



Attachment H

General Conditions of the Contract for Construction

Document 00700

Construction Manager At Risk

September 19, 2008 Edition

New Mammoth Lakes Courthouse

Superior Court of California, County of Mono



**ADMINISTRATIVE OFFICE
OF THE COURTS**

OFFICE OF COURT CONSTRUCTION
AND MANAGEMENT

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DOCUMENT 00700

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 - GENERAL PROVISIONS

- 1.1 **DEFINITIONS:** 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 by the Director of the Office of Court Construction and Management of the Judicial Council of California/Administrative Office of the Courts, State of California, or the Director's designee.
- 1.1.2 Act of God: An Act of God shall include only the following occurrences or conditions and effects:
- .1. Earthquakes in excess of a magnitude of 3.5 on the Richter Scale; or
 - .2. Tidal waves.
- 1.1.3 Addendum (Addenda): A document issued by the AOC during the bidding period which modifies, supersedes or supplements the Contract Documents.
- 1.1.4 Alternative: Refer to Approved Equal and Substitution.
- 1.1.5 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 Contractor, Subcontractors, the Project, the Work, or the prosecution of the Work.
- 1.1.6 Approved Equal: Material, equipment, or method approved by the AOC for use in the Work, as being acceptable as an equivalent in essential attributes to the material, equipment, or method specified in the Contract Documents.
- 1.1.7 Agreement Form: The written and fully executed AOC Standard Agreement form which is attached to and incorporated by reference to the Contract Documents.
- 1.1.8 Architect or Engineer: The AOC's consultant listed in the Contract Documents as the designer of record responsible for the preparation and coordination of the Drawings and technical sections of the Project Manual.
- 1.1.9 Beneficial Occupancy: Occupancy and use by the AOC of all, or part, or parts, of the Work as selected by the AOC, prior to completion.
- 1.1.10 Bidder: Any individual, partnership, corporation, association, joint venture, or any combination thereof, submitting a Bid Form for the Work.
- 1.1.11 Change Order: A written order issued by the AOC on a AOC Standard Agreement form and signed by both the AOC and the Contractor which alters the Contract Documents and identifies the following:
- .1 a change in the Work,
 - .2 a change in the Contract Sum,
 - .3 the extent of the adjustment in the Contract Time, and/or
 - .4 an adjustment to the Contract terms.

- 1.1.12 Claim: An unresolved Dispute arising under or relating to the performance of the Contract that can only be filed after the final statement to the Contractor.
- 1.1.13 Completion: When the entire Work is completed in accordance with all Contract requirements, as determined by the AOC.
- 1.1.14 Construction Manager At Risk (Contractor): is the Contractor selected to review and participate in the development of the construction documents and who agrees to perform the Work identified in the Contract Documents.
- 1.1.15 Contract: The Contract Documents form the Contract for the Construction Phase. The Contract represents the entire and integrated agreement between the parties hereto. The Contract may be amended or modified by a Change Order executed by both parties. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the AOC and the Contractor.
- 1.1.16 Contract Documents: The Contract Documents include the Agreement Form and these General Conditions of the Contract for Construction as well as any other documents referred to 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.
- 1.1.17 Contract Sum: The Contract Sum is stated on the face of the Agreement Form as the "Total Amount Encumbered to Date", and includes any authorized adjustments made by Change Order, and is, at all times during the term of the Contract, the total amount payable by the State to the Contractor under the Contract Documents for all goods, services, and expenses rendered or to be rendered under the Contract.
- 1.1.18 Contract Time: Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract for Completion of the Work.
- 1.1.19 Contractor: The individual, partnership, corporation, association, joint venture, or any combination thereof, who has entered into a contract with the AOC to do the Work, identified as such in the Agreement, and referred to throughout the Contract as if singular in number. The term "Contractor" means the Contractor or the Contractor's representative.
- 1.1.20 Day: Calendar day, unless otherwise specifically defined.
- 1.1.21 Department or OCCM: The Office of Court Construction and Management of the Judicial Council of California/Administrative Office of the Courts.
- 1.1.22 Director: The Director of the Office of Court Construction and Management of the Judicial Council of California/Administrative Office of the Courts, or the Director's designee.
- 1.1.23 Dispute: A demand during performance of the Work seeking adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. A Dispute is not a Claim.
- 1.1.24 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.
- 1.1.25 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.
- 1.1.26 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.
- 1.1.27 Guarantee: The Contractor's assurance that the Project complies with the requirements of the

Contract Documents.

- 1.1.28 **Guaranteed Maximum Price (GMAX):** The maximum price that the AOC and Contractor agree upon as payment for managing and for supplying and installing all the work. The GMAX is the sum of the direct costs of the Contractor for construction of the Project, General and Supplementary Conditions, Performance and Payment bonds, Contractor's fee for construction, Contractor's overhead and profit, and Contractor's contingency. Contractor's pre-construction fees, fees for professional architectural and engineering services, inspection, testing services, modular furniture, and AOC contingency are not included in the GMAX.
- 1.1.29 **Official Progress Schedule:** The Contractor's baseline schedule and updates accepted by the AOC.
- 1.1.30 **Or Equal:** Refer to Approved Equal.
- 1.1.31 **Owner:** The State of California.
- 1.1.32 **Product Data:** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- 1.1.33 **Project:** The total construction of which the Work performed under the Contract may be the whole or a part.
- 1.1.34 **Project Manual:** The volume(s) assembled for the Work which includes the Introductory Information, Bidding Requirements, Contracting Requirements, Specifications, and other information as may be listed in the Project Manual Table of Contents.
- 1.1.35 **Request for Information (RFI):** A written request by the Contractor submitted in an AOC provided format for information regarding Project specific issues.
- 1.1.36 **Retention:** A percentage of the Contract Sum held back upon completion of the Work, or any portion of the Work, to cover outstanding liabilities, contingencies, and the like, as specified in the Contract Documents.
- 1.1.37 **Samples:** Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 1.1.38 **Schedule of Values:** A document furnished by the 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 Contractor's applications for progress payments.
- 1.1.39 **Shop Drawings:** Drawings, diagrams, schedules, and other data specially issued for the Work by the Contractor or a Subcontractor, Sub-subcontractor, and material suppliers to illustrate some portion of the Work.
- 1.1.40 **Specifications:** That portion of the Contract Documents consisting of the written requirements for materials, standards, equipment, construction systems, and standards of workmanship for the Work, and performance of related services.
- 1.1.41 **State:** The State of California acting through the Judicial Council of California/Administrative Office of the Courts.
- 1.1.42 **AOC Construction Supervisor/Inspector:** The person(s) authorized by the AOC to provide inspection services, field coordination and quality control during construction.
- 1.1.43 **AOC's Representative:** Person(s) authorized by the AOC to act on behalf of the AOC for the Project.
- 1.1.44 **Subcontractor:** An individual, partnership, corporation, association, joint venture, or any combination thereof, who has a direct contract with the 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,

- 1.1.45 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.
- 1.1.46 Substantial Completion: The stage in the progress of the Work or designated portion of the Work when it is sufficiently complete in accordance with the Contract Documents, so the AOC can occupy or utilize the Work for its intended use. Substantial Completion does not mean Completion of the Work or Acceptance of the Work.
- 1.1.47 Substitution: A material and/or process offered by the 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.
- 1.1.48 Warranty: A Contractor's, manufacturer's or material supplier's assurance that products and services provided meet the requirements of the Contract Documents.
- 1.1.49 Work: Construction and services required by the Contract Documents, including all labor, materials, equipment and services provided, or to be provided, by the Contractor to fulfill the 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 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 Contractor is a representation that the 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 Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the 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 Divisions, Sections and Articles, and arrangement of Drawings shall not control the 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 Invitation to Bid 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 Contractor upon written notice from the AOC, and shall not be re-employed.

1.3 **USE OF THE AOC'S DRAWINGS, PROJECT MANUAL AND OTHER DOCUMENTS:**
The Drawings, Project Manual and other documents issued by the AOC, and copies furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the 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 Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Project Manual 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 the General Conditions of the Contract for Construction include those which are:

- .1 Specifically defined; or
- .2 Titles of numbered Articles; or
- .3 References to Paragraphs, Subparagraphs and Clauses; or
- .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 priorities shall govern:

- .1 Addenda shall govern over other Sections of the Contract Documents to the extent specifically noted; subsequent Addenda shall govern over prior Addenda only to the extent specified.
- .2 The General Conditions of the Contract for Construction shall govern over the Agreement Form and all Drawings and Specifications except for specific modifications stated in the Supplementary Conditions, and except for Addenda.
- .3 In case of conflict between the Drawings and the Specifications, the Specifications shall govern.
- .4 In the case of conflict within the Drawings, the following shall govern:
- .5 Schedules, when identified as such, shall govern over all other portions of the Drawings.
- .6 Specific notes shall govern over all other notes and all other portions of the Drawings, except schedules described in the preceding Clause.
- .7 Larger scale Drawings shall govern over smaller scale Drawings.
- .8 Detail Drawings shall govern over standard plates bound within the Project Manual.
- .9 Figured or numerical dimensions shall govern over dimensions obtained by scaling.

1.5.2 Omissions: If the Contract Documents are not complete as to any Minor Detail or required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists accepted trade standard for good and workmanlike construction, such detail shall be deemed to have been implied by the requirements of the Contract Documents in accordance with such standard.

- .1 "Minor 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 Contractor discover conflicts, omissions, or errors in the Contract Documents, or have any questions concerning interpretation or clarification of Contract Documents, the Contractor shall immediately submit to the AOC in writing an RFI that complies with the following requirements:
- .1 All RFIs, whether by the Contractor, a Subcontractor or supplier at any tier, shall be submitted by the Contractor to the AOC.
 - .2 RFIs shall be numbered sequentially and be presented in the format provided by the AOC.
 - .3 The 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.
 - .4 The Contractor shall set forth it's own interpretation or understanding of the requirements, along with reasons why it has reached such an understanding in each RFI.
 - .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.
 - .6 Responses to RFIs will be made within 14 days unless the AOC notifies the Contractor in writing that a response will take longer. The 14 days will begin when the RFI is received and dated by the AOC.
 - .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.
 - .8 Should the Contractor believe that a response to an RFI causes a change to the requirements of the Contract, the Contractor shall, before proceeding, give written notice to the AOC, indicating that the Contractor considers the AOC's response to the RFI to be a Change Order. Failure to give such written notice within 14 days of receipt of the AOC's response to the RFI shall waive the Contractor's right to seek additional time or cost under Article 6.
- 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 Contractor, constitute work in excess of the scope of the Work, the Contractor shall submit written notice to the AOC within 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.

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 Contractor will be furnished Drawings and Project Manuals as specified in the Contract Documents.

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, until final payment is due and during the correction period described in Paragraph 12.2 and throughout the guarantee period.

- 2.2.2 The AOC will visit the Project site 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 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 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 Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or of any other persons performing portions of the Work.
- 2.2.4 Communications Facilitating Contract Administration: 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 Contractor. Communications by and with separate contractors shall be through the AOC.
- 2.2.5 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, in accordance with Subparagraphs 3.13.2 and 3.13.3, whether or not such work is fabricated, installed or completed.
- 2.2.6 The AOC will review and take action upon the 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; pursuant to the Specifications, Division 1. 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 Contractor.
- 2.2.7 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 Contractor. The AOC or the AOC's authorized Representative 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 to Subparagraph 3.12.10, for Substitution procedures.
- 2.2.8 The AOC will conduct inspections to determine the 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 Contractor; and will issue a final Payment Authorization upon compliance with the requirements of the Contract Documents and Acceptance of the Work.

2.3 **BREACHES, DEFAULTS AND TERMINATION FOR CAUSE**

- 2.3.1 If the AOC deems that the Contractor has failed to supply an adequate working force, or material of proper quality, or has failed to comply with Public Contract Code Section 10262, or has failed in any other respect to prosecute the Work with the diligence and force specified by the Contract, the AOC may:
- .1 after written notice of at least 5 days to the Contractor, specifying the defaults to be remedied, provide any such labor or materials and deduct the cost from any money due or to become due to the Contractor under the Contract; or
 - .2 if the AOC considers that the failure is sufficient ground for such action, the AOC may give written notice of at least 5 days to the Contractor and the Contractor's sureties, that if the defaults are not remedied, the Contractor's control over the Work will be terminated.

- 2.3.2 Should the AOC exercise its rights to terminate as noted in Subparagraph 2.3.1, the AOC may, without prejudice to any other rights or remedies of the AOC and subject to any prior rights of the Surety:
- .1 terminate employment of the Contractor;
 - .2 take possession of the Project site and all materials, equipment, tools, appliances, and construction equipment and machinery owned by the Contractor;
 - .3 accept assignment of any and all Subcontractor agreements pursuant to Paragraph 4.3; and/or
 - .4 finish the Work by whatever reasonable method(s) the AOC may deem expedient and appropriate.
- 2.3.3 When the AOC terminates the Contract for reasons provided in Subparagraph 2.3.1, the Contractor shall not be entitled to receive any further payment until Completion of the Work. If the costs incurred by the AOC because of termination under Subparagraph 2.3.1 exceed the unpaid balance, the Contractor shall pay the difference to the AOC.

2.4 TERMINATION FOR THE AOC'S CONVENIENCE

- 2.4.1 The AOC reserves the right to terminate this Contract or any part thereof, due to an Act of God or for its sole convenience. In the event of such termination, the 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. The 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 The Contractor shall be paid in accordance with the provisions of Article 8; except that the amount due the Contractor shall be based upon the AOC's final estimate of the Work completed, or acceptable materials furnished but not used, to the date of suspension of the Work, less any amounts required to be withheld pursuant to Article 8, and less any prior payment(s) made to, or on the account of the Contractor.

2.5 SUSPENSION BY THE AOC FOR CONVENIENCE

- 2.5.1 The AOC may, by written notice, order the 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:
- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
 - .2 that an equitable adjustment is made or denied under another provision of the Contract.

ARTICLE 3 - CONTRACTOR

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE CONTRACTOR

- 3.1.1 The 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 Contractor performs any work knowing it involves a recognized error, inconsistency or omission in the Contract Documents, without such notice to the AOC the Contractor shall assume responsibility for such performance and shall bear the cost for correction.
- 3.1.2 The Contractor shall take field measurements and verify field conditions and shall compare such field measurements, conditions and other related information known to the Contractor with the Contract Documents before beginning the Work.

- 3.1.3 The Contractor shall promptly, and before such conditions are disturbed, notify the AOC in writing of:
- .1 subsurface or latent physical conditions at the site differing materially from those indicated, or
 - .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.
 - .3 Hazardous materials.
- 3.1.4 The AOC will promptly investigate the conditions, and if the AOC finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work, whether or not changed as a result of such conditions, a Change Order will be issued in accordance with Article 6.
- 3.1.5 Contractor shall inform itself fully and shall assume the risk as to the physical conditions at the worksite. 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 Contractor shall supervise and direct the Work. The 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 The Contractor shall be responsible to the AOC for acts and omissions of the 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 Contractor.
- 3.2.3 Subcontractor Responsibility: The 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 a Disabled Veterans Business Enterprise (DVBE) firm or are stipulated suppliers or sole sourced. No claim, request for equitable adjustment or Change Order request shall be submitted to the AOC for any action of any Subcontractor, Sub-subcontractor or material supplier, at any tier, unless the Contractor can demonstrate that the AOC is the proximate cause of the change or delay alleged in such request. The AOC will not accept any responsibility or liability 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 proximate cause of the change or delay.
- 3.2.4 The 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 Contractor.
- 3.2.5 The 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 Contractor determines that some work performed on the Project does not comply with the requirements of the Contract Documents, the Contractor shall repair or replace such defective work at the Contractor's sole expense.
- 3.2.6 Until Acceptance of the Work, the 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, except as provided in Paragraph 8.5.

3.3 LABOR AND MATERIALS

- 3.3.1 Unless otherwise provided in the Contract Documents, the 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 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 Contractor shall pay the AOC \$25 as a penalty for each worker for each calendar day worked in violation of the above limitations and restrictions.
- 3.3.3 Prevailing Wage: The Contractor shall comply with Labor Code, Section 1775. In accordance with Section 1775, the Contractor shall forfeit to the AOC \$50 for each day, or portion thereof, for each worker paid less than the prevailing wage rates for the work or craft, in which the worker is employed for any work executed under the Contract by the Contractor or by any Subcontractor in violation of the provisions of the Labor Code; and, in particular, Labor Code, Sections 1770 to 1780, inclusive. In addition to such forfeiture, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each day, or portion thereof, shall be paid to each underpaid worker by the Contractor. This provision shall not apply to properly registered apprentices.
- 1 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. The Contractor shall obtain from the AOC a copy of such prevailing wage rates, which the Contractor shall post at the Project site.
 - 2 Wage rates set forth are the minimum that may be paid by the Contractor. Nothing herein shall be construed as preventing the 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 Contractor to hire labor at minimum rates, nor for necessity for payment by the Contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing the Bid Form.
 - 3 If it becomes necessary to employ crafts other than those listed in the General Prevailing Wage Rate booklet, the 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.
 - 4 The 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 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 Contractor's and Subcontractor's certified payroll records shall be furnished within 10 days. The Contractor's and Subcontractor's certified payroll records shall be available for inspection at the principal office of the Contractor.
- 3.3.4 Travel and Subsistence Payments: The 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.
- 3.3.5 Apprentices: Properly registered apprentices may 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 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.

3.4 NONDISCRIMINATION/NO HARASSMENT CLAUSE

- 3.4.1 During the performance of this Contract, the 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, marital status, age (over 40), sex, or sexual orientation. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 3.4.2 During the performance of this Contract, the Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or its Subcontractors interact in the performance of this Contract. The Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- 3.4.3 The 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 The 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 Contractor has a collective bargaining agreement, to refer either minorities and/or women shall excuse the Contractor's obligations under these specifications; Government Code, Section 12990; or the deregulations promulgated pursuant thereto.
- 3.4.5 The 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 The 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 The 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 1 year from the date of Acceptance of the Work, per Paragraph 8.6, unless a longer guarantee period is specifically called for in the Contract Documents. The 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 The Contractor further agrees, within 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 Contractor shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the AOC finds that the Contractor fails to perform any of the work under the guarantee, the AOC will proceed to have the work completed at the Contractor's expense and the 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 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 Contractor's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by work of the Contractor not being in accordance with the requirements of the Contract Documents.
- 3.6 **TAXES:** The Contractor shall pay all applicable taxes for the Work, or portions thereof provided by the Contractor, which were legally enacted as of the bid date, whether or not yet effective or merely scheduled to go into effect.
- 3.7 **PERMITS, FEES AND NOTICES**
- 3.7.1 The 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.
- 3.7.2 The 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 Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, the Contractor shall promptly notify the AOC in writing. If the Contractor performs work 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, the Contractor shall assume full responsibility for the Work and shall bear the attributable costs.
- 3.7.4 The Contractor is not subject to municipal, county, or district 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 California Building Standards Code (CBSC), current adopted edition, as of the bid date.
- 3.8 **ALLOWANCES:** The Contractor shall include in the Contract Sum any and all Allowances in accordance with the requirements of the Specifications, Division 1.
- 3.9 **SUPERINTENDENT**
- 3.9.1 The 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 Contractor, and communications given to the Superintendent shall be as binding as if given directly to the Contractor. All communications shall be confirmed in writing by the Contractor.
- 3.9.2 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.
- 3.10 **CONTRACTOR'S PROGRESS SCHEDULE AND NARRATIVE REPORT**
- 3.10.1 The Contractor shall submit to the AOC a Progress Schedule prepared in accordance with the Specifications, Division 1. The Progress Schedule shall show the order in which the Contractor proposes to execute the Work, dates on which the Contractor will start each major subdivision of the Work, and contemplated dates of completion of each such subdivision in accordance with the requirements of the Contract Documents. The Contractor shall submit adjusted Progress Schedules, including submittal schedules, to reflect changed conditions in accordance with the requirements of the Contract Documents. The monthly Progress Schedule update shall include a Schedule Narrative Report containing a narrative that includes the following:
- .1 Contractor's transmittal letter
 - .2 Description of problem tasks (referenced to field instructions, Requests for Information (RFIs),

change order or claim numbers) as appropriate.

- .3 Current and anticipated delays not resolved by approved change order, including:
 - .1 Cause of the delay
 - .2 Corrective action and schedule adjustments to correct the delay
 - .3 Known or potential impact of the delay on other activities, milestones, and project completion date
- .4 Changes in construction sequence
- .5 Pending items and status thereof including but not limited to:
 - .1 Pending change orders
 - .2 Time extension requests
 - .3 Other items
- .6 Contract completion date status:
 - .1 ahead of schedule, the number of calendar days ahead
 - .2 If behind schedule, the number of calendar days behind
- .7 Other project or scheduling concerns
- .8 Updated network diagram with target bars shown.

3.10.2 Time is of the essence in the completion of the Contract. Unless otherwise specified in the Contract Documents or advised by written order of the AOC, the Contractor shall begin work within 10 days of the start date stated in the Notice to Proceed. Work shall be executed to completion in accordance with the specified schedule, subject to adjustment in accordance with the requirements of the Contract Documents.

3.10.3 The 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 Contractor's Progress Schedule and within the Contract Time specified.

3.10.4 The Contractor shall furnish the AOC a Schedule of Values consistent with the Progress Schedule and Article 8. The Schedule of Values will be used as a basis for payment in accordance with Article 8.

3.10.5 The AOC's review and acceptance of the Contractor's Progress Schedule is for compliance with the requirements of the Contract Documents only. Review and acceptance by the AOC of the Contractor's Progress Schedule does not mean approval and does not relieve the Contractor of any of the Contractor's responsibility for the accuracy or feasibility of the Progress Schedule, or of the Contractor's ability to meet the interim Project milestone dates and the date of final 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 Contractor's Progress Schedule.

3.10.6 The Contractor shall prepare and submit to the AOC, with copy to the Architect, a detailed update to the Master Project Schedule, as utilized during the bid period, within thirty (30) calendar days after the starting date on the Notice to Proceed. The Contractor's updated Master Project Schedule shall be comprised of a Critical Path Method network. The Contractor shall input the critical path schedule on the computer using MS Project, Primavera Project Planner, Primavera SureTrack, 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 Supplementary General Conditions. The Contractor's Master Project Schedule shall show the dates on which each part or division of the work is expected to be started and completed. The Master Project 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 Supplementary General Conditions. The work activities making up the schedule shall be of sufficient detail to assure that adequate

planning has been done for proper execution of the work and such that, in the sole judgment of the AOC, it provides an appropriate basis for monitoring and evaluating the progress of the work. The schedule shall show the interdependence of each activity and a critical path. The Contractor shall also submit a separate progress 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.

- 3.10.7 The Contractor's Master Project 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 Contractor's activities. The Contractor's Master Project Schedule shall begin with the effective date of the Notice to Proceed and conclude with the date of final completion. No more than twenty percent of the activities will have less than five workdays of float unless approved by the AOC. 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. The schedule shall be developed using an appropriate work breakdown structure. The transmittal provided with the Master Project Schedule shall state whether the durations are in work days or calendar days.
- 3.10.8 The Contractor may submit a Master Project Schedule that shows the work completed in less time than the specified contract time. However, the acceptance of such a schedule will not change the contract time. The contract time shall control in any determination of liquidated damages or extension of the contract time. Float, slack time, or contingency within the schedule (i.e., the difference in time between the project's early completion date and the required contract completion date), and total float within the overall schedule, is not for the exclusive use of either the AOC or the Contractor, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the contract completion date.
- 3.10.9 The Contractor shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, etc. Since float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the contract completion date. Since float time within the construction schedule is jointly owned, it is acknowledged that AOC-caused delays on the Project may be offset by AOC-caused timesaving (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 Contractor, etc.). In such an event, the Contractor shall not be entitled to receive a time extension or delay damages until all AOC-caused timesaving are exceeded and the contract completion date is also exceeded.

3.11 **DOCUMENTS AND SAMPLES AT THE PROJECT SITE**

- 3.11.1 The Contractor shall maintain at the Project site one record copy of the Drawings, Project Manual, 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.
- 3.11.2 Daily Records Clause: The 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 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.

3.12 **SHOP DRAWINGS, PRODUCT DATA AND SAMPLES (SUBMITTALS)**

- 3.12.1 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their

purpose is to demonstrate those portions of the work for which submittals are required and the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the AOC is subject to the limitations of Subparagraph 2.2.6.

- 3.12.2 The 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 Specifications, Division 1; except finishes which 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. Submittals that are not required by the Contract Documents may be returned to the Contractor without action.
- 3.12.3 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed by the AOC. Such work shall be in accordance with reviewed submittals.
- 3.12.4 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the 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.
- 3.12.5 The 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 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 Contractor of responsibility for errors or omissions in submittals.
- 3.12.6 The 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 Contractor will be charged all costs of submittal review. The charges will be deducted from the Contractor's next pay request.
- 3.12.7 Informational submittals on which the AOC is not expected to take action, may be identified in the Contract Documents.
- 3.12.8 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.
- 3.12.9 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 first Invitation to Bid.
- 3.12.10 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 Contractor for use in the Work, provided the Contractor complies with the Specifications, Division 1, and the following requirements:
 - .1 The Contractor shall submit a proposal for the alternative material(s), article(s), or equipment, in writing, within 10 days after Contract start date stated in the Notice to Proceed. In exceptional cases where the best interests of the AOC so require, the AOC may give written consent to a submittal or resubmittal received after expiration of the time limit designated.
 - .2 The proposal will not be considered unless the submittal is accompanied by complete information and descriptive data necessary to determine equality of offered material(s), article(s), or equipment. 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 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 one of the particular products originally specified in the Contract Documents shall be furnished.

- .3 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.

3.13 TESTS AND INSPECTIONS

- 3.13.1 The 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. 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. The Contractor shall be solely responsible for notifying the AOC where and when the work is ready for inspection and testing. Should any work be covered without the required testing and approval, such work shall be uncovered and recovered at the Contractor's expense. Whenever the Contractor intends to perform work on Saturday, Sunday, or a legal holiday, the 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.
- 3.13.2 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 Contractor, in writing, to make arrangements for additional testing, inspection or approval by an entity acceptable to the AOC, and the 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 bear the costs except as provided in Subparagraph 3.13.3.
- 3.13.3 If procedures for testing, inspection or approval under Subparagraphs 3.13.1 and 3.13.2 reveal failure of a portion(s) of the Work to comply with the Contract Documents, the Contractor shall bear all costs made necessary by such failure(s) including those of repeated procedures and compensation for the AOC's services and expenses.
- 3.13.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and delivered to the AOC within 14 days after each test.

3.14 USE OF PROJECT SITE

- 3.14.1 The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Contract Documents.
- 3.14.2 The 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.
- 3.14.3 The Contractor shall ensure the limits of Work to be free of graffiti or other similar defacements during the time of the Contract; if such defacement occurs, then the Contractor shall promptly and properly remove, repair, or correct the affected area(s), or as otherwise directed by the AOC. The 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.
- 3.14.4 Prohibitions: Pursuant to Subparagraph 3.2.2, the use or possession of alcohol, weapons, or illegal controlled substances by the Contractor, or others under the Contractor's control, on AOC property is not allowed. Residing on site in temporary facilities by the Contractor, or others under the Contractor's control, is not allowed.

3.15 CUTTING AND PATCHING

- 3.15.1 The Contractor shall be responsible for cutting, fitting or patching as required to complete the Work.
- 3.15.2 The Contractor shall not damage nor endanger the Work by cutting, patching or otherwise altering

the construction, and shall not cut nor otherwise alter the construction without prior written consent of the AOC.

3.16 **CLEANING UP**

3.16.1 The Contractor shall keep the Project site and surrounding areas free from waste materials and/or rubbish caused by operations under the Contract and at other times when directed by the AOC. At all times while finish work is being accomplished, floors shall be kept clean, free of dust, construction debris and trash. Upon completion of the Work, the Contractor shall remove from the Project site the Contractor's tools, construction equipment, machinery, and any waste materials not previously disposed of, leaving the Project site thoroughly clean, and ready for the AOC's final inspection.

3.16.2 If the Contractor fails to clean up as provided in the Contract Documents, the AOC may do so and charge the cost thereof to the Contractor.

3.17 **ACCESS TO WORK:** The Contractor shall provide the AOC continuous access to the Work.

3.18 **ROYALTIES AND PATENTS:** The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and hold the AOC harmless.

3.19 **INDEMNIFICATION:** The Contractor shall indemnify and hold harmless the State, and all officers and employees of the State, from all suits, actions or claims brought for, or on account of injuries or damages received or sustained by any person or persons, by or from the Contractor, the Contractor's employees or agents, in construction of the Work, or by or in consequence of the Contractor's failure to properly guard the same, or by or as a result of any act or omission of the Contractor, the Contractor's employees or agents. In addition to any remedy authorized by law, moneys due the Contractor under the Contract, as considered necessary by the State, may be retained until disposition has been made of such suits, actions, or claims for 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.

3.20 **AIR POLLUTION:** The 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.

3.21 **UNION ORGANIZING:** Contractor by signing the Contract hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to the Contract.

3.21.1 Contractor will not assist, promote or deter union organizing by employees performing work on a AOC service contract, including a public works contract.

3.21.2 No AOC funds received under the Contract will be used to assist, promote or deter union organizing.

3.21.3 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.

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

ARTICLE 4 - SUBCONTRACTORS

4.1 **SUBLETTING AND SUBCONTRACTING**

4.1.1 The Contractor shall adhere to the rules governing subcontracting as set forth in the Subletting and Subcontracting Fair Practices Act, commencing with Public Contract Code, Section 4100. Subcontractor substitutions shall be in accordance with provisions of the Subletting and Subcontracting Fair Practices Act, beginning with Public Contract Code, Section 4100. Violations of this Act by the Contractor may subject the Contractor to penalties and disciplinary action as provided by the Subletting and Subcontracting Fair Practices Act.

4.1.2 The 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 Contractor. The Contractor shall give personal attention to fulfillment of the Contract and shall keep the Work under the Contractor's control. When any Subcontractor fails to execute a portion of the Work in a manner satisfactory to the AOC, the Contractor shall remove such Subcontractor immediately upon written request notice from the AOC, and the Subcontractor shall not again be employed on the Project. Although Specification Sections of the Contract Documents may be arranged according to various trades or general grouping of work, the Contractor is not obligated to sublet work in any manner. The AOC will not entertain requests to arbitrate disputes among Subcontractors or between the Contractor and Subcontractor(s) concerning responsibility for performing any part of the Work.

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

.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. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

4.1.4 The Contractor shall not self-perform construction work, nor subcontract work to an entity in which the Contractor has a financial interest.

4.2 **SUBCONTRACTUAL RELATIONS:** The Contractor shall make available to each proposed Subcontractor, prior to the execution of a Subcontractor agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed Subcontractor agreement which may or may not be at variance with the Contract. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall, by Subcontractor agreement, require each Subcontractor, to the extent of the work to be performed by the Subcontractor:

- .1 To be bound to the Contractor by terms of the Contract.
- .2 To assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract, assumes toward the AOC.
- .3 To preserve and protect the rights of the AOC under the Contract Documents with respect to the work to be performed by the Subcontractor.
- .4 To be allowed, unless specifically provided otherwise in the Subcontractor Agreement, the benefits of all rights, remedies and redress against the Contractor that the Contractor, by the Contract, has against the AOC.
- .5 To enter into similar agreements with Sub-subcontractors.

4.2.2 **Subcontractor Payments:** The Contractor shall pay the Contractor's Subcontractors for work performed no later than 10 days after receipt of each progress payment. If there is a good faith dispute over all or any portion of the amount due a Subcontractor on a progress payment, the

Contractor may withhold no more than 150 percent of the disputed amount. This provision shall apply to Sub-subcontractors also. A violation of these requirements invokes the payment and penalty provisions of Public Contract Code, Section 10262 and Section 10262.5.

- 4.3 **CONTRACT ASSIGNMENTS:** Contractor's performance of the Contract may not be assigned except upon written consent of the AOC. Consent will not be given to an assignment which would relieve the Contractor or the Contractor's Surety of their responsibilities under the Contract.

ARTICLE 5 –

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ARTICLE 6 - CHANGES IN THE WORK

6.1 GENERAL

6.1.1 The AOC may order changes, including but not limited to, revisions to Drawings and Specifications, performance of extra work, and the elimination of work, without invalidating the Contract and without notice to sureties. Orders for such changes will be in writing and signed by the parties. Changes shall not affect the obligations of the sureties on the contract bonds nor require their consent. The Contractor shall notify the AOC for their evaluation whenever it appears a change is necessary. Contract Time and Contract Sum will be adjusted, in accordance with Articles 7 and 8, by written Change Order for changes which materially increase or decrease the time for performance or cost. The AOC reserves the right to accelerate the Work as set forth in Paragraph 7.6.

- .1 Proposed Change Order: The Contractor will be issued a written proposed Change Order by the AOC describing the intended changes to the Work.
- .2 Timeline: Within 14 days the Contractor shall submit to the AOC the Contractor's proposed cost estimate to be added or deducted from the Contract Sum due to the change, authenticated in full by completely detailed estimates and other authenticators of the cost by the Contractor, Subcontractors, Sub-subcontractors, vendors or material suppliers, and any adjustments of time of Completion of the entire Work that is directly attributable to the AOC's proposed Change Order.
- .3 Agreement: If an agreement is reached as to the adjustment in compensation for performance of changed Work, but an agreement is not reached as to the adjustment of Time for such Work, then the Contractor shall proceed with the Work at the agreed cost, reserving to the Contractor the right to further pursue the Contractor's claim for adjustment of time in accordance with Paragraphs 7.4 and 9.1.
- .4 Failure to Submit Cost Estimate: If the Contractor fails to submit the cost estimate within the 14 days timeline, or there is failure to agree to the Cost, then the AOC shall have the right to issue an order in writing to the Contractor to commence Work immediately, and the Contract Sum shall be changed in accordance with the AOC's estimate of cost, unless, within 14 days following completion of the added Work or with written notice to delete the Work, the Contractor submits to the AOC written proof that the AOC's estimate is in error.

6.1.2 The Contractor, when ordered by the AOC, shall proceed with changes before agreement is reached on adjustment in compensation or time for performance, and shall furnish to the AOC records as specified in Clause 6.2.1.3. If the Contractor fails to provide such records, the AOC's records will be used for the purpose of adjustment in Contract Time and Contract Sum.

- .1 Contractor may request progress payments for such work.

6.2 CHANGE ORDER

6.2.1 Methods used in determining adjustments to the Contract Sum shall be based on one of the following methods:

- .1 By mutual acceptance of a lump sum increase or decrease in costs. Upon the AOC's written request, the Contractor shall furnish a detailed estimate of increase or decrease in costs, together

with cost breakdowns and other support data within the time specified in such request. The Contractor shall be responsible for any additional costs caused by the Contractor's failure to provide the estimate within the time specified.

- .2 By the AOC, on the basis of the AOC's estimate of increase or decrease in the costs.
- .3 By the AOC, whether or not negotiations are initiated as provided in Clause 6.2.1.1, by actual and necessary costs, as determined by the AOC, on the basis of records. Beginning with the first day and at the end of each day, the Contractor shall furnish to the AOC detailed hourly records for labor, construction equipment, and services; and itemized records of materials and equipment used that day in performance of the changes. Such records shall be on a form acceptable to the AOC. Such records shall be signed by the Contractor and, when agreed to by the AOC, will become the basis for compensation for the changed work. Such agreement shall not preclude subsequent adjustment based upon later audit by the AOC.
- .4 By Unit Prices stated in the Contract Documents, or subsequently agreed upon.
- .5 By a manner agreed upon by the AOC and the Contractor.

6.2.2 Allowable Costs: The only costs which will be allowed due to changes in the Work shall be computed in the following manner:

- .1 Compensation for 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 Contractor establishes, to the satisfaction of the AOC, the necessity for payment at higher rates or classifications.
- .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 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 Contractor, payment therefor 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 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 Contractor shall have no claim for costs or mark-ups on such materials and equipment.
- .3 Construction Equipment:
 - .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.
 - .2 Unless otherwise approved by the AOC, the allowable rate for use of construction equipment shall constitute full compensation to the 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

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and all costs to the Contractor incidental to the use of such construction equipment.

.4 Mark-Ups for Added Work:

.1 General: The following allowance for mark-ups for performance of the changes shall constitute full compensation for additional field and home office overhead, profit, insurance, taxes, and bonds, and all other costs not covered under Clauses 6.2.2.1 through 6.2.2.3.

.2 For Added Work: When work is added, the Contractor may add as mark-up to totals of authorized allowable costs, an amount not to exceed the following percentages:

- .1 Labor : 21 percent, including bond cost.
- .2 Materials and Equipment : 16 percent, including bond cost.
- .3 Subcontract : 6 percent, as set forth in Subclause 6.2.2.4.3.3

.3 Subcontractors: Actual cost to the 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 20 percent:

- .1 Labor : 20 percent
- .2 Materials and Equipment : 15 percent
- .3 Contractor may add, as mark-up of actual cost to Contractor, 6 percent, including bond cost.

.4 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 Contractor or Subcontractor, as applicable for the deleted work. Deleted overhead shall be computed as 5 percent 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 \$10,500.

.5 For Combination of Added and Deleted Work: For Change Orders that involve both added and deleted work, the Contract Sum will be adjusted based on the following computation: Cost before mark-ups of added and deleted work shall each be separately estimated. If a difference between costs results in an increase to the Contract Sum, a mark-up for added work shall be applied to the difference. If a difference in costs results in a decrease, then the 5 percent credit to the AOC for deleted overhead shall be applied to the difference.

.6 General Limitations: Costs to the Contractor for changes which exceed market values prevailing at the time of the change will not be allowed unless the 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 Contractor on work performed or furnished by others, no mark-ups will be allowed in excess of those specified in Clause 6.2.2.4 above.

6.2.3 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 cost of any type other than those mandated by statute; 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 retainage; Claims 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.

6.3 **ACCEPTANCE OF CHANGE ORDERS:** The Contractor's written acceptance of a Change Order shall constitute final and binding agreement to the provisions thereof and a waiver of all Claims in connection therewith, whether direct, indirect, or consequential in nature.

6.4 **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.

- 6.5 **VALIDITY OF ALTERATIONS:** Alteration or variation of the terms of this Agreement 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.
- 6.6 **GUARANTEED MAXIMUM PRICE:**
- 6.6.1 The contract amount for the Project is guaranteed by the Contractor not to exceed the GMAX, as set forth in the Agreement. The GMAX shall be supported by a line item cost breakdown for each subcontractor, including Contractor contingency on overall cost of the work, and based on multiple trade subcontractor bids for each trade contract obtained as provided in these General Conditions. The GMAX shall be subject to additions and deductions by change order as provided in this Article 6, Changes in the Work.
- 6.6.2 By signing the construction amendment for the Guaranteed Maximum Price, the Contractor agrees that he has reviewed and accepted the Construction Documents as complete and that he has no right for change orders or extra work due to conflicts, ambiguities or omissions in the Contract Documents or in the subcontractor bid packages, and for any construction phase change orders arising from subcontractors' performance, as determined by the AOC. The cost of change orders or extra work due to conflicts, ambiguities or omissions in the Contract Documents or in the subcontractor bid packages and for any construction phase change orders arising from subcontractors' performance, as determined by the AOC, shall be paid by the Contractor from the Contractor contingency, as set forth in the Agreement.
- 6.6.3 If the cost of the work, excluding AOC-requested changes and unforeseen conditions, exceeds the GMAX, adjusted from time to time by change order, the Contractor shall pay the overrun without reimbursement by the AOC. If the actual cost of the work, excluding AOC-requested changes, is less than the GMAX, adjusted from time to time by change order, then the Contractor shall return the cost savings to the AOC in the final change order. Contractor agrees to use all reasonable efforts to maximize cost savings for the benefit of the AOC.
- 6.7 **COST CLASSIFICATIONS:**
- 6.7.1 Direct cost of the work: The term "direct cost of the work" shall mean costs necessarily incurred by the Contractor in the proper performance of the work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the AOC. The "direct cost of the work" shall include only the following items set forth in this Article 6.7.1, Direct Cost of the Work.
- .1 Labor Costs
 - .1 Wages of construction workers directly employed by the Contractor to perform the construction of the work at the Site or, with the AOC's agreement, at off-site workshops.
 - .2 Actual costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits, associated with the construction workers directly employed by the Contractor, and as required by law.
 - .2 Trade Contractor Cost: Payments made by the Contractor to trade contractors in accordance with the requirements of the subcontracts.
 - .3 Cost of Materials and Equipment Incorporated in the Completed Construction
 - .1 Actual costs, including transportation of materials and equipment incorporated or to be incorporated in the completed construction.
 - .2 Costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the AOC at the completion of the work or, at the AOC's option, shall be sold by the Contractor. Amounts realized, if any, from such sales shall be credited to the AOC as deduction from the cost of the work.
 - .4 Cost of Other Materials and Equipment and Related Items
 - .1 Actual costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not

customarily owned by the construction workers, which are provided by the Contractor at the Site and fully consumed in the performance of the work. Cost for items previously used by the Contractor shall mean fair market value. The AOC reserves the right to dispose of all temporary structures and small tools that have been purchased but no longer required for the work.

.2 Costs of removal of debris from the site.

.5 Miscellaneous Costs

.1 Sales, use or similar taxes imposed by a governmental authority which are related to the work and for which the Contractor or AOC is liable.

.2 Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming work for which reimbursement is excluded by Article 5.06, Testing Materials, Articles, Equipment and Work, or other provisions of the Contract Documents.

.3 Deposits lost for causes other than the Contractor's fault or negligence.

.4 Cost of surveys if required for the work.

.5 Costs of obtaining and using all utility services required for the work, if not paid directly by the AOC.

.6 Other Costs: This category includes other costs incurred in the performance of the work if and to the extent approved in advance in writing by the AOC.

.7 Costs for Emergencies; Repairs to Damaged, Defective or Nonconforming Work: To the extent not covered by the proceeds of insurance required under Article 11.1 of this Contract, including deductibles or self-insured retentions associated with the required insurance policies, or from insurance required by the Contractor from Subcontractors, or directly from Subcontractors, trade contractors, or suppliers, the

.1 Costs in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

.2 Costs in repairing or correcting work damaged or improperly executed by construction workers in the employment of the Contractor or Subcontractor, provided such damage or improper execution did not result from the fault or negligence, or the failure of the Contractor, the Subcontractor or the Contractor's or Subcontractor's employees, foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel to supervise adequately the Work of the Subcontractors or suppliers, and then only to the extent that the cost of to fulfill a specific responsibility to the AOC set forth in this Contract by the Contractor.

.3 Costs in repairing damaged work other than that described in Article 8.03-g (2), provided such damage did not result from the fault or negligence of the Contractor or the Contractor's personnel.

.4 Costs in correcting defective or nonconforming work performed or supplied by a trade contractor or material supplier and not corrected by them, provided such defective or nonconforming work did not result from the fault or neglect of the Contractor or the Contractor's personnel to adequately supervise and direct the work of the trade contractor or material supplier.

6.7.2 Construction Phase Services: The term "construction phase services" shall mean those costs incurred by the Contractor in the field management, supervision, and administration of the work. Such costs are reimbursed to the Contractor through Contractor's fee percentage for construction phase services as included in the cost proposal. The construction phase services shall include only the following items set forth in this Article 6.7.2:

.1 Labor Costs

.1 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the Site with the AOC's agreement.

.2 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops (not including Contractor's principal or branch offices) or on the road expediting the production or transportation of materials or equipment required for the work,

but only for that portion of their time required for the work.

.3 Wages or salaries of the Contractor's project manager, whether stationed at the Site or in the Contractor's principal office or branch offices, but only for that portion of his/her time required for the work.

.2 Materials and Equipment and Temporary Facilities and Accommodations

.1 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.

.2 Costs of long-distance telephone calls, project specific cell phone calls, postage and parcel delivery charges, telephone service at the site, and reasonable petty cash expenses at the Site office.

.3 That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the work.

.3 Miscellaneous Costs

.1 That portion of premiums for insurance and bonds directly attributable to the Contract.

.2 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

6.7.3 Costs Not Reimbursed: The cost of the work shall not include:

.1 Any costs incurred by the Contractor in providing pre-construction services.

.2 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the Site office, except as specifically provided in Articles 6.7.1 and 6.7.2.

.3 Payments to Contractor's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, etc.).

.4 Expenses of the Contractor's principal office and offices other than the Site office.

.5 Overhead and general expenses, except as may be expressly included in Articles 6.7.1 and 6.7.2.

.6 The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

.7 Rental costs of machinery and equipment, except as specifically provided in Article 6.7.1.

.8 Except as provided in Article 6.7.1, costs due to the fault or negligence of the Contractor, subcontractors, anyone directly or indirectly employed by the Contractor or subcontractors, or for whose acts the 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..

.9 Deductibles or self-insured retentions associated with the insurance required under the provisions of Article 11.1.

.10 Electronic processing and personnel cost incurred by the 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.

.11 Any costs based on percentages, rather than actual costs paid by the Contractor, unless specific percentages are documented and approved by the AOC.

.12 Any fees paid to Contractor/Construction Manager organizations. (AGC, ABC, AIA etc.)

.13 Contractor's business license.

.14 Any cost not specifically and expressly described in Articles 6.7.1 and 6.7.2.

.15 Costs that would cause the Guaranteed Maximum Price to be exceeded.

6.7.4 Discounts, Rebates and Refunds

- .1 Cash discounts obtained on payments made by the Contractor shall accrue to the AOC if (1) before making the payment, the Contractor included them in a payment request and received payment therefore from the AOC, or (2) the AOC has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the AOC, and the Contractor shall make provisions so that they can be secured. If a trade discount by the actual supplier is available to the Contractor, it shall be credited to the AOC.
- .2 Amounts, which accrue to the AOC in accordance with the provisions of Article 6.7.4.1 shall be credited to the AOC as a deduction from the cost of the work.

ARTICLE 7 - TIME

7.1 NOTICE TO PROCEED

7.1.1 The Contractor will be notified of the Contract start date as stated in the Notice to Proceed. Notwithstanding other provisions of the Contract, the AOC will not be obligated to accept or to pay for work furnished by the Contractor prior to delivery of the Notice to Proceed whether or not the AOC has knowledge of the furnishing of such work. The Contractor shall not be allowed on the site of the Work until the Contractor's Contract bonds and certificates of insurance comply with requirements of the Contract.

7.1.2 Work under the Contract shall be conducted in accordance with Paragraph 3.10. The Contractor shall not begin any Work until authorized in writing by the AOC.

7.2 **CONTRACT TIME:** The Contract Time is the period set forth in Document 00800, Supplementary Conditions; with start and completion dates as stated in the Notice to Proceed. It is essential that the Project be completed within the time fixed for Completion in Document 00800. 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 completion date. The AOC may occupy or utilize areas upon Substantial Completion of the Work.

7.3 **LIQUIDATED DAMAGES:** If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of \$1,500 for each calendar day of delay until the work is completed or accepted.

7.4 TIME EXTENSIONS

7.4.1 Request for Time Extension: In the event the Contractor requests an extension of Contract Time for unavoidable delay, the Contractor shall furnish such justification and supporting evidence as the AOC may deem necessary for the determination as to whether the Contractor is entitled to an extension of Contract Time. The Contractor shall submit justification no later than 7 days after the initial occurrence of any delay. The justification shall be based on the Official Progress 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. The justification shall include, but is not limited to the following information:

- .1 Duration to perform activity(ies) relating to changes in the Work and resources (manpower, equipment, material, etc.) required to perform these activities within the stated duration.
- .2 Logical ties to the Official Progress Schedule for proposed changes or delay showing activity(ies) in the schedule start or completion dates are affected by the change or delay.

7.4.2 The AOC, upon receipt of such justification and supporting evidence, shall make its finding of fact. The AOC's decision shall be final and conclusive and the AOC will advise the Contractor in writing of such decision. If the AOC finds that the Contractor is entitled to an extension of Contract Time, the AOC's determination as to the total number of extension days shall be based upon the latest updated version of the Official Progress Schedule. Such data will be included in the next monthly updating of the schedule.

7.4.3 Time Extensions: For delays that the AOC agrees are unavoidable, the Contractor shall, pursuant

to the Contractor's application, be allowed an extension of time beyond the Contract Time. During such extension of time, extra compensation for engineering and inspection will be charged to the Contractor. Time extensions shall be granted only for delays or changes that extend the completion date, based on the latest updated version of the Official Progress Schedule. Time extensions for delays and changes shall not exceed one day for each day that the Contract completion date of the Official Progress Schedule is extended by this change or delay.

7.5 DELAYS IN COMPLETION OF THE WORK

- 7.5.1 Notice of Delays: Whenever the Contractor foresees delay in the continuance and completion of the Work, or immediately upon the occurrence of any delay which the Contractor regards as unavoidable, the Contractor shall notify the AOC in writing, in a separate notice of the delay. The Contractor's notice shall include the probability of the occurrences of such delay and its cause in order that the AOC may take immediate steps to prevent the occurrence or continuance of the delay. If the delay cannot be prevented, the AOC will determine whether the delay is unavoidable and to what extent continuance and completion of the Work is anticipated to be delayed.
- .1 The Contractor shall make no claim for delay not called to the attention of the AOC in writing, at the time of its occurrence.
 - .2 Delay in the continuance of parts of the Work that may in themselves be unavoidable but do not necessarily prevent or delay the continuance of other parts of the Work nor the completion of the whole Work within the time specified, shall be deemed to constitute neither avoidable delays nor unavoidable delays, within the meaning of the Contract.
- 7.5.2 Justified Delay: Justified delays in the continuance or completion of the Work shall include all delays which result from causes beyond the control of the Contractor and which could not have been avoided by the exercise of due care and diligence on the part of the Contractor or the Contractor's Subcontractors. Delay in completion of the Work due to Contract modifications ordered by the AOC and unforeseeable delays in continuance or completion of the work of other contractors employed by the AOC may be considered justified delays insofar as they interfere with the Contractor's completion of the Work. Delays due to normal weather conditions which prevent the Contractor from proceeding with the controlling item on the accepted critical path schedule will not be regarded as a justified delay.

7.6 ACCELERATION

- 7.6.1 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. The 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.
- 7.6.2 In the event that the Contractor believes that some action or inaction on the part of the AOC constitutes an acceleration directive, the Contractor shall immediately notify the AOC in writing that the Contractor considers the actions an acceleration directive. This written notification shall detail the circumstances of the acceleration directive. The 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 Contractor and provided to the AOC on a daily basis.
- 7.6.3 In order to recover additional costs due to acceleration, the Contractor shall document that additional expenses were incurred and paid by the 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.

ARTICLE 8 - PAYMENTS AND COMPLETION

- 8.1 **SCHEDULE OF VALUES:** Before Contractor's first invoice to the AOC, the Contractor shall submit to the AOC a Schedule of Values allocated to portions of the Work, included with the

Contractor's Progress Schedule, and supported by such data to substantiate the accuracy as the AOC may require. This Schedule of Values, unless objected to by the AOC, shall be used as a basis for progress payments.

8.2 **PROGRESS PAYMENTS**

8.2.1 Upon AOC's receipt of an invoice with updated Progress Schedule from the 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 modified and processed in accordance with the AOC's assessment.

8.2.2 Progress payments will only be authorized by the AOC where the Work requires more than six weeks to complete. Actual progress payment submittal dates shall be established by the AOC. The Contractor shall submit invoice(s) for allowable progress payments in accordance with the established submittal dates.

8.2.3 Contractor shall provide conditional lien releases for Contractor, all Subcontractors and Sub-subcontractor 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.

8.2.4 Contractor shall submit invoices for progress payments as set forth in Paragraph 8.8, below.

8.3 **RETENTIONS**

8.3.1 Upon submittal and receipt of a monthly progress payment in accordance with Paragraph 8.2 above, the following shall apply:

- .1 The 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 in a secure bonded warehouse, and the value of the materials to date; pursuant to Public Contract Code, Section 10261. The Contractor shall furnish evidence showing the value of such materials when requested by the AOC.
- .2 The AOC shall retain not less than ten (10) percent of the estimated value of Work completed.
- .3 The AOC will release Retention proceeds to the Contractor only upon Acceptance of the Work.

8.3.2 Securities in Lieu of Retention: At the request and expense of the Contractor, with AOC's written acceptance of this alternative, and in accordance with Public Contract Code, Section 10263, the Contractor may provide securities in lieu of retention.

8.3.3 Warranty of Title : If a stop notice or a claim based on a stop 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, Contractor and Contractor's payment bond surety ("Payment Bond Surety"), at Contractor's and/or Payment Bond Surety's own expense, shall promptly take any and all action necessary to cause any such stop notice or a claim based on a lien or a stop notice to be released or discharged immediately therefrom. If the 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 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 Contractor under the Contract.

8.4 **ASSIGNMENT OF CONTRACT FUNDS:** The 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 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 Contractor is in default of the Contract.

8.5 OCCUPANCY BY THE AOC PRIOR TO COMPLETION OF THE WORK

- 8.5.1 The AOC reserves the right to occupy all or any part of the Project prior to Completion of the Work, upon written notice. Such occupancy or use is herein referred to as Beneficial Occupancy. In this event, the Contractor shall be relieved of responsibility to the AOC for injury or damage that results from occupancy and use by the AOC. If, by reason of the AOC's occupancy, the premium for the Contractor's bodily injury and property damage insurance is increased, the AOC will reimburse the Contractor for the additional amount necessarily incurred allocable to the area and the period of AOC's occupancy up to the date of Acceptance of the Work.

The AOC's Beneficial 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 Contractor of responsibility for correcting defective Work or materials found at any time before Acceptance of the Work, as set forth in Paragraph 3.5, or during the Guarantee period after the AOC's acceptance, as set forth in Subparagraph 8.6.1. 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 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.

8.6 ACCEPTANCE OF THE WORK

- 8.6.1 When the Contractor considers the Work complete, the Contractor shall request a final inspection by the AOC.
- .1 The Contractor shall request this final inspection only when all Work, including deficient items identified on previous inspections, has been completed.
 - .2 The AOC will conduct a final inspection within 14 days of receipt of written request from the Contractor for final inspection.
 - .3 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 within 60 days after the date of Completion of the Work.
 - .4 Upon Acceptance of the Work by the Director:
 - .5 The Retention held by the AOC will be released, and
 - .6 The Contractor will be relieved of the duty of maintaining and protecting the Work.
 - .7 If the AOC determines that the Work is not complete, the Contractor will be notified in writing of deficiencies. After correcting all deficiencies the Contractor shall again initiate the procedures for final inspection as set forth above.
 - .8 Determination by the AOC that the Work is complete or Acceptance of the Work will not bar any Claim against the Contractor pursuant to Paragraph 3.5.
- 8.6.2 Upon Acceptance of the Work, the AOC will submit a final statement to the Contractor:
- .1 The final statement shall take into account the Contract Sum as adjusted by any Change Orders, amounts already paid to the Contractor, sums to be withheld for incomplete Work, stop notices, and for any other cause under the Contract.
 - .2 If the Contractor owes any amount to the AOC, the final statement shall serve as an invoice to the Contractor.
- 8.6.3 The Contractor has 30 days after receipt of the final statement to file a Claim with the AOC.
- .1 All Claims shall comply with the requirements of Subparagraph 9.1.2.
 - .2 Failure to file a Claim within the 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.
 - .3 If the Contractor does not file a Claim within the 30 day period, the final warrant made by the

AOC will become a complete and final settlement between the AOC and the Contractor.

8.7 FINAL PAYMENT

- 8.7.1 After Acceptance of the Work, and upon receipt of final statement from the AOC, Contractor will invoice the AOC for any sum due the Contractor including released Retention.
- 8.7.2 Contractor shall provide the AOC unconditional lien and stop notices release for Contractor, all Subcontractors and Sub-subcontractor covering all labor, materials, and equipment for which a lien or stop notice could be filed when submitting Contractor's final statement invoice.
- 8.7.3 For contracts where progress payments were not authorized, Contractor will invoice the AOC, and the AOC will pay the Contractor 100 percent of the Contract Sum after Acceptance of the Work and receipt by the AOC of unconditional lien and stop notices release for Contractor, all Subcontractors and Sub-subcontractor covering all labor, materials, and equipment for which a lien or stop notice could be filed.

8.8 METHOD OF PAYMENT

- 8.8.1 The AOC will make payment in arrears after receipt of the Contractor's properly completed invoice. Invoices shall clearly indicate:
- .1 The Contract number;
 - .2 A unique invoice number;
 - .3 The Contractor's name and address;
 - .4 Taxpayer identification number (the Contractor's federal employer identification number);
 - .5 Description of the completed Work, in accordance with the Contractor's Progress Schedule;
 - .6 The DVBE dollars expended, if DVBE commitments were made;
 - .7 The contractual charges, including the appropriate progress payment, if authorized; and,
 - .8 Preferred remittance address, if different from the mailing address.
- 8.8.2 The Contractor shall submit one (1) original and two (2) copies of invoices to the AOC Project Manager, identified in the Contract for Construction.
- 8.8.3 Invoices not on printed bill heads shall be signed by the Contractor.

ARTICLE 9 - DISPUTES AND CLAIMS

9.1 DISPUTE AND CLAIM PROCEDURES

- 9.1.1 Dispute as to Contract Requirements: When the Contractor and the AOC fail to agree whether or not any work is within the scope of Contract requirements, the Contractor shall immediately perform such work upon receipt of a written notice to do so by the AOC. Within 14 days after receipt of such notice to perform disputed work, the Contractor may submit a written protest to the AOC, specifying in detail in what particulars Contract requirements were exceeded, and approximate change in cost resulting so that the AOC will have notice of a potential Claim. Failure to submit a protest within the specified period shall constitute a waiver of any and all rights to an adjustment in Contract Sum and Contract Time due to such work, and the Contractor thereafter shall not be entitled to adjustment of Contract Sum or Contract Time. For any such work that is found to exceed Contract requirements, there shall be an adjustment in Contract Sum and Contract Time on same basis as any other change in the Work.
- .1 The Contractor shall provide supporting data and shall provide and maintain records of costs attributable to Disputes in similar manner as for Change Orders in Article 6.

- .2 The AOC's Representative and the Contractor's Superintendent will make every reasonable effort to resolve the Dispute prior to proceeding to the next step.
- .3 Either the AOC or the Contractor may call a special meeting for the purpose of resolving the Dispute. Such a meeting will be held within 7 days of written request thereof.
- .4 If the Dispute as to the Contract Documents has not been resolved, the Contractor shall, within 14 days after the special meeting, take one or more of the following actions:
 - 1) submit additional supporting data requested by the AOC;
 - 2) modify the initial Dispute; or
 - 3) notify the AOC that the initial Dispute stands as is.
 - 4) If the Dispute has not been resolved within 7 days after the Contractor's action in response to Clause 9.1.1.4, another meeting may be scheduled, at the AOC's option, with senior management personnel of the AOC and the Contractor. The purpose of this meeting is to resolve the Dispute prior to proceeding to the action under Subparagraph 9.1.2.

9.1.2 Claim Submission and Documentation: If a Dispute has not been resolved at the senior management level, the Contractor shall submit within 30 days a Claim along with detailed documentation required by Subparagraph 9.1.1 for the AOC's consideration.

- .1 The Contractor shall furnish 3 certified copies of the required Claim documentation. The Claim documentation shall be complete when furnished. The evaluation of the Contractor's Claim will be based upon AOC records and the Claim documents furnished by the Contractor.
- .2 Claim documentation shall conform to generally accepted accounting principles and shall be in the following format:
 - 1) General Introduction
 - 2) General Background Discussion
 - 3) Issues
 - .1 Index of Issues (listed numerically)
 - .2 For each issue
 - .1 Background
 - .2 Chronology
 - .3 Contractor's position (reason for AOC's potential liability)
 - .4 Supporting documentation of merit or entitlement
 - .5 Supporting documentation of damages
 - .6 Begin each issue on a new page
 - 4) 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.
 - 5) Productivity exhibits (if appropriate)
 - 6) Summary of Issues and Damages
 - .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, General Conditions; General Requirements; technical Specifications; Drawings; 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 Contractor's Claim.
 - .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 bid; certified, detailed labor records, including labor distribution reports; material and equipment procurement records; construction equipment ownership costs records or rental records; 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 Contractor's Claim.

- .5 Each copy of the Claim documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents.
- .6 Should the Contractor be unable to support any part of the Claim, and it is determined that such inability is attributable to falsity of such certification or misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the AOC as provided for under California Government Code, Section 12650 et seq., known as the False Claims Act.
- .7 The AOC will render a written decision to the Contractor relative to the Claim. The AOC's written decision shall be final and binding on the party(ies) but subject to mediation. The AOC may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. If there is a Surety and there appears to be a possibility of a Contractor's default, the AOC may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy.
- .8 All issue items to be included in the Claim Submission shall be a part of the Claim submitted with the required documentation under this Subparagraph 9.1.2. Issues not included in the Claim under Subparagraph 9.1.2 shall not be considered.
- .9 Mediation. Within thirty (30) days after the State renders its written decision, the Contractor may request that the parties submit the dispute to mediation. Absent a request for mediation, the State's written decision is final and binding on the parties.
- .10 Litigation. If, after mediation pursuant to Subparagraph 9.1.2.9, 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 Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and costs.
- .11 Continuation of Work. Pending the final resolution of any dispute arising under, related to, or involving this Agreement, Contractor agrees to diligently proceed with the performance of this Agreement, including the delivery of deliverables or providing of Services, in accordance with the AOC's instructions. Contractor's failure to diligently proceed in accordance with the AOC's instructions will be considered a material breach of this Agreement.

9.2 **AUDIT AND ACCESS TO RECORDS**

- 9.2.1 The 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. The Contractor shall also maintain all financial information and data used by the Contractor in the preparation or support of any cost submission, including the Contractor's original bid 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. The AOC's Representative shall
- 9.2.2 have access upon 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. The Contractor shall, at no cost to the AOC, provide proper facilities for such access, inspection and copying purposes.
- 9.2.3 The Contractor agrees to make the provisions of Paragraph 9.2 applicable to this Contract, and all Change Orders, Claims, or other requests for Equitable Adjustment affecting the Contract Time or Contract Sum. The Contractor agrees to include the provisions of Paragraph 9.2 in all subcontracts and sub-subcontracts or purchase orders, at any tier, and make Paragraph 9.2 applicable to all subcontracts, at any tier, in excess of \$10,000, and to make the provisions of Paragraph 9.2

applicable to all Change Orders, Claims, and other requests for Equitable Adjustment related to Project performance.

- 9.2.4 Audits conducted under Paragraph 9.2 shall be in accordance with general accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.
- 9.2.5 The Contractor agrees to the disclosure of all information and reports resulting from access to records under the provisions of Paragraph 9.2, to the AOC, and other affected agencies.
- 9.2.6 Records under the provisions of Paragraph 9.2 shall be maintained and made available during the performance of the Work under this Contract until 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.
- 9.2.7 The right of access provisions of Paragraph 9.2 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:
 - .1 To the extent the records pertain directly to Contract performance;
 - .2 If there is any indication that fraud, gross abuse, or corrupt practices may be involved;
 - .3 If the Contract is terminated for default or convenience.
- 9.2.8 Access to records is not limited to the required retention periods. The authorized AOC Representatives shall have access to records at any reasonable time for as long as the records are maintained.
- 9.2.9 Further, the 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.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY OF PERSONS AND PROPERTY

- 10.1.1 The Contractor shall initiate, maintain and supervise all safety precautions and programs in connection with the performance of the Work.
- 10.1.2 The Contractor shall take precautions for safety and provide protection to prevent damage, injury or loss to:
 - .1 Employees working under the Contract and other persons who may be affected thereby;
 - .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 Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
 - .3 Other property at the Project site, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities, except as otherwise noted or specified.
- 10.1.3 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property, or their protection from damage, injury or loss.
- 10.1.4 The 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, other owners and users of adjacent sites and utilities.

- 10.1.5 The 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. The Contractor shall designate the Work Superintendent, or some other responsible member of the Contractor's organization who is at the Site, to be the person responsible for the prevention of accidents and the monitoring of the safety of the Work.
- 10.1.6 The Contractor shall remedy damage and loss to property referred to in Clauses 10.1.2.2 and 10.1.2.3 caused in whole or in part by the 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 Contractor is responsible under Clauses 10.1.2.2 and 10.1.2.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.19.
- 10.1.7 The Contractor shall not permit any part of the Work or Project site to be loaded so as to endanger its safety.
- 10.1.8 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 Contractor, at the Contractor's sole expense, to close down the Work and not commence work again until all dangerous conditions are eliminated.
- 10.1.9 The Contractor, at the 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.
- 10.2 **EMERGENCIES:** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's sole discretion, to prevent any threatened damage, injury or loss. Additional compensation or extension of Contract Time claimed by the Contractor because of an emergency will be reviewed as provided in Article 6.
- 10.3 **DRUG-FREE WORKPLACE**
- 10.3.1 By signing the Contract, the Contractor certifies, under penalty of perjury under the laws of the AOC of California, that the 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:
- .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.
 - .2 Establish a Drug-Free Awareness Program to inform employees about:
 - .1 The dangers of drug abuse in the workplace;
 - .2 The person's or company's policy of maintaining a drug-free workplace;
 - .3 Any available counseling, rehabilitation, and employee assistance programs; and,
 - .4 penalties that may be imposed upon employees for drug abuse violations.
 - .3 Provide, as required by Government Code, Section 8355(c), that every employee who works under the Contract will:
 - .1 receive a copy of the company's drug-free workplace policy statement; and
 - .2 agree to abide by the terms of the company's statement as a condition of employment.

ARTICLE 11 - INSURANCE AND BONDS

11.1 CONTRACTOR'S INSURANCE

11.1.1 General Requirements:

Contractor shall maintain insurance issued by an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide, and are approved to do business in the State of California. If self-insured, 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 Contractor under the terms of this Section 11.1.

- .1 The Contractor shall, prior to commencement of the Work, provide the AOC certificates of insurance, on forms acceptable to the AOC, as evidence that the required insurance is in full force and effect. Where applicable, each certificate of insurance shall specifically provide verification that the AOC and the State have been added as an insured on the insurance policy being referenced, and must clearly indicate that the policy of insurance shall not be materially changed or cancelled without ninety (90) days notice to the AOC and the State. The Certificates of Insurance shall be addressed as follows:
(Name)
(Address)
- .2 All insurance policies required under this Section 11.1 coverage shall be in force until the end of the term of this Contract or Acceptance of the Work, whichever comes later and the 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. The completed operations insurance required under Section 11.1.2.1 shall extend for a period of five (5) years past the Acceptance, termination or cancellation of the Work. If the insurance expires during the term of the Contract, the Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance or 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. Renewal insurance certificates must be tendered to the AOC at least 10 days prior to the expiration of the previous insurance certificate. This new insurance shall be in accordance with the terms of the Contract.
- .3 The insurance required by Section 11.1.2.1, 11.1.2.2, and 11.1.2.4 as well as any excess liability or umbrella liability insurance that the Contractor maintains in compliance with the terms of this Section 11.1 shall include the AOC and the State including their officers, agents, employees and servants as additional insureds, but only with respect to liability arising out of the Work performed by the Contractor under this Contract.
- .4 The Contractor, and any insurer providing insurance required under the terms of this Section 11.1 shall waive any right of recovery it may have against the AOC and the State, including their officers, agents, employees and servants for direct physical loss or damage to the Work, or for any liability arising out of the Work performed by the Contractor under this Contract.
- .5 The insurance policies required under this Section 11.1 shall contain a provision that coverage will not be materially changed or cancelled without ninety (90)30 days prior written notice to the AOC.
- .6 The Contractor shall be responsible for and may not recover from the AOC or the State any deductible or self-insured retention that is connected to the insurance required under this Section 11.1.
- .7 In the event the 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.
- .8 Any insurance required under this Section 11.1 shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the AOC or the State.
- .9 The AOC reserves the right to request certified copies of any of the insurance policies required under this Section 11.1.

11.1.2 Insurance Requirements: Prior to the commencement of performance of the Work the Contractor shall furnish to the AOC evidence of insurance as follows:

- .1 Commercial General Liability: Commercial General Liability Insurance (and if required Excess

Liability or Umbrella Liability insurance) written on an occurrence form covering the Contractor, the AOC and the State parties, and subcontractors with limits of not less than \$10,000,000 per occurrence and a \$10,000,000 per location annual aggregate limit of liability for bodily injury and property damage liability combined that is applicable solely to the Project.. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, liability assumed under an insured contract, and professional services provided in connection with the Work. The policy shall not include an exclusion for property damage resulting from explosion, collapse or underground hazard. The products and completed operation liability coverage shall extend for a period of not less than five (5) years past the Acceptance, termination or cancellation of the Work. 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.

- .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 a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the Work.
- .3 Workers' Compensation: Statutory workers' compensation insurance for all of the Contractor's employees who will be engaged in the performance of the Work including special coverage extensions where applicable and employer's liability with limits not less than \$1,000,000 for each accident \$1,000,000 disease policy limit, \$1,000,000disease – each employee...
- .4 Builders Risk: Builder's Risk Insurance with limits of liability equal to the final completed value of the Work. The insurance shall apply to physical loss or damage to the insured property and shall include coverage for flood, water damage, and earthquake and earth movement.

The Builder's Risk Insurance shall cover property in the course of construction at the Work site, at any temporary off-site location, and while in transit. Included within the terms of coverage shall be all buildings, materials, supplies and temporary structures at the Work site that are to be used in or incidental to the fabrication, erection, testing, or completion of the Work. The Builder's Risk Insurance shall not cover tools, machinery, and equipment, including spare parts and accessories, whether owned, loaned, hired or leased not destined to become part of completed Project.

The Builder's Risk Insurance shall cover against all loss of direct damage, except, but not limited to, war and related causes, nuclear perils, dishonest acts of employees, mysterious disappearance, and ordinary wear and tear. 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.

The Builder's Risk Insurance may include a deductible or self-insured retention, but such deductible or self-insured retention shall not be a recoverable cost under the terms of this Contract, either as a cost included in a change order or otherwise.

- .5 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 when connected and ready for use including coverage for damage during hydrostatic, pneumatic or gas pressure tests.

11.2 PERFORMANCE BOND AND PAYMENT BOND

- 11.2.1 Contract Security – Bonds: Prior to commencing any Work pursuant to this Contract, Contractor shall furnish the following surety bonds issued by a California admitted surety insurer as follows:
 - A. Performance Bond: A bond in an amount at least equal to one hundred percent (100%) of the Project as security for faithful performance of this Contract; and
 - B. Payment Bond: A bond in an amount at least equal to one hundred percent (100%) of the Project for payment of persons performing labor and/or furnishing materials in connection with this Contract.

The cost for these bonds shall be a Reimbursable Expense and shall be specified on the first payment request. Prior to obtaining these bonds, Contractor shall provide the Project Manager with quotes from the proposed sureties for such bonds for approval by the AOC. Any cost of bonds in excess of the quotes approved by the AOC shall be at the sole expense of Contractor.

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

- 11.2.2 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 Contractor shall promptly furnish a copy of the bond(s) or permit a copy to be made.

ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING AND CORRECTION OF WORK

- 12.1.1 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 Contractor's expense without change in the Contract Time.

- 12.1.2 The Contractor shall notify the AOC 2 working days prior to covering any work.

12.2 CORRECTION OF WORK

- 12.2.1 The 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. The 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.

- 12.2.2 Notwithstanding Paragraph 3.5, 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 Contractor's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it was caused by work of the Contractor not being in accordance with requirements of the Contract Documents.

- 12.2.3 The 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 Contractor nor accepted by the AOC.

- 12.2.4 If the Contractor fails to correct nonconforming work, as per Paragraph 3.5, the AOC may correct the nonconforming work in accordance with Paragraph 2.3. If the 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 Contractor's expense. If the Contractor does not pay all costs of such removal and storage within 14 days after written notice, the AOC may, upon 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 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 Contractor would have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the AOC.

- 12.2.5 The 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 Contractor's correction or removal of Work that is not in accordance with requirements of the Contract Documents.

- 12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have in the Contract Documents. Establishment of the time period of 1 year, as described in Subparagraph 3.5.1, relates only to the

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specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with requirements of the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

- 12.3 **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 Contractor has been made.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

- 13.1 **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. The Contractor irrevocably consents to personal jurisdiction in California.
- 13.2 **SUCCESSORS AND ASSIGNS:** The Contractor binds the Contractor, the Contractor's partners, successors, permitted assigns and legal representatives to the AOC in respect to covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract in whole or in part without written consent of the AOC. If Contractor attempts to make such an assignment without such consent, such assignment shall be null and void, and the Contractor shall nevertheless remain legally responsible for all obligations in the Contract Documents.
- 13.3 **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.
- 13.4 **CONTRACTOR'S USE OF COMPUTER SOFTWARE:** By execution of the Contract, the 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.
- 13.5 **RELATIONSHIP OF PARTIES:** The Contractor and the agents and employees of the 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.
- 13.6 **AOC'S OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS**
- 13.6.1 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 Contractor. Such termination shall be in addition to the AOC's rights to terminate for convenience or default.
- 13.6.2 Payment shall not exceed the amount allowable for appropriation by Legislature. If the Contract is terminated for non-appropriation:
- .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 The Contractor shall be released from any obligation to provide further services pursuant to the Contract as are affected by the termination.
- 13.6.3 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.

13.7 **CONFLICT OF INTEREST**

13.7.1 The Contractor and employees of the 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. The Contractor and employees of the Contractor shall also avoid actions resulting in or creating the appearance of:

- .1 Use of an official position with the government for private gain;
- .2 Preferential treatment to any particular person associated with this Contract or the Work of this Contract;
- .3 Loss of independence or impartiality;
- .4 A decision made outside official channels; or
- .5 Adverse effects on the confidence of the public in the integrity of the government or this Contract.

13.7.2 The Contractor certifies and shall require any Subcontractor to certify to the following:

13.7.3 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 (1) 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 of his or her separation from AOC service.

13.8 **COVENANT AGAINST GRATUITIES:** The Contractor warrants by signing this Contract that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by the Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the AOC with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the AOC will have the right to terminate the 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 Contractor agreed to supply, shall be borne and paid for by the 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 the Contract.

13.9 **NATIONAL LABOR RELATIONS BOARD:** By executing this Contract, the Contractor certifies under penalty of perjury under the laws of the State of California that no more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of the National Labor Relations Board.

13.10 **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.

13.11 **WAIVER:** The omission by either party at any time to enforce any default or right, or to require performance of any of this Contract's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of the default or right, nor shall it affect the right of the party to enforce those provisions later.

13.12 **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 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.

13.13 **ENTIRE AGREEMENT:** This Contract, consisting of the Contract Documents as defined herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties. No waiver, alteration, modification of, or addition to the terms and conditions contained herein shall be binding unless expressly agreed in writing by a duly authorized representative of the State.

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