules described in the preceding Clause;
- 1.5.2.3. Larger scale Drawings shall govern over smaller scale Drawings;

- 1.5.2.4. Detail Drawings shall govern over standard plates within the Contract Documents; and
- 1.5.2.5. Figured or numerical dimensions shall govern over dimensions obtained by scaling.

1.5.3. Trade Standard: If the Contract Documents are not complete as to any 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 shall be deemed to have been implied by the requirements of the Contract Documents in accordance with such standard. "Detail" shall include the concept of substantially identical components, where price of each such component is small even though aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial. Quality and quantity of parts or material so supplied shall conform to trade standards and be compatible with type, composition, strength, size and profile of parts or materials otherwise set forth in the Contract Documents.

1.6 REQUESTS FOR INFORMATION, CLARIFICATION OR ADDITIONAL INSTRUCTIONS

1.6.1. Requests for Information (RFI): Should the General Contractor discover conflicts, omissions, or errors in the Contract Documents, or have any questions concerning interpretation or clarification of Contract Documents, the General Contractor shall immediately submit to the AOC in writing an RFI that complies with the following requirements:

- 1.6.1.1. All RFIs, whether originated by the General Contractor, a Subcontractor or supplier at any tier, shall be submitted by the General Contractor to the AOC.
- 1.6.1.2. RFIs shall be numbered sequentially and be presented in the format provided by the AOC.
- 1.6.1.3. The General Contractor shall clearly and concisely set forth the single issue for which interpretation or clarification is sought, indicate Specification Section number, article and subarticle numbers, and Contract Drawing number, and detail, or other item involved and state why a response is required from the AOC.
- 1.6.1.4. The General Contractor shall set forth its own interpretation or understanding of the requirements, along with reasons why it has reached such an understanding in each RFI.
- 1.6.1.5. RFIs shall be submitted in a timely manner in order that they may be adequately researched and answered before the response affects any critical activity of the Work.
- 1.6.1.6. Responses to RFIs will be made within fourteen (14) days unless the AOC notifies the General Contractor in writing that a response will take longer. The fourteen (14) days will begin when the RFI is received and dated by the AOC.
- 1.6.1.7. Responses from the AOC will not change any requirement of the Contract unless so noted by the AOC in the response to the RFI.
- 1.6.1.8. Should the General Contractor think that a response to an RFI causes a change to the Contract that requires a Change Order, the General Contractor shall, before proceeding, give written notice to the AOC, indicating that the General Contractor considers the AOC's response to the RFI to be a Change Order. Failure to give such written notice within fourteen (14) days of receipt of the AOC's response to the RFI shall waive the General Contractor's right to seek additional time or cost herein or for a Change Order.

1.6.2. Additional Detailed Instructions: The AOC may furnish additional detailed written and/or graphic instructions to explain the work more fully, and such instructions shall be a part of the Contract requirements. Should additional detailed instructions, in the opinion of the General Contractor, constitute work in excess of the scope of the Work, the General Contractor shall submit written notice to the AOC within fourteen (14) days following receipt of such

instructions, and in any event prior to commencement of the work thereon. The AOC will then consider the notice; and, if in the AOC's judgment it is justified, the AOC's instructions will be revised or the extra work authorized as a Change Order.

ARTICLE 2 ADMINISTRATION OF THE CONTRACT

2.1 INFORMATION AND/OR SERVICES REQUIRED OF THE AOC

2.1.1. Information and/or services under the AOC's control shall be furnished by the AOC within a mutually agreed upon response time so as to avoid delay in the orderly progress of the Work

2.1.2. The AOC shall furnish the General Contractor Drawings and Contract Documents as specified in the Agreement.

2.2 ADMINISTRATION OF THE CONTRACT

2.2.1. The AOC will provide administration of the Contract as described in the Contract Documents during construction and through the guarantee period.

2.2.2. The AOC will visit the Project site as appropriate to the stage of construction to become familiar with the progress and quality of the completed work and to determine if the Work is in accordance with the Contract Documents.

2.2.3. Independent Contractor. General Contractor shall be, and is an independent contractor, is not an employee or agent of the AOC, and is not covered by any employee benefit plans provided to the AOC's employees. General Contractor is, and shall be, liable for its own acts and omissions as well as those of its employees, its Subcontractors and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the AOC and the General Contractor.

2.2.3.1. The General Contractor will determine the method, details and means of performing its responsibilities with regard to the Services, including, without limitation, exercising full control over the direction and compensation of all persons assisting the General Contractor in the performance of the Services. The General Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding, any and all employee benefits, and all regulations governing such matters.

2.2.4. Unless so specified in the Contract Documents, the AOC will not have control over construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work. The AOC will not be responsible for the General Contractor's failure to carry out the Work in accordance with the requirements of the Contract Documents. The AOC will not be responsible for acts, errors, or omissions of the General Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or of any other persons performing portions of the Work.

2.2.5. Communications by and with the AOC's consultants shall be through the AOC, unless otherwise directed by the AOC. Communications by and with Subcontractors, Sub-subcontractors and material suppliers shall be through the General Contractor. Communications by and with separate contractors shall be through the AOC.

2.2.6. AOC's Quality Assurance Plan. The AOC or its agent may evaluate General Contractor's performance under this Contract. Such evaluation may include assessing General Contractor's compliance with all Contract terms and performance standards. Any deficiencies in the General Contractor's performance that the AOC determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected, will

be reported to the General Contractor's principal. The report may include recommended improvements and corrective measures to be taken by the General Contractor. If the General Contractor's performance remains unsatisfactory, the AOC may, without limitation, terminate this Contract for cause or impose other penalties as specified in this Contract. Any evaluation of General Contractor's performance conducted by the AOC shall not be construed as an Acceptance of the General Contractor's work product or methods of performance. General Contractor shall be solely responsible for the quality, completeness, and accuracy of the work product that General Contractor and its Subcontractors deliver under this Contract. General Contractor shall not rely on AOC to perform any quality control review of General Contractor's work product; as such review shall be conducted by General Contractor.

- 2.2.7. If the AOC observes work that appears to not comply with the requirements of the Contract Documents, the AOC will have the authority to reject the Work. Whenever the AOC considers it necessary or advisable for implementation of the intent of the Contract Documents, the AOC will require additional inspection or testing of the Work, as indicated herein, whether or not such work is fabricated, installed or completed.
- 2.2.8. The AOC will review and take action upon the General Contractor's submitted Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The AOC's action will be taken so as to cause no delay in the Work while allowing sufficient time to permit adequate review. Review of submittals is not conducted for the purpose of 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 remain the responsibility of the General Contractor.
- 2.2.9. The General Contractor may propose, but the AOC is not obligated to accept, alternative material(s), article(s), or equipment that are of equal quality and of required characteristics for the purpose intended. The AOC or the AOC's Project Manager will examine any and all proposed alternatives for compliance with the Contract Documents. The proposed material(s), article(s), or equipment, will be reviewed for comparative quality, suitability, and performance against the product(s) specified in the Contract Documents. Refer the Substitution procedures in the Contract Documents.
- 2.2.10. The AOC will conduct inspections to determine the General Contractor's compliance with the Contract Documents and the date of final Completion; will receive, for review and record, written warranties and related documents required by the Contract Documents and assembled by the General Contractor; and will issue a final Payment Authorization upon compliance with the requirements of the Contract Documents and Acceptance of the Work.

2.3 TERMINATION FOR CAUSE

- 2.3.1. **Grounds for Termination.** The AOC, in its sole discretion, may terminate the Contract and/or terminate the General Contractor's right to perform the work of the Contract based upon the following:
 - 2.3.1.1. General Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or
 - 2.3.1.2. General Contractor fails to complete said Work within the time specified or any extension thereof, or
 - 2.3.1.3. General Contractor persistently fails or refuses to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or

- 2.3.1.4. General Contractor files a petition for relief as a debtor, or a petition is filed against the General Contractor without its consent, and the petition not dismissed within sixty (60) days; or
- 2.3.1.5. General Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
- 2.3.1.6. General Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or
- 2.3.1.7. General Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or
- 2.3.1.8. General Contractor persistently disregards laws, or ordinances, or instructions of AOC; or
- 2.3.1.9. General Contractor fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or
- 2.3.1.10. General Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.

2.3.2. Notification of Termination.

- 2.3.2.1. Upon the occurrence at AOC's sole determination of any of the above grounds, AOC may, without prejudice to any other right or remedy, serve written notice upon General Contractor and its Surety of AOC's termination of this Contract and/or the General Contractor's right to perform the work of the Contract. This notice will contain the reasons for termination. Unless, within three (3) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to AOC for the correction of the condition(s) and/or violation(s) be made, this Contract shall cease and terminate. Upon termination, General Contractor shall not be entitled to receive any further payment until the entire Work is finished.
- 2.3.2.2. Upon termination for cause, AOC may immediately serve written notice of tender upon Surety whereby Surety shall have the right to take over and perform this Contract only if Surety:
 - 2.3.2.2.1. Within three (3) days after service upon it of the notice of tender, gives AOC written notice of Surety's intention to take over and perform this Contract; and
 - 2.3.2.2.2. Commences performance of this Contract within three (3) days from date of serving of its notice to AOC.
- 2.3.2.3. If Surety fails to notify AOC or begin performance as indicated herein, AOC may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of General Contractor and/or its Surety. General Contractor and/or its Surety shall be liable to AOC for any excess cost or other damages the AOC incurs thereby. Time is of the essence in this Contract. If the AOC takes over the Work as herein provided, AOC may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to General Contractor as may be on the Site of the

Work, in bonded storage, or previously paid for.

2.3.3. Effect of Termination.

- 2.3.3.1.** General Contractor shall, only if ordered to do so by the AOC, immediately remove from the Site all or any materials and personal property belonging to General Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. The AOC retains the right, but not the obligation, to keep and use any materials and personal property belonging to General Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. The General Contractor and its Surety shall be liable upon the performance bond for all damages caused the AOC by reason of the General Contractor's failure to complete the Contract.
- 2.3.3.2.** In the event that the AOC shall perform any portion of, or the whole of the Work, pursuant to the provisions of the General Conditions, the AOC shall not be liable nor account to the General Contractor in any way for the time within which, or the manner in which, the Work is performed by the AOC or for any changes the AOC may make in the Work or for the money expended by the AOC in satisfying claims and/or suits and/or other obligations in connection with the Work.
- 2.3.3.3.** In the event that the Contract is terminated for cause, no allowances or compensation will be granted for the loss of any anticipated profit by the General Contractor or any impact or impairment of General Contractor's bonding capacity.
- 2.3.3.4.** If the expense to the AOC to finish the Work exceeds the unpaid Contract Sum, General Contractor and Surety shall pay difference to AOC within twenty-one (21) days of AOC's request.
- 2.3.3.5.** The AOC shall have the right (but shall have no obligation) to assume and/or assign to a contractor construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the General Contractor under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the AOC, no Subcontractor shall have any claim against the AOC or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract. The AOC or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the AOC so elect, the General Contractor shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the AOC may require, for the purpose of fully vesting in the AOC the rights and benefits of it Subcontractor under Subcontracts or other obligations or commitments. All payments due the General Contractor hereunder shall be subject to a right of offset by the AOC for expenses and damages suffered by the AOC as a result of any default, acts, or omissions of the General Contractor. General Contractor must include this assignment provision in all of its contracts with its Subcontractors.
- 2.3.3.6.** The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to AOC. In addition, all remedies provided for in this Contract are cumulative and may be exercised individually or in combination with any other remedy available hereunder.

2.4 TERMINATION FOR THE AOC'S CONVENIENCE

- 2.4.1.** The AOC reserves the right to terminate this Contract pursuant to this section, or any part thereof for its sole convenience. In the event of such termination, the General Contractor

shall immediately stop all work hereunder and shall immediately cause any and all of its Subcontractors, Sub-subcontractors and material suppliers at any tier, to immediately stop all work, leaving the site in a safe and secured condition.

2.4.2. In case of a termination for convenience, the General Contractor shall have no claims against the AOC except for the actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and

2.4.2.1. Was performed prior to the notice of termination;

2.4.2.2. Was necessary on the part of the General Contractor to effect the termination on the date specified by the AOC and to minimize the liability of the General Contractor and the AOC to third parties as a result of termination.

2.4.2.3. General Contractor shall not be paid for any work performed or costs incurred after the termination date that reasonably could have been avoided.

2.4.2.4. The amount due General Contractor shall be less any amounts required to be withheld as indicated herein, and less any prior payment(s) made to, or on the account of the General Contractor.

2.5 SUSPENSION FOR THE AOC'S CONVENIENCE

2.5.1. The AOC may, by written notice, order the General Contractor to suspend, delay or interrupt the Work, in whole or in part, for such period of time as the AOC may determine.

2.5.2. An adjustment will be made for increases in the cost of 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:

2.5.2.1. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the General Contractor is responsible; or

2.5.2.2. That an equitable adjustment is made or denied under another provision of the Contract.

2.6 TERMINATION BY AOC FOR NON-APPROPRIATION; AOC'S OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS

2.6.1. The AOC's obligation under this Contract is subject to the availability of authorized funds. The AOC may terminate the Contract or any part of the Work, without prejudice to any right or remedy of the AOC, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Contract, or in any amendment or Change Order hereto, the AOC may terminate this Contract in whole or in part, upon written notice to the General Contractor.

2.6.2. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Contract is terminated for non-appropriation:

2.6.2.1. The AOC will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and

2.6.2.2. The General Contractor shall be released from any obligation to provide further services pursuant to the Contract as are affected by the termination.

2.6.3. Funding for this Contract beyond the current appropriation year is conditional upon

appropriation by the Legislature of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

ARTICLE 3 CONTRACTOR

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE CONTRACTOR

- 3.1.1.** The General Contractor shall carefully study and compare the Contract Documents with each other and shall report to the AOC, in writing, any errors, inconsistencies or omissions discovered. If the General Contractor performs any work knowing it involves a recognized error, inconsistency or omission in the Contract Documents, without such notice to the AOC the General Contractor shall assume responsibility for such performance and shall bear the cost for correction.
- 3.1.2.** The General Contractor shall take field measurements and verify field conditions and shall compare such field measurements, conditions and other related information known to the General Contractor with the Contract Documents before beginning the Work.
- 3.1.3. Unforeseen Site Conditions.** In the event General Contractor discovers an Unforeseen Site Condition, then General Contractor shall promptly, and before such conditions are disturbed, notify the AOC in writing with details of the Unforeseen Site Condition. The AOC will promptly investigate the Unforeseen Site Condition, and if the AOC finds that such condition materially differs and causes an increase or decrease in the General Contractor's cost of, or the time required for, performance of any part of the Work, whether or not changed as a result of such conditions, a Change Order will be issued in accordance with the applicable provisions herein.
- 3.1.4.** General Contractor shall inform itself fully and shall assume the risk as to the physical conditions at the worksite. General Contractor's lack of knowledge of existing conditions will not be accepted as an excuse for failure to perform the specified Work, nor shall such excuse be accepted as a basis for a Claim for additional compensation.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.2.1.** The General Contractor shall supervise and direct the Work. The General Contractor shall be responsible for, and have control over, construction means, methods, techniques, sequences, procedures, safety precautions and programs in connection with the Work, and for coordinating the Work under the Contract; unless otherwise noted or specified in the Contract Documents.
- 3.2.2. Employees and Personnel**
 - 3.2.2.1.** The General Contractor shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Work. The General Contractor has been selected to perform the Work herein, in part, because of the skills and expertise of the key individuals and/or firms (collectively "General Contractor's Key Personnel") that are listed in the Contract Documents.
 - 3.2.2.1.1.** General Contractor must utilize the Key Personnel as set forth in the General Contractor Application of Prequalification as revised by the AOC and the General Contractor.

- 3.2.2.1.2.** Substitution or replacement of General Contractor's Key Personnel, unless a person is no longer employed by General Contractor, is not allowed except with written approval of the AOC.
- 3.2.2.2.** If any person fails to perform to the satisfaction of the AOC, upon written notice the General Contractor will have fifteen (15) calendar days to remove that person from the Project and replace that person with one acceptable to the AOC. All lead or key personnel for any Subcontractor must also be designated by any Subcontractor and are subject to all conditions stated in this section.
- 3.2.2.3.** The General Contractor shall be responsible for all costs associated with replacing any of General Contractor's Key Personnel, including the additional costs to familiarize replacement personnel with the Work. If the General Contractor does not furnish replacement personnel acceptable to the AOC, the AOC may terminate this Contract for cause.
- 3.2.3.** The General Contractor shall be responsible to the AOC for acts and omissions of the General Contractor's employees, Subcontractors, Sub-subcontractors or material suppliers and their agents and employees, and other persons performing portions of the Work under a contract with the General Contractor.
- 3.2.4.** The General Contractor shall be responsible in all respects for the actions or inaction of all Subcontractors, Sub-subcontractors or material suppliers, at all tiers, regardless of whether they are stipulated suppliers or sole sourced. The AOC shall not be responsible or liable for any action or inaction of any Subcontractor, Sub-subcontractor or material supplier, at any tier, except to the extent that the AOC is the direct cause of the change or delay.
- 3.2.5.** The General Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, either by activities or duties of the AOC, the AOC's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the General Contractor.
- 3.2.6.** The General Contractor shall be responsible for inspections of portions of the Work already completed under the Contract to determine that such portions are in proper condition to receive subsequent work. If the General Contractor determines that some work performed on the Project does not comply with the requirements of the Contract Documents, the General Contractor shall repair or replace such defective work at the General Contractor's sole expense.
- 3.2.7.** Until Acceptance of the Work, the General Contractor shall have the charge and care thereof, and shall bear risk of injury or damage to any part of the Work by action of the elements (except for an Act of God, or natural disaster as proclaimed by the State or Federal Government), or from any other reason except for such damages as are directly caused by acts of the Federal or State Government and the public enemy.
- 3.2.8. Background Checks.** If the General Contractor assigns persons (whether employees, independent contractors, Subcontractors or agents) to perform work under this Contract that requires that the person have access to the systems (whether on-site or by remote access) or premises of the AOC or other Judicial Branch entities, the AOC shall have the right, but not the obligation, to conduct a background check or to require the General Contractor to conduct a background check, as permitted by law, on all such persons before the AOC will grant to such persons access to the AOC's or other judicial branch entities' premises or systems. The General Contractor will cooperate with the AOC in performing such background check, and will promptly notify the AOC of any such person refusing to undergo such background check, and will reassign such person to perform other services. The General Contractor shall obtain all releases, waivers, or permissions required for the release of such information to the AOC.

Costs incident to background checks are the sole responsibility of the General Contractor.

3.3 LABOR AND MATERIALS

- 3.3.1.** Unless otherwise provided in the Contract Documents, the General Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Materials, articles and equipment furnished by the General Contractor for incorporation into the Work shall be new unless otherwise specified in the Contract Documents.
- 3.3.2. Hours of Labor:** Workers are limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week except that pursuant to Labor Code Section 1815, any work performed in excess of 8 hours per day and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1-1/2 times the basic rate of pay. The General Contractor shall pay the AOC One Hundred Dollars (\$100) as a penalty for each worker for each calendar day worked in violation of the above limitations and restrictions.
- 3.3.3. Prevailing Wage:**
- 3.3.3.1.** The General Contractor shall comply with the provisions of the Labor Code including sections 1770 to 1780, inclusive and specifically Section 1775. In accordance with Section 1775, the General Contractor shall forfeit to the AOC the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the AOC, for the work or craft in which that worker is employed for any work done under Contract by General Contractor or by any Subcontractor.
- 3.3.3.1.1.** The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of General Contractor or Subcontractor was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of General Contractor.
- 3.3.3.1.2.** The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if General Contractor or Subcontractor has been assessed penalties within the previous three (3) years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.
- 3.3.3.1.3.** The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the General Contractor or Subcontractor willfully violated Labor Code section 1775.
- 3.3.3.1.4.** The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by General Contractor or Subcontractor.
- 3.3.3.2.** Pursuant to Labor Code, Section 1770, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and a general prevailing rate for legal holiday and overtime work for each craft required for execution of the Contract. General Contractor shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations, regardless of any contractual relationship which may be alleged to exist

between General Contractor or any Subcontractor and such workers.

- 3.3.3.3.** Wage rates set forth are the minimum that may be paid by the General Contractor. Nothing herein shall be construed as preventing the General Contractor from paying more than the minimum rates set. No extra compensation whatsoever will be allowed by the AOC due to the inability of the General Contractor to hire labor at minimum rates, nor for necessity for payment by the General Contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the General Contractor's own satisfaction in preparing its Proposal.
- 3.3.3.4.** If it becomes necessary to employ crafts other than those listed in the General Prevailing Wage Rate booklet, the General Contractor shall contact the Division of Labor Statistics and Research as listed inside the booklet or access on the Internet at http://www.dir.ca.gov/DLSR/statistics_research.html. The rates thus determined shall be applicable as minimum from the time of initial employment.
- 3.3.3.5.** The General Contractor and each Subcontractor shall keep an accurate payroll record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the General Contractor and/or Subcontractor in connection with the Work. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms. Upon written request by the AOC, the General Contractor's and Subcontractor's certified payroll records shall be furnished within 10 days. The General Contractor's and Subcontractor's certified payroll records shall be available for inspection at the principal office of the General Contractor.
- 3.3.4. Labor Compliance Program (Administered by the DIR's CMU):** Effective January 1, 2012, the California Department of Industrial Relations (DIR) began operating a labor Compliance Monitoring Unit or "CMU" to monitor and enforce prevailing wage requirements on public works projects that receive state bond funding and on other projects that are legally required to use the CMU. The funding for this Project requires compliance with the CMU. The General Contractor shall ensure full compliance with all CMU requirements by all of General Contractor's Subcontractors and Sub-subcontractors. (More information available at: <https://www.dir.ca.gov/dlse/cmu/cmu.html>.)
- 3.3.4.1.** To monitor prevailing wage requirements on AOC projects, the General Contractor and all Subcontractors and Sub-subcontractors must submit their certified payroll data directly to the DIR. The DIR has utilized a third party vendor to provide the electronic certified payroll service – "My LCM". All payroll data can be entered manually or uploaded from major construction accounting and payroll programs into the electronic certified payroll reporting (My LCM) service at the DIR.
- 3.3.4.2.** The service must be used by all awarding bodies and contractors for projects subject to CMU monitoring and enforcement for contracts awarded on or after January 1, 2012. A link is established for electronic certified payroll at <https://app.mylcm.com>. The site includes step-by-step instructions on how to assign contractors, manage employee profiles and submit payroll reports. (More information available at: https://www.dir.ca.gov/dlse/cmu/How_do_I_file_electronic_payroll_reports.html.)
- 3.3.4.3.** In addition, General Contractor shall conduct a pre-job conference before commencement of the Work of the Construction Phase with the Subcontractors and the Sub-subcontractors. At the pre-job conference, General Contractor shall provide details of all applicable federal and state labor law requirements and provide

directions and copies of CMU's required reporting process and forms. General Contractor shall also provide a checklist that shows which federal and state labor law requirements are applicable. A checklist in the format provided by the DIR presumptively meets this requirement.

- 3.3.5. Travel and Subsistence Payments:** General Contractor shall pay travel and subsistence payments to persons required to execute the Work as such travel and subsistence payments are defined in applicable collective bargaining agreements filed with the Department of Industrial Relations, pursuant to Labor Code, Sections 1773.1 and 1773.9.
- 3.3.6. Apprentices:** Properly registered apprentices shall be employed in the execution of the Work. Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The General Contractor and each Subcontractor shall comply with the requirements of Labor Code, Section 1777.5, and any related regulations regarding the employment of registered apprentices.
 - 3.3.6.1. Skilled Labor Force Availability – 5-Year Requirement:** All contractors and subcontractors with a contract value on the Project of two hundred and fifty thousand dollars (\$250,000) or more, must employ workers in an apprenticeable craft and have agreements with registered apprenticeship programs, approved by the California Apprenticeship Council, that have graduated apprentices in that craft in each of the immediately preceding five (5) years. This graduation requirement does not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Industrial Relations to be an apprenticeable craft for the five years prior.
- 3.3.7. Subcontractor Health and Safety Program:**
 - 3.3.7.1.** Each Subcontractor and Sub-subcontractor can work at the Project Site if it can demonstrate its compliance with the following requirements and it can provide the following required written documentation:
 - 3.3.7.1.1.** Its worker's compensation experience modifier rate(s) for the most recent three-year period, the average of which must be 1.00 or less; and
 - 3.3.7.1.2.** Its average total recordable injury and illness rate(s) for the most recent three-year period, the average of which must not exceed the applicable statistical standards for its business category; and
 - 3.3.7.1.3.** Its average lost work rate for the most recent three-year period; and
 - 3.3.7.1.4.** Its acknowledgement of its compliance with the General Contractor's Project site safety program.
 - 3.3.7.2.** Should the Subcontractor or Sub-subcontractor workers compensation experience modifier for the most recent three-year period, or its average total recordable injury and illness rates for the most recent three-year period exceed the above requirements, then the Subcontractor or Sub-subcontractor may work at the Project Site if the Subcontractor or Sub-subcontractor is:
 - 3.3.7.2.1.** A party to an alternative dispute resolution system as provided for in Labor Code section 3201.5; and
 - 3.3.7.2.2.** Subcontractor or Sub-subcontractor demonstrates to the satisfaction of the

General Contractor that its Project site safety program is compliant with the provisions of California Division of Occupational Safety and Health regulations, and the General Contractor's Project site safety program required under section 10 of this Agreement, and the provisions of the AOC OCIP Safety Manual.

3.4 NONDISCRIMINATION/NO HARASSMENT CLAUSE

- 3.4.1. **Nondiscrimination.** During the performance of this Contract, General Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), marital status, age (over 40), sex, or sexual orientation. General Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 3.4.2. **No Harassment.** During the performance of this Contract, the General Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the General Contractor or its Subcontractors interact in the performance of this Contract. General Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- 3.4.3. **FEHA.** General Contractor shall comply with applicable provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, Section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part of it as if set forth in full.
- 3.4.4. General Contractor and any of its Subcontractors shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Contract. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the General Contractor has a collective bargaining agreement, to refer either minorities and/or women shall excuse the General Contractor's obligations under these specifications; Government Code, Section 12990; or the regulations promulgated pursuant thereto.
- 3.4.5. General Contractor shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Contract.
- 3.4.6. General Contractor shall not enter into any subcontract with any person or firm decertified from State contracts pursuant to Government Code, Section 12990.

3.5 GUARANTEE

- 3.5.1. General Contractor unconditionally guarantees the Work will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of one (1) year from the date of Acceptance of the Work, unless a longer Guarantee period is specifically called for in the Contract Documents. General Contractor shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the Guarantee period specified in the Contract Documents, without any expense whatsoever to the AOC; ordinary wear and tear and abuse excepted.

- 3.5.2.** General Contractor further agrees, within fourteen (14) days after being notified in writing by the AOC, of any work not in accordance with the requirements of the Contract Documents or any defects in the Work, that the General Contractor shall commence and execute, with due diligence, all work necessary to fulfill the terms of the Guarantee. If the AOC finds that the General Contractor fails to perform any of the work under the Guarantee, the AOC will proceed to have the work completed at the General Contractor's expense and the General Contractor will pay costs of the work upon demand. The AOC will be entitled to all costs, including reasonable attorney's fees necessarily incurred upon the General Contractor's refusal to pay the above costs.
- 3.5.3.** Notwithstanding the foregoing Subparagraph, in the event of an emergency constituting an immediate hazard to health or safety of AOC employees, property, or licensees, the AOC may undertake, at the General Contractor's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by work of the General Contractor not being in accordance with the requirements of the Contract Documents.
- 3.6 TAXES** General Contractor shall pay, when due, all applicable income taxes, including estimated taxes, incurred as a result of the compensation paid by the AOC to the General Contractor for the Services. The AOC is exempt from federal excise taxes and no payment will be made for any taxes levied on the General Contractor's or any Subcontractor's employees' wages. General Contractor agrees to indemnify, defend and hold the AOC harmless for any claims, costs, losses, fees, penalties, interest or damages (including attorney fees and costs) suffered by the AOC resulting from the General Contractor's failure to comply with this provision. The AOC may offset any taxes paid by the AOC as a result of the General Contractor's breach of this provision.
- 3.7 PERMITS, FEES AND NOTICES**
- 3.7.1.** General Contractor shall secure and pay for all required permits, governmental fees, licenses and inspections necessary to complete the Work, unless otherwise provided in the Contract Documents. The AOC shall compensate the General Contractor for the permits, fees and services specified as an Allowance.
- 3.7.2.** General Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the performance of the Work.
- 3.7.3.** If the General Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, the General Contractor shall promptly notify the AOC in writing. If the General Contractor allows work to be performed known to be contrary, or should have known to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without prior notice to the AOC, General Contractor shall assume full responsibility for the Work and shall bear the attributable costs.
- 3.7.4.** General Contractor is not subject to municipal, county, or city laws, rules, or regulations pertaining to building permits or regulating the design or construction of buildings upon AOC property, except as specified in the Contract Documents.
- 3.7.5.** All construction work shall comply with the Applicable Codes including, without limitation, the California Building Standards Code (CBSC), including the California Green Building Standards (CALGreen) Code current adopted edition, as of the proposal date.
- 3.7.6.** Pursuant to Government Code section 4215, The AOC assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction site at the time of commencement of construction under this Contract with respect to any such utility facilities that are not identified in the Plans and Specifications.

General Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the AOC or the owner of a utility to provide for removal or relocation of such utility facilities.

Locations of existing utilities provided by the AOC shall not be considered exact, but approximate within reasonable margin and shall not relieve General Contractor of responsibilities to exercise reasonable care nor costs of repair due to General Contractor's failure to do so. The AOC shall compensate General Contractor for the costs of locating, repairing damage not due to the failure of General Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

No provision herein shall be construed to preclude assessment against General Contractor for any other delays in completion of the Work. Nothing in this Article shall be deemed to require the AOC to indicate the presence of existing service laterals, appurtenances, or other utility lines, within the exception of main or trunk utility lines. Whenever the presence of these utilities on the site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the site of the construction.

If General Contractor, while performing Work under this Contract, discovers utility facilities not identified by the AOC in the Plans and Specifications, General Contractor shall immediately notify the AOC and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the AOC shall be borne by the General Contractor.

- 3.7.7.** Pursuant to Labor Code section 6705, if the Contract Sum exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the General Contractor shall, in advance of excavation, promptly submit to the AOC and/or a registered civil or structural engineer employed by the ACO or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the AOC or by the person to whom authority to accept has been delegated by the AOC.

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the AOC or any of its employees.

The General Contractor shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the site prior to the commencement of any excavation.

The General Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the AOC, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the General Contractor unless an inquiry identification number has been assigned to the General Contractor or any Subcontractor and the General Contractor has given the AOC the identification number. Any damages arising from General Contractor's failure to make appropriate notification shall be at the sole risk and expense of the General Contractor. Any delays caused by failure to make

appropriate notification shall be at the sole risk of the General Contractor and shall not be considered for an extension of the Contract time.

3.8 SUPERINTENDENT

- 3.8.1.** General Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent shall represent the General Contractor, and communications given to the Superintendent shall be as binding as if given directly to the General Contractor. All communications shall be confirmed in writing by the General Contractor.
- 3.8.2.** At any other time when the Superintendent is absent from the Project site because no Work is being performed, the Superintendent shall nevertheless keep the AOC advised of the Superintendent's whereabouts so that the Superintendent may readily be reached and available for consultation at the Project site at any time.

3.9 GENERAL CONTRACTOR'S CONSTRUCTION SCHEDULE AND NARRATIVE REPORT

- 3.9.1. Construction Schedule.** Within thirty (45) calendar days after the starting date on the Notice to Proceed, the General Contractor shall prepare and submit to the AOC for review and acceptance, with copy to the Architect, a Construction Schedule prepared in accordance with the Specification Section 01 32 16. This schedule, once accepted by the AOC, shall be the General Contractor's Progress Schedule.
 - 3.9.1.1.** The Construction Schedule shall be comprised of a Critical Path Method network and shall be in a Gantt chart format. General Contractor shall input the critical path schedule using Primavera Project Planner or AOC-approved equal software. All programs shall be capable of converting the data to a format that is readable using Primavera SureTrack, version 3.0, unless another format is specified in the Contract Documents.
 - 3.9.1.2.** General Contractor's Construction Schedule shall show the dates on which each part or division of the Work is expected to be started and completed.
 - 3.9.1.3.** General Contractor's Construction Schedule shall show the sequence, duration in calendar or working days, and interdependence of activities required for the complete performance of all Work. The schedule shall show milestones, including milestones for AOC-furnished information, and shall include activities for AOC-furnished equipment and furniture when those activities are interrelated with the General Contractor's activities. The transmittal provided with the Construction Schedule shall state whether the durations are in work days or calendar days.
 - 3.9.1.4.** General Contractor's Construction Schedule shall begin with the effective date of the Notice to Proceed and conclude with the date of final Completion.
 - 3.9.1.5.** No more than twenty percent (20%) of the activities will have less than five (5) workdays of Float unless approved by the AOC.
 - 3.9.1.6.** The construction schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on information provided by the National Weather Service or other approved source.

- 3.9.1.7.** The schedule shall be developed using an appropriate work breakdown structure.
- 3.9.1.8.** General Contractor may submit a Construction Schedule that shows the work completed in less time than the specified Contract Time – an early completion (“advanced”) schedule. However, the AOC’s acceptance of such a schedule will not change the Contract Time. The AOC is not required to accept an advanced schedule. General Contractor shall not be entitled to extra compensation if the AOC allows the General Contractor to proceed performing the Contract on an advanced schedule and General Contractor completes the Project, for whatever reason, beyond the date shown in that advanced schedule, but within the time for Completion indicated in the Contract. A schedule showing the work completed in less than the time for Completion indicated in the Contract, shall be considered to have Project Float.
- 3.9.1.9.** General Contractor shall not sequester Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. No time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contract Completion date. In addition, AOC-caused delays on the Project may be offset by AOC-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in a savings of time to the General Contractor, etc.). In such an event, the General Contractor shall not be entitled to receive a time extension or delay damages until all AOC-caused time savings are exceeded and the Contract Completion date is also exceeded.
- 3.9.2.** Time is of the essence in the completion of the Contract. General Contractor shall begin work by the start date stated in the Notice to Proceed. Work shall be executed to completion in accordance with the approved Project Schedule, subject to adjustment in accordance with the requirements of the Contract Documents.
- 3.9.3.** General Contractor shall provide an adequate work force, materials of proper quality, and equipment to properly execute the Work and to ensure Completion of each part in accordance with the Project Schedule and within the Contract Time specified.
- 3.9.4.** The AOC's review and acceptance of the General Contractor’s Construction Schedule is for compliance with the requirements of the Contract Documents only. Review and acceptance by the AOC of the Construction Schedule only means that the AOC acknowledges that the General Contractor believes the General Contractor can perform the Work as indicated in the Construction Schedule and does not relieve the General Contractor of any of the General Contractor's responsibility for the accuracy or feasibility of the Construction Schedule, or of the General Contractor's ability to meet the interim Project milestone dates and the date of Completion. The AOC's review and acceptance does not expressly or impliedly warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of the Construction Schedule.
- 3.9.5. Schedule Updates.**

 - 3.9.5.1.** General Contractor shall provide a monthly update to the Construction Schedule to the AOC for approval.
 - 3.9.5.2.** In addition, the General Contractor shall provide an update to the Construction Schedule at other times when significant changes are made to the schedule or as requested by the AOC.
 - 3.9.5.3.** General Contractor shall provide an update to the Construction Schedule within

three (3) days upon the reasonable request of the AOC.

3.9.6. Narrative. General Contractor shall include with its monthly update to the Construction Schedule, a Schedule Narrative Report containing a narrative that includes the following:

- 3.9.6.1.** General Contractor's transmittal letter
 - 3.9.6.2.** Description of problem tasks, referenced to field instructions, RFIs, change order numbers, or claim numbers as appropriate.
 - 3.9.6.3.** Current and anticipated delays not resolved by approved change order, including:
 - 3.9.6.3.1.** General Contractor's reason for the cause of the delay;
 - 3.9.6.3.2.** Corrective action and schedule adjustments to correct the delay;
 - 3.9.6.3.3.** Known or potential impact of the delay on other activities, milestones, and project completion date.
 - 3.9.6.4.** Changes in construction sequence
 - 3.9.6.5.** Pending items and status thereof including but not limited to:
 - 3.9.6.5.1.** Pending change orders
 - 3.9.6.5.2.** Time extension requests
 - 3.9.6.5.3.** Other items
 - 3.9.6.6.** Contract completion date status:
 - 3.9.6.6.1.** If ahead of schedule, the number of calendar days ahead
 - 3.9.6.6.2.** If behind schedule, the number of calendar days behind
 - 3.9.6.7.** Other project or scheduling concerns
 - 3.9.6.8.** Updated network diagram with target bars shown.
- 3.9.7.** The General Contractor's Construction Schedule shall also show all submittals associated with each work activity, allowing a minimum of fourteen (14) and a maximum of thirty (30) calendar days for the Architect's review of each submittal unless a longer period of time is specified in the Contract Documents.
- 3.9.7.1.** In addition, the General Contractor shall also submit a separate Submittal Schedule listing all submittals required under the contract and noting the anticipated date that each submittal will be submitted. All submittals precedent to critical construction activities shall be included in the construction schedule.

3.10 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

3.10.1. General Contractor shall maintain at the Project site one record copy of the Drawings, Contract Documents (including these General Conditions), Addenda, Change Orders and other modifications, in good order and marked currently to record changes and selections made during construction; and in addition, Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the AOC and shall be delivered to the AOC

upon completion of the Work.

- 3.10.2.** Daily Records Clause: General Contractor shall prepare and maintain daily inspection records to document the progress of the Work on a daily basis. Daily Records shall include a daily accounting of all labor and all equipment on the site for the General Contractor and all Subcontractors, at any tier. Daily Records shall make a clear distinction between work being performed under Change Order, base scope work, and/or disputed work. Daily Records shall be copied and provided to the AOC at the end of every week, unless otherwise agreed to in writing.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES (SUBMITTALS)

- 3.11.1.** 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 General Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the AOC is subject to the limitations stated herein.
- 3.11.2.** General Contractor shall review, approve and submit to the AOC all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents within the number of days set forth in the Contract Documents.
- 3.11.3.** Submittals for finishes shall be submitted in a sequence so as to cause no delay in the progress of the Work or in the activities of the AOC or separate contractors.
- 3.11.4.** Submittals that are not required by the Contract Documents may be returned to the General Contractor without action.
- 3.11.5.** General Contractor shall perform no portion of the Work requiring submittal(s) and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed by the AOC. Such Work shall be in accordance with reviewed submittals.
- 3.11.6.** By submitting Shop Drawings, Product Data, Samples and similar submittals, the General Contractor represents that the General Contractor has determined and verified materials, field measurements and related field construction criteria, and has checked and coordinated the information contained within the submittal(s) with the requirements of the Contract Documents.
- 3.11.7.** General Contractor shall not be relieved of the responsibility for any deviation from the requirements of the Contract Documents by the AOC's review of submittals unless the General Contractor has specifically informed the AOC, in writing, of such deviation at the time of submittal, and the AOC has given written consent to the specific deviation. The AOC's review shall not relieve the General Contractor of responsibility for errors or omissions in submittals.
- 3.11.8.** General Contractor shall respond per requirements of the Contract Documents, in writing or on resubmitted submittals, to revisions other than those requested by the AOC on previous submittals. After the second resubmittal of a specific item, that is still not accepted, the General Contractor will be charged all costs of submittal review. The charges will be deducted from the General Contractor's next pay request.
- 3.11.9.** Informational submittals on which the AOC is not expected to take action, may be identified in the Contract Documents.
- 3.11.10.** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the AOC will be entitled to rely upon the accuracy and

completeness of such calculations and certifications.

3.11.11. 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 AOC's solicitation document.

3.11.12. Substitutions and Approved Equals: Alternative material(s), article(s), or equipment that are of equal quality and of required characteristics for the purpose intended may be proposed by the General Contractor for use in the Work, provided the General Contractor complies with the Contract Documents and the following requirements:

3.11.12.1. General Contractor shall submit a proposal for a substitution request for alternative material(s), article(s), or equipment, in writing within 30 days of execution of the Agreement.

3.11.12.2. At the AOC's discretion, it may give written consent to a submittal or resubmittal received after expiration of the time limit designated.

3.11.12.3. The request 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. Samples shall be provided when requested by the AOC. Burden of proof as to comparative quality, suitability, and performance of offered material(s), article(s), or equipment shall be upon the General Contractor. The AOC will be the sole judge as to such matters. In the event the AOC rejects the use of such alternative(s) submitted, then the particular product(s) originally specified in the Contract Documents shall be furnished.

3.11.12.4. If mechanical, electrical, structural, or other changes are required for installation, fit of alternative materials, articles, or equipment, or because of deviations from Contract Drawings and Specifications, such changes shall not be made without consent of the AOC, and shall be made without additional cost to the AOC.

3.12 TESTS AND INSPECTIONS

3.12.1. General Contractor shall at all times permit the AOC, its agents, officers, and employees to visit the Project site and inspect the Work, including shops where work is in preparation. This obligation shall include maintaining proper facilities and safe access for such inspection. The General Contractor shall be solely responsible for notifying the AOC where and when the work is ready for inspection and testing.

3.12.2. When the Contract Documents require a portion of the Work to be tested, such portion of work shall not be covered up until inspected and approved by the AOC. Should any work be covered without the required testing and approval, such work shall be uncovered and recovered at the General Contractor's expense.

3.12.3. Whenever the General Contractor intends to perform work on Saturday, Sunday, or a legal holiday, the General Contractor shall give written notice to the AOC of such intention at least 48 hours prior to performing the Work, so that the AOC may make necessary arrangements.

3.12.4. If procedures for testing, inspection or approval reveal failure of a portion(s) of the Work to comply with the Contract Documents, the General Contractor shall bear all costs made necessary by such failure(s) including those of repeated procedures, tests and inspections, including paying for AOC's costs and expenses associated therewith.

3.12.5. Tests Not in Contract Documents. If the AOC determines that portions of the Work require

additional testing, inspection or approval not included in the Contract Documents, the AOC will instruct the General Contractor, in writing, to make arrangements for additional testing, inspection or approval by an entity acceptable to the AOC, and the General Contractor shall give 48 hours written notice to the AOC of where and when tests and inspections will be conducted so that the AOC may observe the procedures. The AOC will pay for these tests.

- 3.12.6. Certification.** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the General Contractor and delivered to the AOC within fourteen (14) days after each test.

3.13 USE OF PROJECT SITE

- 3.13.1.** General Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Contract Documents.
- 3.13.2.** General Contractor shall perform no operations of any nature on or beyond the limits of Work or premises, except as such operations are authorized in the Contract Documents, or authorized by the AOC.

- 3.13.3.** General Contractor shall ensure the limits of Work to be free of graffiti or other similar defacements during the time of the Contract.

3.13.3.1. If such defacement occurs, then the General Contractor shall promptly and properly remove, repair, or correct the affected area(s), or as otherwise directed by the AOC.

3.13.3.2. General Contractor shall protect all exposed surfaces within the limits of Work, with anti-graffiti coatings, and maintain such protection continuously effective during the time of the Contract.

3.13.4. Prohibitions:

3.13.4.1. The use or possession of alcohol, weapons, or illegal controlled substances by the General Contractor, or others under the General Contractor's control, on AOC property is not allowed.

3.13.4.2. Residing on site in temporary facilities by the General Contractor, or others under the General Contractor's control is not allowed.

- 3.14 ACCESS TO WORK** General Contractor shall provide the AOC continuous access to the Work.

- 3.15 ROYALTIES AND PATENTS** General Contractor shall pay all royalties and license fees. General Contractor shall defend suits or Claims for infringement of patent rights and hold the AOC harmless.

3.16 INDEMNIFICATION

- 3.16.1.** General Contractor shall, to the fullest extent permitted by law, indemnify, defend with counsel satisfactory to the AOC, and hold harmless (collectively, "Indemnify") the State, the Judicial Council of California, the Administrative Office of the Courts, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, contractors, representatives, volunteers and employees (individually, an "Indemnified Party") from any and all claims, lawsuits, losses, costs (including attorney fees and costs), liabilities, and damages arising from, related to or in connection with, in whole or in part, any of the following:

- 3.16.1.1.** General Contractor's or any of its employees' or Subcontractors' negligent acts, omissions, or intentional misconduct;
- 3.16.1.2.** General Contractor's breach of its obligations under this Contract;
- 3.16.1.3.** General Contractor's or any of its employees' or Subcontractors' violation of any applicable law, rule, or regulation; and/or
- 3.16.1.4.** Any claim or lawsuit by a third party, contractor, subcontractor, supplier, worker, or any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of this Contract who may be injured or damaged by the General Contractor or any of its Subcontractors or employees.
- 3.16.2.** General Contractor's obligation to Indemnify shall occur when the above claims, lawsuits, losses, costs, liabilities, and damages arise from, are related to, or are in connection with, the General Contractor's performance of this Agreement.
- 3.16.3.** This article does not require the General Contractor to Indemnify an Indemnified Party for such portion of any loss, cost, liability, or damage that arises solely from the negligence or intentional misconduct of the Indemnified Party.
- 3.16.4.** In addition to any remedy authorized by law, moneys due the General Contractor under the Contract, as considered necessary by the State, may be retained until disposition has been made of such claims, lawsuits, losses, costs, liabilities, and damages; however, this provision shall not be construed as precluding the State from enforcing any right of offset the State may have to any such moneys.
- 3.17 AIR POLLUTION:** General Contractor and each Subcontractor shall comply with all State and/or local air pollution control rules, regulations, ordinances, and statutes that apply to any work performed under the Contract. If there is a conflict between the State and local air pollution control rules, regulations, ordinances and statutes, the most stringent shall govern.
- 3.18 SWPPP:** General Contractor shall comply with the AOC's Storm Water Pollution Prevention Plan (SWPPP) and shall be the AOC's Qualified SWPPP Practitioner ("QSP"), at no additional cost to the AOC.

 - 3.18.1.** General Contractor shall strictly follow the requirements to implement all the provisions of the SWPPP including, without limitation, preparation of monitoring and recording reports and providing those to the AOC.
- 3.19 UNION ORGANIZING:** General Contractor, by signing the Contract, hereby acknowledges the applicability of Government Code section 16645 through section 16649 to the Contract.

 - 3.19.1.** General Contractor will not assist, promote or deter union organizing by employees performing work on an AOC contract, including a public works contract.
 - 3.19.2.** No AOC funds received under the Contract will be used to assist, promote or deter union organizing.
 - 3.19.3.** General Contractor will not, for any business conducted under the Contract, use any AOC property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the AOC property is equally available to the general public for holding meetings.

- 3.19.4.** If General Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, General Contractor will maintain records sufficient to show that no reimbursement from AOC funds has been sought for these costs, and that General Contractor shall provide those records to the Attorney General upon request.

ARTICLE 4 SUBCONTRACTORS

4.1 SUBLETTING AND SUBCONTRACTING

- 4.1.1.** Although the AOC is not bound by the Public Contract Code for trial court construction, the AOC has specifically incorporated the provisions of the Subcontractor Listing Law (Public Contract Code section 4100, et seq.) into the Contract. The AOC intends to fully enforce the provisions of the Subcontractor Listing Law, including, specifically sections 4109 and 4110. Accordingly, General Contractor and AOC shall adhere to the rules governing subcontracting as set forth in Public Contract Code section 4100 et seq. Subcontractor substitutions shall be in accordance with provisions of the Subletting and Subcontracting Fair Practices Act. Violations of this Act by the General Contractor may subject the General Contractor to penalties and disciplinary action as provided by the Subletting and Subcontracting Fair Practices Act.
- 4.1.2.** General Contractor is prohibited from replacing or otherwise substituting subcontractors that are listed in the Contract without following the procedures set forth in the Subcontractor Listing Law. An agreement made in violation of this section shall confer no rights on any party and shall be null and void.
- 4.1.2.1** At the request of the AOC, the General Contractor shall provide documentation that its Subcontractors meet any technical qualifications set forth in the contract documents with respect to that subcontractors' work. If requested by the AOC, the General Contractor shall provide copies of all General Contractor's agreements with its Subcontractors to the AOC.
- 4.1.3.** General Contractor shall, in the course of the work, engage only Subcontractors and employees who possess, and will maintain in good standing during the performance of the Services, valid and applicable licenses where the State of California or this Contract requires that the work to be performed by that Subcontractor or employee must be performed by a licensed person or entity.
- 4.1.4.** General Contractor expressly acknowledges that its Subcontractors are not third party beneficiaries of this Contract. No contractual relationship exists between the AOC and any Subcontractor, supplier, or sub-subcontractor by reason of this Contract.
- 4.1.5.** General Contractor shall be responsible for all Work performed under the Contract. All persons engaged in the Work of the Project are the responsibility and under the control of the General Contractor. General Contractor shall give personal attention to fulfillment of the Contract and shall keep the Work under the General Contractor's control.
- 4.1.6.** Although some of the Contract Documents may be arranged according to various trades or general grouping of work, General Contractor is not obligated to sublet work in any particular grouping or manner. The Contractor shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.
- 4.1.7.** The AOC may not permit a contractor or subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Sections 1777.1 or 1777.7 of the Labor Code

to propose on, bid on, be awarded, or perform work as a subcontractor on a public works project.

- 4.1.7.1.** Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the awarding body.
- 4.1.7.2.** General Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

4.2 SUBCONTRACTOR RELATIONS

- 4.2.1.** General Contractor shall provide each Subcontractor copies of the Contract Documents. General Contractor shall require all Subcontractors to comply with the terms and conditions of this Contract. General Contractor shall require Subcontractors to make copies of applicable portions of the Contract Documents available to their respective Sub-subcontractors.
- 4.2.2.** General Contractor shall pay the General Contractor's Subcontractors for work performed no later than 10 days after General Contractor's receipt of each progress payment from AOC. If there is a good faith dispute over all or any portion of the amount due a Subcontractor on a progress payment, the General Contractor may withhold no more than 150 percent of the disputed amount. This provision shall also apply to Sub-subcontractors.
- 4.2.3.** General Contractor is solely responsible for settling any differences between the General Contractor and its Subcontractor(s) or between Subcontractors.

ARTICLE 5 CHANGES IN THE WORK

5.1 NO CHANGES WITHOUT AUTHORIZATION

- 5.1.1.** There shall be no change whatsoever in the Drawings, Specifications or in the Work without a fully executed Change Order. AOC shall not be liable for the cost of any extra work which should have been covered by a Change Order unless the AOC authorized the same and the cost thereof has been approved by the AOC in writing by an executed Change Order.
- 5.1.2.** The Surety, in executing and providing the Performance Bond and the Payment Bond, shall be deemed to have expressly agreed to any change to the Contract and to any extension of time made by reason thereof.
- 5.1.3.** No extension of time for performance of the Work shall be allowed hereunder unless Claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in a fully executed Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.
- 5.1.4.** General Contractor shall perform immediately all Work that has been authorized by a fully executed Change Order. General Contractor shall be fully responsible for any and all delays and/or expenses caused by General Contractor's failure to expeditiously perform this Work.
- 5.1.5.** Should any Change Order result in an increase in the Contract Sum, the cost of that Change

Order shall be agreed to, in writing, in advance by General Contractor and AOC. In the event that General Contractor proceeds with any change in Work without a fully executed Change Order, General Contractor waives any Claim of additional compensation or time for that additional Work.

- 5.1.6. General Contractor understands, acknowledges, and agrees that the reason for AOC authorization is so that AOC may have an opportunity to analyze the Work and decide whether the AOC shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

5.2 CHANGE ORDERS

- 5.2.1. A Change Order is a written order approved by the AOC as defined herein. A Change Order shall include all of the following:
 - 5.2.1.1. A description of a change in the Work;
 - 5.2.1.2. The amount of the adjustment in the Contract Sum, if any; and
 - 5.2.1.3. The extent of the adjustment in the Contract Time, if any.
- 5.2.2. General Contractor must comply with the AOC's adopted Change Order Process and the only acceptable forms of Change Order and are those prepared by the AOC and may include at the AOC's discretion, the funding source and the General Contractor's waiver of claims related to the Work of the change, and related terms.
- 5.2.3. **Force Account Pricing Option (Time & Materials Pricing).** When the AOC and the General Contractor cannot agree on an amount of the adjustment in the GMP, the following process may be followed, at the AOC's discretion:
 - 5.2.3.1. All direct costs necessarily incurred and paid by the General Contractor for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the AOC and compensation will be determined as set forth herein.
 - 5.2.3.2. The AOC will issue a Change Order to proceed with the Work on a force account basis, and a not-to-exceed budget will be established by the AOC.
 - 5.2.3.3. All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to the Change Order. However, the AOC will only pay for actual costs verified in the field by the AOC's Project Manager on a daily basis.
 - 5.2.3.4. General Contractor shall be responsible for all cost related to the administration of the Change Order. The markup for overhead and profit for General Contractor modifications shall be full compensation to the General Contractor to administer the Change Order.
 - 5.2.3.5. General Contractor shall notify the AOC's Project Manager at least twenty-four (24) hours prior to proceeding with any of the force account work. Furthermore, the General Contractor shall notify the AOC when it has consumed eighty percent (80%) of the not-to-exceed budget, and shall not exceed the not-to-exceed budget unless specifically authorized in writing by the AOC. General Contractor will not be compensated for force account work in the event that the General Contractor fails to timely notify the AOC regarding the commencement of force account work, or exceeding the not-to-exceed budget.

5.2.3.6. General Contractor shall diligently proceed with the Work, and on a daily basis, submit a daily force account report on a form supplied by the AOC no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the force account Work only. The names of the individuals performing the force account Work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. The AOC will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to the General Contractor for their records. The AOC will not sign, nor will the General Contractor receive compensation for work the AOC cannot verify. General Contractor will provide a weekly force account summary indicating the status of the Change Order in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the Work.

5.2.3.7. In the event the General Contractor and the AOC reach a written agreement on a set cost for the Work while the Work is proceeding based on the Change Order, the General Contractor's signed daily force account reports shall be discontinued and all previously signed reports shall be invalid.

5.3 PRICE REQUEST

5.3.1. Definition of Price Request. A Price Request is a written request prepared by the Architect or the AOC, requesting the General Contractor to submit to the AOC and the Architect an estimate of the effect of a proposed change in the Work on the Contract Sum and the Contract Time.

5.3.2. Scope of Price Request. A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable General Contractor to provide the cost breakdowns required herein. General Contractor shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

5.3.3. Response to Price Request. Within fourteen (14) days, the General Contractor, shall submit to the AOC the General Contractor's proposed price to be added or deducted from the Contract Sum due to the change, authenticated in full by completely detailed price estimates and other authenticators of the cost by the General Contractor, Subcontractors, Sub-subcontractors, vendors or material suppliers, and any adjustments of time for Completion of the entire Work that is directly attributable to the proposed change in the Work.

5.4 PROPOSED CHANGE ORDER

5.4.1. Definition of Proposed Change Order. A Proposed Change Order ("PCO") is a written request prepared by the General Contractor requesting that the AOC and the Architect issue a Change Order based upon a proposed change to the Work.

5.4.2. Changes in Time. A PCO shall also include any changes to the Contract Time. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If General Contractor fails to request a time extension in a PCO, then the General Contractor is thereafter precluded from requesting additional time and/or claiming a delay.

5.4.3. Unforeseen Site Condition(s). If General Contractor submits a PCO requesting an increase in Contract Sum and/or Contract Time that is based at least partially on General Contractor's assertion that General Contractor has encountered an Unforeseen Site Condition on the Project, then General Contractor shall base the PCO on provable information to the AOC's

satisfaction, demonstrates that the Unforeseen Site Condition was actually unknown and/or unforeseen, and explaining why the General Contractor did not discover the Unforeseen Site Condition prior to finalizing the Contract Sum. If AOC denies the PCO, General Contractor shall complete the Project without any increase in Contract Sum and/or Contract Time based on that PCO.

5.5 ALLOWABLE COSTS FOR CHANGE ORDERS AND USE: All proposed cost requests by General Contractor for a Change Order shall include a complete itemized breakdown with the following detail, which are the only costs that will be allowed for these items.

5.5.1. Subcontractor(s)' Labor. Compensation for Subcontractor(s)' labor shall include the necessary payroll cost for labor, including first level supervision, directly engaged in performance of the changes. Wages shall not exceed current prevailing wages in the locality for performance of the changes. Use of a classification which would increase labor costs will not be permitted. Exceptions will be permitted only when the General Contractor establishes, to the satisfaction of the AOC, the necessity for payment at higher rates or classifications.

5.5.2. Materials and Equipment: Compensation for materials and equipment shall include the necessary costs for materials and equipment directly required for performance of the changes. Cost of materials and equipment may include costs of transportation and delivery. If discounts by suppliers are available to the General Contractor, they shall be credited to the AOC. If materials and equipment are obtained from a supply or source owned by, or in part, by the General Contractor, payment therefore will not exceed current wholesale prices for such materials and equipment. If, in the opinion of the AOC, the cost of materials and equipment is excessive, or if the General Contractor fails to furnish satisfactory evidence of costs 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. The AOC reserves the right to furnish materials and equipment required for performance of the changes, and the General Contractor shall have no Claim for costs or mark-ups on such materials and equipment.

5.5.3. Construction Equipment:

5.5.3.1. Compensation for construction equipment shall include the necessary costs for use of construction equipment directly required for performance of the changes. Any use for less than 30 minutes shall be considered one-half hour. 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 AOC. Rental time for construction equipment moved by its own power shall include the time required to move construction equipment to the Work site from the nearest available source for rental of such equipment, and time required to return such equipment to the source. If construction equipment is not moved by its own power, loading and transportation costs will be paid in lieu of such rental time. Neither moving time nor loading and transportation costs will be allowed if the construction equipment is used for any work other than the changes. No allowance will be made for individual pieces of construction equipment and tools having a replacement value of \$500 or less. No construction equipment costs will be recognized in excess of rental rates established by distributors or equipment rental agencies in the locality for performance of the changes.

5.5.3.2. Unless otherwise approved by the AOC, the allowable rate for use of construction equipment shall constitute full compensation to the General Contractor for cost of fuel, power, oil, lubrication, supplies, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor except for construction equipment operators and any and all costs to the General Contractor incidental to the use of such construction equipment.

- 5.5.4. Mark-Ups for Added Work:** The following amounts for mark-ups for performance of the changes shall constitute full compensation for all other costs not covered under the above-stated Allowable Costs, including additional field and home office overhead, profit, insurance (other than OCIP Insurance), taxes, and bonds. General Contractor is not permitted to add costs for additional items that are part of the General Contractor's General Conditions in its performance of the Work unless approved in advance by the AOC.
- 5.5.4.1.** General Contractor's fee for Subcontractor-performed work: Six percent (6%) of the Direct Cost of Work associated with the added work.
- 5.5.4.2. Subcontractors:** Actual cost to the General Contractor for work performed by the Subcontractor. The Subcontractor shall compute mark ups as follows, except that the aggregate mark-ups made at all subcontract tiers shall not exceed Twenty percent (20%):
- 5.5.4.2.1.** For Subcontractor's direct labor costs: Twenty percent (20%)
- 5.5.4.2.2.** For Subcontractor's direct Materials & Equipment costs: Fifteen percent (15%)
- 5.5.5. Deleted Work:** When the AOC is entitled to a credit for deleted work, the credit shall include direct labor, materials, and supervision plus overhead of the General Contractor or Subcontractor, as applicable for the deleted work. Deleted overhead shall be computed as ten percent (10%) of the direct labor, materials, and supervision. For example, if a \$10,000 item of work is deleted, the credit to the AOC would be \$11,000.
- 5.5.6. General Limitations:** Costs to the General Contractor for changes which exceed market values prevailing at the time of the change will not be allowed unless the General Contractor establishes that all reasonable means for performance of the changes at prevailing market values have been investigated and the excess cost could not be avoided. Notwithstanding actual charges to the General Contractor on work performed or furnished by others, no mark-ups will be allowed in excess of those specified above.
- 5.5.7. Cost Disallowance:** Costs which will not be allowed or paid in Change Orders or Claim settlements under this Contract include, but are not limited to: interest on cost of any type other than those mandated by statute; Dispute or Claim preparation or filing costs; legal expenses; the costs of preparing or reviewing proposed Change Orders or Change Order proposals concerning Change Orders which are not issued by the AOC; lost revenues; lost profits; lost income or earnings; rescheduling costs; costs of idled equipment when such equipment is not yet at the site or has not yet been employed on the Work; lost earnings or interest on unpaid retention; Dispute or Claim consulting costs; the costs of corporate officers or staff visiting the site or participating in meetings with the AOC; any compensation due to the fluctuation of foreign currency conversions or exchange rates; or loss of other business.
- 5.6 ACCEPTANCE OF CHANGE ORDERS** General Contractor's written acceptance of a Change Order shall constitute final and binding agreement to the provisions thereof and a waiver of all Disputes or Claims in connection therewith, whether direct, indirect, or consequential in nature.
- 5.7 EFFECT ON SURETIES.** All alterations, extensions of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing consent of Surety(s) on Contract Bonds.
- 5.8 VALIDITY OF ALTERATIONS** Alteration or variation of the terms of this Contract shall not be valid unless made in writing and signed by the parties, and an oral understanding or agreement that is not incorporated shall not be binding on any of the parties.

ARTICLE 6 TIME

6.1 NOTICE TO PROCEED

- 6.1.1.** The Contract is effective on the date that the Agreement is fully executed (“Effective Date”); however, the General Contractor is not authorized to begin work until the AOC delivers a written "Notice to Proceed" to the General Contractor.
- 6.1.2.** If the General Contractor begins work before delivery of the Notice to Proceed, that work will be at the General Contractor's risk and expense and subject to all terms and conditions of the Contract except those terms and conditions inconsistent with the General Contractor's assumption of that risk and expense.
- 6.1.3.** The AOC will not be obligated to accept or to pay for work furnished by the General Contractor prior to delivery of the Notice to Proceed whether or not the AOC has knowledge of the furnishing of such work.
- 6.1.4.** If a Notice to Proceed is delivered, then work performed before delivery will be treated for all purposes as though it were performed after delivery.
- 6.1.5.** Work under the Contract shall be conducted in accordance with the Contract Documents. The General Contractor shall not begin any Work until authorized in writing by the AOC.
- 6.1.6.** General Contractor shall not be allowed on the site of the Work until the General Contractor's Contract bonds and certificates of insurance comply with requirements of the Contract.

6.2 CONTRACT TIME The Contract Time is the period set forth in the Contract Documents for Completion of the Work. The Contract Time will be designated as either (1) a total number of days and a start date or (2) a start date and an end date. It is essential that the Project be completed within the time fixed for Completion. All portions of the Work shall be completed with necessary labor, equipment, procedures and overtime and shall be ready for full use by the AOC on, or prior to, the date indicated for Completion. The AOC may occupy or utilize areas as indicated herein.

6.3 TIME EXTENSIONS AND DELAYS IN COMPLETION OF THE WORK

6.3.1. Force Majeure: The AOC and the General Contractor shall be excused from performance to the extent that there is a force majeure event. General Contractor’s obligations are as further indicated herein.

6.3.2. General Contractor’s Notice of Delay

- 6.3.2.1.** In addition to the requirements indicated in this subsection, General Contractor shall notify the AOC pursuant to the Claims provisions in these General Conditions and the other Contract Documents of any anticipated delay and its cause.
- 6.3.2.2.** General Contractor shall, within seven (7) calendar days of any delay impacting the critical path in completing the Work, notify AOC in writing of the causes of the delay including documentation and facts explaining the delay.
- 6.3.2.3.** In the event the General Contractor requests an extension of Contract Time for a delay in this notice, that request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. If the General Contractor fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Construction Schedule as

updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work.

6.3.2.4. Any Claim for delay must include the following information as support, without limitation:

6.3.2.4.1. The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

6.3.2.4.2. Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.)

6.3.2.4.3. A recovery schedule must be submitted.

6.3.2.5. AOC shall review the facts and extent of any noticed delay and shall grant Contract Time extension(s) of time for completing Work when, in the AOC's judgment, the findings of fact justify an extension.

6.3.2.6. Any extension granted by the AOC shall be based on the Master Project Schedule as updated at the time of occurrence of the delay or execution of work related to any changes to the scope of the Work. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected.

6.3.2.7. An extension of time may only be granted if General Contractor has timely submitted the Construction Schedule as required herein.

6.3.2.8. Following submission of a notice of delay, the AOC may determine whether the delay is to be considered:

6.3.2.8.1. Excusable and Compensable, Excusable, or Unexcused;

6.3.2.8.2. How long the delay continues; and

6.3.2.8.3. To what extent the prosecution and Completion of the Work might be delayed thereby.

6.3.3. Excusable and Compensable Delay(s)

6.3.3.1. General Contractor is **not** entitled to additional compensation for any delay, even a delay caused by Adverse Weather or an Excusable Delay, unless **all** of the following conditions are met:

6.3.3.1.1. The AOC is responsible for the delay

6.3.3.1.2. The delay is not caused by conflicts, ambiguities or errors or omissions in the Contract Documents that could have been reasonably discovered by the General Contractor prior to the Construction Phase;

6.3.3.1.3. The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the Contract Completion date;

6.3.3.1.4. The delay was not within the contemplation of AOC and General

Contractor;

- 6.3.3.1.5.** General Contractor complies with the Disputes and Claims procedure of the Contract Documents.
- 6.3.3.1.6.** The delay could **not** have been avoided or mitigated by the General Contractor's care, prudence, foresight, and diligence.
- 6.3.3.1.7.** The delay extends the Contract Completion date, and is not concurrent with a General Contractor-caused delay or other type of Excusable Delay.

6.3.4. Excusable Delay(s)

6.3.4.1. An "Excusable Delay" shall mean an interruption of the Work beyond the reasonable control of the General Contractor and that:

6.3.4.1.1. Could have not been avoided by the General Contractor's exercising care, prudence, foresight, and diligence, and

6.3.4.1.2. Actually extended the Project Completion date.

6.3.4.2. General Contractor may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but the General Contractor shall not be entitled to additional compensation for an Excusable Delay.

6.3.4.3. Excusable Delays are limited to force majeure events and Adverse Weather that satisfies the requirements herein.

6.3.4.4. General Contractor is aware that governmental agencies and utilities, including, without limitation, the Corrections Standards Authority, State Fire Marshall, Division of the State Architect of the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve General Contractor-prepared drawings or approve a proposed installation. General Contractor shall include in its proposal, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. General Contractor is not entitled to make a Claim for damages or delays or an Excusable Delay arising from the review of General Contractor's drawings or other approvals from the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies.

6.3.4.5. Computation of Time / Adverse Weather

6.3.4.5.1. General Contractor will only be allowed a time extension for weather conditions if requested by General Contractor and only if **all** of the following conditions are met – thereby making the resulting delay an Excusable Delay.

6.3.4.5.1.1. The weather conditions constitute Adverse Weather, as defined herein;

6.3.4.5.1.2. General Contractor can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

6.3.4.5.1.3. General Contractor's crew is dismissed as a result of the Adverse Weather; and

6.3.4.5.1.4. The precipitation, sleet, snow, or hail for the month exceed those for the norm for the location and time of year.

6.3.4.5.2. A day-for-day extension will only be allowed for those days supported by the above determinations.

6.3.4.5.3. General Contractor shall work seven (7) days per week, if necessary, irrespective of weather conditions, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the AOC.

6.3.4.5.4. The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

6.3.5. Unexcused Delay(s) – Liquidated Damages

6.3.5.1. General Contractor and AOC hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the AOC will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the General Contractor shall forfeit to AOC as fixed and liquidated damages, and not as a penalty, the amount set forth in the Agreement for each calendar day of delay in Completion. General Contractor and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

6.3.5.2. General Contractor shall not forfeit liquidated damages for an Excusable Delay or an Excusable and Compensable Delay.

6.4 ACCELERATION

6.4.1. The AOC reserves the right to accelerate the Work of the Contract. In the event that the AOC directs acceleration, such directive will be only in written form. General Contractor shall keep cost and other Project records related to the acceleration directive separately from normal Project costs and records, and shall provide a written record of acceleration cost to the AOC on a daily basis.

6.4.2. In the event that the General Contractor believes that some action or inaction on the part of the AOC constitutes an acceleration directive, the General Contractor shall immediately notify the AOC in writing that the General Contractor considers the actions an acceleration directive. This written notification shall detail the circumstances of the acceleration directive. General Contractor shall not accelerate work efforts until the AOC responds to the written notification. If acceleration is then directed or required by the AOC, all cost records referred to above shall be maintained by the General Contractor and provided to the AOC on a daily basis.

6.4.3. In order to recover additional costs due to acceleration, the General Contractor shall document that additional expenses were incurred and paid by the General Contractor. Labor costs recoverable will be only overtime or shift premium costs or the cost of additional laborers brought to the site to accomplish the accelerated work effort. Equipment costs recoverable will be only the cost of added equipment mobilized to the site to accomplish the accelerated work effort.

- 6.4.4.** All changes to the Scope of the Work, the Contract Sum or the Contract Time caused by any acceleration must be reflected by a written and executed Change Order.

ARTICLE 7 PRICE, PAYMENTS AND COMPLETION

- 7.1 Contract Sum.** The Contract Sum is stated in the Agreement and is the total amount payable by the AOC to the General Contractor for performance of the Work under the Contract Documents, along with any adjustments to the Contract Sum to the extent allowed under the Contract Documents (i.e. authorized Change Orders).
- 7.1.1. Allowance(s).** Allowances are included in the Contract Sum only to the extent General Contractor has performed the Work encompassed in the Allowance description; General Contractor has appropriately billed for that Work and the AOC has approved General Contractor's invoice. To the extent that there are any allowances set forth in the Contract Documents and General Contractor has completed the Work, General Contractor may bill its time, materials, and other items with respect to the Allowance(s) in the identical structure as a Change Order. The unused portion of each Allowance shall be retained by the AOC at the end of the Project.
- 7.1.2. All Costs Included in Contract Sum.** All of General Contractor costs are included in the Contract Sum, including without limitation the following:
- 7.1.2.1.** All costs related to providing the Work for the Project including labor and materials.
 - 7.1.2.2.** Salaries and other compensation of the General Contractor's personnel stationed at the General Contractor's principal office or offices other than the Site office.
 - 7.1.2.3.** Payments to General Contractor's employees (regular pay, bonuses, incentive pay, profit sharing, severance pay, etc.).
 - 7.1.2.4.** Expenses of the General Contractor's principal office and offices other than the Site office.
 - 7.1.2.5.** Overhead and general expenses, except as may be expressly included herein.
 - 7.1.2.6.** General Contractor's capital expenses, including interest on the General Contractor's capital employed for the work.
 - 7.1.2.7.** Rental costs of machinery and equipment, except as specifically provided herein.
 - 7.1.2.8.** Costs due to the fault or negligence of the General Contractor, subcontractors, anyone directly or indirectly employed by the General Contractor or subcontractors, or for whose acts the General Contractor or subcontractors may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
 - 7.1.2.9.** Deductibles or self-insured retentions associated with the insurance required to be maintained by the General Contractor and the Subcontractors.
 - 7.1.2.10.** Electronic processing and personnel cost incurred by the General Contractor in preparing the Project schedule and schedule updates, payroll, project cost reports or project status reports and any other reports necessary to the progress of the Work.

- 7.1.2.11. Any fees paid to the Design and Construction Industry (e.g., AGC, ABC, AIA etc.)
- 7.1.2.12. Any licenses maintained by the General Contractor.
- 7.1.2.13. Any cost not specifically and expressly described herein.
- 7.1.2.14. Allowances subject to section 7.1.1.

7.1.3. Discounts, Rebates and Refunds

- 7.1.3.1. Cash discounts obtained on payments made by the General Contractor shall accrue to the AOC if (1) before making the payment, the General Contractor included them in a payment request and received payment therefore from the AOC, or (2) the AOC has deposited funds with the General Contractor with which to make payments; otherwise, cash discounts shall accrue to the General Contractor.
- 7.1.3.2. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the AOC, and the General Contractor shall make provisions so that they can be secured. If a trade discount by the actual supplier is available to the General Contractor, it shall be credited to the AOC.
- 7.1.3.3. Amounts, which accrue to the AOC in accordance with the provisions of this subsection shall be credited to the AOC as a deduction from the cost of the Work.

7.2 SCHEDULE OF VALUES Before submitting its first invoice to the AOC for the Construction Phase, the General Contractor shall provide a preliminary schedule of values for all of the Work of the Construction Phase consistent with the Master Project Schedule. This preliminary schedule of values shall include quantities and prices of items aggregating the Contract Sum and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. This preliminary schedule of values shall include, at a minimum, the following information and, when possible, the following structure:

- 7.2.1.1. The premium for General Contractor-provided “subguard” insurance protection in lieu of Subcontractor bonds;
- 7.2.1.2. Layout;
- 7.2.1.3. Mobilization;
- 7.2.1.4. Submittals;
- 7.2.1.5. Closeout documentation;
- 7.2.1.6. Demolition;
- 7.2.1.7. Installation;
- 7.2.1.8. Rough-in;
- 7.2.1.9. Finishes;
- 7.2.1.10. Testing; and
- 7.2.1.11. Punchlist and acceptance.

7.2.2. Divided by each of the following areas:

- 7.2.2.1. Site work;
- 7.2.2.2. By each building; and
- 7.2.2.3. By each floor.

7.2.3. Closeout Documentation. Until the AOC receives all required Closeout Documentation, the AOC may withhold a portion of the Retention in an amount as determined by the AOC to ensure the submittal of the Closeout Documentation. The AOC’s receipt of the Closeout Documentation is separate from Completion. Closeout Documentation shall include the

following, without limitation:

- 7.2.3.1.** A full set of final As-Built Drawings, as further defined herein;
 - 7.2.3.2.** All Operations & Maintenance Manuals and information, as further defined herein; .
 - 7.2.3.3.** All Warranties, as further defined herein; and
 - 7.2.3.4.** All verified report(s) for all scope(s) of Work as required for final Completion of the Project.
- 7.2.4.** General Contractor shall certify that the preliminary schedule of values as submitted to the AOC is accurate and reflects the costs as developed in preparing General Contractor's Contract Sum. The preliminary schedule of values shall be subject to the AOC's review and approval of the form and content thereof. In the event that the AOC objects to any portion of the preliminary schedule of values, the AOC shall notify the General Contractor, in writing, of the AOC's objection(s) to the preliminary schedule of values. Within five (5) calendar days of the date of the AOC's written objection(s), General Contractor shall submit a revised preliminary schedule of values to the AOC for review and approval. The foregoing procedure for the preparation, review and approval of the preliminary schedule of values shall continue until the AOC has approved the entirety of the preliminary schedule of values.
- 7.2.5.** Once the preliminary schedule of values is approved by the AOC, this shall become the Schedule of Values. The Schedule of Values shall not be thereafter modified or amended by the General Contractor without the prior consent and approval of the AOC, which may be granted or withheld in the sole discretion of the AOC. This Schedule of Values, once accepted by the AOC, shall be used as a basis for progress payments.

7.3 PROGRESS PAYMENTS

- 7.3.1.** Upon AOC's receipt of an invoice with updated Master Project Schedule from the General Contractor, the AOC will review same to determine if it is a proper invoice based on the approved Schedule of Values. Any invoice determined by the AOC not to be suitable for payment shall be returned to General Contractor and General Contractor shall modify it in accordance with the AOC's assessment and provide it again to the AOC.
- 7.3.2.** Progress payments (less Retention) will only be authorized by the AOC where the Work requires more than six (6) weeks to complete. Actual progress payment submittal dates shall be established by the AOC. General Contractor shall submit invoice(s) for allowable progress payments in accordance with the established submittal dates.
- 7.3.3.** General Contractor shall provide conditional lien releases for General Contractor, all Subcontractors and Sub-subcontractors with each progress payment invoice totaling the amount requested in the progress payment and covering the same time period as the progress payment time period.
- 7.3.4.** General Contractor shall submit invoices for progress payments as set forth herein below and in the Contract Documents.

7.4 RETENTION OF PAYMENTS

- 7.4.1.** Upon submittal and receipt of a monthly progress payment in accordance with the requirements herein, the following shall apply:
- 7.4.1.1.** General Contractor's invoice shall include the total amount of Work completed to date, including materials furnished and delivered on the Project site, not used, or fully insured with the AOC's prior approval and stored in a secure warehouse, and the value of the materials to date. General Contractor shall furnish evidence showing the value of such materials when requested by the AOC.

7.4.1.2. Due to many factors, including extensive coordination and security issues, AOC projects are substantially complex and the AOC shall retain not less than ten percent (10%) of the estimated value of Work completed.

7.4.2. The AOC will release Retention proceeds to the General Contractor only upon Completion of the Work, less any amounts that the AOC is permitted or required to withhold as indicated herein and as permitted under applicable statute.

7.4.3. After the Project is fifty percent (50%) complete, the AOC may, at its sole discretion, reduce the Retention to as low as five percent (5%). General Contractor acknowledges that AOC may seek General Contractor's surety's approval prior to reducing the Retention.

7.5 METHOD OF PAYMENT

7.5.1. The AOC will make payment in arrears after receipt of the General Contractor's properly completed invoice or application for payment. Invoices shall clearly indicate the following information. Invoices furnished by the General Contractor must be in this form.

7.5.1.1. The Contract number;

7.5.1.2. A unique invoice number;

7.5.1.3. General Contractor's name and address;

7.5.1.4. Taxpayer identification number (General Contractor's federal employer identification number);

7.5.1.5. Description of the completed Work, in accordance with the General Contractor's updated Master Project Schedule;

7.5.1.6. Amount of Retention to be withheld from the invoice;

7.5.1.7. Net amount to be paid for the invoice;

7.5.1.8. Total amount of Retention withheld to date;

7.5.1.9. The original signature of the authorized representative of the General Contractor;

7.5.1.10. The contractual charges, including the appropriate progress payment, if authorized; and

7.5.1.11. Preferred remittance address, if different from the mailing address.

7.5.2. General Contractor shall submit one (1) original and two (2) copies of invoices to the AOC's Project Manager, identified in the Agreement.

7.5.3. Invoices not on printed bill heads shall be signed by the General Contractor.

7.5.4. General Contractor acknowledges the complex payment approval process that the AOC must follow and agrees that the AOC will pay invoices that are approved, due and payable within forty-five (45) days after receipt of a correct, itemized invoice. In no event shall the AOC be liable for interest or late charges for any late payments.

7.5.5. Payment shall be made by the AOC to the General Contractor at the address specified on the

invoice.

- 7.6 DISALLOWANCE.** If the General Contractor claims or receives payment from the AOC that is later disallowed by the AOC, the General Contractor shall promptly refund the disallowed amount to the AOC upon the AOC's request. At its option, the AOC may offset the amount disallowed from any payment due or that may become due to the General Contractor under this Agreement or any other agreement.
- 7.7 PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK.** The granting of any payment by the AOC, or the receipt thereof by the General Contractor, shall in no way lessen the liability of the General Contractor to correct unsatisfactory work in connection with this Agreement.
- 7.8 RELEASE OF CLAIMS.** The acceptance by the General Contractor of its final payment due under this Agreement shall be and shall operate as a release to the State and the AOC of all claims and all liability to the General Contractor for everything done or furnished in connection with this Agreement (including every act and neglect of the AOC), with the exception of any claims that are expressly identified by the General Contractor as outstanding as of the date of General Contractor's submission of General Contractor's final application for payment. General Contractor's failure to identify any such claims shall operate as a release of all claims.
- 7.9 STOP PAYMENT NOTICES.** If a stop payment notice or a Claim based on a stop payment notice or lien of any nature should at any time be filed against the Work or any AOC property, by any entity or person that has supplied material or services for a Project, or financing for any supplied materials, General Contractor and General Contractor's payment bond surety ("Payment Bond Surety"), at General Contractor's and/or Payment Bond Surety's own expense, shall promptly take any and all action necessary to cause any such stop payment notice or a Claim based on a lien or a stop payment notice to be released or discharged immediately. If the General Contractor fails to furnish to the AOC, within thirty (30) Days after demand by the AOC, satisfactory evidence that a lien or a Claim based on a stop payment notice has been so released, discharged, or secured, the AOC may discharge such indebtedness and deduct the amount required therefore, together with any and all losses, costs, damages, and attorney fees and expense incurred or suffered by the AOC from any sum payable to General Contractor under the Contract.
- 7.10 ASSIGNMENT OF CONTRACT FUNDS.** General Contractor may assign moneys due or to become due under the Contract, through an amendment to the Contract. Any assignment of moneys earned by the General Contractor shall be subject to proper retention in favor of the AOC and to all deductions provided for in the Contract. All moneys withheld, whether assigned or not, are subject to being used by the AOC to the extent permitted by law, for the Completion of the Work in the event that the General Contractor is in default of the Contract.
- 7.11 JOINT CHECKS.** The AOC shall have the right in its sole discretion, if necessary for the protection of the AOC, to issue joint checks made payable to the General Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the AOC and a Subcontractor of any tier, any obligation from the AOC to such Subcontractor, or rights in such Subcontractor against the AOC.
- 7.12 OCCUPANCY BY THE AOC PRIOR TO COMPLETION OF THE WORK**
- 7.12.1.** The AOC reserves the right to occupy all or any part of the Project prior to Completion of the Work, upon written notice.
- 7.12.2.** If the AOC chooses to take occupancy, the AOC and the General Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract. Any Dispute as to responsibilities

shall be resolved pursuant to the Disputes and Claims provisions herein, with the added provision that during the Dispute process, the AOC shall have the right to occupancy of any portion of the Project that it needs or desires to use. Immediately prior to partial occupancy of the Project, the AOC and the General Contractor shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Work.

- 7.12.3.** The AOC's occupancy does not constitute Completion of the Work or Acceptance of the Work by the AOC, or any portion of the Work, nor will it relieve the General Contractor of responsibility for correcting defective Work or materials found at any time before Acceptance of the Work, as set forth herein, or during the Guarantee period after the AOC's acceptance, as set forth in the Contract Documents. However, when the Project includes separate buildings, and one or more of the buildings is entirely occupied by the AOC, then upon written request by the General Contractor and by written consent from the AOC, the Guarantee period will commence to run from the date of the AOC's occupancy of such building or buildings.

7.13 ACCEPTANCE OF THE WORK

- 7.13.1.** When the General Contractor considers the Work complete, the General Contractor shall request a final inspection by the AOC.

7.13.1.1. The AOC will conduct a final inspection within fourteen (14) days of receipt of written request from the General Contractor for final inspection.

7.13.1.2. If, after the inspection, the AOC determines that the Work is complete, the AOC will determine the date of the Completion of the Work and recommend that the Director accept the Work.

7.13.1.3. Upon Acceptance of the Work by the Director:

7.13.1.3.1. Upon acceptance of the Work as being complete by the Director, the Retention held by the AOC will be released less any amounts that the AOC is permitted or required to withhold as indicated herein and as permitted under applicable statute, and

7.13.1.3.2. General Contractor will be relieved of the duty of maintaining and protecting the Work.

7.13.1.4. If the AOC determines that the Work is not complete, the General Contractor will be notified in writing of deficiencies or any incomplete work and prepares a punch list of such items ("Punch List"). After completing the Punch List items, the General Contractor shall again initiate the procedures for final inspection as set forth above and the Work shall be considered complete when the Punch List items have been completed to the satisfaction of the AOC, however, in the event of unusual circumstances with respect to specific Punch List items, the AOC may accept the Work as complete as long as it withholds 150% of the value of the incomplete Punch List items.

7.13.1.5. Determination by the AOC that the Work is complete or Acceptance of the Work will not bar any Claim against the General Contractor as permitted herein and by law.

- 7.13.2.** General Contractor has thirty (30) days after receipt of the final statement to file a Claim with the AOC.

- 7.13.2.1. All Claims shall comply with the requirements of the Disputes and Claims provisions herein.
- 7.13.2.2. Failure to file a Claim within the thirty (30) day period constitutes a failure to diligently pursue and exhaust the required administrative procedures set forth in the Contract. Such failure shall constitute waiver of additional rights to compensation under the Contract or the right to request Equitable Adjustment.
- 7.13.2.3. If the General Contractor does not file a Claim within the thirty (30) day period, the final payment issued by the AOC will be a complete and final settlement between the AOC and the General Contractor.

7.14 FINAL PAYMENT

- 7.14.1. After Acceptance of the Work, and upon receipt of final statement from the AOC, General Contractor will invoice the AOC for any sum due the General Contractor including Retention.
- 7.14.2. General Contractor, if requested by the AOC, shall provide the AOC unconditional lien and stop payment notices release for General Contractor, all Subcontractors and Sub-subcontractor covering all labor, materials, and equipment for which a lien or stop payment notice could be filed when submitting General Contractor's final statement invoice.
- 7.14.3. If the General Contractor owes any amount to the AOC, the final statement shall serve as an invoice to the General Contractor.
- 7.14.4. If progress payments are not authorized, General Contractor will invoice the AOC, and the AOC will pay the General Contractor One Hundred Percent (100%) of the sum owing pursuant to the contract after Acceptance of the Work and receipt by the AOC of unconditional lien and stop payment notices release for General Contractor, all Subcontractors and Sub-subcontractor covering all labor, materials, and equipment for which a lien or stop payment notice could be filed.

7.15 DECISIONS TO WITHHOLD PAYMENT

- 7.15.1. **Reasons to Withhold Payment.** AOC may withhold payment in whole, or in part, to the extent reasonably necessary to protect the AOC if, in the AOC's opinion, the representations to the AOC required herein cannot be made. AOC may withhold payment, in whole or in part, to such extent as may be necessary to protect the AOC from loss because of, but not limited to:
 - 7.15.1.1. Up to 150% of the value of any Defective Work not remedied within the time frames required herein, including without limitation any Punch List items not satisfactorily completed;
 - 7.15.1.2. 125% to 150% of the claim stated in any stop notices, stop payment notices or other liens served upon the AOC as a result of the Contract;
 - 7.15.1.3. Liquidated damages assessed against the General Contractor;
 - 7.15.1.4. The cost to complete the Work if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum or by the Completion Date;
 - 7.15.1.5. Damage to the AOC or other contractor(s);
 - 7.15.1.6. Unsatisfactory performance of the Work by General Contractor;

- 7.15.1.7. Failure of the General Contractor to maintain or provide As-Built Drawings;
 - 7.15.1.8. Erroneous estimates by the General Contractor of the value of the Work performed, or other false statements in an application for payment;
 - 7.15.1.9. If there is an LCP in force on this Project, the failure to provide certified payroll records acceptable to the AOC and/or the LCP for each journeyman, apprentice, worker, or other employee employed by the General Contractor and/or each Subcontractor in connection with the Work for the period of the application for payment;
 - 7.15.1.10. Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with the LCP, if one is in force on this Project;
 - 7.15.1.11. Failure to properly maintain or clean up the Site;
 - 7.15.1.12. Failure to timely indemnify, defend or hold harmless the AOC;
 - 7.15.1.13. Failure to pay any royalty, license or similar fees;
 - 7.15.1.14. General Contractor is otherwise in breach, default or in substantial violation of any provision of the Contract;
 - 7.15.1.15. Failure of the General Contractor to submit on a timely basis all Closeout Documentation in a manner and form that is proper, sufficient, and reasonably acceptable to the AOC, and to not cause a delay in the Completion of the Project;
 - 7.15.1.16. Failure to perform any implementation and/or monitoring required by any SWPPP for the Project and/or the imposition of any penalties or fines imposed therefore against General Contractor or AOC; and/or;
- 7.15.2. **Reallocation of Withheld Amounts.** AOC may, in its discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, AOC shall make such payments on behalf of General Contractor. If any payment is so made by AOC, then that amount shall be considered a payment made pursuant to the Contract and AOC shall not be liable to General Contractor for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. AOC will render General Contractor an accounting of funds disbursed on behalf of General Contractor.
- 7.15.3. **Payment after Cure.** When General Contractor cures the grounds for declining approval, payment shall be made for amounts so withheld. No interest shall be paid on any retention or amounts withheld due to the failure of the General Contractor to perform in accordance with the terms and conditions of the Contract Documents.

ARTICLE 8 DISPUTES AND CLAIMS

- 8.1 **PERFORMANCE DURING DISPUTE AND CLAIM RESOLUTION PROCESS** General Contractor shall diligently proceed with Work on the Project at the same time that Disputes and Claims are addressed under this Article. It is the intent of AOC to resolve Disputes with the General Contractor as close to the events giving rise to the Disputes as possible, and to avoid stale or late Claims and the late documenting of Claims. General Contractor's failure to diligently proceed in

accordance with the AOC's instructions will be considered a material breach of this Agreement.

8.2 WAIVER If General Contractor fails to timely submit the written notices required by the provisions in this Disputes and Claims section, General Contractor hereby waives and releases its rights regarding further review of its Dispute or Claim, unless General Contractor and AOC mutually agree in writing to other time limits.

8.3 INTENTION The Dispute and Claims Resolution Process required herein are intended to provide a concise mechanism for resolving Disputes as they arise during the Project, while requiring accurate documentation related to contested issues as to those Disputes that are not contemporaneously resolved.

8.4 EXCLUSIVE REMEDY Compliance with the notice and claim submission procedures described in this Disputes and Claims section is an express condition precedent to the right to commence litigation, file a claim under the California Government Code, or commence any other legal action. General Contractor cannot bring assert or bring any Claim in any Government Code claim or subsequent legal action until that Claim has gone through the Dispute and Claims Resolution Process. The AOC hereby exercises the power conferred upon it by Government Code Sections 930.2 and 930.4 to augment claims presentation procedures and create its own Dispute and Claims Resolution Process as an exclusive remedy as indicated in this Disputes and Claims section.

8.5 OTHER PROVISIONS If portions of the Contract, other than this Disputes and Claims section establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements. Otherwise, the provisions in this Disputes and Claims section shall control the resolution of all Disputes and Claims.

8.6 SUBCONTRACTORS General Contractor is responsible for providing this Disputes and Claims section to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the General Contractor are informed of the Dispute and Claims resolution process in this Disputes and Claims section. No Claim submitted by any party that fails to follow the provisions of this Disputes and Claims section will be considered. General Contractor shall indemnify, keep and hold harmless the AOC and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Disputes and Claims section to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the General Contractor.

8.7 DISPUTE AND CLAIM RESOLUTION PROCESS

8.7.1. A "Dispute" is a request, demand or assertion by General Contractor as defined in the Definitions section herein.

8.7.2. A "Claim" is a Dispute that remains unresolved as defined in the Definitions section herein.

8.7.3. Notwithstanding any provision herein, the AOC is **not** granting to any Subcontractor or Sub-subcontractor any contractual, equitable, or other right that does not otherwise exist.

8.7.4. Dispute Resolution Process

8.7.4.1. Identifying, Presenting and Documenting a Dispute

8.7.4.1.1. Every Dispute shall be stated with specificity in writing and signed by General Contractor under penalty of perjury and presented to the AOC within thirty (30) calendar days of the incidents giving rise to the Dispute. The writing shall:

8.7.4.1.1.1. Identify all of the issues, events, conditions, circumstances and/or

causes giving rise to the Dispute;

8.7.4.1.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Sum, milestones and/or Contract Time adjustments; and

8.7.4.1.1.3. Identify in detail line-item costs if the Dispute seeks money.

8.7.4.1.2. The writing shall be accompanied by all documents substantiating General Contractor's position regarding the Dispute. A Dispute that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.

8.7.4.1.3. Architect's Initial Decision. The AOC's Architect shall issue a written decision regarding the Dispute to the General Contractor within ten (10) calendar days of receipt of the written Dispute from the General Contractor.

8.7.4.2. Meet and Confer

8.7.4.2.1. Where There Is No Agreement: If there is no agreement between General Contractor and the Architect on a General Contractor's Dispute, including cases where a General Contractor's Proposed Change Order ("PCO") seeks money, time, and/or any other relief, then within ten (10) calendar days of the date stated on the AOC's written decision of General Contractor's Dispute or request for Proposed Change Order, General Contractor shall give written notice and demand a review as indicated below, if General Contractor ever intends to seek any relief in connection with the AOC's rejection.

8.7.4.2.2. Where There Is Partial Agreement: If General Contractor and the Architect partially agree on a General Contractor's Dispute but do not reach complete agreement, then the Architect shall issue a written decision or prepare a Change Order, if applicable, for the issues and/or amounts agreed to. General Contractor shall give written notice and demand for review as indicated below, if General Contractor ever intends to seek relief in connection with the portion of the Dispute rejected by the Architect.

8.7.4.3. General Contractor's Demand for Review of Dispute

8.7.4.3.1. General Contractor shall give in writing a demand for review to the AOC Project Manager with copy to the Architect, within ten (10) calendar days of receiving the Architect's rejection of General Contractor's Dispute. The written demand for review shall include copies of all documentation the General Contractor intends to rely upon in substantiating General Contractor's position regarding the Dispute, including any supplementary documentation the General Contractor deems appropriate for the AOC's consideration.

8.7.4.3.1.1. AOC Project Manager's Written Decision. The AOC Project Manager will review the Dispute and issue a written decision to General Contractor and Architect within thirty (30) calendar days from the date the demand for review and supporting documentation are received. The AOC Project Manager has the option to meet with General Contractor, or with General Contractor and any other party, before issuing a decision.

8.7.4.3.1.2. If no decision is issued within thirty (30) days after the demand for review, the AOC will be deemed to have rejected General Contractor's Dispute in its entirety, and General Contractor shall proceed with the Claim Resolution Process below.

8.7.4.3.1.3. If the AOC Project Manager's decision completely resolves the Dispute, the AOC will prepare and process a Change Order, if applicable, or proceed accordingly.

8.7.4.3.1.4. If the AOC Project Manager rejects the Dispute in whole or in part or does not issue a timely written response, and if General Contractor ever intends to seek relief regarding the unresolved issues of the Dispute, then General Contractor shall proceed with the Claim Resolution Process below.

8.7.4.3.1.5. General Contractor's costs incurred in seeking relief under this Disputes and Claims section are not recoverable from AOC.

8.7.5. Claim Resolution Process. If a Dispute has not been resolved during the Dispute Resolution Process, the General Contractor shall submit within thirty (30) days a Claim along with the required detailed documentation for the AOC's consideration.

8.7.5.1. General Contractor shall furnish three (3) certified copies of the required Claim documentation. The Claim documentation shall be complete when furnished. The evaluation of the General Contractor's Claim will be based upon AOC records and the Claim documents furnished by the General Contractor.

8.7.5.2. Claim documentation shall conform to generally accepted accounting principles and shall be in the following format:

8.7.5.2.1. General Introduction

8.7.5.2.2. General Background Discussion

8.7.5.2.3. Index of Issues (listed numerically)

8.7.5.2.4. For each issue, provide the following information and begin each issue on a new page:

8.7.5.2.4.1. Background

8.7.5.2.4.2. Chronology

8.7.5.2.4.3. General Contractor's position including all reason(s) for AOC's potential liability

8.7.5.2.4.4. Supporting documentation of merit or entitlement

8.7.5.2.4.5. Supporting documentation of damages

8.7.5.2.5. All critical path method schedules, both as-planned, monthly updates, schedule revisions, and as-build along with the computer disks of all schedules related to the Claim.

8.7.5.2.6. Productivity exhibits (if appropriate)

8.7.5.2.7. Summary of Damages for each issue

- 8.7.5.3.** Supporting documentation of merit for each issue shall be cited by reference, photocopies, or explanation. Supporting documentation may include, but shall not be limited to the Contract Documents; correspondence; conference notes; shop drawings and submittals; shop drawing logs; survey books; inspection reports; delivery schedules; test reports; daily reports; subcontracts; fragmentary CPM schedules or time impact analyses; photographs; technical reports; requests for information; field instructions; and all other related records necessary to support the General Contractor's Claim.
- 8.7.5.4.** Supporting documentation of damages for each issue shall be cited, photocopied, or explained. Supporting documentation may include, but shall not be limited to, any or all documents related to the preparation and submission of the proposal; certified, detailed labor records, including labor distribution reports; material and equipment procurement records; construction equipment ownership costs records or rental records; job cost reports; Subcontractor or vendor files and cost records; service cost records; purchase orders; invoices; Project as-planned and as-built cost records; general ledger records; variance reports; accounting adjustment records; and any other accounting materials necessary to support the General Contractor's Claim.
- 8.7.5.5.** Each copy of the Claim documentation shall be certified by a responsible officer of the General Contractor in accordance with the requirements of the Contract Documents.
- 8.7.5.6.** **AOC's Written Decision.** An AOC representative that is a supervisor of the AOC's Project Manager will render a written decision to the General Contractor relative to the Claim. The AOC's written decision shall be final and binding on the party(ies) but subject to mediation.
- 8.7.5.7.** The AOC may withhold from a progress payment and/or the final payment an amount not to exceed 150 percent of the disputed amount. The AOC may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy.
- 8.7.5.8.** General Contractor shall include in its Claim documents all issue items and information that General Contractor contends are part of its Claim. Issues not included in the Claim documents shall not be considered.
- 8.7.5.9.** **Mediation.** Within thirty (30) days after the AOC renders its written decision, the General Contractor may request that the parties submit the Dispute to mediation. Absent a request for mediation, the AOC's written decision is final and binding on the parties.
- 8.7.5.10.** **Litigation.** If, after a mediation as indicated above, the parties have not resolved the Dispute, the receiving party's decision made pursuant to mediation will be conclusive and binding regarding the Dispute unless the submitting party commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the conclusion of such mediation or one (1) year following the accrual of the cause of action, whichever is later. In the event of litigation of a Dispute arising from or related to this Contract, the prevailing party shall be entitled to recover reasonable attorney fees and costs.
- 8.7.6.** The AOC shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to the AOC by the General Contractor or any Subcontractor

under the standards set forth in Government Code section 12650 *et seq.* Any General Contractor or Subcontractor who submits a false claim shall be liable to the AOC for three times the amount of damages that the AOC sustains because of the false claim. A General Contractor or Subcontractor who submits a false claim shall also be liable to the AOC for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$10,000 for each false claim.

8.8 DOCUMENTATION OF RESOLUTION. If a Claim is resolved, the AOC shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate.

8.9 NON-APPLICABILITY OF DISPUTE & CLAIM RESOLUTION PROCESS The procedures and provisions in this Disputes and Claims section shall not apply to;

8.9.1. AOC's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;

8.9.2. AOC's rights and obligations, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from AOC contracts, the imposition of penalties or forfeitures prescribed by statute or regulation;

8.9.3. Personal injury, wrongful death or property damage claims;

8.9.4. Latent defect or breach of warranty or guarantee to repair;

8.9.5. Stop Payment notices;

8.9.6. Any other AOC rights as set forth herein; and

8.9.7. Disputes arising out of or pertaining to an LCP (if applicable).

8.10 AUDIT AND ACCESS TO RECORDS

8.10.1. General Contractor shall maintain all books, records, documents, and other evidence directly pertinent to the performance of the Work under this Contract, in accordance with generally accepted accounting principles and practices consistently applied. General Contractor shall also maintain all financial information and data used by the General Contractor in the preparation or support of any cost submission, including the General Contractor's original proposal required for this Contract, or any Change Order, Claim, or other request for equitable adjustment, and a copy of the cost summary or information submitted to the AOC.

8.10.2. The AOC's Project Manager shall have access upon twenty-four (24) hours advance written notice, at all times during normal business hours, to all such books, records, documents, financial information, and all other evidence for the purpose of inspection, audit, and copying. General Contractor shall, at no cost to the AOC, provide proper facilities for such access, inspection and copying purposes.

8.10.3. General Contractor agrees to make the audit and record provisions of this subsection applicable to this Contract, and all Change Orders, Claims, or other requests for Equitable Adjustment affecting the Contract Time or Contract Sum General Contractor agrees to include the audit and record provisions of this subsection in all subcontracts and sub-subcontracts or purchase orders, at any tier, and make the audit and record provisions of this subsection applicable to all subcontracts, at any tier, in excess of \$10,000, and to make the audit and record provisions of this subsection applicable to all Change Orders, Claims, and other requests for equitable adjustment related to Project performance.

- 8.10.4.** Audits conducted under the audit and record provisions of this subsection shall be in accordance with general accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.
- 8.10.5.** General Contractor agrees to the disclosure of all information and reports resulting from access to records under the audit and record provisions of this subsection, to the AOC, and other affected agencies.
- 8.10.6.** Records under the audit and record provisions of this subsection shall be maintained and made available during the performance of the Work under this Contract until three (3) years past 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, shall be maintained and made available until final payment or final resolution of such Dispute, litigation, Claim, or exception, whichever occurs later.
- 8.10.7.** The right of access within the audit and record provisions of this subsection applies to all financial records pertaining to this Contract and all Change Orders and Claims. In addition, this right of access applies to all records pertaining to all contracts, Change Orders, and Contract Amendments:
 - 8.10.7.1.** To the extent the records pertain directly to Contract performance;
 - 8.10.7.2.** If there is any indication that fraud, gross abuse, or corrupt practices may be involved;
 - 8.10.7.3.** If the Contract is terminated for default or convenience.
- 8.10.8.** Access to records is not limited to the required retention periods. The AOC shall have access to records at any reasonable time for as long as the records are maintained.
- 8.10.9.** Further, the General Contractor agrees to include a similar right of the AOC to audit records and interview staff in any subcontract related to performance of this Contract, in regards to the Disabled Veterans Business Enterprise (DVBE) Program.
- 8.10.10.** General Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles (GAAP).

ARTICLE 9 PROTECTION OF PERSONS AND PROPERTY

9.1 SAFETY OF PERSONS AND PROPERTY

- 9.1.1.** General Contractor shall initiate, maintain and supervise all safety precautions and programs in connection with the performance of the Work, and shall make all employees engaged in the performance of the Work aware of all Project safety, fire, and health requirements and regulations including the appropriate use of personal protective equipment.
- 9.1.2.** General Contractor shall prior to the start of construction, submit to the AOC a written plan for Project site safety that is compliant with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety and protection of persons and property from damage, injury or loss, as well as the guidance found in the OCIP Safety Manual, and that will include:
 - 9.1.2.1.** General Contractor's program to require its Subcontractors, and their Sub-subcontractors to comply with the Project site safety plan and the OCIP Safety

- Manual;
 - 9.1.2.2. General Contractor's storm water pollution prevention plan;
 - 9.1.2.3. General Contractor's water event and mold prevention plan;
 - 9.1.2.4. General Contractor's air and dust management plan; and
 - 9.1.2.5. If applicable, General Contractor's blasting and use of explosives plan.
- 9.1.3. The General Contractor shall as part of its written plan for Project site safety plan appoint a dedicated member of the General Contractor's organization who by possession of a recognized college degree, certificate or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems related to the safety of the work and the Project, and when required is properly licensed in accordance with federal, state or local laws and regulations. The designated safety representative must be full time worker assigned solely to the Project site.
- 9.1.4. **Prevention.** General Contractor shall take precautions for safety and provide protection to prevent damage, injury, or loss to:
- 9.1.4.1. Employees performing work at the Project Site and other persons who may be affected thereby;
 - 9.1.4.2. The Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody or control of the General Contractor or the General Contractor's Subcontractors or Sub-subcontractors; and
 - 9.1.4.3. Other property at the Project Site, or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, stairways, passageways, roadways, structures, equipment, and utilities, not designated for removal, relocation, renovation, restoration, reconstruction, or replacement during the course of the completion of the Work or except as otherwise noted or specified.
- 9.1.5. General Contractor shall at all times conduct the construction of the Work to minimize inconvenience to the general public and to ensure the protection of persons and business adjacent to the Project site so as to minimize interference with their daily lives and operations.
- 9.1.6. If required by the local jurisdiction having authority, or by safe work practice, the General Contractor shall hire appropriate law enforcement personnel to control public vehicle traffic during periods of deliveries, construction vehicles leaving or entering the Project Site, and during periods of off loading on public roads, streets or through fares.
- 9.1.7. General Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying the AOC and other owners and users of adjacent sites and utilities of any unsafe condition resulting from the Work.
- 9.1.8. General Contractor shall exercise appropriate care during the construction of the Work to prevent and eliminate excessive dust, silt, airborne particulates including paint overspray, and other nuisances related to the Work, from affecting workers providing work at the Project Site, or persons, property, and business adjacent to the Site.
- 9.1.9. The General Contractor shall exercise appropriate care during the construction of the Work to avoid water intrusion events and subsequent mold growth.
- 9.1.10. General Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities regarding the storage and/or use of explosives or other hazardous materials or equipment necessary for execution of Work.

- 9.1.11.** General Contractor shall remedy damage and loss to property referred to in the Subparagraphs herein above caused in whole or in part by the General Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the General Contractor is responsible under the Subparagraphs herein above. The foregoing obligations of the General Contractor are in addition to the General Contractor's obligations under the Contract.
- 9.1.12.** General Contractor shall not load, or permit its Subcontractor or their Sub-subcontractors to load, any part of the Work so as to endanger its safety.
- 9.1.13.** When conditions of the Work, in the judgment of the AOC, present unreasonable risk of injury or death to persons or property damage, the AOC, may direct the General Contractor, at the General Contractor's sole expense, to close down the Work and not commence work again until all dangerous conditions are eliminated.
- 9.1.14.** General Contractor, at the General Contractor's own cost, shall rebuild, repair, restore and make good any and all damages to any portion of the Work affected by such causes before its acceptance.

9.2 EMERGENCIES AND REPORTING OF ACCIDENTS OR CLAIMS

- 9.2.1.** In an emergency affecting safety of persons or property, the General Contractor shall act, at the General Contractor's sole discretion, to prevent any threatened damage, injury or loss. Additional compensation or extension of Contract Time claimed by the General Contractor because of an emergency will be reviewed as provided in herein.
- 9.2.2.** General Contractor will report to the AOC in writing, within twenty-four (24) hours of an occurrence, using forms provided by the AOC in its OCIP Manual, all accidents, injuries, property damage, or any significant event that may have resulted in injury or property damage. The written reports will be sent to the AOC Project Manager and the AOC Senior Facilities Risk Manager, both of whom are identified in the OCIP Manual under the section titled "Accident Reporting".
- 9.2.3.** General Contractor shall cooperate with the AOC, and the OCIP insurers, and shall require its Subcontractors, and their Sub-subcontractors to cooperate with the AOC and the OCIP insurers, in the reporting, investigation, and resolution of claims for property damage, personal injury, or industrial injury that may arise from the construction of the Project.

9.3 PROHIBITED SUBSTANCE OR MATERIALS

- 9.3.1.** General Contractor is prohibited from, and will prohibit its Subcontractors, and their Sub-subcontractors from bring onto the Project site or using in the performance of the Work, any toxic material including, but not limited to, asbestos, asbestos containing material or product, polychlorinated bi-phenyls (PCB), lead contaminated material, or any substances that are regulated by any governmental entity ("Hazardous Materials").
- 9.3.2.** If the General Contractor encounters what would reasonably believed to be Hazardous Materials the General Contractor will immediately inform the AOC and will stop work in the affected area until the possible Hazardous Materials have been identified, and if required removed or rendered harmless.

9.4 DRUG-FREE WORKPLACE

- 9.4.1.** By signing the Contract, the General Contractor certifies, under penalty of perjury under the laws of the AOC of California, that the General Contractor will comply with the requirements

of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.), and will provide a drug-free workplace by taking the following actions:

- 9.4.1.1.** Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- 9.4.1.2.** Establish a Drug-Free Awareness Program to inform employees about:
 - 9.4.1.2.1.** The dangers of drug abuse in the workplace;
 - 9.4.1.2.2.** The person's or company's policy of maintaining a drug-free workplace;
 - 9.4.1.2.3.** Any available counseling, rehabilitation, and employee assistance programs; and
 - 9.4.1.2.4.** Penalties that may be imposed upon employees for drug abuse violations.
- 9.4.1.3.** Provide that every employee who works under the Contract will:
 - 9.4.1.3.1.** Receive a copy of the company's drug-free workplace policy statement; and
 - 9.4.1.3.2.** Agree to abide by the terms of the company's statement as a condition of employment.
- 9.4.1.4.** Provide for random pre-assignment testing, reasonable cause testing as necessary, and post accident testing as necessary of workers performing work at the Project Site.
- 9.4.1.5.** In addition to the other indemnity requirements of the Contract, General Contractor shall indemnify and hold harmless the State of California, the Judicial Council of California, and the Administrative Office of the Courts, the Superior Court of California associated with the Project including their respective elected and appointed officials, judges, officers, employees and agents against any loss, claim, damages or liability resulting from General Contractor's failure to enforce and maintain a drug free workplace.

ARTICLE 10 INSURANCE AND BONDS

10.1 GENERAL CONTRACTOR'S INSURANCE

10.1.1. General Requirements. General Requirements for General Contractor's insurance that is not provided by the OCIP:

- 10.1.1.1.** General Contractor shall maintain the required insurance for its operations not insured under the OCIP with an insurance company or companies 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.
- 10.1.1.2.** For all insurance policies required by this Paragraph 10.1 the General Contractor shall declare any deductible or self-insured retention (SIR). Any deductible or SIR shall be clearly stated on the appropriate certificate of insurance.
- 10.1.1.3.** If self-insured, the General Contractor agrees to administer its self-insurance program in a commercially reasonable manner so as to ensure the availability of funds to cover losses required to be insured against by General Contractor under the

terms of this Article.

- 10.1.1.4.** General Contractor, prior to commencement of the Construction Phase of the Project, shall provide the AOC with certificates of insurance and signed insurance policy endorsements, on forms acceptable to the AOC, as evidence that the required insurance is in full force and effect. Where applicable, each certificate of insurance and signed insurance policy endorsement shall specifically provide verification that the State of California, the Judicial Council of California, the Administrative Office of the Courts, the Superior Court of California associated with the Project, and their respective elected and appointed officials, judges, officers, and employees have been added as additional insureds on the insurance policy being referenced.
- 10.1.1.5.** The Certificates of Insurance shall be addressed as follows:
- [Name] Contract Specialist
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688
- 10.1.1.6.** All insurance policies required under this Article shall be in force until the end of the term of this Contract or Completion, whichever comes later and the General Contractor and the AOC have agreed in writing that the Work is covered under the AOC's programs of insurance or self-insurance designed for the purpose of providing coverage for the accepted Work once occupied.
- 10.1.1.7.** If the insurance expires during the term of the Construction Phase of the Project, the General Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsements, or it may be declared in breach of Contract. The AOC reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of the AOC. General Contractor must provide renewal insurance certificates and signed policy endorsements to the AOC at least ten (10) days following the expiration of the previous insurance certificates and signed policy endorsements.
- 10.1.1.8.** In the event General Contractor fails to keep in effect at all times the specified insurance coverage, the AOC may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- 10.1.1.9.** The insurance required by the "Insurance Requirements" herein below, as well as any excess liability or umbrella liability insurance that General Contractor maintains in compliance with the terms of this "General Requirements" subparagraph shall be endorsed to include the State of California, the Judicial Council of California, the Administrative Office of the Courts, the Superior Court of California, County of **Sutter**, and their respective elected and appointed officials, judges, officers, and employees as additional insureds, but only with respect to liability assumed by General Contractor under the terms of this Contract or liability arising out of the performance of the Services.
- 10.1.1.10.** General Contractor, and any insurer providing insurance required under the terms of this "General Requirements" subparagraph shall waive any right of recovery or subrogation it may have against the State of California, the Judicial Council of California, the Administrative Office of the Courts, the Superior Court of California, County of **Sutter**, and their respective elected and appointed officials, judges, officers, and employees for direct physical loss or damage to the Work, or for any

liability arising out of the Services performed by General Contractor under this Contract.

- 10.1.1.11.** All insurance policies required under this “General Requirements” subparagraph shall contain a provision that coverage will not be materially changed or cancelled without thirty (30) days prior written notice to the AOC.
 - 10.1.1.12.** General Contractor shall be responsible for and may not recover from the State of California, the Judicial Council of California, the Administrative Office of the Courts, the Superior Court of California, County of **Sutter** any deductible or self-insured retention that is connected to the insurance required under this “General Requirements” subparagraph.
 - 10.1.1.13.** The insurance required under this “General Requirements” subparagraph shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the State of California, the Judicial Council of California, the Administrative Office of the Courts, or the Superior Court of California, County of **Sutter** with the exception of coverage provided under the OCIP, which shall be primary to coverage provided by the General Contractor where applicable.
 - 10.1.1.14.** The AOC reserves the right to request certified copies of any of the insurance policies required under this “General Requirements” subparagraph, which shall be provided by the General Contractor within ten (10) working days following the request by the AOC.
 - 10.1.1.15.** The cost of all insurance required by this “General Requirements” subparagraph is the sole cost of the General Contractor and is a component part of the General Contractor’s Contract Sum.
 - 10.1.1.16.** General Contractor shall require insurance from Subcontractors and their Sub-subcontractors defined as “Excluded Parties” herein below with substantially the same terms and conditions as required of the General Contractor under “Insurance Requirements” herein below and with limits of liability, which in the opinion of the General Contractor are sufficient to protect the interests of the General Contractor, State of California, the Judicial Council of California, the Administrative Office of the Courts, and the Superior Court of California associated with the Project.
- 10.1.2. Construction Insurance Requirements:** From the beginning of the Construction , the General Contractor shall maintain at a minimum and in full force and effect, the following insurance:
- 10.1.2.1. Commercial General Liability for off Project site operations:** Commercial General Liability Insurance (and if required Excess Liability or Umbrella Liability insurance) for off Project site operations written on an occurrence form with limits of not less than \$5,000,000 per occurrence and a \$5,000,000 per location annual aggregate limit of liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, 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 lawsuit is brought subject to the insurance policy limit of liability. The completed operations liability shall extend for the period of time for which the General Contractor is legally liable for any actual or alleged defects in its off Project site work.
 - 10.1.2.2. Commercial Automobile Liability:** Automobile liability insurance with limits of

not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of the operation, use, loading or unloading of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the Work.

10.1.2.3. Workers' Compensation for off-Project site employees: Statutory workers' compensation insurance for all of the General Contractor's off Project site employees who are not covered by OCIP workers compensation insurance including special coverage extensions where applicable and employer's liability insurance with limits not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee.

10.1.2.4. General Contractor's Equipment Insurance: General Contractor's equipment insurance covering equipment and tools used in the performance of the Work at the project site that are not intended to become a permanent part of the Work.

10.2 OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

10.2.1. General Requirements for the AOC provided Owner Controlled Insurance Program (OCIP) during the construction of the Project:

10.2.1.1. The AOC has elected to provide the types of insurance indicated in the Subparagraph "OCIP Insurance" herein below insuring the AOC, the General Contractor, Subcontractors, and Sub-subcontractors of every tier (other than Excluded Parties as defined herein), while performing Work at the Project site until final Completion of the Project.

10.2.1.2. The indemnified site is defined in the OCIP as the Project site designated in the Contract Documents that has been scheduled with the OCIP insurance companies, including operations necessary or incidental to the Project site that have been specifically added to the OCIP insurance program by specific agreement with the OCIP insurance companies.

10.2.1.3. The insurance shall be provided through an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide.

10.2.1.4. Named Insured: The State of California, the Judicial Council of California, the Administrative Office of the Courts, the Superior Court of California associated with the Project, the General Contractor, its Subcontractors, and their Sub-subcontractors of each and every tier.

10.2.1.5. Additional Insureds: As required by written contract.

10.2.1.6. Excluded Parties: Contract haulers or truckers (or others only making deliveries or pickups from the Project site), vendors, suppliers (who do not perform or subcontract installation work at the Project site), material dealers, manufacturing representatives, equipment rental companies who perform equipment maintenance (does not apply to equipment companies who provide operators); architects, surveyors, soil testing contractors, and their consultants; asbestos abatement or other hazardous waste removal contractors and their respective subcontractor of any tier (unless specifically enrolled in the OCIP); demolition and blasting contractors and their respective subcontractors of any tier (unless specifically enrolled in the OCIP), and others who do not perform any actual on Project site labor, and any other entity specifically determined by the AOC to be excluded, will not be covered by insurance purchased by the AOC under the OCIP.

- 10.2.1.7. Term:** Any insurance policies provided within the OCIP shall be in force until the end of the term of this Contract or Completion of the Project, whichever comes later.
- 10.2.1.8. Completed Operations:** The completed operations insurance provided under the commercial general liability, excess liability and contractor's pollution liability insurance provided under the OCIP Insurance shall extend for a period of ten (10) years past the Completion, termination or cancellation of the Project, but the aggregate limit of liability shall not reinstate each annual period following Completion.
- 10.2.1.9. Waiver of Subrogation:** Each OCIP insurer shall waive any right of recovery or subrogation it may have against the Named Insureds and the Additional Insureds for direct physical loss or damage to the Work, or for any liability arising out of the services performed in the completion of the Work.
- 10.2.1.10. General Contractor/Subcontractor waiver:** General Contractor shall waive and require its insurers, its Subcontractors and their Sub-subcontractors, and their respective insurers to waive any right of recovery or subrogation each may have against the State of California, the Judicial Council of California, the Administrative Office of the Courts, the Superior Court of California, County of Sutter including their respective elected and appointed officials, judges, officers, employees arising out of the services performed at the Project site in the completion of the Construction Phase of the Project.
- 10.2.1.11. Cancellation:** All required insurance policies required under OCIP Insurance shall contain a provision that coverage will not be materially changed or cancelled without ninety (90) days prior written notice to the Named Insureds.
- 10.2.1.12. Loss Sharing:** All Subcontractors and Sub-subcontractors of every tier involved in a loss that would otherwise be insured under the terms and conditions of the OCIP commercial general liability and builder's risk insurance, which arises from the performance of the Work, as reasonably determined by the General Contractor, shall share equally in the first \$5,000 of such loss. Such obligation (or contribution by all Subcontractors and Sub-subcontractors of every tier) shall remain uninsured and will not be covered by the OCIP commercial general liability or builder's risk insurance policies.
- 10.2.1.13. Primary and non-contributory:** Any insurance provided under OCIP Insurance shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the Named Insureds or the Additional Insureds.
- 10.2.1.14. Limits Sharing:** The limits of liability provided under the commercial general liability insurance apply collectively for all Named Insureds and Additional Insureds.
- 10.2.1.15. Insurance Credits:** General Contractor will require that each prospective Subcontractor and each of their Sub-subcontractors prepare their bids and proposals for work on the Project to exclude the cost for any insurance that will be provided under OCIP Insurance. At the time of their bid each Subcontractor and their Sub-subcontractors shall be required to complete a warranty statement to certify that as a condition of its contract to perform work at the Project Site, and under penalty of having its contract to perform Work at the Project site terminated that it has removed the cost of any insurance that will be provided under the OCIP from its bid and that there is no duplication in insurance coverage for which reimbursement is being sought. Upon award the warranty statement will become a component part of any contract.

- 10.2.1.16. Contract Obligations:** Any OCIP insurance provided by the AOC is not intended to, and shall not qualify, limit or waive any liabilities or obligations of General Contractor, its Subcontractors, or their Sub-subcontractors have assumed under this Contract, or the contract between the General Contractor and Subcontractor, or the Subcontractor and its Sub-subcontractors.
- 10.2.1.17. General Contractor Insurance:** General Contractor shall continue to be responsible to provide any insurance required under “Contractor’s Insurance” indicated herein above that is not provided by the AOC under the OCIP.
- 10.2.2. OCIP Insurance:** Prior to the commencement of performance of the Construction Phase the AOC shall furnish the OCIP insurance for all contractors of every tier that are enrolled in the OCIP while performing Work at the Project site until final Completion of the Project (“OCIP Insurance”):
- 10.2.2.1. Commercial General Liability:** Commercial General Liability Insurance written on an occurrence form with separate limits as follows:
- \$2,000,000 each occurrence,
 - \$2,000,000 personal and advertising injury
 - \$4,000,000 general annual aggregate
 - \$4,000,000 products - completed operations aggregate
 - \$500,000 damages to premises rented to an insured
 - \$10,000 medical payments
- All limits of liability are applicable solely to the Project. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products - completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall not include exclusions for property damage resulting from explosion, collapse or underground hazard, or the consequences of inadvertent construction defects.
- 10.2.2.2. Excess Liability:** Excess Liability Insurance provided on a form following the commercial general liability insurance insuring against bodily injury, bodily injury, property damage, personal and advertising injury liability, products - completed operations, and employers liability on an occurrence form with limits as follows:
- \$50,000,000 each occurrence
 - \$50,000,000 general annual aggregate
 - \$50,000,000 products and completed operations aggregate
- 10.2.2.3. Contractor’s Pollution Liability Insurance:** Contractor’s pollution liability insurance (and if required Excess Liability insurance) written on an occurrence form with limits of liability of not less than \$10,000,000 per occurrence and \$10,000,000 general aggregate applicable solely to the Project for third-party claims for bodily injury and/or property damage, and for remediation costs stemming from pollution incidents resulting from the contractor’s covered operations resulting from Work at the Project site.
- 10.2.2.4. Workers' Compensation:** Statutory workers' compensation insurance for all of the General Contractors, Subcontractors, and Sub-subcontractors employees who will be engaged in the performance of the Work at the Project site including special coverage extensions where applicable and employer’s liability with limits of not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee.

10.2.2.5. Builders Risk: Builder's Risk Insurance with limits of liability equal to the combined value of the building under course of construction and final completed value of the Work. The insurance shall apply to physical loss or damage to the insured property, including the cost of damage to that portion of the building not under construction, and shall include coverage for flood, water damage, and earthquake and earth movement. The coverage for flood, earthquake and earth movement shall be provided with sub-limits less than the final completed value of the Work at the sole determination of the AOC.

10.2.2.5.1. Builder's Risk Insurance shall cover Work in the course of construction at the Project site, at any temporary off-site location, and while in transit. Included within the terms of coverage shall be all buildings, materials, supplies scaffolding, falsework, and temporary structures located at the Project site that are to be used in or incidental to the fabrication, erection, testing, or completion of the Project. The Builder's Risk Insurance shall cover the cost of removing debris, including demolition as may be made necessary by the operations of any law, ordinance or regulation.

10.2.2.5.2. Builder's Risk Insurance may exclude loss resulting from, war and related causes, terrorism resulting from nuclear, biological or chemical materials, nuclear perils, dishonest acts of employees, mysterious disappearance, and ordinary wear and tear, and earthquake and earth movement excess of a primary limit of earthquake and earth movement insurance. The insurance policy may also exclude the cost of making good faulty workmanship or materials, but shall specifically cover loss or damage arising as a consequence of faulty workmanship or materials.

10.2.2.6. Equipment Breakdown: Equipment Breakdown Insurance (which may be provided separately or as part of the Builder's Risk Insurance) with limits of liability of not less than \$5,000,000 per accident. Coverage will be provided with coverage for damage to any object, or production machine, when connected and ready for use including coverage for damage during hydrostatic, pneumatic or gas pressure tests.

10.3 PERFORMANCE BOND AND PAYMENT BOND

10.3.1. Prior to commencing any Work pursuant to this Contract, General Contractor shall furnish the following surety bonds issued by a California admitted surety insurer as follows:

10.3.1.1. Performance Bond: A bond in an amount at least equal to one hundred percent (100%) of the Contract Sum as security for faithful performance of this Contract; and

10.3.1.2. Payment Bond: A bond in an amount at least equal to one hundred percent (100%) of the Contract Sum for payment of persons performing labor and/or furnishing materials in connection with this Contract.

10.3.2. The costs for these bonds are included in the Contract Sum and shall not be a reimbursable expense. The cost of the bonds can be specified on the first payment request. .

10.3.3. In lieu of requiring some or all of its Subcontractors and their Sub-subcontractors to provide payment and performance bonds the General Contractor may utilize a form of contractor default insurance as a substitute for a Subcontractor performance bond. Such insurance must be provided by an insurance company or companies 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. If the General Contractor is utilizing contractor default insurance then prior to the start of the Work the General Contractor shall provide the AOC with quotes from the proposed insurance

company for such insurance for approval by the AOC. Any cost of contractor default insurance in excess of the quotes approved by the AOC shall be at the sole expense of General Contractor.

10.3.4. All bonds related to this Contract shall be in a form acceptable to the AOC.

10.3.5. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the General Contractor shall promptly furnish a copy of the bond(s) or permit a copy to be made.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

11.1 UNCOVERING AND CORRECTION OF WORK

11.1.1. If a portion of the Work is covered prior to the AOC's review, it shall, if requested in writing by the AOC, be uncovered for the AOC's observation and replaced at the General Contractor's expense without change in the Contract Time.

11.1.2. General Contractor shall notify the AOC two (2) working days prior to covering any work.

11.2 CORRECTION OF WORK

11.2.1. General Contractor shall promptly correct work rejected by the AOC or Work failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. General Contractor shall bear the costs of correcting such rejected work, including additional testing and inspections required and compensation for the AOC's services and expenses made necessary thereby.

11.2.2. Notwithstanding any provision to the contrary, in the event of an emergency constituting an immediate hazard to the health or safety of AOC employees, property, or licensees, the AOC may undertake, at the General Contractor's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it was caused by work of the General Contractor not being in accordance with requirements of the Contract Documents.

11.2.3. General Contractor shall 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 General Contractor nor accepted by the AOC.

11.2.4. If the General Contractor fails to correct nonconforming work as required herein either during Contract performance or during the period of the Guarantee, the AOC may correct the nonconforming work as permitted herein. If the General Contractor does not proceed with correction of such nonconforming work, within such time fixed by written notice from the AOC, the AOC may remove and store the salvable materials articles and/or equipment at the General Contractor's expense. If the General Contractor does not pay all costs of such removal and storage within fourteen (14) days after written notice, the AOC may, upon fourteen (14) additional calendar 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 General Contractor, including compensation for the AOC's services and expenses made necessary thereby. If the proceeds of a sale do not cover all costs that the General Contractor would have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the General Contractor are not sufficient to cover such amount, the General Contractor shall pay the difference to the AOC.

11.2.5. General Contractor shall bear the cost of correcting destroyed or damaged Work executed by the AOC or separate contractors, whether fully completed or partially completed, which is

caused by the General Contractor's correction or removal of Work that is not in accordance with requirements of the Contract Documents.

11.2.6. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations that the General Contractor might have in the Contract Documents. Establishment of the time period of the Guarantee as indicated herein, relates only to the specific obligation of the General 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 General Contractor's liability with respect to the General Contractor's obligations other than specifically to correct the Work.

11.3 ACCEPTANCE OF NONCONFORMING WORK. If the AOC prefers to accept any or all of the Work that is not in accordance with requirements of the Contract Documents, the AOC 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 General Contractor has been made.

ARTICLE 12 MISCELLANEOUS PROVISIONS

12.1 GOVERNING LAW The Contract shall be governed by California law without regard to any conflict of law rules that would direct the application of the laws of any other jurisdiction. General Contractor irrevocably consents to personal jurisdiction in California.

12.2 CONTRACT CONSTRUCTION. Headings or captions to the provisions of this Contract are solely for the convenience of the parties, are not part of this Contract, and shall not be used to interpret or determine the validity of this Contract. Any ambiguity in this Contract shall not be construed against the drafter, but rather the terms and provisions hereof shall be given their reasonable interpretation.

12.3 SEVERABILITY. If any term or provision of this Contract is found to be illegal or unenforceable, this Contract shall remain in full force and effect and that term or provision shall be deemed stricken.

12.4 SUCCESSORS AND ASSIGNS. General Contractor binds the General Contractor, the General Contractor's partners, successors, permitted assigns and legal representatives to the AOC in respect to covenants, agreements and obligations contained in the Contract Documents. General Contractor shall not voluntarily or involuntarily assign (e.g. assignment by operation of law), encumber, or otherwise transfer or delegate its duty or obligation to perform any Work under the Contract without the prior written consent of the AOC. Any voluntary assignment by General Contractor or assignment by operation of law (e.g. involuntarily assignment) of any portion of General Contractor's duty or obligation to perform any Work under the Contract shall be deemed a default allowing the AOC to exercise all remedies available to it under applicable law. Consent will not be given to an assignment which would relieve the General Contractor or the General Contractor's Surety of their responsibilities under the Contract. Any assignment in violation hereof shall be null and void.

12.5 STANDARD OF CARE. General Contractor, its officers, agents, employees, Subcontractors, consultants and any persons or entities for whom General Contractor is responsible, shall provide all Services pursuant to this Contract in accordance with the requirements of this Contract and in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project. The AOC's Acceptance of any submittals, deliverables, or other work product of the General Contractor shall not be construed as assent that General Contractor has complied, nor in any way relieve the General Contractor of, compliance with (i) the applicable standard of care or (ii) applicable statutes, regulations, rules, guidelines, and requirements.

12.6 NO PERSONAL LIABILITY. Neither the AOC, nor any other officer or employee of the AOC will be personally responsible for liabilities arising under the Contract.

12.7 USE OF PROJECT PLANS AND DRAWINGS

- 12.7.1.** All Design Documents, Record Documents, General Notes and Shop Drawings (“Plans”) prepared by the Architect, including those in electronic form, provided to General Contractor, are confidential Judicial Administrative Records exempt from public disclosure pursuant to California Rules of Court, Rule 10.500 (f)(6). General Contractor acknowledges that disclosing Plans for purposes other than those relating to the Project, could compromise the safety of the Court.
- 12.7.2.** General Contractor shall use the Plans solely with respect to Project Work. Plans shall not be used by General Contractor, or any Subcontractors, Sub-Subcontractors or material or equipment supplier on other projects or for any use outside the scope of the Project, without the specific written consent of the AOC.
- 12.7.3.** Any copies of Plans made by General Contractor, pursuant to AOC prior authorization, shall bear a confidentiality notice.

12.8 SIGNAGE Neither the General Contractor nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences, trailers, offices, or elsewhere on the Site without the specific prior written approval of the AOC.

12.9 OWNERSHIP OF DATA

- 12.9.1.** Everything created, developed or produced in the course of the General Contractor’s performance of the Services, including, without limitation, all drawings and specifications, reports, records, files, documents, memoranda, schedules, recordings, information and other materials or data (collectively, "Data") in any form, prepared, or in the process of being prepared, are works made for hire by the General Contractor for the AOC and are the sole property of the AOC without further employment or the payment of additional compensation to the General Contractor. The AOC owns all of the right, title and interest, in and to the Data, including, without limitation, all trademarks, copyrights, trade secrets, patents, and any and all other intellectual property rights therein (collectively, the "Intellectual Property Rights"). To the extent that any of the Data or the Intellectual Property Rights therein are not works for hire, the General Contractor hereby irrevocably assigns its entire right, title and interest in and to all such Data and the Intellectual Property Rights therein, to the AOC. At the AOC’s request, the General Contractor will assist the AOC in the AOC’s prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. General Contractor irrevocably appoints the AOC as its attorney in fact, coupled with an interest, to take all actions and execute and file all documents that the AOC deems necessary to perfect the AOC’s interest and Intellectual Property Rights in the Data as set forth herein.
- 12.9.2.** The AOC shall be entitled to access copies of the Data in whatever form, including, without limitation CAD, all times during the term of the Contract. Any such Data in the possession of the General Contractor or in the possession of any Subcontractor upon completion or termination of the Contract shall be immediately delivered to the AOC. If any Data are lost, damaged or destroyed before final delivery to the AOC, the General Contractor shall replace them at its own expense and the General Contractor assumes all risks of loss, damage or destruction of or to such Data.

12.10 PROPRIETARY OR CONFIDENTIAL INFORMATION OF AOC

- 12.10.1.** General Contractor understands and agrees that, in the performance of the Services under this Contract or in contemplation thereof, the General Contractor may have access to private or confidential information which may be owned or controlled by, or otherwise in the possession of, the AOC and that such information may contain proprietary or confidential details, the

disclosure of which to third parties may be damaging to the AOC. General Contractor agrees that all information disclosed by the AOC to the General Contractor shall be held in confidence and used only in the performance of the Contract. General Contractor shall exercise the same standard of care to protect such information as the General Contractor uses to protect its own proprietary information and in any case no less than a reasonably prudent person or entity would use to protect its own proprietary data.

- 12.10.2.** It is understood, however, that the General Contractor may disclose the AOC's confidential information on a "need to know" basis to the General Contractor's employees, the General Contractor's Subcontractors, and the Subcontractors' employees, and as required by law. General Contractor shall execute written agreements with its Subcontractors that bind each Subcontractor and its employees to the confidentiality provisions set forth in this Contract.
- 12.10.3.** General Contractor shall acquire no right or title to the confidential information. General Contractor GENERAL CONTRACTOR agrees not to use the confidential information for any purpose except to provide the Services. Notwithstanding the foregoing, the General Contractor may disclose the confidential information: (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it or as appropriate to respond to any summons or subpoena applicable to it; provided, however, that the General Contractor first gives reasonable notice of its intention to disclose in order for the AOC to seek a protective order; or (ii) to the extent necessary to enforce its rights under this Contract.
- 12.10.4.** General Contractor agrees that monetary damages are inadequate to remedy any breach or threatened breach of this Section and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.
- 12.11 LIMITATION ON PUBLICATION.** General Contractor shall not publish or submit for publication any article, press release, or other writing relating to the General Contractor's Services for the AOC without prior review and written permission by the AOC. The AOC review shall be completed within thirty (30) days of submission to the Project Manager and, if permission is denied, the AOC shall provide its reasons for denial in writing.
- 12.12 WRITTEN NOTICE.** Written notice shall be deposited in the U.S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or, hand-delivered to the other party's authorized representative, which shall be effective on the date of service.
- 12.13 CONTRACTOR'S USE OF COMPUTER SOFTWARE.** By execution of the Contract, the General Contractor certifies that it has appropriate systems and controls in place to ensure that AOC funds will not be used in the performance of the Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- 12.14 RELATIONSHIP OF PARTIES.** General Contractor and the agents and employees of the General Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State of California.
- 12.15 CONFLICT OF INTEREST**
- 12.15.1.** General Contractor and employees of the General Contractor shall not participate in proceedings that involve the use of AOC funds or that are sponsored by the AOC if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. General Contractor and employees of the General Contractor shall also avoid actions resulting in or creating the appearance of:
- 12.15.1.1.** Use of an official position with the government for private gain;
 - 12.15.1.2.** Preferential treatment to any particular person associated with this Contract or the

Work of this Contract;

12.15.1.3. Loss of independence or impartiality;

12.15.1.4. A decision made outside official channels; or

12.15.1.5. Adverse effects on the confidence of the public in the integrity of the government or this Contract.

12.15.2. Prohibited Financial Conflict of Interest. General Contractor and its Subcontractors presently have no interest and shall not acquire any interest which would present a conflict of interest pursuant to California Government Code sections 1090 *et seq.* and 87100 *et seq.*, during the performance of Services pursuant to this Contract. General Contractor further certifies that, to the best of its knowledge after due inquiry, no employees or agents of the AOC are now, nor in the future will they be, in any manner interested directly or indirectly in this Contract, or in any profits expected to arise from this Contract, as set forth in California Government Code sections 1090 *et seq.* and 87100 *et seq.*

12.15.3. Conflict of Interest for Former AOC Employees. General Contractor certifies and shall require any Subcontractor to certify to the following: Former AOC employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period after his or her employment with AOC.

12.16 COVENANT AGAINST GRATUITIES. No gratuities, in the form of entertainment, gifts, or otherwise, were offered by the General Contractor or any agent, director, or representative of the General Contractor, to any officer, official, agent, or employee of the AOC with a view toward securing this Contract or securing favorable treatment with respect to any determinations concerning the performance of this Contract. For breach or violation of this provision, the AOC will have the right to terminate this Contract, either in whole or in part, and any loss or damage sustained by the AOC in procuring, on the open market, any items which the General Contractor agreed to supply, shall be borne and paid for by the General Contractor. The rights and remedies of the AOC provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

12.17 WAIVER. The failure of AOC in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the AOC or Architect shall constitute a waiver of any right or duty afforded the AOC under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

12.18 PUBLIC CONTRACT CODE REFERENCES. References to the Public Contract Code are provided for Contract's convenience only and shall not imply that the Public Contract Code applies to the AOC, but rather shall be used to define the General Contractor's obligations under the particular contract provision in which such code section is referenced. The AOC is not subject to the Public Contract Code.

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