

## 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 Acting 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 State 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 State, 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 State 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 State Standard Agreement Form which is attached to and incorporated by reference to the Contract Documents.
- 1.1.8 Architect or Engineer: The State, or the State'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 State of all, or part, or parts, of the Work as selected by the State, 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 State on a State Standard Agreement Form and signed by both the State and the Contractor which alters the Contract Documents and identifies the following, as applicable:
- .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 State.
- 1.1.14 Contract: The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. 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 State and the Contractor.

- 1.1.15 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.
- 1.1.16 Contract Sum: The Contract Sum is stated on the face of the Agreement Form and, including authorized adjustments by Change Order, is the total amount payable by the State to the Contractor for performance of the Work under the Contract.
- 1.1.17 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.
- 1.1.18 Contractor: The individual, partnership, corporation, association, joint venture, or any combination thereof, who has entered into a contract with the State to do the Work, identified as such in the Contract, and referred to throughout the Contract as if singular in number. The term "Contractor" means the Contractor or the Contractor's representative.
- 1.1.19 Day: Calendar day, unless otherwise specifically defined.
- 1.1.20 Department or OCCM: The Office of Court Construction and Management of the Judicial Council of California/Administrative Office of the Courts, State of California.
- 1.1.21 Director: The Acting 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.
- 1.1.22 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.
- 1.1.23 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.
- 1.1.24 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.
- 1.1.25 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.
- 1.1.26 Guarantee: The Contractor's assurance that the Project complies with the requirements of the Contract Documents.
- 1.1.27 Official Progress Schedule: The Contractor's baseline schedule and updates accepted by the State.
- 1.1.28 Or Equal: Refer to Approved Equal.
- 1.1.29 Owner: The State of California.
- 1.1.30 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.
- 1.1.31 Project: The total construction of which the Work performed under the Contract may be the whole or a part.
- 1.1.32 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.
- 1.1.33 Request for Information (RFI): A written request by the Contractor submitted in a State provided format for information regarding Project specific issues.
- 1.1.34 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.

- 1.1.35 Samples: Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 1.1.36 Schedule of Values: A document furnished by the Contractor to the State 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.
- 1.1.37 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.
- 1.1.38 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.
- 1.1.39 State or AOC: The State of California acting through the Judicial Council of California/Administrative Office of the Courts.
- 1.1.40 State Construction Supervisor/Inspector: The person(s) authorized by the State to provide inspection services, field coordination and quality control during construction.
- 1.1.41 State's Representative: Person(s) authorized by the State to act on behalf of the State for the Project.
- 1.1.42 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.
- 1.1.43 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.
- 1.1.44 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 State can occupy or utilize the Work for its intended use. Substantial Completion does not mean Completion of the Work or Acceptance of the Work.
- 1.1.45 Substitution: A material and/or process offered by the Contractor in lieu of the specified material and/or process, and accepted by the State in writing as being equivalent (equal) to the specified material and/or process.
- 1.1.46 Warranty: A Contractor's, manufacturer's or material supplier's assurance that products and services provided meet the requirements of the Contract Documents.
- 1.1.47 Work: Construction and services required by the Contract Documents, including all labor, materials, equipment and services as well as other Deliverables 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 State until fully executed by the appropriate authorized representatives of the Contractor and the State. 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 State may deem incompetent or disorderly shall be promptly removed from the Project by the Contractor upon written notice from the State, and shall not be re-employed.

1.3 **USE OF THE STATE'S DRAWINGS, PROJECT MANUAL AND OTHER DOCUMENTS:** The Drawings, Project Manual and other documents issued by the State, 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 State. 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 State 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 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:
  - 1) Schedules, when identified as such, shall govern over all other portions of the Drawings.
  - 2) Specific notes shall govern over all other notes and all other portions of the Drawings, except schedules described in the preceding Clause.
  - 3) Larger scale Drawings shall govern over smaller scale Drawings.
  - 4) Detail Drawings shall govern over standard plates bound within the Project Manual.
  - 5) 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 State 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 State.
- .2 RFIs shall be numbered sequentially and be presented in the format provided by the State.
- .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 State.
- .4 The Contractor shall set forth its own interpretation or understanding of the requirements, along with reasons why it has reached such an understanding in each RFI.
- .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 State 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 State.
- .7 Responses from the State will not change any requirement of the Contract unless so noted by the State 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 State, indicating that the Contractor considers the State's response to the RFI to be a Change Order. Failure to give such written notice within 14 days of receipt of the State'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 State 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 State within 14 days following receipt of such instructions, and in any event prior to commencement of the work thereon. The State will then consider the notice; and, if in the State's judgment it is justified, the State'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 STATE**

2.1.1 Information and/or services under the State's control shall be furnished by the State 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 State 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 State 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 State will not have control over construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work. The State will not be responsible for the Contractor's failure to carry out the Work in accordance with the requirements of the Contract Documents. The State 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 State's consultants shall be through the State. 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 State.

2.2.5 If the State observes work that appears to not comply with the requirements of the Contract Documents, the State will

have the authority to reject the Work. Whenever the State considers it necessary or advisable for implementation of the intent of the Contract Documents, the State 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 State 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 State'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 State or the State'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 State 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 State 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 State 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 State considers that the failure is sufficient ground for such action, the State 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 State exercise its rights to terminate as noted in Subparagraph 2.3.1, the State may, without prejudice to any other rights or remedies of the State 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 State may deem expedient and appropriate.

2.3.3 When the State 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 State because of termination under Subparagraph 2.3.1 exceed the unpaid balance, the Contractor shall pay the difference to the State.

### **2.4 TERMINATION FOR THE STATE'S CONVENIENCE**

2.4.1 The State 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 State'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 STATE FOR CONVENIENCE**

2.5.1 The State 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 State 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 State, 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 State 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 State 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 State will promptly investigate the conditions, and if the State 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 State 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.

- .1 **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 State for any action of any Subcontractor, Sub-subcontractor or material supplier, at any tier, unless the Contractor can demonstrate that the State is the proximate cause of the change or delay alleged in such request. The State 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 State is the proximate cause of the change or delay.

3.2.3 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 State, the State's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.2.4 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.

3.2.5 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 State \$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 State \$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 State 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 State 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](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 State, 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 agreement. 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 State; ordinary wear and tear and abuse excepted.

3.5.2 The Contractor further agrees, within 14 days after being notified in writing by the State, 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 State finds that the Contractor fails to perform any of the work under the guarantee, the State will proceed to have the work completed at the Contractor's expense and the Contractor will pay costs of the work upon demand. The State 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 State employees, property, or licensees, the State 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 State 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 State, the Contractor shall assume full responsibility for the Work and shall bear the attributable costs.

3.7.4 The Contractor is subject to county, or district laws, rules, or regulations pertaining to building permits or regulating the design or construction of buildings upon County 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 State 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**

3.10.1 The Contractor shall submit to the State, subject to the State Project Manager's review, approval, and written acceptance, a Progress Schedule prepared in accordance with the Specifications, Division 1. Said Progress Schedule shall be provided not later than thirty (30) days following the initiation of the Contract. A modified Progress Schedule shall accompany any Change Order(s) which seek(s) to modify the Progress Schedule. The Progress Schedule shall show the order in which the Contractor proposes to execute the Work, dates on which the Contractor will start and complete 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 any changed conditions made in accordance with the requirements of this Contract and any approved Change Orders.

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 State, 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 State 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 State'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 State 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 State'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.

### 3.11 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 State and shall be delivered to the State 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 State 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 State is subject to the limitations of Subparagraph 2.2.6.

3.12.2 The Contractor shall review, approve and submit to the State 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 State 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 State. 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 State's review of submittals unless the Contractor has specifically informed the State, in writing, of such deviation at the time of submittal, and the State has given written consent to the specific deviation. The State'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 State 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 State 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 State 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 State so require, the State 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 State. Burden of proof as to comparative quality, suitability, and performance of offered material(s), article(s), or equipment shall be upon the Contractor. The State will be the sole judge as to such matters. In the event the State 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 State, and shall be made without additional cost to the State.

### 3.13 TESTS AND INSPECTIONS

3.13.1 The Contractor shall at all times permit the State, 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 State. The Contractor shall be solely responsible for notifying the State 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 State of such intention at least 48 hours prior to performing the Work, so that the State may make necessary arrangements.

3.13.2 If the State determines that portions of the Work require additional testing, inspection or approval not included in the Contract Documents, the State will instruct the Contractor, in writing, to make arrangements for additional testing, inspection or approval by an entity acceptable to the State, and the Contractor shall give 48 hours written notice to the State of where and when tests and inspections will be conducted so that the State may observe the procedures. The State 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 State'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 State 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 State.

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 State. 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 State 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 State.

**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 State. 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 State's final inspection.

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

3.17 **ACCESS TO WORK:** The Contractor shall provide the State 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 State harmless.

3.19 **INDEMNIFICATION:** The Contractor shall indemnify, defend (with counsel satisfactory to the State), and save harmless the State and its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all other contractors, Subcontractors, suppliers, and laborers, and any other person, firm, or corporation furnishing or supplying Work, Materials, Data, or services in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor or its agents or employees in the performance of this Contract.

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 State service contract, including a public works contract.

3.21.2 No State 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 State property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the State 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 State 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 State, the Contractor shall remove such Subcontractor immediately upon written request notice from the State, 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 State 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 State 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.

4.2 **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 State.
- .3 To preserve and protect the rights of the State 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 State.
- .5 To enter into similar agreements with Sub-subcontractors.

4.2.1 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 State. 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 –**

Article 5 Intentionally Left Blank

**ARTICLE 6 - CHANGES IN THE WORK**

**6.1 GENERAL**

6.1.1 The State 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 State 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 State 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 State describing the intended changes to the Work.
- .2 Timeline: Within 14 days the Contractor shall submit to the State 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 State'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 7 days timeline, or there is failure to agree to the Cost, then the State 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 State's estimate of cost, unless, within 7 days following completion of the added Work or with written notice to delete the Work, the Contractor submits to the State written proof that the State's estimate is in error.

6.1.2 The Contractor, when ordered by the State, shall proceed with changes before agreement is reached on adjustment in compensation or time for performance, and shall furnish to the State records as specified in Clause 6.2.1.3. If the Contractor fails to provide such records, the State'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 State'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 State, on the basis of the State's estimate of increase or decrease in the costs.
- .3 By the State, whether or not negotiations are initiated as provided in Clause 6.2.1.1, by actual and necessary costs, as determined by the State, on the basis of records. Beginning with the first day and at the end of each day, the Contractor shall furnish to the State 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 State. Such records shall be signed by the Contractor and, when agreed to by the State, will become the basis for compensation for the changed work. Such agreement shall not preclude subsequent adjustment based upon later audit by the State.
- .4 By Unit Prices stated in the Contract Documents, or subsequently agreed upon.
- .5 By a manner agreed upon by the State 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 Labor: 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 State, 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 State. 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 State, 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 State 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 State. 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 State, 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 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 : 15 percent, including bond cost.
    - .2 Materials and Equipment : 15 percent, including bond cost.
    - .3 Subcontract : 15 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 : 15 percent
    - .2 Materials and Equipment : 15 percent
    - .3 Contractor may add, as mark-up of actual cost to Contractor, 15 percent, including bond cost.
- .5 For Deleted Work: When the State 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 State would be \$10,500.
- .6 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 State for deleted overhead shall be applied to the difference.
- .7 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 State; 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 State; 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 Contract shall not be valid unless made in writing and signed by the parties, and an oral understanding or agreement that is not incorporated shall not be binding on any of the parties.

## ARTICLE 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 State 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 State 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 State.

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 State on, or prior to, the completion date. The State may occupy or utilize areas upon Substantial Completion of the Work.

### 7.3 LIQUIDATED DAMAGES

7.3.1 Contract may provide time within which Work or portions thereof shall be completed and may provide for payment of agreed liquidated damages to the State for every day thereafter during which Work shall be uncompleted.

7.3.2 Execution of the Contract by the Contractor shall constitute acknowledgment by Contractor that Contractor understands, has ascertained and agrees that the State will actually sustain damages in the amount fixed in the Contract for each and every calendar day during which completion of Work required is delayed beyond expiration of time fixed for completion or extensions of time as have been allowed pursuant to the provisions hereof. Contractor and State agree that such damages shall be presumed to be the damages actually sustained by the State as defined below, and that because of the nature of the project, it would be impracticable or extremely difficult to fix the actual damages.

7.3.3 Liquidated damages shall be considered not as a penalty but as agreed monetary damage sustained by the State for loss of revenue and increased project administration expenses, including extra inspection, construction management and architectural and engineering expenses, related to this Contract because Contractor failed to perform and complete Work within time fixed for completion or extension of time as have been allowed pursuant to the provisions hereof. Liquidated damages shall not be deemed to include within their scope additional damages arising from defective work, cost of completion of the contract, or damages suffered by others or other forms of liability claimed against the State as a result of delay (r.g delay or delay related claims of other contractors and subcontractors) or defense costs thereof; Contractor shall be responsible for the actual amount of any such damages.

7.3.4 Should Contractor fall behind the approved Work Schedule, the State reserves the right to deduct liquidated damages based on estimated period of late completion. The State need not wait until Contract completion to withhold liquidated damaged for Contractor's progress payments.

7.3.5 Should money due or to become due to Contractor be insufficient to cover agreed liquidated damages, the Contractor forthwith shall pay remainder to the State.

7.3.6 Time is of the essence.

7.3.7 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 \$1,000.00 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 State 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 State, upon receipt of such justification and supporting evidence, shall make its finding of fact. The State's decision shall be final and conclusive and the State will advise the Contractor in writing of such decision. If the State finds that the Contractor is entitled to an extension of Contract Time, the State'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 State 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 State 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 State may take immediate steps to prevent the occurrence or continuance of the delay. If the delay cannot be prevented, the State 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 State 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 State and unforeseeable delays in continuance or completion of the work of other contractors employed by the State 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 State reserves the right to accelerate the Work of the Contract. In the event that the State 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 State on a daily basis.

7.6.2 In the event that the Contractor believes that some action or inaction on the part of the State constitutes an acceleration directive, the Contractor shall immediately notify the State 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 State responds to the written notification. If acceleration is then directed or required by the State, all cost records referred to above shall be maintained by the Contractor and provided to the State 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:** The Contractor shall, accompanying its submission of Progress Schedules, submit to the State's Project Manager a Schedule of Values allocated to portions of the Work, supported by such data to substantiate the accuracy of the values as the State may require. This Schedule of Values, which is subject to the review, modification (if deemed necessary by the State), approval, and written acceptance of the State's Project Manager, shall be used as a basis for progress payments made to the Contractor. The Schedule of Values shall be based exclusively on the "payment in arrears" principle, as the State is not allowed to make payments in advance. The total of all payments in the Schedule of Values must at all times be equal to the Contract Sum.

### **8.2 PROGRESS PAYMENTS**

8.2.1 Upon State's receipt of an invoice with updated Progress Schedule from the Contractor, the State will review same to determine if it is a proper invoice based on the approved Schedule of Values. Any invoice determined by the State not to be suitable for payment shall be modified and processed in accordance with the State's assessment.

8.2.2 Progress payments will only be authorized by the State where the Work requires more than six weeks to complete. Actual progress payment submittal dates shall be established by the State. 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 State.
- .2 The State shall retain not less than ten (10) percent of the estimated value of Work completed.
- .3 The State will release Retention proceeds to the Contractor only upon Acceptance of the Work.

8.3.2

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 State and to all deductions provided for in the Contract. All moneys withheld, whether assigned or not, are subject to being used by the State 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 STATE PRIOR TO COMPLETION OF THE WORK

8.5.1 The State 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 State for injury or damage that results from occupancy and use by the State. If, by reason of the State's occupancy, the premium for the Contractor's bodily injury and property damage insurance is increased, the State will reimburse the Contractor for the additional amount necessarily incurred allocable to the area and the period of State's occupancy up to the date of Acceptance of the Work.

8.5.2 The State's Beneficial Occupancy does not constitute Completion of the Work or Acceptance of the Work by the State, 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 State'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 State, then upon written request by the Contractor and by written consent from the State, the Guarantee period will commence to run from the date of the State'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 State.

- .1 The Contractor shall request this final inspection only when all Work, including deficient items identified on previous inspections, has been completed.
- .2 The State 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 State determines that the Work is complete, the State 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:
  - a) The Retention held by the State will be released, and
  - b) The Contractor will be relieved of the duty of maintaining and protecting the Work.
- .5 If the State 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.
- .6 Determination by the State 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 State 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 State, 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 State.

- .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 State will become a complete and final settlement between the State and the Contractor.

## 8.7 FINAL PAYMENT

8.7.1 After Acceptance of the Work, and upon receipt of final statement from the State, Contractor will invoice the State for the Contract Sum due the Contractor.

8.7.2 Contractor shall provide the State 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 State, and the State will pay the Contractor 100 percent of the Contract Sum after Acceptance of the Work and receipt by the State 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 State 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:

Judicial Council of California  
 Southern Regional Office  
 Attn: Ms. Nora Freiwald  
 2255 North Ontario Street, Suite 200  
 Burbank, CA 91504

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 State 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 State. Within 14 days after receipt of such notice to perform disputed work, the Contractor may submit a written protest to the State, specifying in detail in what particulars Contract requirements were exceeded, and approximate change in cost resulting so that the State 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 State'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 State 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 State;
  - .2 modify the initial Dispute; or
  - .3 notify the State that the initial Dispute stands as is.
- .5 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 State's option, with senior management personnel of the State 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 State'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 State 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 State'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 State as provided for under California Government Code, Section 12650 et seq., known as the False Claims Act.
- .7 The State will render a written decision to the Contractor relative to the Claim. The State's written decision shall be final and binding on the party(ies). The State 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 State 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 Equitable Adjustment 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 State. The State's Representative shall 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 State, provide proper facilities for such access, inspection and copying purposes.

9.2.2 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.

9.2.3 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.

9.2.4 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 State, and other affected agencies.

9.2.5 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.

9.2.6 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.

9.2.7 Access to records is not limited to the required retention periods. The authorized State Representatives shall have access to records at any reasonable time for as long as the records are maintained.

9.2.8 Further, the Contractor agrees to include a similar right of the State 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 State, 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 employ properly qualified personnel for supervision of same. 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 State, present unreasonable risk of injury or death to persons or property damage, the State, 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 State 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 AND INDEMNITY

## 1.1.1 General Requirements

- .1 Contractor will maintain, or cause to be maintained, 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.
- .2 For all insurance policies required by this Contract, Contractor will declare any deductible or self-insured retention (SIR). Any amount in excess of \$25,000 is subject to approval by the AOC and the County. Contractor will be responsible for reimbursement of any deductible to its insurer. Contractor will administer any self-insurance program in a commercially reasonable manner that ensures sufficient funds are available to cover all losses Contractor must insure against under the terms of section .2.
- .3 Before commencement of the Work, Contractor will provide the AOC and the County with certificates of insurance, on forms acceptable to the AOC, as evidence that all required insurance is in full force and effect. The dollar amount of any SIR or deductible will be specified on the applicable certificate of insurance. The certificates of insurance will be accompanied by the following endorsements:
  - .1 As required by section .1.G, below, an endorsement evidencing that the State, Judicial Council, AOC, County, and Court, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any, have been added as additional insureds on the insurance policy being referenced;
  - .2 An endorsement that the insurance will not be materially changed or cancelled without 30 days notice to the AOC and the County; and
  - .3 An endorsement to the builders risk insurance policy, only, as required in Section .2.D that adds the AOC and the County as "Loss Payees"; and
  - .4 An endorsement evidencing that the insurance is primary and non-contributing with any insurance, self-insurance, or other risk management program maintained by the State, Judicial Council, AOC, County, or Court, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any.
- .4 The Certificates of Insurance shall be addressed as follows:  
 If to the AOC: [to come]  
  
 If to the County: [to come]
- .5 The Contractor will maintain the products and completed operations insurance required under section .2.A for a period of five years past the Acceptance of the Work or the end of the term of this Contract, whichever comes later. The Contractor will maintain all other insurance required under section .2 in full force until the end of the term of this Contract or Acceptance of the Work, whichever comes later, and Contractor and the AOC have agreed in writing that the Work is covered under the County's or AOC's programs of insurance or self-insurance designed for the purpose of providing coverage for risks associated with the accepted Work.
- .6 If any of the required insurance policies expire during the term of the Contract, Contractor will immediately renew or replace the required insurance and provide a new certificate of insurance to the AOC and County. Contractor will ensure that any renewal insurance certificates are tendered to the AOC and County at least 30 days before the expiration of the expiring insurance policy.
- .7 The insurance required by sections .2.A, .2.B, and .2.D, as well as any excess liability or umbrella liability insurance that Contractor maintains in compliance with the terms of this section .2 must include the State, Judicial Council, AOC, County, and Court, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any, as additional insureds, but only with respect to liability assumed by Contractor under the terms of this Contract or liability arising out of the performance of the Work.
- .8 Contractor waives any right of subrogation it may have against any of the State, Judicial Council, AOC, County, or Court, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents for loss or damage to the Work, or for any liability arising out of

the Work performed by Contractor under this Contract, and the Contractor will require any insurer providing insurance required under section \_\_.2 to do the same.

- .9 Contractor is responsible for and may not recover from the State, Judicial Council, AOC, County, or Court, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any, any deductible or self-insured retention that is connected to the insurance required under section \_\_.2.
- .10 If 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, declare the Contract to be in breach and withhold all progress payments and retentions until the breach is cured, or terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- .11 The AOC and the County reserve the right to request certified copies of any of the insurance policies required under section \_\_.2.

11.1.2 Insurance Requirements :Before the commencement of performance of the Work Contractor will furnish to the AOC and the County verification that the following insurance is in force:

- .1 Commercial General Liability. Commercial General Liability Insurance written on an occurrence form with limits of not less than \$5,000,000 per occurrence, and a \$5,000,000 per location annual aggregate combined single limit. The Contractor may satisfy these limits through any combination of primary, excess, or umbrella liability insurance. Each policy must 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. No policy may exclude property damage resulting from explosion, collapse, or underground hazard, for damage to property on which Work is being performed, or for the consequences of inadvertent construction defects. The products and completed operation liability coverage must extent for a period of not less than five years past the Acceptance, termination, or cancellation of the Work. This insurance must apply separately to each insured against whom a claim is made or lawsuit is brought, subject only to the insurance policy's limit of liability.
- .2 Commercial Automobile Liability. Automobile liability insurance with limits of not less than \$2,000,000 per accident. Such insurance must 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, including special coverage extensions, for all of Contractor's employees who will be engaged in the performance of the Work, and employer's liability with limits not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee.
- .4 Builders Risk. Builder's Risk Insurance with limits of liability of not less than the final completed value of the Work. The insurance must apply to physical loss or damage to the insured property and include coverage for flood, water damage, and earthquake and earth movement. The Builder's Risk Insurance must cover property in the course of construction at the Project site, at any temporary off-site location, and while in transit. Included within the terms of coverage must also be all buildings, materials, supplies, machinery, fixtures, and equipment that will become a permanent part of the building on which the Work is being performed, and all temporary structures at the Project site that are to be used in or incidental to the fabrication, erection, testing, or completion of the Work. The Builder's Risk Insurance may include a deductible or self-insured retention, but this deductible or self-insured retention must not be a recoverable cost under the terms of this Contract, either as a cost included in a change order or otherwise.

## 11.2 CONTRACTOR'S PERFORMANCE BOND AND PAYMENT BOND

11.2.1 Before commencing any Work pursuant to this Contract, Contractor will furnish the following surety bonds issued by a California admitted surety insurer as follows:

- .1 Performance Bond. A bond in an amount at least equal to 100 percent of the Project as security for faithful performance of this Contract; and
- .2 Payment Bond. A bond in an amount at least equal to 100 percent of the Project for payment of persons performing labor and/or furnishing materials in connection with this Contract.

11.2.2 The cost for these bonds is a Reimbursable Expense, and Contractor will include them in the first payment request. Before obtaining these bonds, Contractor will 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 will be at the sole expense of Contractor.

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

11.2.4 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, Contractor will promptly furnish a copy of each bond that is requested, or permit

## 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 State's review, it shall, if requested in writing by the State, be uncovered for the State's observation and replaced at the Contractor's expense without change in the Contract Time.

12.1.2 The Contractor shall notify the State 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 State 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 State'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 State employees, property, or licensees, the State 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 State.

12.2.4 If the Contractor fails to correct nonconforming work, as per Paragraph 3.5, the State 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 State, the State 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 State 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 State'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 State.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged Work executed by the State 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 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.

13.2 **ACCEPTANCE OF NONCONFORMING WORK:** If the State prefers to accept any or all of the Work that is not in accordance with requirements of the Contract Documents, the State 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 subject to, governed by, and construed in accordance with the laws of the State of California.

13.2 **SUCCESSORS AND ASSIGNS:** The Contractor binds the Contractor, the Contractor's partners, successors, permitted assigns and legal representatives to the State 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 State. 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**

13.3.1 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.

13.3.2 Any notice from the Contractor to the State shall be in writing and shall be delivered to the State as follows:

Judicial Council of California  
 Southern Regional Office  
 Attn: Ms. Nora Freiwald  
 2255 North Ontario Street, Suite 200  
 Burbank, CA 91504

13.3.3 Any notice from the State to the Contractor shall be in writing and shall be delivered to the Contractor as follows:

Mr. Contractor  
 XXXXX Construction Company  
 Address  
 Any City, CA 90000

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 State 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 **STATE'S OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS**

13.6.1 The State's obligation under this Contract is subject to the availability of authorized funds. The State may terminate the Contract or any part of the Work, without prejudice to any right or remedy of the State, 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 State may terminate this Contract in whole or in part, upon written notice to the Contractor. Such termination shall be in addition to the State'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 State 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 State funds or that are sponsored by the State 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:

Former State 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 state 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 State 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 State will have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State 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 State 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 Contractor'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.

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.

END OF DOCUMENT