

# **CONTRACT APPENDIX, SUBPART A**

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Chaffey Community College District  
Fontana Intech Center

New Welding Facility at Intech Center  
Bid No. 2026PW188  
October 20, 2025

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# GENERAL CONDITIONS

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## ARTICLE 1 - GENERAL

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### 1.1 BASIC DEFINITIONS

Unless specifically noted, wherever words defined below (or pronouns used in their stead) occur in any of the Contract Documents, they shall have the meanings provided for in this Section.

#### 1.1.1 ACCEPTABLE

Acceptable, Acceptance or words of similar import shall be understood to be the acceptance of the Owner's Representative and/or the Construction Manager, as defined below.

#### 1.1.3 APPROVAL

Approval means written authorization by Owner's Representative and/or Construction Manager, as defined below.

#### 1.1.4 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture with whom the OWNER has contracted for this Project, and is referred to throughout the Contract as if singular in number. The Architect shall have all powers in representing the OWNER as is consistent with applicable state laws, rules or regulations, as well as those provisions provided in this Contract and in the OWNER/Architect Agreement. The Contractor shall cooperate with the Architect and respond to any requests or directives authorized by the OWNER to be made or given by the Architect. The Contractor shall request clarification from the OWNER in writing if the Contractor should have any questions regarding the authority of the Architect. OWNER may also expand the Architect's authority at any time and may direct the Contractor, subcontractors or any other party to acknowledge the authority of the Architect in any situation. The term "Architect" means the Architect or the Architect's authorized representative.

#### 1.1.5 CHANGE ORDER

A Change Order ("CO") is a Contract document, issued by the OWNER, and signed by the OWNER, the Contractor, and the Architect, stating their agreement, as applicable, to the following: (1) a change in the Work, if any; (2) the amount of the adjustment in the Contract Sum, if any; (3) the extent of the adjustment in the Completion Time, if any; (4) modification of any other Contract term or condition.

#### 1.1.6 COLLEGE'S REPRESENTATIVE, OWNER'S REPRESENTATIVE OR REPRESENTATIVE

College's Representative, Owner's Representative or Representative means the member of the Construction Manager's staff designated as the Owner's Representative for the Project. In the event of a dispute between the Construction Manager and the College, the College shall have the unilateral authority to designate another party, including but not limited to, a third party consultant or member of College's staff to serve as the Owner's Representative. The Contractor shall abide by the College's

designation of the "Owner's Representative" for the Project. The parties acknowledge that while the Owner's Representative may act in a certain capacity on behalf of the College, ultimately the College retains the only authority to authorize change orders, payments to Contractor and the settlement of claims arising from the Project.

#### **1.1.7 COMPLETION TIME**

Unless otherwise provided, the "Completion Time" is the period of time, including authorized adjustments, allotted in the Contract for Substantial Completion of the Work. The Completion Time will begin to run on the commencement date specified in the Notice to Proceed.

#### **1.1.8 CONTRACT DOCUMENTS**

The Contract Documents consist of all documents listed in Section 3.1 of the Contract Form and constitute the Contract.

The Contract Documents comprising the Contract are complementary, and each obligation of the Contractor, Subcontractors, and material or equipment suppliers in any one shall be binding as if specified in all. The Contract represents the entire and integrated agreement between the parties hereto, and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the OWNER and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the OWNER and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

The number of executed copies the successful CONTRACTOR shall provide of the Contract is 4 and the number of PERFORMANCE and PAYMENT BONDS is 4 each.

#### **1.1.9 CONTRACTOR**

The individual, firm, partnership, corporation, or combination thereof, private, municipal or public, including joint ventures, which, as an independent contractor, has entered into this Contract with the OWNER. The Contractor shall be referred to throughout the Contract by singular number and masculine gender. The term "Contractor" means the Contractor or the Contractor's Representative. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors shall be equally applicable to the Contractor.

#### **1.1.10 CONTRACTOR'S REPRESENTATIVE**

Contractor's executive representative (as specified in Article 3) who shall be present on the Work Site at all times during construction, and who shall be authorized to act on behalf of the Contractor for any and all reasons, including but not limited to, receiving and fulfilling instructions from the Construction Manager or the OWNER, and directing the construction activities of the Contractor. The term Superintendent as used in Article 3 shall mean the Contractor's Representative.

#### **1.1.11 CONTRACT SUM**

The Contract Sum is stated in the Contract and, including authorized adjustments pursuant to Change Orders, is the total amount payable by the OWNER to the Contractor for full completion of the Work under the Contract.

#### **1.1.12 CONSTRUCTION MANAGER**

The terms "Construction Manager," "Project Manager," and "Program Manager" mean the individual, firm, partnership, corporation or other entity providing construction management services for the Project. The "Construction Manager" and the Construction Manager's Representative, shall be referred to throughout the Contract as if singular in number.

Unless directed otherwise by OWNER, the Construction Manager shall have authority to act on behalf of OWNER for all purposes consistent with the Construction Manager's authority. The Contractor shall cooperate with the Construction Manager and respond to any requests or directives authorized by the OWNER to be made or given by the Construction Manager. The Contractor shall request clarification from OWNER in writing if the Contractor has any questions regarding the authority of the Construction Manager. OWNER may expand the Construction Manager's authority at any time and may direct the Contractor, subcontractors, Architect or any other party to acknowledge the authority of the Construction Manager in any situation.

#### **1.1.13 CONSTRUCTION MANAGEMENT AGREEMENT**

That document executed by and between the Construction Manager and the OWNER, or such other document executed by and between the OWNER and any other firm, partnership, corporation or other entity with whom the OWNER may contract for the provision of construction management services for the Project.

#### **1.1.14 DAYS**

Unless otherwise designated, the term "day" means calendar day.

#### **1.1.15 DRAWINGS OR PLANS**

Provisions applicable to this Contract provided by the OWNER as a separate document, and included in the Contract Appendix, which are graphic and pictorial portions of the Contract prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, character, dimensions, details and scope of the Work, generally including plans, profiles, typical cross-sections, general cross-sections, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

#### **1.1.16 EMERGENCY**

Any great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, affecting the safety of life, the Work, or adjacent property.

#### **1.1.17 ENERGY CONSERVATION MEASURE OR ECM**

The equipment, devices and/ or materials as installed by Contractor at the Project Site for the purpose of improving the efficiency of utility consumption.

#### **1.1.18 EQUAL/EQUIVALENT**

A product, service, component or system which is demonstrated, through the submittal process, to the satisfaction and specific approval of the OWNER or its designee to be equal to the product, service, component or system specified as set forth in these Contract.



#### 1.1.19 **EQUIPMENT**

A general term which refers to vehicles, systems, assemblies, sub-assemblies, products, material, fittings, devices, appliances, fixtures, apparatus, supplies and the like used in the performance of a specific function or functions or Contract obligation.

#### 1.1.20 **EXTRA WORK**

Extra Work is work of which the performance or compensation thereof is not otherwise provided for in the Contract, but found by the OWNER to be necessary or desirable to the satisfactory completion of this Contract and within its intended scope.

#### 1.1.21 **FACILITY IMPROVEMENT MEASURES OR FIMS**

The methods, techniques, application of know-how, installation of devices or otherwise, described in the Scope of Work (Appendix A), that are undertaken by Contractor as a result of this Contract with the intent of generating net savings or efficiencies at or in connection with the operation of the Project Site, including without limitation the ECMs and any other non-conservation related improvements, activities, means or methods.

#### 1.1.22 **INSTALL/INSTALLATION**

Completely assembling, erecting and connecting material, parts, components, appliances, supplies and related equipment specified or required for the completion of the Work.

#### 1.1.23 **MATERIALS**

Equipment, material, products, and articles incorporated in the Work.

#### 1.1.24 **MODIFICATIONS**

A Modification is a written amendment to the Contract signed by both parties, in the form of a Change Order or a Construction Change Directive.

#### 1.1.25 **NOTICE TO PROCEED**

Written notice from the OWNER to Contractor to proceed with the Work by a specified date.

#### 1.1.26 **OWNER**

The Chaffey Community College District, which shall be referred to throughout the Contract as if singular in number. The term "OWNER" means the OWNER or the OWNER's Representative. The terms "OWNER", "College", and "District" as used herein shall all be deemed to mean the Chaffey Community College District and Chaffey College or its representatives and Governing Board.

#### 1.1.27 **OWNER'S REPRESENTATIVE**

The Associate Superintendent, Administrative Services, or his or her designee(s), which shall be referred to throughout the Contract as if singular in number.

#### 1.1.28 **PERFORM**

Perform shall mean that the Contractor, at Contractor's expense, shall take all actions necessary to

complete the Work, including the furnishing of all necessary labor, materials, tools, equipment, and appurtenances required to complete the Work in strict accordance with the Contract Documents.

#### **1.1.29 PROJECT**

The term "Project" means the Work of the Contract and all other work, labor, equipment, and materials necessary to accomplish the total and satisfactory completion of the Project in accordance with the Contract. The Project may include construction by OWNER or by separate contractors.

#### **1.1.30 PROJECT MANUAL**

The "Project Manual" also means the Contract Documents.

#### **1.1.31 PROJECT SITE**

The "Project Site" or "Site" is all of the property and/or facilities of the OWNER where the Work will be performed pursuant to the Contract, as well as such adjacent lands as may be directly affected by the performance of the Work.

#### **1.1.32 PROVIDE**

In reference to Work to be performed by Contractor, to "provide complete in place." That is, to furnish, install, test and make ready for operation and use in accordance with the Contract.

#### **1.1.33 REFERENCE STANDARDS**

Standards for Material, Equipment, Work, procedures or workmanship established by reference to standards or procedures published in a described reference text. Referenced Standards shall have the same force and effect as if they are physically incorporated in the Contract.

#### **1.1.34 REGULAR WORK DAY**

This consists of eight hours as required under Section 1810 of the California Labor Code.

#### **1.1.35 SCHEDULES: PROJECT – CONSTRUCTION**

The "Construction Schedule" is the schedule developed by the Contractor as required in Division 1 of the Specifications. The Construction Schedule shall be a dynamic documentation of the progress of the Project.

#### **1.1.36 SPECIAL CONDITIONS**

Provisions applicable to this Contract provided by the OWNER and included in the Contract Appendix which may reinvoke, modify, or supplement any portion of the Contract Documents and which are incorporated into the Contract.

#### **1.1.37 SPECIFICATIONS**

Provisions applicable to this Contract provided by the OWNER and/or Architect, and included in the Project Manual, which contain the written directions, descriptions, requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related written directions necessary to complete the Work. Reference Standards, or portions thereof, cited in the Project Manual by reference shall have the same force and effect as if included in the

Contract physically.

#### 1.1.38 **SUBCONTRACTOR**

Any person, firm, entity or corporation, other than the employees of Contractor, who contracts with Contractor to furnish labor or labor and materials in order to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract as if singular in number, and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor of the OWNER or subcontractors of such a separate contractor. To the extent that the term Trade Contractor is utilized in the Contract, it shall have the same meaning as the term "Subcontractor".

#### 1.1.39 **SUB-SUBCONTRACTOR**

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to furnish labor, material or labor and materials in order to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract as if singular in number, and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

#### 1.1.40 **SUBSTANTIAL COMPLETION**

"Substantial Completion" or "Substantially Complete" means the first to occur of the following: (i) that point in time when the Work, or any identifiable portion thereof, has been fully tested and OWNER has determined, in its reasonable discretion, that all such Work has been completed to a sufficient degree and quality, in strict accordance with the Contract, except only for completion of the Punch List as defined in 3.11.4.2, that OWNER will be able to realize from such Work substantially all of the practical benefits and functional operation of all building systems intended to be gained therefrom, or otherwise to employ the Work or the FIMs associated therewith for their intended purposes; or (ii) temporary, qualified or final certificates of occupancy, if required, have been issued with respect to such portions of the Work by the appropriate public authority. If the OWNER is not able to use the Work or such identifiable portion thereof for one or more of its intended purposes, no matter how small the purpose may be, expressly including but not limited to employment of any of the FIMs for their intended purposes, the Work is not Substantially Complete.

#### 1.1.41 **SUPPLIER**

A person, firm, entity or corporation who contracts with the Contractor, a subcontractor or a sub-subcontractor to provide a tangible product, but who usually provides no services other than delivery. The term "Supplier" is referred to throughout the Contract as if singular in number, and means a Supplier or an authorized representative of the Supplier.

#### 1.1.42 **WORK**

All construction, labor, materials, equipment and other contractual requirements necessary to fully and adequately complete the portion of the Project for which the Contractor has contracted with the OWNER. The Work shall include, but is not necessarily limited to, the following: (1) an initial obligation of any Contractor or Subcontractor who performs any portion of the Work to visit the Site of the proposed Work; (2) a continuing obligation of the Contractor and Subcontractors after the commencement of the Work to fully acquaint and familiarize themselves with the conditions as they exist and the character of the operations to be carried on under the Contract; and (3) a continuing obligation of the Contractor and Subcontractors to make such investigations as they may see fit so that they shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract. Each such

Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated Contract Documents. The Work expressly includes completion of all FIMs for their intended purposes. The Contractor shall require its Subcontractors to comply with each and every provision of the Contract, including this Section. The Work shall be completed in accordance with the time specified in the Contract form.

#### **1.1.44 WORKING DAYS**

A Working Day is defined as any calendar day, except for Sundays and legal holidays. Hours of daily construction operation shall consist of Mondays through Fridays, 7:00 am to 7:00 pm. Saturdays from 8:00 am to 5:00 pm. For any work outside the hours of operation listed above the Contractor must submit a written request for permission to work to the OWNER a minimum of two weeks prior to the requested work. The OWNER's written permission to work outside the normal hours of operation may be granted at the OWNER's sole discretion, and OWNER's denial of Contractor's request shall not result in any liability of any kind to OWNER. The Contractor may work outside the hours listed above only with the OWNER's written permission.

### **1.2 EXECUTION, CORRELATION AND INTENT**

#### **1.2.1 EXAMINATION OF CONTRACT DOCUMENTS**

Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project Site and other information given to Contractor as to materials and methods of construction and other Project requirements, including the specifications drafted by the College's Commissioning Agent. Contractor shall immediately notify the Construction Manager of any potential error, inconsistency, ambiguity, conflict or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.

#### **1.2.2 CORRELATION AND INTENT**

##### **1.2.2.1 Documents Complementary and Inclusive**

The documents which comprise the Contract are complementary, and each obligation of the Contractor, Subcontractors, and material or equipment suppliers in any one shall be binding as is specified in all. The Contract is intended to include all items required for the proper execution and completion of the Work. Any item of work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both.

##### **1.2.2.2 Coverage of the Drawings and Specifications**

The Drawings and Specifications generally describe the work to be performed by Contractor. Generally, the Specifications describe work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on either by the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to complete the Work), shall be provided by the Contractor whether or not

the Work is expressly covered in either the Drawings and/or the Specifications. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by them.

#### **1.2.2.3 Conflicts**

In the event there is a discrepancy between the documents which comprise the contract, the order of precedence specified in Section 1.2.5.1 shall control. Without limiting Contractor's obligation to identify conflicts for resolution by the Architect in accordance with Section 1.2.2.5, it is intended that the more stringent, higher quality and greater quantity of Work shall apply.

#### **1.2.2.4 Conformance With Laws**

Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract. In the event Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, Contractor shall immediately notify Architect in writing of same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder.

Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA regulations.

#### **1.2.2.5 Ambiguity**

Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications, Contract, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify OWNER and Architect of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. Neither the Contractor nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Drawings, Specifications or any of the Contract. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract, which it knows or reasonably should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Sum or the Completion Time. In no case shall any Subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.

#### **1.2.2.6 Corrections**

The OWNER shall be entitled to order the making of such corrections and interpretations in

the Drawings or Specifications as he may deem necessary for the fulfillment of their intent. Omission from the Drawings or Specifications, or the misdescription of details of Work which are manifestly necessary to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted Work (no matter how extensive) or misdescribed details of the Work and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications at no additional expense or delay to the OWNER.

#### **1.2.2.7 Verification of Governing Dimensions**

Before commencing work, Contractor shall, at no additional expense to the OWNER, verify all governing dimensions at the Project Site, and shall examine all adjoining work on which his Work is in any way dependent according to the Contract. Contractor shall notify the OWNER if any defective or non-conforming adjoining dimensions are observed before Contractor begins that part of the Work.

#### **1.2.2.8 Subsections**

References to Sections include Subsections under the Sections referenced and references to Subsections similarly include references to sub-Subsections.

#### **1.2.2.9 Severability**

In the event any article, section, subarticle, paragraph, sentence, clause or phrase contained in the Contract shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other articles, sections, subarticles, paragraphs, sentences, clauses or phrases of the Contract, which shall remain of full force and effect as if the article, section, subarticle, paragraph, sentence, clause or phrase declared, determined or adjudged invalid, illegal, unconstitutional or otherwise unenforceable was not originally contained in the Contract.

#### **1.2.2.10 Headings**

The various headings contained in the Contract are inserted for convenience only and shall not affect the meaning or interpretation of the Contract or any provision thereof. The organization or arrangement of the Specifications into divisions, sections and articles, and the arrangement and titles of Contract Drawings shall not control Contractor in dividing the Work among Subcontractors nor in establishing the extent of Work to be performed by any trade.

#### **1.2.2.11 Plural**

Words in the singular shall include the plural whenever applicable or the context so indicates.

### **1.2.3 ADDENDA AND DEFERRED APPROVALS**

#### **1.2.3.1 Addenda**

Addenda shall govern over all other Documents which comprise the Contract. Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with the applicable provisions of the California Code of Regulations (Titles 19 and 21), the California Building Code (formerly Title 24 of the Code of Regulations), and the Uniform Building Code, addenda shall be approved by the DSA.

#### **1.2.3.2 Deferred Approvals**

The requirements approved by the DSA on any item submitted as a deferred approval in accordance with the applicable provisions of the California Code of (Titles 19 and 21), the California Building Code (formerly Title 24 of the Code of Regulations), and the Uniform Building Code, shall take precedence over any previously issued addenda, drawing or specification.

#### 1.2.4 **SPECIFICATION INTERPRETATION**

##### 1.2.4.1 ***Titles***

The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved.

##### 1.2.4.2 ***As Shown, Etc.***

Where "as shown," "as indicated," "as detailed," or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as accepted," "as selected," or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

##### 1.2.4.3 ***General Conditions.***

The General Conditions and Supplementary General Conditions are a part of each and every section of the Project Manual.

##### 1.2.4.4 ***Abbreviations.***

In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as "Contractor shall," "shall be," etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings.

##### 1.2.4.5 ***Plural.***

Words in the singular shall include the plural whenever applicable or the context so indicates.

##### 1.2.4.6 ***Metric.***

The Specifications may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1" (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the "International System of Units" (SI) and generally follow ASTM E 380, "Standard for Metric Practice."

##### 1.2.4.7 ***Standard Specifications***

Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization's standard specifications, which are in effect at the date set for receipt of bids. If applicable specifications are revised prior to completion of any part of the Work, the Contractor may, if acceptable to Architect, perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications. Architect will furnish, upon request,

information as to how copies of the standard specifications referred to may be obtained.

#### **1.2.4.8 *Absence of Modifiers***

In the interest of brevity, the Contract frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **1.2.5 RULES OF DOCUMENT INTERPRETATION**

#### **1.2.5.1 *General Precedence of Documents Comprising the Contract***

Except as otherwise provided in the Supplementary General Conditions, the precedence of the documents comprising the Contract, in the event of an express conflict, is as follows:

- (1) Change Orders / Modifications
- (2) Addenda
- (3) Special Conditions
- (4) Specifications
- (5) Drawings
- (6) Contract Form
- (7) Supplementary General Conditions
- (8) General Conditions

#### **1.2.5.2 *Drawings***

In the event of conflict within the drawings, the following rules shall apply:

- (1) Change Order Drawings / Addenda Drawings govern over Contract Drawings.
- (2) General Notes, when identified as such, shall be incorporated into other portions of Drawings.
- (3) Schedules, when identified as such, are complementary with other notes and other portions of Drawings including those identified as General Notes.
- (4) Larger scale drawings shall take precedence over smaller scale drawings. In the event of any discrepancy between any drawing and the figure written thereon, the figure shall govern.
- (5) Figured, derived, or numerical dimensions shall govern. At no time shall the Contractor base construction on scaled drawings.
- (6) Contract Drawings govern over Shop Drawings.

#### **1.2.5.3 *Specifications***

Specifications shall govern as to materials, workmanship, and installation procedures.

#### **1.2.5.4 *More Stringent and Higher Quality/Quantity***

In the case of disagreement or conflict between or within standards, specifications, and



drawings, the more stringent, higher quality, and greater quantity of Work shall apply.

#### **1.2.5.5      *Contiguous Work***

Should the proper and accurate performance of the Work hereunder depend upon the proper and accurate performance of other work not covered by this Agreement, the Contractor shall carefully examine such other work, determine whether it is in fit, ready and suitable condition for the proper and accurate performance of the Work hereunder, use reasonable means necessary to discover any defects in such other work, and before proceeding with the Work hereunder, report promptly any such improper conditions and defects that it discovers to the College and Construction Manager in writing and allow the College a reasonable time to have such improper conditions and defects remedied.

#### **1.2.5.6      *Field Measurements***

Notwithstanding the dimensions on the Plans, Specifications and other Contract Documents it shall be the obligation and responsibility of the Contractor to take such measurements as will insure the proper matching and fitting of the Work covered by this Agreement with contiguous work.

### **1.3      OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

The Drawings, Specifications, and other documents prepared on behalf of the OWNER are instruments of the services of the Architect and its consultants and are the property of the OWNER. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, upon request upon completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof 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 or for additions to this Project outside the scope of the Work without the specific written consent of the OWNER. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the OWNER's property interest or other reserved right.

### **1.4      RELATIONSHIPS**

The Contract Documents shall not be construed to create a contractual relationship of any kind between the Construction Manager, Architect, Owner's Representative and/or the Contractor, or any of its subcontractors or supplier. Notwithstanding the above, nothing contained herein shall be deemed to give the Contractor or any third party any claim or right of action against the Owner's Representative, the Construction Manager or the Architect which does not otherwise exist without regard to this Agreement. The Contractor and its subcontractors and suppliers shall not be deemed to be beneficiaries of any of the acts or services of the Construction Manager, the Architect or the Owner's Representative which are performed under separate agreements for the sole benefit of the College. Contractor shall forward all communications to the College and Architect through Construction Manager and hereby acknowledges and agrees that any instructions, reviews, advice, approvals, orders or directives that are rendered to it by Construction Manager are specifically authorized and directed by the College.

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## **ARTICLE 2 – OWNER**

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### **2.1 DEFINITION**

The term "OWNER" shall have the meaning provided in Article 1.

### **2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

#### **2.2.1 FINANCING AND FUNDING**

At the request of the Contractor, the OWNER will, prior to execution of the Contract and promptly from time to time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the OWNER's obligations under the Contract.

#### **2.2.2 SITE SURVEY**

When required by the scope of the Project, the OWNER may furnish, at its expense, a legal description and a land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site. Surveys to determine locations of construction, grading, and site work (other than those provided in the Contract Drawings) shall be provided by the Contractor. The OWNER shall, at its expense, identify/establish existing control points and corner stakes of the property/project boundary. Site survey requirements of the Contractor are further discussed in the Project Manual.

When a soils investigation report for the Project site is available, such report shall not be a part of the Contract Documents. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Contractor is required to examine the site before submitting its bid and must make whatever tests it deems appropriate to determine the underground condition of the soil.

#### **2.2.3 SOILS**

When required by the scope of the Project, the OWNER may furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required and deemed necessary by the Architect or as required by local or state codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions. When a soils investigation report for the Project site is available, such report shall be a part of the Contract Documents. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Contractor is required to examine the site before submitting its bid and must make whatever tests it deems appropriate to determine the underground condition of the soil.

#### **2.2.4 UTILITY SURVEY**

When required by the scope of the Project, the OWNER will furnish, at its expense, all information regarding known existing utilities on or adjacent to the Project Site. The location, size inverts and depths

of existing utilities shall be field verified by the Contractor. Utility survey requirements of the Contractor are further discussed in the Project Manual.

#### **2.2.5 INFORMATION**

Upon the request of the Contractor, OWNER will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from OWNER's records. The Contractor may not rely upon the accuracy of any such information, other than that provided under Sections 2.2.2 through 2.2.4 (except that the Contractor may not rely upon and must question in writing to the OWNER and the Architect any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Project, and prior experience with school projects), unless specifically stated in writing that the Contractor may rely upon the designated information.

#### **2.2.6 EXISTING UTILITIES AT THE WORK SITE; REMOVAL, RELOCATION**

The College has endeavored to determine the existence of utilities at the Project Site from the records of the owners of known utilities in the vicinity of the Project. The positions of these utilities as derived from such records are shown on the Plans.

Unless indicated otherwise on the Plans and Specifications, no excavations or potholing was performed to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the plans. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations and potholing, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities. The Contractor shall immediately notify the College in writing of any utility discovered in a different location than shown on the plans or which is not shown on the Plans.

If applicable, all water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Contractor. Locations of existing utilities shown on the Plans are approximate and may not be complete. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of the Work.

Notwithstanding the above, pursuant to Section 4215 of the Government Code, the College has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the Contract Documents, College shall assume the responsibility for their timely removal, relocation, or protection.

Contractor, except in an emergency, shall contact the appropriate regional notification center, California Underground Service Alert at 811 or 1-800-227-2600 or on-line at [www.digalert.org](http://www.digalert.org) at least two working days prior to commencing any excavation if the excavation will be performed in an area which is known, or reasonably should have been known, to contain subsurface installations other than the underground facilities owned or operated by the College, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any Subcontractor and the College has been given the identification number by the Contractor.

#### **2.2.7 EASEMENTS**

OWNER shall secure and pay for easements for permanent structures or permanent changes in existing

facilities, if any, unless otherwise specified in the Contract.

#### 2.2.8 REASONABLE PROMPTNESS

Information or services under OWNER's control will be furnished by the OWNER with reasonable promptness to avoid delay in orderly progress of the Work.

#### 2.2.9 COPIES FURNISHED

The Contractor will be furnished with the number of copies of Drawings and Project Manuals as are stated herein. OWNER shall establish vendors to provide reproduction of the Drawings and Project Manuals from the originals. Contractor is responsible for all reproductions costs beyond the initial sets furnished. The number of hard copies of Construction Documents furnished shall be **two (2)**. OWNER shall make the Drawings and Project Manuals available to Contractor in electronic format.

#### 2.2.10 DUTIES CUMULATIVE

The foregoing are in addition to other duties and responsibilities of the OWNER enumerated herein, and especially those in Article 6 (Construction by OWNER or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

### 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract, as required by paragraph 12.2, or persistently fails to carry out Work in accordance with the Contract, the OWNER, after providing Notice pursuant to paragraph 12.2.4, by written order signed personally or by an agent specifically so empowered by the OWNER in writing, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated. The right of the OWNER to stop the Work shall not give rise to a duty on the part of the OWNER to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Article 6.

### 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor, at any time during the process of construction, defaults or neglects to carry out the Work in accordance with the Contract, or fails or refuses to furnish enough materials and/or workers to properly prosecute the Work, unless prohibited from so doing by the OWNER or other authorized governmental bodies, the OWNER, after giving **Three (3) calendar days** written notice to the Contractor, may proceed to furnish the materials and/or workers necessary to proceed with and/or complete the Work, without prejudice to any other rights it may have. The OWNER may then deduct the cost thereof, with reasonable expenses arising from such procedure including compensation for additional professional and internally generated services and expenses made necessary by the Contractor's actions, from any amounts then due or which may thereafter become due to the Contractor. In such cases, the Contractor will be invoiced for the amount of such costs and expenses, and the invoice amount shall be deducted from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the OWNER.

### 2.5 NOTICE OF THIRD PARTY CLAIMS

Pursuant to Public Contract Code Section 9201, the OWNER shall provide Contractor with timely notification of the receipt of any third-party claim relating to the Contract. The OWNER is entitled to recover reasonable costs incurred in providing such notification.

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## **ARTICLE 3 - THE CONTRACTOR**

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### **3.1 DEFINITION**

The term "Contractor" shall have the meaning prescribed in Article 1.

### **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

#### **3.2.1 CONTRACTOR**

The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences of its Work necessary to meet the Construction Schedule, procedures, and coordinating all portions of the Work under the Contract to meet the Construction Schedule, unless the Contract gives other specific instructions concerning these matters. If any of the Work is performed by other contractors retained directly by the OWNER, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Construction Schedule pursuant to the requirements of Article 6. Specific duties of the Contractor shall be in accordance with the applicable provisions of the California Code of Regulations (Titles 19 and 21), the California Building Code (formerly Title 24 of the Code of Regulations), and the Uniform Building Code. Contractor shall fully comply with any and all reporting requirements of Education Code §§ 39151 and 81141 in the manner prescribed by the applicable provisions of the California Code of Regulations (Titles 19 and 21), the California Building Code (formerly Title 24 of the Code of Regulations), and the Uniform Building Code.

#### **3.2.2 CONTRACTOR RESPONSIBILITY; INDEPENDENT CONTRACTOR**

The Contractor shall be responsible to the OWNER for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors. OWNER retains Contractor on an independent contractor basis and Contractor is not an employee, agent or representative of the OWNER. Contractor represents that it is fully experienced and properly qualified to perform the class of Work provided for in this Contract and that it is properly licensed, equipped, organized, and financed to perform the Work. Contractor shall maintain complete control over its employees and its subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. Contractor shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

#### **3.2.3 OBLIGATIONS NOT CHANGED BY ARCHITECT'S ACTIONS**

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract either by activities or duties of the Architect in the Architect's administration of the Contract or by tests, inspections, or approvals required or performed by persons other than the Contractor.

#### **3.2.4 ACCEPTANCE/APPROVAL OF WORK**

The Contractor shall be responsible to determine when any completed portions of the Work already performed under this Contract or provided pursuant to Article 6 are suitable to receive subsequent work thereon.

### **3.2.5 STATE LICENSE BOARD NOTICE**

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

## **3.3 SUPERINTENDENT**

### **3.3.1 CONTRACTOR'S REPRESENTATIVE**

The Contractor shall provide a competent Superintendent, as well as any assistants the Superintendent may need, who shall be in attendance at the Project site at all times that any Work is in progress and at any time that any employee or Subcontractor of Contractor is present at the Work Site. The Superintendent, who may also be referred to as the "Contractor's Representative," shall represent the Contractor, shall have the authority to act on behalf of the Contractor for all purposes of the Contract and shall be available to the OWNER, Architect and Inspector of Record at all reasonable times. Any communications given to the Contractor's Representative shall be as binding as if given to the Contractor. Superintendent must be able to proficiently speak, read and write in English. Arrangements for responsible supervision, acceptable to the OWNER, shall be made for emergency Work which may be required. Contractor's approved Contractor's Representative shall devote full time to the Project and will supervise all Work on site (not a working foreman). Should Contractor wish to reduce the level of Contractor's Representative effort to part-time, he may do so only with prior written approval of the OWNER and upon submission and approval of a Change Order granting applicable monetary credit to the OWNER.

Prior to the commencement of work on the Project, Contractor shall notify the OWNER of the person(s) who will act as the Contractor's Representative and staff for the Project. The OWNER and Architect shall review the resume(s) of the proposed Contractor's Representative and staff, and approve or reject the proposed Contractor's Representative and staff. Should the Contractor wish to remove the Contractor's Representative or any other staff member for any reason, Contractor may substitute another employee of at least equal competence only with the prior written approval of the OWNER. For any change in the Contractor's Representative, Contractor shall provide, at its sole cost and expense, at least ten (10) Working Days of on-site training and transitional guidance for the new Contractor's Representative, with the prior Contractor's Representative if possible, otherwise with a person who is fully and adequately knowledgeable about the Project.

Contractor shall provide a project manager and assistants, as necessary, who shall administer and manage the Work. OWNER, in its reasonable discretion, can require increased percentage dedication and percentage presence on the Project Site with no extra cost to OWNER to the extent that such additional presence is required due to an accelerated schedule caused by Contractor delays.

### **3.3.2 STAFF**

The Contractor and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work;

organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract.

The OWNER requires the Contractor to provide the following full-time project personnel, at a minimum: 1 Superintendent, 1 Assistant Superintendent, 1 Project Administrator and 2 Project Engineers. All full-time personnel are subject to all the requirements established in Section 3.3.1. All other positions can be made or scheduled at the Contractor's discretion.

### **3.3.3 RIGHT TO REMOVE**

OWNER shall have the right, but not the obligation, to require the removal from the Project of the Contractor's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project.

## **3.4 LABOR AND MATERIALS**

### **3.4.1 CONTRACTOR TO PROVIDE**

Unless otherwise provided in the Contract, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, 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.

### **3.4.2 QUALITY**

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and shall be of such quality so that work in accordance with the standards of construction set forth in Contract will result.

### **3.4.3 REPLACEMENT**

Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract, may be disapproved and condemned by the OWNER, in which case, they shall be removed and replaced by the Contractor.

### **3.4.4 DISCIPLINE**

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract in accordance with paragraph 5.5.1 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### **3.4.4.1 WORKERS**

Any person in the employ of the Contractor whom Construction Manager or the Owner's Representative may deem incompetent or unfit shall be dismissed from the Work and shall not be re-employed on this Project except with the written Approval of the Owner's Representative.

In the event that Contractor dismisses an employee pursuant to this provision, Contractor shall inform the OWNER of said dismissal in its incident report to the OWNER.

#### **3.4.5 LABOR TO BE EMPLOYED**

The Contractor shall not employ workers, means, materials or equipment which may cause strikes, work stoppages or any disturbances by workers employed by the Contractor, or other contractors or subcontractors on or in connection with the Work or the Project. The Contractor agrees that all disputes as to jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the Work is being performed and that it shall be bound and abide by all such adjustments and settlements of jurisdictional disputes, provided that the provisions of this Article shall not be in violation of or in conflict with any provisions of law applicable to the settlement of such disputes. Should the Contractor fail to carry out or comply with any of the foregoing provisions, the College shall have the right, in addition to any other rights and remedies provided by this Agreement or the Contract Documents or by law, after three (3) days written notice, to terminate this Agreement or any part thereof or the employment of the Contractor for all or any portion of the Work pursuant to the termination provisions set forth in the General Conditions.

#### **3.5 WARRANTY**

The Contractor warrants to the OWNER and Architect that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty does not cover damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty/guarantee period begins on the day the OWNER records a Notice of Completion to the County Recorder per Section 9.9.2 hereof.

Immediately upon receipt of written notice from the OWNER, but in no event later than one (1) business day thereafter, the Contractor shall repair or replace, at its own expense, any defective material or Work which may be discovered before Notice of Completion or within the above guaranty period, any material or Work damaged thereby, and all adjacent material or Work which may be displaced in connection with the repair or replacement required hereunder. Inspection of or failure to inspect the Work or the Project by the OWNER shall not relieve the Contractor from these obligations. The Contractor shall notify the OWNER upon completion of the repairs.

If the Contractor fails to repair or replace the material or Work as indicated in the preceding paragraph within five (5) business day (or earlier if due to circumstances which could cause waste of resources or danger to life or property if such circumstances and time period is noted in written notice) from the date of receipt of a written notice from the OWNER notifying the Contractor of the defect, the OWNER, with its own forces or by contract, may proceed with the repair or replacement and assess the costs thereof against the Contractor, and which amount may be withheld or retained from any portion of the Contract Sum outstanding and otherwise owing to the Contractor. When necessary to keep school open or safely operating, the OWNER, with its own forces or by contract, may make such repairs or replacement without advance notice to the Contractor and assess the costs thereof against the Contractor. Such action by the OWNER will not relieve the Contractor of the guaranties provided in this Section or elsewhere in the Contract Documents. If Contractor fails to repair or replace any Work or material covered by any guaranty or warranty set forth in the



Contract Documents within the applicable guaranty or warranty period, the OWNER may elect to initiate proceedings to declare the Contractor a non-responsible bidder on future OWNER projects per section 14.2.2.

Whether the Contractor or the OWNER actually repairs or replaces defective material or Work within the applicable guaranty period pursuant to either of the preceding two paragraphs, the warranty period shall begin anew from the date of completion of the repair or replacement. For example, if an item with a one year warranty requires repair or replacement during the guaranty period, then the guaranty for that item shall expire one (1) year after the completion of the repair or replacement of such item and not one (1) year after Notice of Completion.

Contractor further warrants that title to all Work, materials and equipment will pass to the OWNER upon receipt of payment by Contractor therefor, free and clear of all lien rights, stop notice rights, security interests or encumbrances (collectively referred to as liens). The Contractor shall also defend the OWNER, at the Contractor's sole cost and expense, against any and all actions, lawsuits or proceedings brought against the OWNER as a result of claims, liens or stop notices filed against the OWNER, the Project Site or otherwise. The Contractor hereby indemnifies, defends and holds harmless the OWNER against any and all such claims, liens and stop notices and agrees to pay any judgment, lien or stop notice claim against the OWNER or the OWNER's property resulting from any actions, lawsuits or proceedings brought to enforce such liens, stop notices or other claims.

This Section does not in any way limit the guaranty on any items for which a longer guaranty is specified, or on any items for which a manufacturer gives a guaranty for a longer period. Contractor shall furnish the OWNER all appropriate guaranty or warranty certificates immediately upon completion of the Project.

No payment by the OWNER, or any partial or entire use or occupancy of the Project by the OWNER, shall constitute an acceptance of any Work not performed in accordance with the Contract Documents and all applicable laws, rules and regulations.

### **3.6 TAXES AND CONTRIBUTIONS**

The Contractor for the Contract Sum herein provided, hereby accepts and assumes exclusive liability for and shall indemnify, protect and hold harmless the College and the Construction Manager from and against the payment of:

1. All contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the Unemployment Insurance Law of any State, Federal Social Security Act, Federal, State, County and/or Municipal Tax Withholding Laws, or any other law, measured upon the payroll of or required to be withheld from employees, by whomsoever employed, engaged in the Work to be performed and furnished under this Agreement.

2. All sales, use, personal property and other taxes (including interest and penalties thereon) required by any Federal, State, County, Municipal or other law to be paid or collected by the Contractor or any of its subcontractors or vendors or any other person or persons acting for, through or under it or any of them, by reason of the performance of the Work or the acquisition, ownership, furnishing or use of any materials, equipment, supplies, labor, services or other items for or in connection with the Work.

3. All pension, welfare, vacation, annuity and other union benefit contributions payable under or in connection with labor agreements with respect to all persons, by whomsoever employed, engaged in the Work to be performed and furnished under this Agreement.

In furtherance of, and in addition to the agreements, duties obligations and responsibilities of the Contractor with respect to the payment of sales, use, personal property and other taxes set forth herein,

the Contractor agrees to reimburse and otherwise indemnify the College and Construction Manager for any expenses, including legal fees and litigation arising from, or related to the Contractor's failure to pay any sales, use, personal property or other taxes based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for or in connection with the Work.

### **3.7 PERMITS, FEES AND NOTICES**

#### **3.7.1 PAYMENT**

The Contractor shall secure and pay for all permits, including inspection costs and governmental and utility fees, and licenses which are (1) necessary for the proper execution and completion of the Work; (2) customarily secured after execution of the Contract; and (3) legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). Except as provided for herein, the OWNER will reimburse Contractor for the actual documented costs of such permits and governmental fees, and licenses, with no overhead or profit added. The Contractor shall be solely responsible for the costs of city business licenses and hauling permits, and the OWNER shall not reimburse Contractor for any such costs. OWNER shall be responsible for all testing and inspection as required by the DSA as set forth in paragraph 13.5.2.

#### **3.7.2 COMPLIANCE**

The Contractor shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work.

#### **3.7.3 DOCUMENTS COMPRISING THE CONTRACT**

If the Contractor observes that portions of the Contract are at variance with any applicable law, statute, ordinance, building code, rule or regulation, the Contractor shall promptly notify the Architect and OWNER in writing, and necessary changes shall be accomplished by appropriate modification.

#### **3.7.4 RESPONSIBILITY**

If the Contractor performs Work contrary to any law, statute, ordinance, building code, rule or regulation, the Contractor shall assume full responsibility for such Work and shall bear the attributable cost. Contractor assumes no responsibility of existing work or pre-existing conditions.

### **3.8 ALLOWANCES**

#### **3.8.1 DEFINITION**

An allowance is an amount established in the Contract Documents for the cost of specific items not prescribed in detail, with the provision that any variation between the allowance amount and the final cost of the specified items, will be made by Change Order to adjust the Contract Sum. The un-spent balance of an allowance is returned to the OWNER via credit/deductive Change Order.

#### **3.8.2 CONTRACT**

The Contractor shall include in the Contract Sum all allowances stated in the Contract. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the OWNER may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable objection.

### **3.8.3 SCOPE**

#### **3.8.3.1 PROMPT SELECTION**

Materials and equipment under an allowance shall be selected promptly by the OWNER to avoid delay to the Work.

#### **3.8.3.2 COVERED ALLOWANCE COSTS**

Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, etc., as delineated in paragraph 7.7.4.

#### **3.8.3.3 COST INCLUDED IN CONTRACT SUM**

Contractor's costs for unloading and handling at the Site, storage, security, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances.

#### **3.8.3.4 CONTRACT SUM ADJUSTMENT**

Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual cost and the allowances under paragraph 3.8.3.2 and the change in the Contractor's costs under paragraph 3.8.3.3.

### **3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES**

#### **3.9.1 REQUIREMENTS**

Refer to Specifications, Division 1.

#### **3.9.2 FAILURE TO MEET REQUIREMENTS**

Failure of the Contractor to provide proper schedules as required by this paragraph may, at the sole discretion of OWNER, constitute grounds to withhold, in whole or in part, progress payments to the Contractor provided all prior undisputed invoices are paid in full.

### **3.10 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain a record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain approved Shop Drawings, Product Data, Samples, and similar required submittals. These documents shall be available to the Construction Manager and Architect, and shall be delivered to the Construction Manager and Architect for delivery to the OWNER upon completion of the Work.

### **3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

Paragraphs 3.11.1-3.11.3 pertain to shop drawing, product data, and sample submittals consistent with the requirements in the Specifications Divisions 2-16, not requests for substitutions. To request a material, product, thing or service substitution, use the procedure defined in paragraph 3.11.5, "Substitutions."

### 3.11.1 SUBMITTALS DEFINED

#### 3.11.1.1 *Shop Drawings*

The term "shop drawings" means drawings, diagrams, schedules, and other data specially prepared by Contractor or a Subcontractor to illustrate some portion of the Work.

Shop drawings shall establish the actual detail of all manufactured or fabricated items, indicate proper connection and relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

#### 3.11.1.2 *Product Data*

The term "Product data" means illustrations, standard schedules, performance charts, manufacturer specifications, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate or describe materials or equipment for some portion of the Work.

#### 3.11.1.3 *Samples*

The term "samples" means physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged. All Work shall be in accordance with the approved samples.

#### 3.11.1.4 *Contractor's Responsibility*

Contractor shall obtain and submit all shop drawings, product data and samples in accordance with the Construction Schedule as required in Division 1 of the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor or subcontractor, unless otherwise required in writing by the Construction Manager. No extensions of time will be granted to Contractor because of its failure to have shop drawings, product data and samples submitted on time as required.

By submitting shop drawings, product data, and samples, the Contractor or submitting party (if other than Contractor) represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract. Contractor and Subcontractors shall be solely responsible for any quantities, which may be shown on the shop drawings. At the time of submission, any deviation in the shop drawings, product data, or samples from the requirements of the Contract shall be narratively described in a transmittal accompanying the submittal. Review by OWNER and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings, product data, and samples in accordance with the Contract. Any submission, which in Architect's opinion is incomplete, contains numerous errors, or has been checked only superficially, will be returned unreviewed by the Architect for resubmission by the Contractor.

The deadline by which Contractor must obtain and submit all shop drawings, product data and samples, is no later than **twenty-one (21) days after** Contractor receives the Notice of Award letter for the Project from OWNER OR is no later than the timeframes as stated within the Specifications.

### 3.11.1.5 ***Extent of Review***

Only submittals required to be submitted by the Contract shall be reviewed.

The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract. The Architect will not verify dimensions and field conditions. The Architect's review shall neither be construed as a complete check nor relieve the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission.

### 3.11.2 **SUBMITTAL PROCEDURE**

#### 3.11.2.1 ***Transmittal Letter and Other Requirements***

Contractor shall submit all submittals to the Construction Manager, who will forward the submittals to the Architect for review.

Contractor shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract. All submittals must be accompanied by a Transmittal Letter with the following:

- A. Contractor's Name, address, and telephone number.
- B. Submittal sequence number, and date of submittal identifying whether initial or revised.
- C. Project Name.
- D. Name, address, and telephone number of subcontractor, supplier, or manufacturer.
- E. List of attachments and reference Specification Section number and Drawing Number, including detail number, for identification of each item.
- F. A narrative that either:
  - 1. Indicates that submittal conforms in all respects to the requirements in the Contract Documents, or
  - 2. Clearly states any qualifications, departures, or deviations from the Contract.
- G. A clear space for the stamps of Architect.

Submittals shall be numbered consecutively, and the numbering system shall be retained throughout all revisions.

A separate transmittal letter shall be used for each specific item or class of material or equipment for which a submittal is required. Contractor may use a single transmittal letter for submittal of various items (a "multiple-page submittal") only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency dictates a review of the items as a whole. A multiple-page submittal shall be collated into sets and each set shall be stapled or bound, as appropriate, when submitted.

#### 3.11.2.2 ***Copies Required***

Each submittal shall include **one (1) electronic copy** in AutoCAD (2000 or newer) and **three (3)** legible print copies (upon approval, one each will be retained by the Contractor, Construction Manager/Inspector and Architect) of each drawing, including fabrication, erection, layout and setting

drawings, and such other drawings as required under the various sections of the Specifications until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; wiring diagrams and controls; schedules; all calculations; and other pertinent information as required. During the closeout of the Project, Contractor must provide **one (1) electronic copy of all** approved submittals in a format reasonably acceptable to OWNER.

#### 3.11.2.3 **Corrections**

The Contractor shall make any corrections required by Architect and shall resubmit, as required by Architect pursuant to paragraph 3.11.2.4, corrected copies of shop drawings, product data or samples until approved. Contractor shall direct specific attention in writing on resubmitted submittals to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than **one (1) re-review** of required submittals of shop drawings, product data, or samples are subject to charge to the Contractor pursuant to paragraph 4.4.

#### 3.11.2.4 **Review and Approval Prior to Commencement of Work**

The Architect shall review the submittals and return them **within five (5) calendar days** after receiving them to the Construction Manager, who will then forward them to the Contractor with one of these responses:

- A. APPROVED WITH NO EXCEPTIONS-PROCEED.  
Construction Manager shall return **one (1) copy to the Contractor and one (1) copy to the DSA Inspector**, both with the Architect's stamp and signature applied thereto.
- B. APPROVED AS NOTED-PROCEED CONDITIONALLY:  
Contractor shall make the required corrections and resubmit to Construction Manager **within five (5) calendar days** after Contractor's receipt of the returned submittal.
- C. REJECTED-RESUBMIT-DO NOT PROCEED:  
Contractor must completely revise and resubmit the submittal to Construction Manager **within five (5) calendar days** after Contractor's receipt of the returned submittal.

No portion of the Work requiring a submittal shall be commenced until the submission has been reviewed by OWNER and Architect, unless specifically directed in writing by the OWNER. All such portions of the Work shall be in accordance with Architect's approved response to the submittal.

#### 3.11.3 **SAMPLE SUBMITTAL PROCEDURE**

In addition to the requirements in paragraph 3.11.2, Contractor shall:

- A. Submit samples in triplicate, unless otherwise required in the Specifications or a greater number is required to illustrate range. In case a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, **a sufficient number of samples** of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics, which will be present in the finished products.

- B. Properly identify all samples with the name of the submitting party, date, submittal sequence number, the Project Name, and the purpose for which the samples are submitted.

Include a tag, label, or sticker with a clear space for the review stamp of Architect.

#### 3.11.3.1 ***Labels and Instructions***

Samples of materials, which are generally furnished in containers bearing the manufacturers' descriptive labels and printed application instructions, shall, if not submitted in standard containers, be supplied with such labels and application instructions.

#### 3.11.4 **SUBSTANTIAL COMPLETION SUBMITTAL PROCEDURE**

##### 3.11.4.1 ***Inspection Request and Substantial Completion Submittals***

At least **15 calendar days** before the date the Contractor considers the Work, or a portion thereof, is substantially complete, the Contractor shall send a written inspection request, together with the Project Closeout Checklist and attachments, to the Construction Manager. Construction Manager shall forward copies of Contractor's inspection request, Project Closeout Checklist and attachments (collectively the "Substantial Completion Submittal") to the Architect, OWNER, and Inspector. Contractor will also provide the following submittals within the time period indicated above:

##### A. As-Builts and Annotated Specifications

- .1 Contractor shall submit accurate, complete sets of final Drawings red lined with changes due to change orders, field orders and installed conditions showing the Contractor's Work "as built" which Contractor has prepared and maintained on a current basis throughout the progress of the Work. Contractor shall deliver the As-Built Drawings in an electronic format reasonably acceptable to OWNER and Annotated Specifications to OWNER, in accordance with the Construction Schedule, certifying them to be complete and accurately reflect the actual construction conditions of the Work.
- .2 The As Builts must clearly show all changes, revisions, and substitutions during construction, including without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features.
- .3 The Annotated Specifications must clearly show all changes, revisions, and substitutions during construction. The Annotations shall show which item(s) Contractor has furnished if a specification allows the Contractor to select one of several item brands, makes, or types of material or equipment.

##### B. "O & M" Manuals

- .1 Contractor shall obtain and furnish complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract, all warranties, and any additional data specifically requested under the various sections of the Specifications for each Division of the Work.

- .2 The manuals shall be arranged in the same order as the Specifications, indexed, and delivered in an electronic format reasonably acceptable to OWNER.
- .3 Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work.

#### 3.11.4.2 ***Punch List and Certificate of Substantial Completion***

After receiving a substantial completion inspection request with a Project Closeout Check List, As-Built, Annotated Specifications, and O&M Manuals duly completed and attached, Construction Manager shall notify Contractor of whether OWNER determined the Work (or designated portion) is substantially complete.

OWNER shall determine if the Work (or designated portion) is substantially complete with the assistance of the Construction Manager, Architect and Inspector. The OWNER, Construction Manager, Architect and Inspector shall conduct field reviews of the Work. The Construction Manager, Architect and Inspector shall make a recommendation to the OWNER concerning whether the Work is substantially complete.

Any review by the Architect, Construction Manager, Inspector or OWNER of Contractor's Substantial Completion Submittal shall not diminish or transfer any of Contractor's responsibilities or liabilities required by the Contract Documents.

##### A. OWNER Determines Work is not Substantially Complete

If the OWNER determines the Work (or designated portion) is **not** substantially complete, OWNER shall send written notice to the Contractor of the items requiring correction. **No extension of time shall be granted.**

- .1 Contractor shall then promptly complete the items noted by the OWNER necessary for Substantial Completion.
- .2 Contractor shall notify OWNER, Construction Manager and Architect when finished and request another inspection per 3.11.4.1.

##### B. OWNER Determines Work is Substantially Complete

If the OWNER determines that the Work (or designated portion) is substantially complete and accepts Contractor's Substantial Completion Submittal, the Construction Manager shall call for a Substantial Completion inspection.

- .1 Architect shall prepare the Punch List, and submit it to OWNER for approval. The Construction Manager and Inspector shall assist the OWNER in approving the Punch List.
  - (1) The Punch List is a comprehensive list of minor items to be completed or corrected within 30 calendar days after the date of issuance of the punch list.
  - (2) Failure to include an item on the Punch List shall not waive or otherwise alter the ultimate responsibility of the Contractor to complete all Work in strict accordance with the Contract Documents.



- .2 Construction Manager and Architect shall submit the Certificate of Substantial Completion, with the Punch List attached, to the Contractor and then the OWNER for their written approval. The Certificate of Substantial Completion shall establish:

- (1) the date Substantial Completion of the Work (or designated portion) occurred;
- (2) the responsibilities of the OWNER and Contractor with respect to security, maintenance, heat, utilities, damage to the Work (or designated portion), and liability(ies);

- C. If Substantial Completion, the Contractor fails to correct all "punch-list" items prior to the expiration of the 60 day period immediately following the issuance of the Certificate of Substantial Completion, the District shall withhold from the final payment, in addition to any other amounts that the District may be permitted to withhold pursuant to Sections 3.92 and 9.5.1 hereof, an amount equal to 150% of the Architect's estimated cost of the correction of all such items until the last of the items has been corrected. At the end of the 60 day period, if there are items remaining to be corrected, the District may request the Contractor in writing to make immediate correction of said items, and if the Contractor fails to make such correction within ten (10) days of the date of the written notice, the District may make the correction and deduct the costs incurred in connection therewith from the amount withheld therefore.

#### 3.11.4.3 **Warranties**

Contractor's warranties for the Work (or designated portion) shall commence on the date the OWNER records a Notice of Completion to the County Recorder per section 9.9.2 hereof.

#### 3.11.4.4 **Payment After Substantial Completion**

After issuing a Certificate of Substantial Completion and Punch List, and upon duly submitted Application from the Contractor, the OWNER may, in its sole and absolute discretion, make payment reflecting adjustment in retainage as provided by State law and the Contract Documents.

Unless OWNER approves in writing releasing retainage in this manner, the OWNER's obligation to release the Contractor's retention shall not arise until the entire Project is fully complete, accepted and approved by the Governing Board per Paragraph 9.9.2.

#### 3.11.4.5 **Delays After Substantial Completion**

Contractor claims for Compensable Delays shall not apply to any alleged delays occurring after Substantial Completion.

#### 3.11.5 **SUBSTITUTIONS**

##### 3.11.5.1 **One Product Specified**

Unless the Contract Documents state that no substitution is permitted, whenever in the Contract any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction is indicated or specified by name, make, trade name, or catalog number,

with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article, which shall be substantially equal or better in every respect to that so indicated or specified and will completely accomplish the purpose of the Contract.

#### 3.11.5.2 ***Two or More Products Specified; Substitution Requests***

When two or more acceptable products are specified for an item of the Work, along with the phrase "or equal", the choice between those two or more acceptable products will be up to the Contractor, unless the Contractor chooses to submit an "or equal" product to the OWNER for consideration. Contractor shall utilize the same product throughout the Project. If the Contractor wishes to request a substitution, he shall do so timely and in the manner specified below. If the required notice is not provided and an "or equal" substitution is requested, the OWNER, at its sole discretion, may refuse to consider the substitution unless the listed products specified are no longer commercially available. If the OWNER allows the substitution to be proposed despite the lack of proper notice, the Contractor will be invoiced by the OWNER for the professional fees incurred by the Architect or Architect's consultants in reviewing the proposed substitution.

#### 3.11.5.3 ***Substitution Request***

Requests for substitutions of products, materials, or processes other than those specified must be made in the format below. Any use of a product which is not specifically listed shall be deemed to be a substitution request, and shall comply with each and every provision of this paragraph 3.11.5.3.

All substitution requests shall be submitted **no later than the deadline specified stated below**. Any Requests submitted after such time will not be considered.

Each Substitution Request Form must be accompanied by evidence as to whether or not the proposed substitution:

- A. Is equal in quality and serviceability to the specified item;
- B. Will entail no changes in detail and construction of related work;
- C. Will be acceptable in consideration of the required design and artistic effect;
- D. Will provide no cost disadvantage to OWNER; and
- E. Will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts.

The burden of proof of these facts shall be upon the Contractor. The Contractor shall furnish with its request all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the OWNER in determining whether the proposed substitution is acceptable.

**The final decision shall be the OWNER's.** The written approval of the OWNER, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. OWNER may condition its approval of the substitution upon delivery to OWNER of an extended warranty or other assurances of adequate performance of the substitution.

The deadline by which Contractor must submit a request for substitution of products, materials or processes, is no later than the Bid Due date. Substitution requests will be reviewed during the bid evaluation period for conformance with the contract documents

After Bid Opening, if the contractor submitting the substitution is the lowest apparent bidder and the Substitution request is not acceptable to the OWNER, then the Contractor's bid shall be deemed non-responsive and will be rejected. The OWNER will then award the project to the next lowest responsive bidder

#### **3.11.5.4 *List of Manufacturers and Products Required***

Each Subcontractor shall prepare and submit to the Contractor within **thirty (30) days** of execution of its Subcontract, comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract, as may be required for Contractor's or Architect's preliminary approval. Such lists shall not be construed as a request for substitution of products, materials or processes specified in the Contract Documents. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data, and samples, which are required by the Contract, but rather as a base from which more detailed submittals shall be developed for the final review of the Contractor and the Architect.

#### **3.11.6 DEFERRED APPROVALS**

Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the Project Manual.

#### **3.12 CUTTING AND PATCHING**

##### **3.12.1 SCOPE**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

##### **3.12.2 CONSENT**

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the OWNER or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the OWNER or a separate contractor except with written consent of the OWNER and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the OWNER or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. All cutting shall be done promptly, and all repairs shall be made as necessary.

##### **3.12.3 STRUCTURAL MEMBERS**

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Contractor's risk, subject to replacement at its own expense and without reimbursement under the Contract. Agency approvals shall be obtained by the Architect, not by the Contractor.

##### **3.12.4 SUBSEQUENT REMOVAL**

Permission to patch any areas or items of the Work shall not constitute a waiver of the OWNER's or the Architect's right to require complete removal and replacement of the areas of items of the Work if, in the opinion of the Architect or the OWNER, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract.

### **3.13 CLEANING UP**

#### **3.13.1 CONTRACTOR'S RESPONSIBILITY**

The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a neat and orderly condition. All crates, cartons, paper, and other flammable waste materials shall be removed from Work areas and properly disposed of at the end of each day. The Contractor shall remove from and about the Site the waste materials, rubbish, tools, construction equipment, machinery, and materials no longer required for the Work. Contractor shall also work with the OWNER's Monitoring Biologist to ensure that all construction made potential refugia (pipes, debris. Piles, etc.) for protected and sensitive species to nest are properly closed, covered or capped.

#### **3.13.2 FAILURE TO CLEANUP**

If the Contractor fails to clean up as provided in the Contract after 2 working days written notice to Contractor, the OWNER may do so, and the cost thereof shall be invoiced to the Contractor and deducted from the next progress payment. Each Subcontractor shall have the responsibility for the cleanup of its own Work. If the Subcontractor fails to clean up, the Contractor may do so and back-charge the Subcontractor.

#### **3.13.3 CONSTRUCTION BUILDINGS**

When directed by the OWNER or the Architect, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor. If the Contractor does not remove the tools, equipment, machinery, and materials within fifteen (15) days after completion of its Work, then they shall be deemed abandoned, and the OWNER can dispose of them for its own benefit in whatever way it deems appropriate. Any costs incurred for such services shall be the sole responsibility of the Contractor, which costs may be invoiced to the Contractor (less salvage value, if any) and deducted from the final payment.

### **3.14 ACCESS TO WORK**

The Contractor shall provide the OWNER, the Architect, the Construction Manager and the Inspector, access to the Work in preparation and progress wherever located.

### **3.15 ROYALTIES AND PATENTS**

#### **3.15.1 PAYMENT AND INDEMNITY**

The Contractor shall pay all royalties and license fees applicable to the Work. The Contractor shall defend suits or claims of infringement of patent rights arising out of the Work and shall hold the OWNER and the Architect harmless from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract. However, if the Contractor has reason to believe the required design, process, or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

#### **3.15.2 REVIEW**

The review by the Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by

the Contractor in violation of any patent or other rights of any person or entity.

### **3.16 INDEMNIFICATION**

#### **3.16.1 SCOPE: CONTRACTOR**

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the College, Construction Manager, the Owner's Representative, the Architect, and their respective officials, officers, agents, employees, and representatives ("Indemnitees") from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages (including without limitation the payment of all reasonable attorneys' fees and other related costs and expenses) or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to tangible property or persons (including wrongful death) arising out of or resulting from the performance of the Work or this Agreement (including claims made by subcontractors for nonpayment), to the extent that the acts, omissions or willful misconduct are caused by the Contractor or anyone employed directly or indirectly by any of them. Contractor shall defend, at Contractor's own cost, expense and risk, with legal counsel of Indemnitee's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against College, Construction Manager, the Owner's Representative, the Architect, and their respective officials, officers, agents, employees and representatives. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the College, Construction Manager, the Owner's Representative, the Architect, and their respective officials, officers, agents, employees, and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse the College, Construction Manager, the Owner's Representative, the Architect, and their respective officials, officers, agents, employees, and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code Section 2782.

Nothing contained herein shall be deemed to obligate the Contractor to defend, indemnify, and hold harmless Construction Manager, the Owner's Representative, the College or any of the other Indemnitees, against liability for damages or any other loss, damage or expense sustained, suffered or incurred on account of death or bodily injury to active persons or injury to property caused by the sole or active negligence or willful misconduct of the College, Construction Manager, the Owner's Representative or any of the other Indemnitees set forth herein. Therefore, if it is determined by legal proceedings or agreement, that the Contractor has no direct contributory or incidental negligence or other obligation to Construction Manager, the Owner's Representative, the College, or any Indemnitee, and that the Contractor is in no way a proper party to a particular claim, then the Contractor shall not be obligated to hold Construction Manager, the College or any Indemnitees harmless with respect to said claim. However, until such determination is made by legal proceedings or agreement, or if the Contractor is found to have any degree of direct or contributory negligence or if it is determined that the Contractor is in any way or to any degree a proper party to said claim, then the Contractor's obligations under all of the terms and provisions shall remain in full force and effect.

Nothing in this provision, or elsewhere in this Agreement, shall be deemed to relieve the Contractor of its duty to defend Construction Manager, the Owner's Representative, the College, or any Indemnitee, as specified under this Article, pending a determination of the respective liabilities of the Contractor, Construction Manager, the Owner's Representative, the College, or any Indemnitee, by legal proceeding or agreement.

In furtherance to, but not in limitation of the indemnity provisions in this Agreement, Contractor hereby expressly and specifically agrees that its obligation to indemnify, defend and hold harmless as provided in this Agreement shall not in any way be affected or diminished by any statutory or constitutional

immunity it enjoys from suits by its own employees or from limitations of liability or recovery under workers' compensation laws.

### **3.16.2 SCOPE: SUBCONTRACTORS**

#### **3.16.2.1 *Indemnity***

The Contractor shall require all Subcontractors to comply with the above indemnification requirements.

#### **3.16.2.2 *Joint and Several Liability***

The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity.

### **3.16.3 NO LIMITATION**

The Contractor's and the Subcontractor's obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property and death of any person; for breach of any warranty, express or implied; for failure of the Contractor or the Subcontractor to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work.

### **3.17 GATE USAGE FOR DELIVERIES**

Contractor shall notify in writing, and assign its employees, material men and suppliers, to such gates or entrances as may be established for their use by the Construction Manager and in accordance with such conditions and at such times as may be imposed. Strict compliance with gate usage procedures shall be required by the Contractor, who shall be responsible for such gate usage by its employees, material men, suppliers, subcontractors, and their material men and suppliers.

Contractor shall schedule the work and the presence of its employees at the jobsite and any deliveries of supplies or materials by its materialmen and suppliers to the Site on such days, and at such times and during such hours, as specified herein and as may be required by Construction Manager. Contractor shall assume responsibility for such schedule compliance not only for its employees for all its material men, suppliers and subcontractors, and their material men and suppliers.

Contractor shall indemnify and hold harmless the College, the Construction Manager, and the Owner's Representative from and against any liability, loss, damages, cost, claims, awards, judgments, fines, penalties, expenses, including attorneys' fees and costs, which may be incurred by as a result of Contractor's or its lower tier subcontractor's failure to fulfill the provisions stated above.

### **3.18 CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY**

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the College and the Construction Manager in order that proper steps may be taken to have the change reflected on the Contract.

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## **ARTICLE 4 - ADMINISTRATION OF THE CONTRACT**

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### **4.1 ARCHITECT**

#### **4.1.1 DEFINITION**

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Contract, and is referred to throughout the Contract as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

#### **4.1.2 MODIFICATION**

Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract shall not be restricted, modified, or extended without written consent of the OWNER and Architect. Consent shall not be unreasonably withheld.

#### **4.1.3 TERMINATION**

In the case of the termination of the Architect, the OWNER may appoint an architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract shall be that of the former architect.

### **4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT.**

#### **4.2.1 STATUS**

The Architect will provide administration of the Contract as described in the Contract and will be the OWNER's representative during construction, until final payment is due, and during the one (1) year period following the commencement of any warranties. The Architect will advise and consult with the OWNER. The Architect will have authority to act on behalf of the OWNER only to the extent provided in the Contract, unless otherwise modified by in writing in accordance with other provisions of The OWNER/Architect Agreement. The Architect will have all responsibilities and power established by law, including the applicable provisions of the California Code of Regulations (Titles 19, 21 and/or 24).

#### **4.2.2 SITE VISITS**

The Architect will visit the Site at intervals necessary in the judgment of the Architect or as otherwise agreed by the OWNER and the Architect in writing to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of its on-Site observations, the Architect will keep the OWNER informed of the progress of the Work. The Contractor will provide the Architect access to all parts of the Work at any time.

#### **4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY**

The Architect shall not have control over, charge of, or be responsible for construction means, methods, techniques, schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt, installation, or for safety precautions and programs in connection with the Work, since these are solely

the Contractor's responsibility under the Contract. The Architect shall not be responsible for the Contractor's, Subcontractors', material or equipment suppliers', or any other person's schedules or failure to carry out the Work in accordance with the Contract. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, their agents or employees, or any other persons or entities performing or supplying portions of the Work. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Contractor. The Architect's duties shall not extend to the receipt, inspection, and acceptance on behalf of the OWNER of furniture, furnishings, and equipment at the time of their delivery to the premises and installation.

#### **4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract, or when direct communications have been specially authorized, the OWNER and Contractor shall communicate through the Construction Manager, and shall contemporaneously provide the same communications to the Architect. Communications by and with the Architects' consultants shall be through the Architect. Communications by and with Subcontractors and material or equipment suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager, and shall be contemporaneously provided to the Architect.

#### **4.2.5 PAYMENT APPLICATIONS**

Pursuant to Article 9, based on the Architect's observations, the Contractor's Applications for Payment, and the Inspector's approval, the Architect will review and make recommendations to the OWNER regarding the amounts due the Contractor on the Certificates for Payment.

#### **4.2.6 REJECTION OF WORK**

In addition to the rights, duties, and obligations of the Inspector under this Article, the Architect may recommend to the OWNER that the OWNER reject Work which does not conform to the Contract. Whenever the Architect considers it necessary or advisable to achieve the intent of the Contract, the Architect may recommend to the OWNER that the OWNER require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

#### **4.2.7 CHANGE ORDERS**

The Construction Manager will prepare Change Orders and Construction Change Directives. The Construction Manager may authorize minor or emergency changes in the Work as provided in paragraph 7.1.2. The Architect will review Change Order Requests and prepare drawings and specifications to incorporate the changes into the Work.

#### **4.2.8 WARRANTIES UPON COMPLETION**

Contractor warrants that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract Documents; and that all Work conforms to the Contract Document requirements and is free of any defect whether performed by the Contractor or any subcontractor or



supplier. All warranty periods for the Work shall be one year commencing from the day the Owner records the Notice of Completion to the County Recorder per Section 9.9.2 hereof.

Without limiting the generality of the foregoing, the Contractor warrants to the College, the Architect and Construction Manager, and each of them, that all materials and equipment furnished under this Agreement will be new, unless otherwise required or permitted by the Contract Documents or College, that the Work performed pursuant to this Agreement will be free from defects and that the Work will strictly conform with the requirements of the Contract Documents. Work not conforming to such requirements, including substitutions not properly approved and authorized, shall be considered defective. All warranties contained in this Agreement and in the Contract, Documents shall be in addition to and not in limitation of all other warranties or remedies required and/or arising pursuant to applicable law.

Prior to final acceptance of the Project by Construction Manager and the College and Final Payment by the College, the Contractor shall furnish to Construction Manager, for the benefit of the College, all warranty and guarantee documents. Said warranties shall include the Contractor's one year warranty, as well as all warranties, express or implied, from subcontractors, manufacturers, or suppliers for Work performed and materials and equipment furnished under this Agreement. The Contractor shall: (i) Obtain for the College all warranties that would be given in normal commercial practice; (ii) Require all warranties to be executed, in writing, for the benefit of the College; (iii) assign a dedicated person who will be the single point of contact to the OWNER to resolve all warranty issues covered by any warranty period; and (iii) Enforce all warranties for the benefit of the College, unless otherwise directed in writing by the Construction Manager or the College.

After Project completion, the College shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within one (1) calendar days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect, or damage; the College shall have the right to replace, repair, or otherwise remedy the defect, or damage at the Contractor's expense.

In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract Documents, the College may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.

This Article shall not limit the College's rights under this Agreement or with respect to latent defects, gross mistakes, or fraud. The College specifically reserves all rights related to defective work, including but not limited to the defect claims pursuant to Code of Civil Procedure Section 337.15.

#### **4.2.9 INTERPRETATION**

The Architect will interpret and decide matters concerning performance under and requirements of the Contract on written request of either the OWNER or the Contractor. The Architect's response to such request will be made with reasonable promptness, while allowing sufficient time in the Architect's professional judgment, to permit adequate review and evaluation of request.

#### **4.2.10 ADDITIONAL INSTRUCTIONS**

##### **4.2.10.1 *Architect's Interpretations and Decisions***

Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract and will be in writing or in the form of drawings. When making

such interpretations and decisions, the Architect will endeavor to secure faithful performance by both the OWNER and the Contractor, will not show partiality to either. The Architect will not be liable for the result of interpretations or decisions so rendered in good faith. The Work shall be executed in conformity with, and the Contractor shall do no Work without, approved drawings, Architect's clarifying instructions, and/or submittals.

#### **4.2.10.2 *Typical Parts and Sections***

Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections which are essentially of the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.

#### **4.2.10.3 *Dimensions***

Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on Drawings, Architect shall supply them on request. The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the Contract.

### **4.3 INSPECTOR OF RECORD**

#### **4.3.1 GENERAL**

One or more project inspectors employed by the OWNER and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of the applicable provisions of the California Code of Regulations (Titles 19, 21 and/or 24). The Inspector(s) duties will be as specifically defined in the California Code of Regulations.

Work done or covered up in the absence of specified or prescribed inspection may be required to be removed and replaced under proper inspection. Contractor shall bear the entire cost of performing all the Work and furnishing all the material necessary for the removal and its subsequent replacement irrespective of whether or not the Work is found to be defective. Whenever Contractor arranges to work at night, or at any time when the Work is not usually in progress, or to vary the period during which the Work is carried on each day, Contractor shall give the Owner forty-eight (48) hours prior notice so that proper inspection may be provided. Cost for off-hour work that has not originally been scheduled per the Contractor's baseline schedule will be assessed and invoiced by the OWNER to the Contractor.

Contractor shall furnish the Inspector with reasonable facilities (including, without limitation, a fully functioning and furnished field office). Inspection of the Work shall not relieve the Contractor from any obligation to fulfill the Contract. The Inspector shall have the authority to stop Work whenever safety provisions of the Contract Documents are not being complied with, and Contractor shall instruct its subcontractors and employees accordingly.

#### **4.3.2 INSPECTOR'S DUTIES**

All Work shall be under the observation of or with the knowledge of the Inspector. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the drawings or specifications

nor shall the Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects.

The Inspector will not be used as quality control for the Contractor. If the Contractor requests an inspection of areas or assemblies that are evidently or excessively incomplete, and/or if, in the reasonable opinion of the District, the Contractor is using the inspection as a means and way to define or determine a scope of Work or to accelerate the Work of a Subcontractor instead of a means to finally inspect a completed portion of the Work, then the Contractor shall be liable for all costs and expenses that the District may incur in connection with any such inspection, inclusive of, but not limited to, personnel salaries, wages, consultant fees, transportation costs, etc., which amounts the District may retain or withhold from the Contract Sum in accordance with Section 13.5.6 hereof.

#### **4.3.3 INSPECTOR'S AUTHORITY TO REJECT OR STOP WORK**

The Inspector shall have the authority to reject work that does not comply with the provisions of the Contract. In addition, the Inspector may stop any Work which poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly.

#### **4.3.4 INSPECTOR'S FACILITIES**

The Contractor shall provide the temporary facilities for both the Inspector and the Construction Manager as provided in Division 1 of the Specifications.

### **4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES**

#### **4.4.1 GENERAL**

If at any time prior to the completion of the requirements under the Contract, through no fault of its own, the OWNER is required to provide or secure additional professional services for any reason by any act of the Contractor, the Contractor shall be invoiced by the OWNER for any costs incurred for any such additional services, which costs shall be deducted from the next progress payment. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the OWNER. Additional services shall include, but shall not be limited to, the following:

- A. Services made necessary by the default of the Contractor.
- B. Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- C. Services required by failure of the Contractor to perform according to any provision of the Contract.
- D. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by the Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- E. Services for evaluating and processing claims submitted by the Contractor in connection with the Work outside the established Change Order process.
- F. Services required by the failure of the Contractor to prosecute the Work in a timely

manner in compliance within the specified time of completion.

- G. Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.
- I. The assessment of cost for additional services are as follows. The OWNER will assess such additional services by the hour, with a minimum of 1 (one) hour of time at the following rates (see Section 13.5.6 also):
  - 1. Inspector of Record, Special Inspectors, Construction Manager shall be invoiced at \$200 per hour.
  - 2. Project Engineer, Owner consultants and other Owner Representatives shall be invoiced at \$150 per hour.
  - 3. Project Architect or Design Engineer shall be invoiced at \$250 per hour.

#### **4.4.2 ADDITIONAL CHARGES RELATED TO PUNCH LIST AND FIELD REVIEWS**

The Architect will conduct a field review of the Contractor's comprehensive list of items to be completed or corrected (final punch list) and one (1) follow-up field review if required. The cost incurred by the OWNER for further field reviews or the preparation of further punch lists by the Architect shall be invoiced to the Contractor and deducted from the final payment per Section 4.4.1 above.

#### **4.5 CLAIMS AND DISPUTES**

##### **4.5.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the OWNER and the Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

##### **4.5.2 DECISION OF CONSTRUCTION MANAGER**

Claims shall be referred initially to the Construction Manager for action as provided in paragraph 4.6. A decision by the Construction Manager, as provided in paragraph 4.6.4, shall be required as a condition precedent to mediation of a Claim between the Contractor and the OWNER as to all such matters arising prior to the date final payment is due, regardless of whether such matters relate to execution and progress of the Work, or the extent to which the Work has been completed. The decision by the Construction Manager in response to a Claim shall not be a condition precedent to mediation in the event: the position of Construction Manager is vacant; the Construction Manager has not received evidence or has failed to render a decision within agreed time limit; the Construction Manager has failed to take action required under paragraph 4.6.4 within thirty (30) days after the Claim is made, forty-five (45) days have passed after the Claim has been referred to the Construction Manager; or the Claim relates to a Stop Payment Notice Claim.

#### **4.5.3 TIME LIMIT ON CLAIMS**

Except as otherwise specifically provided elsewhere, claims by either party must be made within Ten (10) calendar days after occurrence of the event giving rise to such Claim or within Ten (10) calendar days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered.

#### **4.5.4 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim including mediation, arbitration, or litigation, unless otherwise agreed to in writing, the Contractor shall proceed diligently with performance of the Contract, and the OWNER shall continue to make payment in accordance with the Contract.

#### **4.5.5 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS**

If conditions are encountered at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than Ten (10) calendar days after first observance of the conditions. The Architect will promptly investigate such conditions, and if they differ materially and cause an increase or decrease in the Contractor's cost of, time required for, or performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum, Completion Time, or both. If the Architect determines that the conditions at the Site are not materially different from those indicated in the Contract and that no change in the terms of the Contract is justified, the Architect shall so notify the OWNER and the Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within ten (10) days after the Architect has given notice of the decision. If the OWNER and the Contractor cannot agree on an adjustment in the Contract Sum or the Completion Time, the adjustment shall be referred to the Architect for initial determination, subject to other proceedings pursuant to paragraph 4.6.

#### **4.5.6 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Each Claim for additional cost must include any claim for additional time and its associated costs. Prior notice is not required for claims relating to an emergency endangering life or property arising under paragraph 10.4.1. If the Contractor believes additional cost is involved for reasons, including, but not limited to the following: a written interpretation from the Architect, an order by the OWNER to stop the Work where the Contractor was not at fault, a written order for a minor change in the Work issued by the Architect, failure of payment by the OWNER, termination of the Contract by the OWNER, the OWNER's suspension of the Work, or other reasonable grounds, a claim shall be filed in accordance with the procedure established herein.

#### **4.5.7 CLAIMS FOR ADDITIONAL TIME**

##### **4.5.7.1 *Notice and Extent of Claim.***

If the Contractor wishes to make a claim for an increase in the Completion Time, written notice as provided herein shall be given. The Contractor's claim shall include the cost associated with the extension and effect of delay on progress of the Work. In the case of a continuing delay, only one (1)

claim is necessary.

#### **4.5.7.2     *Adverse Weather Claims***

If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

#### **4.5.7.3     *No Reservation Allowed***

In no event will the Contractor be allowed to reserve its rights to assert a claim for time extension later than as required by paragraph 4.5.3 unless the OWNER agrees in writing to allow such reservation.

#### **4.5.8     INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, any of the other party's employees or agents, or others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding Ten (10) calendar days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be made as provided in paragraphs 4.5.6 or 4.5.7.

#### **4.6     RESOLUTION OF CLAIMS AND DISPUTES**

##### **4.6.1     GENERAL**

Contractor shall timely comply with all notices and requests for changes to Completion Time or Contract Sum, including but not limited to all requirements of Articles 7 and 8 as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the Contract Sum or Completion Time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

##### **4.6.2     INTENT**

Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with said statutes.

##### **4.6.3     CLAIMS**

For purposes of this Article, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the Contract Documents has been denied by the OWNER, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the OWNER. A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a change order, or otherwise failed to follow any procedures contained in the Contract Documents. Claims governed by this Article may not be filed unless and until the Contractor completes

all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the procedures contained in Articles 7 and 8, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than fourteen (14) days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the OWNER and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

#### **4.6.4 SUPPORTING DOCUMENTATION**

The Contractor shall submit all claims in the following format:

1. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made
2. List of documents relating to claim:
  - a. Specifications
  - b. Drawings
  - c. Clarifications (Requests for Information)
  - d. Schedules
  - e. Other
3. Chronology of events and correspondence
4. Analysis of claim merit
5. Analysis of claim cost
6. Time impact analysis in CPM format
7. If Contractor's claim is based in whole or in part on an allegation of errors or omissions in the Plans, Drawings or Specifications for the Project, Contractor shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.
8. Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with Government Code section 12650 et seq.

#### **4.6.5 OWNER'S RESPONSE**

Upon receipt of a claim pursuant to this Article, OWNER shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the OWNER issues its written statement.

##### **4.6.5.1 Authorization**

If the OWNER needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the OWNER's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the OWNER shall have up to three Days following the next duly publicly noticed meeting of the OWNER's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

#### **4.6.5.2 Request for Additional Information**

Within 30 Days of receipt of a claim, the OWNER may request in writing additional documentation supporting the claim or relating to defenses or claims the OWNER may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of OWNER and the Contractor. The OWNER's written response to the claim, as further documented, shall be submitted to the Contractor within 30 Days (if the claim is less than \$15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

#### **4.6.6 MEET AND CONFER**

If the Contractor disputes the OWNER's written response, or the OWNER fails to respond within the time prescribed, the Contractor may so notify the OWNER, in writing, either within 15 Days of receipt of the OWNER's response or within 15 Days of the OWNER's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the OWNER shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

#### **4.6.7 MEDIATION**

Within 10 business Days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the OWNER shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 Days after the OWNER issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the OWNER and the Contractor sharing the associated costs equally. The OWNER and Contractor shall mutually agree to a mediator within 10 business Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

##### **4.6.7.1 Mediator Selection**

If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

##### **4.6.7.2 Nonbinding Process**

For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.

##### **4.6.7.3 Compliance With Public Contract Code**

Unless otherwise agreed to by the OWNER and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.



#### **4.6.7.4      *Mediation Schedule***

The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

#### **4.6.8      *PROCEDURES AFTER MEDIATION***

If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

#### **4.6.9      *CIVIL ACTIONS***

The following procedures are established for all civil actions filed to resolve claims of \$375,000 or less:

##### **4.6.9.1      *Non-Binding Judicially Mandated Mediation***

Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

##### **4.6.9.2      *Judicial Arbitration***

If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

#### **4.6.10      *GOVERNMENT CODE CLAIMS***

In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the OWNER. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted,

or if the prerequisite contractual requirements are not satisfied, no action against the OWNER may be filed. A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

#### 4.6.11 **NON-WAIVER**

The OWNER's failure to respond to a claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the claim being deemed rejected in its entirety.

### 4.7 **CONSTRUCTION MANAGER**

#### 4.6.1 **GENERAL RESPONSIBILITIES**

The Construction Manager, in cooperation with the Architect, shall provide administration of the Contract with the Contractor, as well as the OWNER's contracts with each contractor on the Project, as set forth below and in the Construction Management Agreement. The Contractor shall recognize any direction or authority provided to the Construction Manager by the OWNER, and shall work closely and cooperate fully with the Construction Manager.

#### 4.6.2 **EXAMPLES OF RESPONSIBILITIES**

By way of example and not by limitation, the Construction Manager will be providing the following services in administration of the Contract. To the extent any provisions herein are in conflict with the Construction Management Agreement, the Construction Management Agreement shall control. The Contractor shall request clarification from the OWNER in writing if the Contractor should have any questions regarding the authority of the Construction Manager.

##### 4.6.2.1 ***Project Schedule***

Refer to Specification Section 01310 for schedule reviews.

##### 4.6.2.2 ***Coordination***

The Construction Manager shall provide administrative, management, and related services as required to coordinate the Work of the Contractor with the other contractors on the Project, as well as with the activities and responsibilities of the Construction Manager, the OWNER, and the Architect to complete the Project in accordance with the OWNER's objectives for cost, time and quality.

##### 4.6.2.3 ***Meetings***

Schedule and conduct preconstruction, construction and progress meetings as required by the Contract to discuss such matters as procedures, progress problems and scheduling. Prepare and promptly distribute minutes after each meeting.

##### 4.6.2.4 ***Quality of Work***

The Construction Manager shall determine whether the Work of the Contractor, as well as any other contractor on the Project, is being performed in accordance with the requirements of the Contract, and shall endeavor to guard the OWNER against defects and deficiencies in such Work. The

Construction Manager shall make recommendations to the Architect regarding special inspection or testing of Work not in accordance with the provisions of the Contract, whether or not such work is then fabricated, installed or completed. The Construction Manager shall also inform the Architect of work that the Construction Manager believes does not conform to the requirements of the Contract and should be rejected by the Architect.

#### **4.6.2.5     *Interpretation of Documents***

Consult with the Architect and OWNER if the Contractor or any other contractor on the Project requests interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions which may arise.

#### **4.6.2.6     *Insurance Documents***

Receive Certificates of Insurance and endorsements from the Contractor and other contractors on the Project, review them for compliance with the Contract, and forward them to the OWNER's purchasing agent.

#### **4.6.2.7     *Drawings, Data and Submittals***

The Construction Manager shall receive and review from the Contractor, as well as all other contractors on the Project, all Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall coordinate them with information contained in related documents and transmit to the Architect for review and approval. In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

### **4.6.3     MEANS AND MANNER OF CONTRACTOR WORK**

The Construction Manager shall not be responsible for construction means, methods, techniques, sequences and procedures employed by the Contractor, or any other contractor on the Project, in the performance of their contracts, and shall not be responsible for the failure of any Contractor to carry out Work in accordance with the Contract.

### **4.6.4     COMMUNICATION**

Except as otherwise provided in the Contract or when direct communications have been specially authorized, the OWNER and Contractor shall communicate through the Construction Manager, and shall contemporaneously provide the same communications to the Architect. Communications by and with the Architects' consultants shall be through the Architect. Communications by and with Subcontractors and material or equipment suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager, and shall be contemporaneously provided to the Architect. All communications shall be written.

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## **ARTICLE 5 – SUBCONTRACTORS**

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### **5.1     DEFINITIONS**

#### **5.1.1     SUBCONTRACTOR**

The term "Subcontractor" shall have the meaning prescribed in Article 1.

#### 5.1.2 SUB-SUBCONTRACTOR

The term "Sub-subcontractor" shall have the meaning prescribed in Article 1.

#### 5.1.3 SPECIALTY CONTRACTORS

If a Subcontractor is designated as a "Specialty Contractor" as defined in § 7058 of the Public Contract Code, all of the Work outside of that Subcontractor's specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Business and Professions Code § 4100, *et seq.*

### 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

#### 5.2.1 ASSIGNMENT OR SUBSTITUTION - CONSENT OF OWNER

#### 5.2.2 GROUNDS FOR SUBSTITUTION

All Sub-Contractor and Sub-subcontractor substitutions shall be made only with the Owner's consent, which may be granted or withheld in Owner's sole discretion.

##### 5.2.2.1 *No Change in Contract*

Any substitutions of Subcontractors shall not result in any increase in the Contract Sum or result in the granting of any extension of Completion Time for the completion of the Project.

### 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract, assumes toward the OWNER and the Architect. Each subcontract agreement shall preserve and protect the rights of the OWNER and the Architect under the Contract with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract, has against the OWNER. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract 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 subcontract agreement which may be at variance with the Contract. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Any subcontract agreement for a portion of the Work may be assigned by the Contractor to the OWNER provided that both of the following requirements are met:

- A. Assignment is effective only after termination of the Contract with the Contractor by the OWNER for cause pursuant to Article 14, and only for those subcontract agreements

which the OWNER accepts by notifying the Subcontractor in writing; and

- B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

## **5.5 SUBCONTRACTOR'S RESPONSIBILITIES**

Every Subcontractor is bound to the following provisions, subject to the limitations of paragraph 5.3 above.

### **5.5.1 SUPERVISION BY SUBCONTRACTORS**

Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Specifications, and other instructions, shall at once report to Contractor any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Contractor concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

### **5.5.2 DISCIPLINE AND ORDER**

Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Site. The Subcontractor shall not employ on the Work any unfit person or anyone not skilled in the task assigned. The Contractor shall have the right to remove from the Work any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

### **5.5.3 DEFECTS DISCOVERED**

Should the proper and accurate performance of the Work depend upon the proper and accurate performance of other work not included in its Contract, each Subcontractor shall use reasonable necessary means to discover any defect in such other work and shall allow the Contractor, the Architect or other Subcontractors as Contractor elects a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Contractor over its written objection.

### **5.5.4 SUBCONTRACTOR INFORMATION**

Each Subcontractor shall submit to the OWNER, the Contractor, or the Architect, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Contractor in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Contractor with respect thereto.

### **5.5.5 TEMPORARY STRUCTURES**

Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those

specifically agreed to be furnished to it by the Contractor in the Subcontract Agreement. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Contractor. When it becomes necessary due to the progress of the Project for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Contractor or OWNER. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

#### **5.5.6 CHARGES TO SUBCONTRACTOR**

Each Subcontractor may be subject to the Contractor's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

#### **5.5.7 FINES IMPOSED**

Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

#### **5.5.8 PROJECT SIGNS**

Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement. The OWNER will permit a single Project sign, which shall be subject to the OWNER's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

#### **5.5.9 REMEDIES FOR FAILURE TO PERFORM**

Without limitation of any other right or remedy available to Contractor under the Contract or at law, should the Subcontractor: (1) fail to perform its portion of the Work in a skilled and expeditious manner in accordance with the terms of the Contract with sufficient labor, materials, equipment, and facilities; (2) delay the progress of the job; (3) otherwise fail in any of its obligations; (4) have a receiver appointed for the Subcontractor; or (5) be declared bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceeding or declaration is not set aside within thirty (30) days, then the Contractor, upon three (3) days notice to the Subcontractor (subject to the requirements of Public Contracts Code § 4107), may provide such labor, materials, or perform such work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Contractor may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Contractor's own forces.

#### **5.5.10 DISPUTES NOT TO AFFECT WORK**

In the event of any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a Change Order for any Work requested of it, the Subcontractor shall continue to proceed diligently with the performance as required by the Contractor. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. The Contractor shall continue to pay the undisputed amounts called for under the Subcontract Agreement during the existence of the dispute. Any party stopping or delaying

the progress of the Work because of a dispute shall be responsible in damages to the OWNER, the Architect, and the Contractor for any losses suffered as a result of the delay.

#### **5.5.11 APPLICATION FOR PAYMENT**

Contractor agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.

#### **5.5.12 COMPLIANCE WITH PROCEDURES**

Each Subcontractor shall comply with all procedures established by the Contractor for coordination among the OWNER, the OWNER's consultants, Architect, Contractor, and the various Subcontractors for coordination of the Work with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

#### **5.5.13 ON-SITE RECORD KEEPING**

Subcontractor shall comply with all on-Site record keeping systems established by the Contractor and shall, upon the request of the Contractor, provide the Contractor with such information and reports as the Contractor may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Site.

#### **5.5.14 NON-EXCLUSIVE OBLIGATIONS**

The specific requirements of Article 5 are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the other Contract which are relevant to the proper performance of its portion of the Work.

#### **5.5.15 TIME FOR COMMENCEMENT BY SUBCONTRACTORS**

Contractor shall require all Subcontractors to commence their Work within Two (2) Working Days after Contractor provides them with a notice to begin, and shall require all subcontractors to diligently prosecute their work in accordance with the Project Schedule, so as to allow the Project to be totally and adequately completed within the Completion Time.

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## **ARTICLE 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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### **6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

#### **6.1.1 OWNER'S RIGHTS**

The OWNER reserves the right to perform Work related to the Project with the OWNER's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. Upon the election to perform Work with its own forces or by separate contracts, the OWNER shall notify the Contractor. Notwithstanding anything to the contrary in the Contract Documents, Contractor shall have the absolute obligation to work cooperatively with the OWNER and all other contractors, subcontractors, suppliers

and other entities working on any portion of the Project or performing any operations on or off the Site, including, but not limited to, those provided for in the Project Schedule.

The Project incorporates multiple trade contractors under a multi-prime delivery method. The Contractor acknowledges that all planned conditions and required interfaces have been reviewed and incorporated into the Contract Sum. The Contractor shall be solely responsible for any costs associated with Contractor's omission of required coordination with other contractors or tie-ins to existing work.

#### **6.1.2 DESIGNATION AS CONTRACTOR**

When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract in each case shall mean the Contractor who executes each separate OWNER/Contractor Contract.

#### **6.1.3 CONTRACTOR DUTIES**

The Contractor shall have overall responsibility for coordination and scheduling of the activities of the OWNER's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the OWNER in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the OWNER until subsequently revised.

#### **6.1.4 OWNER OBLIGATIONS**

Unless otherwise provided in the Contract, when the OWNER performs Work related to the Project with the OWNER's own forces, the OWNER shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Contractor under the General Conditions, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11, and 12.

### **6.2 MUTUAL RESPONSIBILITY**

#### **6.2.1 DELIVERY AND STORAGE**

The Contractor shall afford the OWNER and separate contractors' reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with theirs as required by the Contract.

#### **6.2.2 NOTICE BY CONTRACTOR**

If part of the Contractor's Work depends upon proper execution or results from work by the OWNER or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the OWNER's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

#### **6.2.3 COSTS INCURRED**

Costs caused by delays, improperly timed activities, defective construction, or damages to another's Work shall be borne by the party responsible.



#### **6.2.4 CORRECTION OF DAMAGE**

The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the OWNER or separate contractors.

Contractor shall provide full cooperation with Construction Manager and all other contractors on the Project. Conflicting operations shall be resolved in the manner that minimizes impact to the Master Schedule and cost impacts to all contractors, as determined by the Construction Manager.

#### **6.3 OWNER'S RIGHT TO CLEAN UP**

If a dispute arises among the Contractor, separate contractors, and the OWNER as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in paragraph 3.13, the OWNER may clean up and allocate the cost among those responsible as the Architect determines to be just.

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### **ARTICLE 7 - CHANGES IN THE WORK**

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#### **7.1 CHANGES**

##### **7.1.1 NO CHANGES WITHOUT AUTHORIZATION**

There shall be no change whatsoever in the Work without an executed Change Order or Construction Change Directive. Any Extra Work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications must be authorized by and the cost thereof approved in writing by both an executed Construction Change Directive and subsequently executed Change Order. No change in Completion Time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 7, all Change Orders shall be reviewed by the Architect and issued by the Owner and shall become effective when executed by the OWNER, the Architect, and the Contractor. OWNER shall not be liable for the cost of any Extra Work performed without a Construction Change Directive or Change Order.

If a CO or CCD requires DSA approval, then no payment shall be made on such a CO or CCD until DSA issues its written approval of the changes in the Work.

##### **7.1.2 CONSTRUCTION MANAGER AUTHORITY**

The Construction Manager will have authority to order additions, deletions and other changes in the Work by Change Order or CCD without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to OWNER. The Construction Manager may issue an emergency CCD to correct a situation that poses an immediate danger to persons or damage to property. Such changes shall be affected by written Change Order and shall be binding on the OWNER and the Contractor. The Contractor shall carry out such written orders promptly.

##### **7.1.3 OMITTED WORK**

In the case of omitted work, the College shall have the right to withhold from payments due or to become due to the Contractor an amount which, in the College's or Construction Manager's opinion, is equal to the value of such work until such time as the value thereof is determined by agreement.

#### **7.1.4 IMPACT COSTS**

Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the change order for work. Under no circumstances shall Contractor be permitted to modify the Change Order Form, set forth as Exhibit "J," attached hereto and incorporated herein. In submitting its bid, Contractor shall be deemed to have reviewed and accepted the attached Change Order Form, including the terms and conditions set forth therein. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications.

#### **7.1.5 CHANGES ADDITIONS OMISSIONS**

All changes, additions or omissions in the Work ordered in writing by the College or Construction Manager shall be deemed to be a part of the Work hereunder and shall be performed and furnished in strict accordance with all of the terms and provisions of this Agreement and the other Contract Documents. Contractor accepts the responsibility to keep its surety informed of all such modifications to its contract. The obligations of Contractor's surety shall not be reduced, waived or adversely affected by the issuance of such change orders, additions or deductions even if the College or Construction Manager fails to inform the surety of same and the College or Construction Manager shall not be required to obtain consent of the surety to such modifications.

#### **7.2 CHANGE ORDERS ("CO")**

Refer to Section 7.1.1.

OWNER may issue a CO unilaterally, without the Contractor's signature, signed only by OWNER and the Architect, for a change in the Work, in the event that Contractor refuses to sign the CO or no agreement is otherwise reached between Owner and Contractor with regard to such change in the Work. The Contract Sum and Completion Time shall be adjusted in accordance with the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract Sum or the Contract Time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order. Should a dispute arise between the parties regarding the validity of a change or disagree upon the terms of original scope, Contractor is to proceed per the Construction Change Directive issued by the College. Under no circumstances shall Contractor be entitled to delay or additional compensation for failure to timely prosecute work contemplated under a Construction Change Directive.

#### **7.3 CONSTRUCTION CHANGE DIRECTIVES ("CCD")**

##### **7.3.1 DEFINITION**

A CCD is a written order prepared by the Construction Manager and reviewed by the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Completion Time, or both. The Construction Manager may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions within the Contract. A CCD does not require the agreement of the Contractor, and shall be valid with or without the Contractor's signature. The Contract Sum and Completion Time shall be adjusted in accordance with the Contract Documents.

### **7.3.2 USE TO DIRECT CHANGE**

A CCD shall be used to direct the Contractor to proceed with a change in the absence of agreement on the terms.

## **7.4 REQUEST FOR INFORMATION ("RFI")**

### **7.4.1 DEFINITION**

An RFI is a written request prepared by the Contractor asking the Architect to provide additional information necessary to clarify an item which the Contractor feels is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions.

### **7.4.2 SCOPE**

The RFI shall reference all the applicable Contract provisions, including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. The DSA Inspector shall review and initial all RFI's prior to submission by Contractor to Architect. An RFI cannot modify the Contract Sum, Completion Time, or the Contract.

### **7.4.3 RESPONSE TIME**

The Contractor shall provide its RFI to the Architect within one (1) day after occurrence of the event giving rise to such RFI, or within five (5) days after the Contractor first recognizes the condition giving rise to the RFI, whichever is later. The Architect must respond to an RFI within seven (7) days after receiving such request. If the Architect's response results in a change in the Work, then such change shall be affected by a written CO or CCD. If the Architect cannot respond to the RFI within seven (7) days, the Architect shall notify the Contractor, with a copy to the Inspector and the OWNER, of the amount of time that will be required to respond.

### **7.4.4 COSTS INCURRED**

The Contractor shall be invoiced by the OWNER for any costs incurred for professional services, which shall be deducted from the next progress payment, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

## **7.5 REQUEST FOR PROPOSAL ("RFP")**

### **7.5.1 DEFINITION**

An RFP is a written request prepared by the Architect asking the Contractor to submit to the OWNER and the Architect an estimate of the effect of a proposed change on the Contract Sum or the Completion Time.

### **7.5.2 SCOPE**

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by paragraph 7.7.

## **7.6 CHANGE ORDER REQUEST ("COR")**

#### **7.6.1 DEFINITION**

A COR is a written request prepared by the Contractor asking the OWNER to incorporate a proposed change called for in an RFP or a claim per paragraph 7.7.6 into a CO. The Construction Manager shall provide a form for this purpose.

#### **7.6.2 CHANGES IN PRICE**

A COR shall include breakdowns per paragraph 7.7 to validate any change in Contract Sum due to proposed change or claim.

#### **7.6.3 CHANGES IN TIME**

A COR shall also include any additional time requested to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule.

### **7.7 COST OF CHANGE ORDERS**

#### **7.7.1 TIME TO PROVIDE ESTIMATE**

Within ten (10) days or such lesser period of time as may be required by OWNER after any request is made for a change that impacts the Contract Sum or the Completion Time, the Contractor shall provide to the OWNER and the Construction Manager in writing an estimate of the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Completion Time of such CO. Changes may be made by OWNER by an appropriate written CO, or, at the OWNER's option, such changes shall be implemented immediately upon the Contractor's receipt of an appropriate written CCD.

#### **7.7.2 DETERMINATION OF COST FOR ESTIMATE SUBMITTED ON TIME**

If Contractor submits a written estimate within the time specified in 7.7.1, then OWNER, without invalidating the Contract and as provided by law, may order Extra Work or make changes by altering, adding to, or deducting from work, the Contract Sum being adjusted accordingly. All such work shall be executed under conditions of the original Contract, except that any claim for extension of the Completion Time caused thereby shall be adjusted at the time of ordering such change. Contractor shall increase the amounts of his payment and performance bonds in proportion to any increase in the Contract Sum. In giving instructions, Construction Manager shall have authority to make minor changes in the work, not involving change in cost, and not inconsistent with the purpose of the Project.

The amount of the increase or decrease, if any, in the Contract Sum resulting from a CO or CCD shall be determined in one or more of the following ways as applicable to a specific situation and as determined in the sole and absolute discretion of the OWNER:

- A. By acceptance of a proposal from Contractor, properly itemized and supported by sufficient substantiating data to permit evaluation;
- B. By unit prices in the Contractor's original bid and incorporated in the Contract Documents or unit prices fixed by subsequent agreement between the OWNER and the Contractor;
- C. By cost of material and labor and percentage of overhead and profit, determined by the

method below and in 7.7.3:

## 1. **Daily Reports by Contractor**

a) General: At the close of each Working Day, the Contractor shall submit a daily report to the Inspector, on forms approved by the OWNER, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the Work, and for other services and expenditures when authorized concerning Extra Work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Inspector and the Contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by subcontractors or others shall be submitted through the Contractor.

b) Labor: Show names of workers, classifications, and hours worked.

c) Materials: Describe and list quantities of materials used.

d) Equipment: Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.

e) Description/Location: Description and location of work being performed.

f) Other Services and Expenditures: Describe in such detail as the OWNER may require.

## 2. **Basis for Establishing Costs**

a) Labor will be the actual cost for wages prevailing locally for each craft or type of workers at the time the Extra Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the Extra Work cost, will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

The OWNER reserves the right to approve materials and sources of supply or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the OWNER.

c) Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$100 or less. Regardless of Ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the work is performed. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind,

depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the Extra Work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the OWNER than holding it at the work Site, it shall be returned unless the Contractor elects to keep it at the work Site at no expense to the OWNER.

All equipment shall be acceptable to the Inspector, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

d) Other Items. The OWNER may authorize other items which may be required on the Extra Work. Such items include labor, services, material, and equipment which are different in their nature from those required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the request for payment.

e) Invoices. Vendors' invoices for material, equipment rental and other expenditures shall be submitted with the COR. If the request for payment is not substantiated by invoices or other documentation, the OWNER may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.

f) Overhead. Overhead, including direct and indirect costs, is applicable to both additive and deductive COs and CCDs, and shall be submitted with the COR and include: home office overhead, off-Site supervision, CO and CCD preparation/negotiation/research, time delay costs, project interference and disruption, any travel and subsistence costs, additional as-built costs, additional guaranty and warranty durations, on-Site supervision (such as project managers or superintendents), additional temporary protection, additional temporary utilities, additional temporary facilities, additional material handling costs, and additional safety equipment costs.

g) Subcontractor Overhead & Profit Schedule.

**Schedule 1:** *Changes Totaling \$500 or Less:* not to exceed 10% of Line D Subtotal.

**Schedule 2:** *Changes Totaling More Than \$500 But Less Than Or Equal To \$7,500:* not to exceed 10% of Line D Subtotal.

**Schedule 3:** *Changes Totaling More Than \$7,500.* not to exceed 5% of Line D Subtotal.

h) Contractor Overhead & Profit Schedule.

**Schedule 1:** *Changes Totaling \$500 or Less:* not to exceed 15% of Line G or L.

**Schedule 2: Changes Totaling More Than \$500 But Less Than Or Equal To \$7,500:** not to exceed 10% of Line G or L.

**Schedule 3: Changes Totaling More Than \$7,500:** not to exceed 5% of Line G or L.

If the Contractor should claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation obligates OWNER to pay additional compensation to the Contractor or to grant an extension of time for the completion of the Contract, he shall notify OWNER in writing, of such claim within the time specified in 4.5.3 from the date he has actual or constructive notice of the factual basis supporting the claim. The Contractor's failure to notify OWNER within such period shall be deemed a waiver and relinquishment of the claim against OWNER. If such notice be given within the specified time, the procedure for its consideration shall be as stated in the General Conditions. If the Contractor is delayed in completing the work by reason of any change made pursuant 7.7.2, the time for completion of the work shall be extended by Change Order for a period commensurate with such delay.

Changes in plans or specifications shall be made by addenda or change orders approved by DSA.

If Contractor **does not** submit a written estimate within the time specified in 7.7.1, then the amount of an increase or decrease, if any, in the Contract Sum resulting from a change in the Work shall be determined by OWNER. At OWNER'S sole option, OWNER shall set a reasonable price using one of the following methods: a Unit Price stated in the Contractor's bid, or the method specified in subparagraph C of 7.7.2, or an estimated price provided by the Architect. In such a case, Contractor agrees to accept the price set by OWNER and to execute the CO with respect thereto.

### 7.7.3 **FORMAT FOR PROPOSED COST CHANGE**

The following format shall be used, as determined in the sole and absolute discretion of the OWNER in accordance with 7.7.2, by the Contractor to communicate proposed additions and deductions to the Contract in order to determine the amount of increase or decrease, if any, in the Contract Sum.

#### 1. **Work Performed by Subcontractor**

Use Subsections (A) through (G) for each Subcontractor. Insert the cumulative total for all Subcontractor(s) in Subsection (H).

	<u>EXTRA</u>	<u>CREDIT</u>
A. <b>Material:</b> (Attach receipts, invoices or itemized quantity and unit cost, plus sales tax and delivery. Enter Total as Material.)	_____	_____
B. <b>Labor:</b> (Attach itemized hours times rates in accordance with certified payroll records. Separately show dollar amount for employer-paid payroll taxes/insurance		

	<u>EXTRA</u>	<u>CREDIT</u>
benefits. Enter Total as Labor.	_____	_____
C. <b>Equipment:</b> (Attach receipts, tear tickets or invoices indicating unit costs and total hours or loads charged. Enter Total as Equipment.)	_____	_____
D. <b>SUBTOTAL</b> (LINES A+B+C)	_____	_____
E. <b>Subcontractor Overhead &amp; Profit:</b> See Subcontractor Overhead & Profit Schedule in Section 7.7.2 (C) (2) (g) above. (Insert _____ % x D)	_____	_____
F. <b>Total Cost of Subcontractor Work:</b> (Lines D + E)	_____	_____
G. <b>General Contractor's Overhead and Profit (On Subcontractor's Work).</b> See Contractor Overhead & Profit Schedule in Section 7.7.2 (C) (2) (h) above. (Insert _____ % x F)	_____	_____
H. <b>Total Subcontractor(s) Cost (Credit).</b> A cumulative total of all Subcontractors working on this Change. (Lines F + G for <u>ALL</u> Subcontractors)		

2. **Work Performed by Contractor.**

	<u>EXTRA</u>	<u>CREDIT</u>
I. <b>Material:</b> (Attach receipts, invoices or itemized quantity and unit cost, plus sales tax and delivery. Enter Total as Material.)	_____	_____
J. <b>Labor:</b> (Attach itemized hours times rates in accordance with certified payroll records. Separately show dollar amount		



	<u>EXTRA</u>	<u>CREDIT</u>
for employer-paid payroll taxes/insurance benefits. Enter Total as Labor).	_____	_____
K. <b>Equipment:</b> (Attach receipts, tear tickets or invoices indicating unit costs and total hours or loads charged. Enter Total as Equipment.)	_____	_____
L. <b>SUBTOTAL</b> (LINES I+J+K)	_____	_____
M. <b>Contractor Overhead &amp; Profit:</b> See Contractor Overhead & Profit Schedule in Section 7.7.2 (C) (2) (h) above. (Insert _____ % x L)	_____	_____
N. <b>Total Contractor Cost (Credit).</b> (Lines L + M)		

3. **Total of Work Performed by Subcontractor(s) and the Contractor.**

	<u>EXTRA</u>	<u>CREDIT</u>
O. <b>Total Subcontractor(s) Cost (Credit).</b> (Line H)	_____	_____
P. <b>Total Contractor Cost (Credit).</b> (Line N)	_____	_____
Q. <b>Subtotal Cost (Credit).</b> (Lines O + P)	_____	_____
R. <b>Bond Costs:</b> Payment and Performance bond costs shall not exceed two percent (2%) of Q. (Insert _____ % x Q)	_____	_____
S. <b>Grand Total of Cost (Credit).</b> (Lines Q + R)		

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project. When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

#### **7.7.4 DISCOUNTS, REBATES, AND REFUNDS**

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein.

#### **7.7.5 ACCOUNTING RECORDS**

With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the OWNER, which shall be available to the OWNER on the same terms as any other books and records the Contractor is required to maintain under the Contract.

#### **7.7.6 NOTICE REQUIRED**

If the Contractor desires to make a claim for an increase in the Contract Sum, or any extension in the Completion Time for completion, it shall give the OWNER written notice thereof within ten (10) calendar days after the occurrence of the event giving rise to the claim, together with detailed estimates of the impact on the Contract Sum and/or the Completion Time. This notice shall be given by the Contractor before proceeding with the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with paragraph 10.4 hereof. No claim shall be considered unless made in accordance with this Subparagraph; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the Completion Time, and/or the increase in the Contract Sum. Contractor shall proceed to execute the Work even though the adjustment has not been agreed upon. Any change in the Contract Sum or extension of the Completion Time resulting from such claim shall be authorized by a CO.

#### **7.7.7 APPLICABILITY TO SUBCONTRACTORS**

Any requirements under this Article 7 shall be equally applicable to COs or CCDs issued to Subcontractors by the Contractor to the same extent required of the Contractor.

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## **ARTICLE 8 – TIME**

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### **8.1 DEFINITIONS**

### **8.1.1 COMPLETION TIME**

The term "Completion Time" shall have the meaning prescribed in Article 1.

### **8.1.2 NOTICE TO PROCEED**

The term "Notice to Proceed" shall have the meaning prescribed in Article 1.

### **8.1.3 DAYS**

The term "Day" shall have the meaning prescribed in Article 1.

## **8.2 HOURS OF WORK**

### **8.2.1 SUFFICIENT FORCES**

Contractors and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Completion Time. Lack of sufficient forces will subject the Contractor to withholding of payment per Section 9.5.1.

### **8.2.2 PERFORMANCE DURING WORKING HOURS**

Work shall be performed during regular working hours, except that in the event of an emergency or when required to complete the Work in accordance with job progress, work may be performed outside of regular working hours with advance written permission of the OWNER.

### **8.2.3 LABOR CODE APPLICATION**

In accordance with Section 1773.2 of the California Labor Code, the Contractor shall post a copy of the determination of prevailing wage rates at the job site. The schedule of per diem wages is based upon a work day of eight (8) hours and a working week of forty (40) hours, per Labor Code section 1810. The rate for overtime work shall be at not less than time and one-half, pursuant to Labor Code Section 1815. The Contractor shall pay to the OWNER a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the OWNER and to the Division of Labor Law Enforcement,

Department of Industrial Relations of the State of California.

#### **8.2.4 COSTS FOR AFTER HOURS INSPECTIONS**

If the work done after hours is required by the Contract to be done outside the Contractor's or the Inspector's regular working hours, the costs of any inspections, if required to be done outside normal working hours and not scheduled per the Construction Schedule, shall be borne by the Contractor.

#### **8.2.5 DISRUPTION OF SCHOOL ACTIVITIES**

No Work or other activities by or on behalf of the Contractor which presents a hazard or unreasonable disruption to the staff or students shall be allowed while school is in session. The determination as to whether Work or some other activity presents a hazard or constitutes an unreasonable disruption to the staff or students of any school shall be made by and pursuant to the sole discretion of the Construction Manager or a representative of the OWNER's Maintenance and Operations Department. All Work or other activities which could present a hazard or unreasonable disruption to the staff or students shall be performed before or after school is in session, on weekends, or on a school holiday. Neither the Contractor nor its subcontractors or anyone working on behalf of the Contractor or subcontractors shall be entitled to additional compensation or Completion Time for having to arrange their work schedule so as not to violate the provisions of this Section. The Contractor, subcontractors and persons working on behalf of the Contractor and subcontractors shall be expected to arrange such Work and other activities in advance so as to avoid creating monetary or time impacts.

### **8.3 PROGRESS AND COMPLETION**

#### **8.3.1 TIME OF THE ESSENCE**

Time limits stated in the Contract are of the essence of the Contract. By executing the Contract, the Contractor confirms that the Completion Time and Project Schedule are a reasonable period for performing the Work.

#### **8.3.2 NO COMMENCEMENT WITHOUT INSURANCE**

The Contractor shall not knowingly, except by agreement or instruction of the OWNER in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

#### **8.3.3 EXPEDITIOUS COMPLETION**

The Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Completion Time.

Should the progress of the Work or of the Project be delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect or act or failure to act of the Contractor or any of its officers, agents, servants, employees, subcontractors or suppliers and not due to an Excusable Delay so as to cause any additional cost, expense, liability or damage to the College, Construction Manager, the Architect or the Owner's Representative, including legal fees and disbursements incurred by the College, Construction Manager, the Architect or the Owner's Representative, (whether incurred in defending claims arising from such delay or in seeking reimbursement and indemnity from the Contractor and its surety hereunder or otherwise) or any damages or additional costs or expenses for which College, Construction Manager, the Architect or the Owner's Representative, may or shall become liable, the

Contractor and its surety shall and does hereby agree to compensate the College, Construction Manager, the Architect or the Owner's Representative, for and indemnify them against all such costs, expenses, damages and liability.

The College, at its sole discretion, if the College deems necessary, may direct the Contractor to work overtime and, if so directed, the Contractor shall work said overtime and, provided that the Contractor is not in default under any of the terms or provisions of this Agreement or of any of the other Contract Documents, the College will pay the Contractor for such actual additional wages paid, if any, at the prevailing wage rates plus taxes imposed by law on such additional wages, plus workers' compensation insurance, liability insurance and levies on such additional wages if required to be paid by the Contractor.

If, however, the progress of the Work or of the Project is delayed by any fault or neglect or act or failure to act of the Contractor or any of its officers, agents, servants, employees, subcontractors or suppliers, and not due to Excusable Delay, then the Contractor shall, in addition to all of the other obligations imposed by this Agreement upon the Contractor in such case, and at its own cost and expense, work such overtime as may be necessary to make up for all time lost in the completion of the Work and of the Project due to such delay. Should the Contractor fail to make up for the time lost by reason of such delay, the Construction Manager or College shall have the right to cause other contractors to work overtime and to take whatever other action it deems necessary to avoid delay in the completion of the Work and of the Project, and the cost and expense of such overtime and/or such other action shall be borne solely by the Contractor.

#### **8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES**

##### **8.4.1 LIQUIDATED DAMAGES- REF. TO 3.4**

##### **8.4.2 EXCUSABLE DELAY**

The Contractor shall not be liable for actual damages, as set forth in the Contract, because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or the negligence of Contractor, including, but not restricted to, acts of God, acts of public enemy, acts of Government, acts of the OWNER or anyone employed by it, acts of another contractor in performance of a contract (other than this Contract) with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, or delays of subcontractors due to such causes.

##### **8.4.3 REQUIREMENTS FOR EXCUSABLE DELAY**

The Completion Time will be extended for a delay, and the Completion Time adjusted, if and only if Contractor demonstrates that all of the following conditions are met:

- A. The delay, only occurring at or in the immediate vicinity of the site is caused by fire; or strikes, boycotts, or like obstructive actions by employees or labor organizations; or stormy or inclement weather; or Acts of God (As used herein, "Acts of God" shall include only earthquakes in excess of a magnitude of 5.0 on the Richter Scale and tidal waves); or a man-made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; or an error or omission in the Contract Documents; or OWNER'S decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Contractor; or OWNER'S decision to suspend the Work, where such decision is not the result of any default or misconduct of the Contractor; or the failure of OWNER or Construction Manager to timely perform any Contract obligation unless such failure is due to Contractor's default or misconduct.

- B. The delay is not caused by a naturally occurring unforeseen site condition (e.g., unanticipated naturally occurring rock or sand); or the financial inability, misconduct or default of the Contractor, a Subcontractor or supplier; or the unavailability of materials or parts.
- C. **Within 3 working days** of the date the Contractor discovers or reasonably should discover an act, error, event, omission or unforeseen condition causing the delay, (even if the Contractor has not been delayed when the Contractor discovers or reasonably should discover the act, error, event, omission or unforeseen condition giving rise to the delay) the Contractor submits a timely Change Order Request that meets the requirements in the General Conditions.
- D. When the event causing the delay commences, the Contractor has complied with all Contract requirements for maintaining, submitting, and updating the Construction Schedule.
- E. The delay is critical. A delay is critical if and only to the extent it delays a critical activity that cannot be delayed without delaying completion of the entire Project beyond the Completion Time.
  - 1. If the Construction Schedule shows completion of the entire Project before the contractually specified date for full completion of the Work, a delay is critical if and only to the extent the delay pushes completion of the entire Project to a date that is beyond the contractually specified date for full completion of the Project.
  - 2. When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Completion Time should be adjusted, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.
- F. The delay is supported by the Construction Schedule (or, if appropriate, the Project Schedule) and a fragnet or Time Impact Analysis (TIA), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Construction Schedule (or, if appropriate, the Project Schedule) and associated fragnet or TIA corroborates that it causes a delay to completion of the entire Project beyond the contractually specified date for full completion because it is critical. The requirement that a delay be supported will be excused if the event causing the delay commences before approval of the Construction Schedule, provided that the absence of an approved Construction Schedule is not due to the Contractor's failure to timely submit an acceptable Construction Schedule.

#### 8.4.4 TIME – ACTUAL COSTS

Damages caused by College delay, including delays caused by items that are the responsibility of the College pursuant to Government Code Section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

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## ARTICLE 9 - PAYMENTS AND COMPLETION

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### 9.1 CONTRACT SUM

The term "Contract Sum" shall have the meaning prescribed in Article 1.

### 9.2 COST BREAKDOWN

#### 9.2.1 REQUIRED INFORMATION

On forms approved by the OWNER, the Contractor shall furnish the following:

- A. Within ten (10) days of the award of the Contract, a detailed breakdown of the Contract Sum (Schedule of Values) for each Project or Site. The Contractor must ensure that each portion of the Work or separate activity on the Schedule of Values contains a proportionate share of profit, overhead and other costs or expenses which will be incurred by the Contractor as compared to the line item percentage of the Contract Sum for that portion of the Work or separate activity. Contractor shall not unevenly weight or allocate its overhead and profit to one or more particular portions of Work or separate activity on the Schedule of Values;
- B. Within ten (10) days of the award of the Contract, a schedule of estimated monthly payment requests (cash flow) due the Contractor showing the values and construction time of the various portions of the Work to be performed by it and by its Subcontractors or material and equipment suppliers containing such supporting evidence as to its correctness as the OWNER may require;
- C. Five (5) days prior to the submission of a pay request, an itemized breakdown of work done for the purpose of requesting partial payments;
- D. Within ten (10) days of the award of the Contract, the name, address, telephone number, fax number, license number, and classification of all of its Subcontractors and of all other parties furnishing labor, material, or equipment for its Contract, along with the amount of each such subcontract or the price of such labor, material, and equipment needed for its entire portion of the Work.
- E. Failure to provide the documents above within the time allotted will be grounds for the OWNER assessing a credit change order to the Contractor per Section 9.5.1. If after 30 days after award of the Contract, the Contractor has not provided the submittals specified above, the OWNER will back charge the Contractor the sum of \$1,000 per document via a credit change order to the Contract. Every 30 days past the award of the Contract in which the submittals are delinquent, the Owner will process this same credit amount until the Contractor has submitted the required documents.

#### 9.2.2 OWNER APPROVAL REQUIRED

The OWNER shall review all submissions received pursuant to paragraph 9.2.1 in a timely manner. All submissions must be approved by the OWNER before becoming the basis of any payment.

## 9.3 APPLICATIONS FOR PAYMENT

### 9.3.1 PROCEDURE

On or before the fifth (5th) day of each month, the Contractor shall submit to the Construction Manager an accurate, itemized Application for Payment for operations completed in accordance with the Schedule of Values. Contractor shall submit two (2) copies. Each Application for Payment copy must be reviewed and executed by the DSA Inspector for concurrence of Work completed. Each application copy shall be notarized, if required, and supported by the following or such portion thereof, at Contractor's sole expense, as Architect requires and/or at OWNER'S sole discretion:

- A. The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- B. The amount being requested with the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- C. The balance that will be due to each of such entities after said payment is made;
- D. A certification that the As-Built Drawings and Annotated Specifications are current;
- E. The additions to and subtractions from the Contract Sum and Completion Time (as approved in COs or CCDs);
- F. A summary of the retentions (each Application shall provide for retention, as set out in Article 9.6, of the amount due until completion of the Work of the Contractor and Final Acceptance thereof by OWNER);
- G. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the OWNER may require from time to time;
- H. The percentage of completion of the Contractor's Work by line item;
- I. A statement showing all payments made by the Contractor for labor and materials on account of the Work covered in the preceding Application for Payment;
- K. Waiver and release forms must be submitted with each Application for Payment, and shall substantially comply with California Civil Code sections 8132, 8134, 8136 and 8138.
  - 1. Conditional Waiver and Release Upon Progress Payment forms must be submitted by Contractor from all first tier Subcontractors for the current month's Application for Payment.
  - 2. Unconditional Waiver and Release Upon Progress Payment forms must be submitted by Contractor from all first tier Subcontractors and from anyone who has filed a stop payment notice.
  - 3. Conditional Waiver and Release Upon Final Payment forms must be submitted by Contractor from all first tier Subcontractors for final Application for Payment, in accordance with 9.9.3 PROCEDURES FOR APPLICATION FOR FINAL



## **PAYMENT.**

4. Unconditional Waiver and Release Upon Final Payment forms must be submitted by Contractor from all Subcontractors regardless of tier and from anyone who has filed a stop payment notice, within ten (10) calendar days upon receipt of payment for final Application for Payment;

- L. Certified Payroll Reports (CPR) from Contractor and any/all Contractor's first tier Subcontractors.

### **9.3.2 PURCHASE OF MATERIALS AND EQUIPMENT**

As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from OWNER, to assure that there will be no delays, payment by the OWNER for stored material shall be made only in unusual circumstances where the Architect specifically recommends, and OWNER specifically approves, the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site or at some other location agreed upon in writing by the OWNER, the payments shall be conditioned upon submission by the Contractor, Subcontractor, or vendor of bills of sale and such other documents satisfactory to the Architect and the OWNER to establish the OWNER's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the OWNER's interest, including, without limitation, provision of applicable insurance and transportation to the Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to the OWNER by sureties of the Contractor and the Subcontractor and, if stored off-Site, stored only in a bonded warehouse.

### **9.3.3 WARRANTY OF TITLE**

The Contractor warrants that title to all Work covered by an Application for Payment will pass to the OWNER no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the OWNER shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

## **9.4 REVIEW OF PROGRESS PAYMENT**

### **9.4.1 OWNER APPROVAL**

The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Architect's reasons for withholding approval in whole or in part as provided in paragraph 9.5.1.

### **9.4.2 ARCHITECT'S REVIEW**

The review of the Contractor's Application for Payment by the Architect is based on the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract, to results of subsequent tests and inspections, to minor deviations from the Contract correctable prior to completion, and to specific

qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the review by the Architect will not be a representation that the Architect has:

- A. Made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work;
- B. Reviewed construction means, methods, techniques, sequences, or procedures;
- C. Reviewed copies of requisitions received from Subcontractors, material and equipment suppliers, and other data requested by the OWNER to substantiate the Contractor's right to payment; or
- D. Made an examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## **9.5 DECISIONS TO WITHHOLD PAYMENT**

### **9.5.1 REASONS TO WITHHOLD PAYMENT**

The OWNER may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the OWNER if, in the OWNER's opinion, the representations to the OWNER required by paragraph 9.4.2 cannot be made. Failure by OWNER to deduct any sums from a progress payment shall not constitute a waiver of the OWNER's right to such sums. The OWNER may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefore, to the payment of any expenses, losses, or damages as determined by the OWNER, incurred by the OWNER for which Contractor is liable under the contract. For instance, the OWNER may withhold payment, in whole or in part, to such extent as may be necessary to protect the OWNER from loss because of:

- A. Failure to provide requested supporting documents, including those noted in 9.3;
- B. Defective Work not remedied;
- C. Stop Payment Notices. Provided Contractor has been paid for undisputed work performed, if any Stop Payment Notice or other lien is filed on the Project for labor, materials, supplies, equipment or any other thing of value claimed to have been furnished to or incorporated into the Work, or for other alleged contribution thereto, the OWNER shall retain from payments otherwise due Contractor, in addition to other amounts properly withheld under this Section or under other provisions of the Contract, an amount equal to 125 percent (125%) of the amount claimed under such Stop Payment Notice; provided, however, that the OWNER may release such funds upon receipt of evidence satisfactory to the OWNER to the effect that Contractor has resolved such claim, by settlement, Stop Payment Notice Release Bond or otherwise. All other provisions of state law with respect to stop payment notices shall also apply. The Contractor agrees to indemnify, protect and save harmless the College and the Construction Manager from and against any and all such stop payment notices and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees and disbursements, which the College or Construction Manager may sustain or incur in connection therewith;

- D. Reasonable doubt that the Work can be completed for the unpaid balance of any Contract Sum or within the Completion Time;
- E. Damage to the OWNER, another contractor, or subcontractor, including any sums expended by or on behalf of the OWNER in performing any of the Contractor's obligations under the Contract which the Contractor has failed to perform or has performed inadequately;
- F. Failure to store and properly secure materials;
- G. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;
- H. Failure of the Contractor to maintain As-Built Drawings on a monthly basis;
- I. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- J. Unauthorized deviations from the Contract; or
- K. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and completion dates.
- L. All funds forfeited pursuant to California Labor Code Section 1727. The OWNER and shall retain and transfer those funds pursuant to California Labor Code Section 1730.

#### **9.5.2 WRITTEN REASONS FOR WITHHOLDING PROVIDED**

Provide notice within a reasonable time of withholding payment, the Contractor shall be given a written copy of OWNER's reasons for withholding payment.

#### **9.5.3 PAYMENT AFTER CURE**

When the grounds for declining approval are removed, payment shall be made for amounts properly withheld because of them. No interest shall be paid on any retainage or amounts withheld.

### **9.6 PROGRESS PAYMENTS**

#### **9.6.1 PAYMENTS TO CONTRACTOR**

Within thirty (30) days after approval of the Request for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed up to the last day of the previous month, less the aggregate of previous payments. The value of the Work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the Contractor, or any bondsman, from damages arising from such Work or from enforcing each and every provision of this Contract, and the OWNER shall have the right subsequently to correct any error made in any estimate for payment.

The Contractor shall not be entitled to have any payment requests processed, or be entitled to have any payment made for work performed, so long as any lawful or proper direction given by the OWNER

concerning the Work, or any portion thereof, remains uncompleted with.

#### **9.6.2 PAYMENTS TO SUBCONTRACTORS**

The Contractor shall pay its Subcontractors in accordance with their subcontracts and pursuant to Public Contract Code Section 10262. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

#### **9.6.3 PERCENTAGE OF COMPLETION OR PAYMENT INFORMATION**

The OWNER will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor, and action taken thereon by the OWNER, on account of portions of the Work done by such Subcontractor.

#### **9.6.4 NO OBLIGATION OF OWNER FOR SUBCONTRACTOR PAYMENT**

The OWNER shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

#### **9.6.5 PAYMENT TO SUPPLIERS**

Payment to material or equipment suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3 and 9.6.4.

#### **9.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE**

An approved Request for Payment, a progress payment, or partial or entire use or occupancy of the Project by the OWNER shall not constitute acceptance of work not in accordance with the Contract.

#### **9.6.7 JOINT CHECKS**

OWNER shall have the right, if necessary for the protection of the OWNER, to issue joint checks made payable to the Contractor and Subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the OWNER and a Subcontractor of any tier, any obligation from the OWNER to such Subcontractor, or rights in such Subcontractor against the OWNER.

#### **9.6.8 CERTIFICATION**

Contractor shall certify under penalty of perjury, that all Payment Application requests accurately reflect the Work performed to date on the Project.

#### **9.7 COMPLETION OF THE WORK – INTENTIONALLY OMITTED – See Article 9.9**

#### **9.8 PARTIAL OCCUPANCY OR USE**

##### **9.8.1 OWNER'S RIGHTS**

The OWNER may occupy or use any completed or partially completed portion of the Work at any stage. The OWNER and the Contractor shall agree in writing to the condition of the Work (or designated portion), the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work (or designated portion), insurance, the period for correction of the Work (or

designated portion), and the commencement of warranties for the Work (or designated portion) required by the Contract. When requested by the OWNER, the Contractor shall complete all Punch List items for the occupied portion of the Work.

#### 9.8.2 INSPECTION PRIOR TO OCCUPANCY OR USE

Immediately prior to such partial occupancy or use, the OWNER, Contractor, Construction Manager, and the Architect shall jointly inspect the area of Work (or designated portion) to be occupied or used, in order to determine and document the condition of the Work and make the written agreement required by paragraph 9.8.1.

#### 9.8.3 NO WAIVER

Unless otherwise agreed upon, partial completion, occupancy or use of a portion or portions of the Work shall not constitute Substantial Completion or final acceptance of the Work, shall not be deemed an approval of any portion or portions of the Work not in compliance with the requirements of the Contract, and shall not relieve the Contractor of any responsibility or obligation under the Contract, except as noted in the written agreement required under paragraph 9.8.1.

### 9.9 COMPLETION AND FINAL PAYMENT

#### 9.9.1 CLOSEOUT PROCEDURES AND FINAL INSPECTION

9.9.1.1 Upon Substantial Completion, Contractor shall promptly complete the Punch List and all other remaining portions of the Work **within 30 calendar days after the date Substantial Completion occurred.**

9.9.1.2 Upon fully completing the Punch List, Contractor shall send a written Project Closeout request (1 original and 5 copies) to Construction Manager declaring the Work is fully complete, ready for final inspection and OWNER'S acceptance.

- A. Field Review and Inspection: After receiving Contractor's Project Closeout Request, Construction Manager, Architect, Inspector and OWNER will conduct a field review of the Contractor's Punch List work.

Construction Manager, Architect, and Inspector shall inspect the Work to determine if the Work is fully completed in compliance with the Contract Documents.

- .1 If the Punch List items and all other work are fully complete, the Construction Manager, Architect, and Inspector shall submit to Contractor and OWNER a Final Inspection Report with Project Closeout Check List attached, recommending that OWNER accepts the Work as fully complete in accordance with the Contract Documents.

If the OWNER finds the Work fully completed in accordance with the Contract Documents per the Final Inspection Report, OWNER shall notify Contractor to submit to its Final Application for Payment to the Construction Manager.

- .2 If any Punch List items or any other work is incomplete, the Construction Manager, Architect, and Inspector shall submit to Contractor and OWNER

a Project Closeout Check List identifying the Punch List items or any other work required to complete the Work in accordance with the Contract Documents.

- .3 Within 10 calendar days after receiving the Project Closeout Check List, Contractor shall fully complete all remaining work and re-submit a written Project Closeout Request.

B. Contractor's Liability for Additional Inspections: The costs incurred by the OWNER for any additional field reviews, or the preparation of additional Punch List, shall be invoiced to the Contractor and deducted from the Final Payment.

C. Final Application for Payment:

- .1 Contractor shall submit a fully completed Final Application for Payment to Construction Manager.
- .2 Upon both the Construction Manager's and Architect's approval of the Final Application for Payment, Architect shall transmit to OWNER a Final Certificate for Payment stating that to the best of its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Architect in connection with the Work, such Work has been completed in accordance with the Contract.
- .3 OWNER shall thereupon inspect such Work and either (1) accept the Work as complete with approval of the Governing Board, or (2) notify the Architect and the Contractor in writing of reasons why the Work is incomplete. If the OWNER notes any work remaining to be completed, Contractor shall promptly complete the work and then notify Construction Manager, Architect, and OWNER when it is fully complete. Any corrective work, additional inspection(s) or approvals shall not change Contractor's obligation to complete all Work within the Completion Time.

#### 9.9.2 NOTICE OF COMPLETION AND RELEASE OF RETAINAGE

Upon acceptance of the Work as fully complete and within 10 calendar days after Governing Board approval, OWNER shall file a Notice of Completion with the County Recorder. The contract retainage shall be released and paid to Contractor, and Subcontractors if required, pursuant to Public Contract Code Section 7107. OWNER will release any retention owed to Contractor 35 days after the recordation of the Notice of Completion.

#### 9.9.3 PROCEDURES FOR APPLICATION FOR FINAL PAYMENT

The Application for Final Payment shall be accompanied by the same details as set forth in paragraph 9.3, and in addition, the following conditions must be fulfilled:

- A. Contractor shall execute and deliver a full and final waiver of all liens in connection with the Work, on a form supplied by the OWNER, including a release of lien in recordable form. If requested by OWNER, the waiver and release of lien shall be submitted together with a fully executed copy of the full and final waiver of all liens in connection with the

Work, on a form supplied by the OWNER, including a release of lien in recordable form, obtained by Contractor from each person to receive or that has received a payment under the Contract.

- B. The Contractor shall have made, or caused to have been made, all corrections to the Work which are required to remedy any defects therein, to obtain compliance with the Contract or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of OWNER required under the Contract.
- C. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract for its portion of the Work.
- D. Contractor shall execute and deliver a warranty for its Work, as provided by the Contract, on a form supplied by the OWNER.
- E. Architect shall have issued a Final Certificate for Payment.
- F. The Contractor shall have delivered to the OWNER all manuals and materials required by the Contract.
- G. The Contractor shall have provided instruction to the OWNER on all operable equipment in accordance with the Contract.
- H. The Contractor shall have removed, or caused to be removed, all waste materials and rubbish from and about the Site, as well as all tools, construction equipment, machinery, surplus material, scaffolding equipment, and any other similar materials of the Contractor or any subcontractor, shall have cleaned, or caused to be cleaned, all glass surfaces, and shall have left the Work broom-clean, except as otherwise provided in the Contract.
- I. Prior to, and as a condition precedent for, final payment under this Contract, the Contractor shall provide documentation to the OWNER identifying the amounts paid to DVBE's in conjunction with this Contract so that the OWNER can assess its success at meeting its DVBE participation goal.

#### **9.9.4 OWNER'S PROPERTY**

All shop drawings, working drawings, plans, quantities, specifications, proposals, sketches, magnetic media, computer software or other programming, manuals and technical data submitted to the OWNER or its agents or representatives by Contractor, his employee or his subcontractor pursuant to the Work shall become the property of the OWNER upon payment in full of all undisputed amounts due and payable to Contractor under the Contract Documents. Such materials may be duplicated, used and disclosed by the OWNER, in any manner and for any purpose, provided that any such use not within the purposes intended by this Contract shall be at the OWNER's sole risk and provided that Contractor shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Contract. Manuals, software documentation or other technical data produced by Contractor shall not include copyrighted materials without the express written permission of the copyright OWNER.

#### **9.10 SUBSTITUTION OF SECURITIES**

In accordance with § 22300 of the Public Contract Code, the OWNER will permit the substitution of securities for any monies withheld by the OWNER to ensure performance under the Contract. At the

request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the OWNER, or with a state or federally chartered bank in California as the escrow agent, and thereafter the OWNER shall then pay such monies to the Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Unless otherwise agreed to by the OWNER and Contractor, securities eligible for investment under this section shall include those listed in Government Code § 16430, bank or savings and loan certificates of deposit, interest-bearing demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the OWNER.

The Contractor shall be the beneficial OWNER of any securities substituted for monies withheld and shall receive any interest thereon.

The escrow agreement used for the purposes of this Section shall be substantially similar to the form set forth in the Contract.

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## **ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY**

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### **10.1 SAFETY PRECAUTIONS AND PROGRAMS.**

#### **10.1.1 CONTRACTOR RESPONSIBILITY**

The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Each Contractor shall designate a responsible member of its organization (who is not one of the required full-time staff listed in section 3.3.2) whose sole duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

#### **10.1.2 SUBCONTRACTOR RESPONSIBILITY**

Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Each Subcontractor shall designate and name a responsible, dedicated member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs. Safety Official cannot be one of the required full-time staff listed in section 3.3.2.

#### **10.1.3 COOPERATION**

All Subcontractors and material or equipment suppliers shall cooperate fully with Contractor, the OWNER, and all insurance carriers and loss prevention engineers.

#### **10.1.4 ACCIDENT REPORTS**

Subcontractors shall promptly report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death,



personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. Contractor shall thereafter promptly report the facts in writing to the OWNER and the Architect giving full details of the accident.

#### **10.1.5 FIRST-AID SUPPLIES AT SITE**

The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

### **10.2 SAFETY OF PERSONS AND PROPERTY.**

#### **10.2.1 THE CONTRACTOR**

The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to arising in connection with Contractor's operations under the Contract:

- A. Employees on the Work and other persons who may be affected thereby;
- B. The Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- C. Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

#### **10.2.2 CONTRACTOR NOTICES**

The Contractor shall give notices and comply with 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.

#### **10.2.3 SAFETY BARRIERS AND SAFEGUARDS**

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent Sites and utilities.

#### **10.2.4 USE OR STORAGE OF HAZARDOUS MATERIAL**

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the OWNER any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the OWNER and local fire authorities.

### **10.3 PROTECTION OF WORK AND PROPERTY.**

#### **10.3.1 PROTECTION FROM LOSS**

The Contractor and Subcontractors shall continuously protect the Work, the OWNER's property, and the

property of others, from damage, injury, or loss arising in connection with operations under the Contract. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be due to, or caused by, agents or employees of the OWNER.

#### **10.3.2 PROTECTION FROM ELEMENTS**

The Contractor shall remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The Contractor shall at all times provide heat, coverings, and enclosures necessary to maintain adequate protection against weather so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury or damage.

#### **10.3.3 SHORING AND STRUCTURAL LOADING**

The Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the appropriate Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Contractor shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage or cause damage to the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Contractor at no cost to the OWNER.

#### **10.3.4 CONFORMANCE WITHIN ESTABLISHED LIMITS**

The Contractor and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the OWNER or the Contractor, and shall not unreasonably encumber the premises with construction equipment or materials.

#### **10.3.5 SUBCONTRACTOR ENFORCEMENT OF RULES**

Subcontractors shall enforce the OWNER's and the Contractor's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, the presence of liquor, and the presence of firearms by any person at the Site.

#### **10.3.6 SITE ACCESS**

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the OWNER, observe the boundaries of the Site designated by the OWNER, park only in those areas designated by the OWNER, which areas may be on or off the Site, and comply with any parking control program established by the OWNER such as furnishing license plate information and placing identifying stickers on vehicles.

#### **10.3.7 PROTECTION OF MATERIALS**

The Contractor and the Subcontractors shall receive, count, inspect for damage, record, store, and protect construction materials for the Work and promptly send to the Contractor evidence of receipt of such materials, indicating thereon any shortage, change, or damage (failure to so note shall constitute

acceptance by the Subcontractor of financial responsibility for any shortage).

#### **10.4 EMERGENCIES.**

##### **10.4.1 EMERGENCY ACTION**

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 7.

##### **10.4.2 ACCIDENT REPORTS**

The Contractor shall promptly report in writing to the OWNER all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the OWNER.

#### **10.5 HAZARDOUS MATERIALS**

##### **10.5.1 ASBESTOS-FREE MATERIALS CERTIFICATION**

The Contractor shall certify to the OWNER, in writing that, to the best of his knowledge, information and belief, no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. To this end, the Contractor must provide for the completion of the certification form included in the Appendix of the Contract Documents at the time of execution of the Contract.

##### **10.5.2 ACCIDENT PREVENTION:**

The Contractor agrees that the prevention of accidents to workers engaged upon or in the vicinity of the Work is its responsibility. The Contractor agrees to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as shall be applicable to the Work, including, among others, the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder.

##### **10.5.3 SAFETY:**

When so ordered, the Contractor shall stop any part of the Work which the College or the Construction Manager deems unsafe until corrective measures satisfactory to the College and the Construction Manager have been taken, and the Contractor agrees that it shall not have nor make any claim for damages growing out of such stoppages. Should the Contractor neglect to take such corrective measures, the College or Construction Manager may do so at the cost and expense of the Contractor and may deduct the cost thereof from any payments due or to become due to the Contractor. If the Contractor fails to take corrective measures, then the OWNER may initiate proceedings to declare the Contractor a non-responsible bidder on OWNER's future projects per Section 14.2.2. Failure on the part of the College or the Construction Manager to stop unsafe practices shall in no way relieve the Contractor of its responsibility therefore.

##### **10.5.4 HAZARDOUS SUBSTANCES:**

In the event that Hazardous materials or substances ("Hazardous Substances") of a type of which an employer is required by law to notify its employees are being used or stored on the Site by the Contractor, its subcontractor and anyone directly or indirectly employed or otherwise retained by any of them, the Contractor shall immediately provide written notice of the chemical composition thereof (including, without limitation, a copy of the applicable Material Safety Data Sheet) to Construction Manager and the College in sufficient time to permit compliance with such laws by the College, other subcontractors and other contractors on Site. For the purposes of this Agreement, Hazardous Substances shall mean any substance, product, waste, or other material of any nature that is or becomes listed, regulated or addressed under one or more of the following Environmental Laws: (1) CERCLA; (2) Hazardous Materials Transportation Act; (3) RCRA, (4) the Clean Water Act; (5) the Toxic Substances Control Act, (6) HSAA, (7) the California Porter-Cologne Water Quality Control Act; (8) the California Hazardous Waste Management Act; (9) the California Safe Drinking Water Act; (10) the California Waste Management Act; and (11) any other federal or state law or local ordinance concerning hazardous, toxic or dangerous substances, wastes, or materials.

#### **10.5.4.1 HAZARDOUS SUBSTANCES AT SITE:**

In the event that the Contractor encounters on Site material reasonably believed to be a Hazardous Substance which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and immediately report the condition to Construction Manager and the College in writing. Work in the affected area shall resume when such Hazardous Substance has been rendered harmless or removed as determined by a licensed laboratory retained by the College to verify the presence or absence of the Hazardous Substance and, if found, to render the Hazardous Substance harmless. If, due to no fault of the Contractor or its subcontractors and suppliers, the Contract Time shall be extended accordingly and the Contract Sum shall be increased by a reasonable amount for additional costs incurred by the Contractor as a result of shut down, delay and start up, which adjustments shall be accomplished through Change Order.

#### **10.5.5 INDEMNIFICATION:**

To the fullest extent permitted by law, Contractor agrees to indemnify and hold harmless the College, the Construction Manager, the Owner's Representative, the Architect and other contractors from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, cost and expenses, including legal fees and disbursements, caused by the negligent mishandling by Contractor or its subcontractors and suppliers of any Hazardous Substances found at Site to the extent the materials or substances were brought onto Site by Contractor, its subcontractors and/or material suppliers. The College shall indemnify and hold harmless the Contractor, the Construction Manager, their subcontractors and suppliers and other contractors against any and all demonstrated and proven loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, cost and expenses arising out of or resulting from any Hazardous Substances existing at the Site before commencement of the Work.

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## **ARTICLE 11 - INSURANCE AND BONDS**

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### **11.1 INSURANCE**

Contractor must, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and OWNER from claims which may arise from the Work required by the Contract Documents, whether such Work is done by Contractor, by any subcontractor, by anyone directly or

indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The coverages required by these Supplementary General Conditions shall not in any way limit the liability of Contractor. All insurance purchased pursuant to these Supplementary General Conditions shall be in policies subject to the prior written approval of the OWNER as to form, content, liability limits, cost and issuing company. The requirements in these Supplementary General Conditions apply to the Contractor, subcontractors and sub-subcontractors performing Work on the Project. Contractor and all subcontractors shall furnish Certificates of Insurance, as required below, evidencing said coverage before commencing work on the Project.

- a. **COMMERCIAL GENERAL LIABILITY INSURANCE** covering operations. The policy form must be nothing less than the standard Commercial General Liability insurance policy (Occurrence Form”) with limits no less than those specified in these Supplementary General Conditions.
- b. **AUTOMOBILE LIABILITY INSURANCE** covering the use of all owned, non-owned and hired vehicles and with limits no less than those specified in these Supplementary General Conditions.
- c. **WORKERS’ COMPENSATION AND EMPLOYER’S LIABILITY INSURANCE** as required by Federal and State of California law.

#### **11.2 CONTRACTOR CONSTRUCTION EQUIPMENT INSURANCE:**

Any policies maintained by the Contractor and subcontractors on their owned and/or rented equipment and materials shall contain a provision requiring the insurance carriers to waive their rights of subrogation against the OWNER and all other indemnities named in the contract.

#### **11.3 PROFESSIONAL LIABILITY INSURANCE (ERRORS & OMISSIONS)**

In the event any contract specification requires the performance of professional services, such as but not limited to, architectural, engineering, construction management, surveying, design, etc., a certificate of insurance must be provided prior to commencing work evidencing such coverage with a limit of not less than \$1,000,000.

#### **11.4 ENVIRONMENTAL AND ASBESTOS ABATEMENT COVERAGES**

If the Contract involves the removal of asbestos, the removal/replacement of underground tanks or the removal of toxic chemicals and substances, the Contractor will be required to provide adequate coverages, with limits not less than \$5,000,000 per claim basis, for such exposures subject to requirements and approval of the OWNER.

#### **11.5 HOLD HARMLESS CLAUSE**

Work done on the premises, or in connection with the prosecution of this contract by the Contractor, shall be at the Contractor’s risk and the Contractor shall assume any and all liability and shall hold harmless the OWNER, its officials, officers, directors, agents and employees, from claims or demands, cost expenses, loss or damage due to bodily injury, sickness or disease, including death to employees of the Contractor or any other person, or damage of property including loss of use thereof suffered by employees of the Contractor or any other person; to the extent caused by Contractor, whether such are based upon negligence of the OWNER or any other person, firm, corporation or organization for whom such contract is being performed, their agents, employees or otherwise.

## 11.6 PROOF OF INSURANCE – GENERAL REQUIREMENTS

Before work is started, the Contractor shall forward to the OWNER two copies of a Certificate of Insurance, evidencing that all required insurance is in full force and effect, executed by an authorized representative of the insurance company, and naming the OWNER "Chaffey Community College District" as an additional insured. The Certificate of Insurance shall show (1) all companies affording coverage and (2) the name of the insured exactly in the manner as shown on the bid. The name of the insured must be the name under which the entity is licensed by the Contractors State License Board.

All certificates of insurance, from both contractor and all subcontractors, shall clearly state that the OWNER is named as an additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the OWNER.

Certificates and insurance policies shall include the following clause: *"This policy shall not be cancelled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the OWNER. Date of cancellation or reduction may not be less than Thirty (30) days, or Ten (10) days for nonpayment of premium, after date of mailing notice."*

Certificates of insurance shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice.

The form and substance of all insurance policies are subject to OWNER'S approval. Commercial General Liability and Automobile Liability Insurance policies shall be issued by companies with a Best rating of A- or better and a financial classification of VII or better (or an equivalent rating by Standard & Poor or Moody's). Workers' Compensation and Employer's Liability Insurance policies shall be issued by companies with either (1) a Best rating of B+ or better and a financial classification of VII or better (or an equivalent rating by Standard & Poor or Moody's), or (2) that are acceptable to OWNER.

In the event the contractor or any subcontractor fails to purchase and maintain the required insurance or to furnish satisfactory evidence thereof, the OWNER may procure and maintain such coverages for all parties on behalf of the contractor. Contractor shall furnish all necessary information and pay the premium cost to the OWNER immediately upon presentation of a premium invoice; otherwise, OWNER may deduct the cost of such insurance from the Contract Sum.

Each subcontractor must be covered by insurance of the same character and in the amounts specified in these Supplementary General Conditions, naming the Contractor and the OWNER as additional insureds. Copies of certificates of insurance for subcontractors must be filed with the OWNER within thirty (30) working days after issuance of a Notice to Proceed and at least five (5) working days before the subcontractor begins work on the site. Failure to provide evidence of such insurance shall result in the subcontractor being excluded from the site until proper coverage is verified. The cost of any resulting delay will be borne by the Contractor.

Any material changes in limits, coverages or loss of aggregate limit due to outstanding claims must be reported to the OWNER within 30 days of any such event.

## 11.7 LIMITS

The insurance policies for Commercial General Liability and Automobile Liability Insurance required of the Contractor and all subcontractors shall be written for not less than the following minimum limits:

### Commercial Form General Liability Insurance:

	<u>Contractor</u>	<u>Subcontractor(s)</u>
Chaffey Community College District Fontana Intech Center	New Welding Facility at Intech Center Bid No. 2026PW188 October 20, 2025	

Per Occurrence	\$5,000,000.00	\$2,000,000.00
General Aggregate	\$5,000,000.00	\$3,000,000.00
Products/Completed Operations Aggregate	\$1,000,000.00	\$1,000,000.00
Personal/Advertising Injury Aggregate	\$5,000,000.00	\$1,000,000.00

Automobile Liability Insurance:

	<u>Contractor</u>	<u>Subcontractor(s)</u>
Bodily Injury and Property Damage Combined Single Limit	\$1,000,000.00	\$1,000,000.00

Professional Errors and Omissions Liability Insurance:

	<u>Contractor</u>	<u>Subcontractor(s)</u>
Per Occurrence	N/A	N/A
General Aggregate	N/A	N/A

Pollution Liability Insurance:

	<u>Contractor</u>	<u>Subcontractor</u>
Per Occurrence	\$1,000,000.00	\$1,000,000.00
General Aggregate	\$1,000,000.00	\$1,000,000.00

**NOTE:** These limits can be attained by individual policies or by combining primary and umbrella policies.

## 11.8 **Builder's Risk**

OWNER shall provide Builder's Risk Insurance as follows:

- a. Primary Coverage: The policy shall cover the full contract value of the project, up to, but not to exceed, the Policy Limit of \$50,000,000.00.
- b. Coverage Term: Duration of project.
- c. Description of Coverages:
  - (1) All-risk (i.e., "open perils"), excluding earthquake.
  - (2) Replacement costs.
  - (3) Collapse, if resulting from a covered peril.
  - (4) Debris removal.
  - (5) Off-site storage.
    - i. Policy Limit of \$10,000,000.00 per occurrence.
  - (6) Property in transit.
    - i. Policy Limit of \$40,000,000.00 per occurrence.
- d. Deductible: \$5,000.00.
  - (1) Contractor shall be responsible for the first FIVE THOUSAND AND 00/100 DOLLARS (**\$5,000.00**) of each loss or damage covered by the Builder's Risk Insurance provided by the OWNER which is caused by the Contractor or any Subcontractor or Sub-Subcontractor or for which the Contractor, Subcontractor or Sub-Subcontractor is liable, and for all uninsured losses. No loss or damage, if any, incurred hereunder shall excuse Contractor's complete and satisfactory performance of the provisions of the Contract Documents.
- e. Exclusions:
  - (1) Earthquake.
  - (2) Contractor's equipment.

## 11.9 **PERFORMANCE AND PAYMENT BONDS.**

### 11.9.1 **CONTRACTOR BOND REQUIREMENTS**

Contractor maintains and agrees that it has executed Payment and Performance Bonds in the amounts and manner required by the Contract Documents. No payment will be made to Contractor until Contractor's Payment Bond and Performance Bond have been approved by the OWNER. Should, in the OWNER's sole opinion, any bond become insufficient or Surety found to be unsatisfactory, Contractor shall renew or replace the effected bond within 10 days of receiving notice from the OWNER. In the event the Surety or Contractor intends to reduce or cancel any required bonds, at least thirty (30) days prior written notice shall be given to the OWNER, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this 11.4 are accepted by the OWNER. To the extent, if any, that the Contract Sum is increased in accordance with the Contract, the Contractor shall immediately cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the OWNER. To the extent available, the bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Contract Sum, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the



Contractor fails to furnish any required bond, the OWNER may terminate the Contract for cause.

#### **11.9.2 SUBCONTRACTOR BOND REQUIREMENTS**

Per California Public Contract Code section 4108, it shall be the responsibility of each subcontractor submitting bids to Contractor, as a prime contractor, to be prepared to submit a faithful performance and payment bond or bonds if so requested by Contractor.

In the event any subcontractor submitting a bid to Contractor does not, upon the request of Contractor and at the expense of Contractor at the established charge or premium therefore, furnish to Contractor a bond or bonds issued by an admitted surety wherein Contractor shall be named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, Contractor may reject the bid and make a substitution of another subcontractor subject to Public Contract Code section 4107.

The bond or bonds may be required under this Paragraph only if Contractor in his or her written or published request for subbids clearly specifies the amount and requirements of the bond or bonds. If the expense of the bond or bonds required under this Paragraph is to be borne by the subcontractor, that requirement shall also be specified in the Contractor's written or published request for subbids. Contractor's failure to specify bond requirements, in accordance with this subdivision, in the written or published request for subbids shall preclude Contractor from imposing bond requirements under this Paragraph.

#### **11.9.3 SURETY QUALIFICATION**

Surety companies used by Contractor shall be, on the date the Contract is signed by OWNER, an admitted surety insurer (as defined in the California Code of Civil Procedure Section 995.120). The signature of the person executing the bond must be notarized. If an attorney-in-fact executes the bond on behalf of the surety, a copy of the current power of attorney bearing the notarized signature of the appropriate corporate officer shall be included with the bond. Contractor must use the payment and performance bond forms provided by OWNER.

Pursuant to Code of Civil Procedure Section 995.660, Contractor shall provide OWNER with a certificate from the County Clerk verifying that the Payment Bond surety's certificate of authority has not been surrendered, revoked, canceled, annulled or suspended or, in the event that it has been suspended, that it has been renewed.

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## **ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK**

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### **12.1 UNCOVERING OF WORK.**

#### **12.1.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS**

If a portion of the Work is covered contrary to the Inspector's prior written request, the Architect's prior written request, or to requirements specifically expressed in the Contract, it must, if required in writing by the Inspector or the Architect, be uncovered for the Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Contract Sum or Completion Time.

### **12.1.2 COSTS FOR INSPECTIONS NOT REQUIRED**

If a portion of the Work has been covered which the Inspector or the Architect has not specifically requested to observe prior to its being covered, the Inspector or the Architect may request to see such Work, and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract, costs of uncover and replacement shall, by appropriate Change Order, be charged to the OWNER. If such Work is not in accordance with the Contract, the Contractor shall pay such costs unless the condition was caused by the OWNER or a separate contractor, in which event the OWNER shall be responsible for payment of such costs to the Contractor.

## **12.2 CORRECTION OF WORK.**

### **12.2.1 CORRECTION OF REJECTED WORK**

The Contractor shall promptly correct the Work rejected by the Inspector or the OWNER upon recommendation of the Architect or failing to conform to the requirements of the Contract, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby. If the Contractor fails to correct the Work within five (5) calendar days or such other time as OWNER may approve, the OWNER may withhold 150% of the estimated cost for repair and/or repair the rejected work with the OWNER's own resources and back charge the cost to the Contractor via a credit change order to the Contract.

### **12.2.2 TWO-YEAR WARRANTY CORRECTIONS**

If, within one (1) year after the OWNER records the Notice of Completion to the County Recorder or OWNER'S acceptance of a designated portion thereof, or after the commencement of warranties at full completion of the Work, or by terms of an applicable special warranty required by the Contract, any of the Work is found to be not in accordance with the requirements of the Contract, the Contractor shall correct it promptly after receipt of written notice from the OWNER to do so unless the OWNER has previously given the Contractor a specific and clearly identifiable written acceptance of that particular condition. This period of one (1) year shall be extended with respect to portions of the corrective Work first performed after the OWNER records the Notice of Completion by the period of time between the date the OWNER records the Notice of Completion and the actual performance of the corrective Work. This obligation under this paragraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The OWNER shall give such notice promptly after discovery of the condition.

12.2.2.1 Contractor shall conduct a warranty inspection 11 months after commencement of any warranty, together with the Architect, Construction Manager, and Owner; which inspection is anticipated to be a one-day walkthrough unless otherwise necessitated by the scope of warranty repairs.

### **12.2.3 REMOVAL OF NONCONFORMING WORK**

The Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract and are not corrected by the Contractor or accepted by the OWNER.

### **12.2.4 OWNER'S RIGHTS IF CONTRACTOR FAILS TO CORRECT**

If the Contractor fails to correct nonconforming Work within a reasonable time, the OWNER may correct it in accordance with paragraph 2.4.1. In addition, if the Contractor does not proceed with correction of such nonconforming Work within the time fixed by written notice from the Inspector or the OWNER

through the Architect, the OWNER may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the OWNER may upon ten (10) additional days written notice sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contractor shall be invoiced for 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 OWNER. OWNER may also elect to initiate proceedings to declare the Contractor a non-responsible bidder on future OWNER projects in accordance with Section 14.2.2 hereof.

#### **12.2.5 COST OF CORRECTING THE WORK**

The Contractor shall bear the cost of correcting destroyed or damaged construction of the OWNER or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of the nonconforming Work.

#### **12.2.6 NO TIME LIMITATION**

Nothing contained in this paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract. Establishment of the time period of one (1) year as described in paragraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work and has, for example, no relationship to the time within which the obligation to comply with the Contract may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

#### **12.3 ACCEPTANCE OF NONCONFORMING WORK.**

If it is found at any time before or after completion of the Work that the Contractor has varied from the Contract in materials, quality, form, finish, or in the amount or value of the materials or labor used, the Architect shall make a recommendation: that all such improper work should be removed, remade, and replaced, that all work disturbed by these changes be made good at the Contractor's expense, and that the OWNER deduct from any amount due Contractor that sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. The Architect shall determine such difference in value. The OWNER, at its option, may pursue either course unless correction is required by law.

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### **ARTICLE 13 - MISCELLANEOUS PROVISIONS**

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#### **13.1 GOVERNING LAW.**

The Contract shall be governed by the law of the place where the Project is located.

#### **13.2 SUCCESSORS AND ASSIGNS.**

The OWNER and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in

the Contract. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### **13.3 WRITTEN NOTICE.**

In the absence of specific notice requirements in the Contract, written notice shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

### **13.4 RIGHTS AND REMEDIES.**

#### **13.4.1 DUTIES AND OBLIGATIONS CUMULATIVE**

Duties and obligations imposed by the Contract and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

#### **13.4.2 NO WAIVER**

No action or failure to act by the Inspector, the OWNER, the Architect or the Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### **13.5 TESTS AND INSPECTIONS.**

#### **13.5.1 COMPLIANCE**

Tests, inspections, and approvals of portions of the Work required by the Contract will comply with the applicable provisions of Titles 19 and 21 of the California Code of Regulations, the California Building Code (formerly Title 24 of the Code of Regulations), and the Uniform Building Code, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

#### **13.5.2 INDEPENDENT TESTING LABORATORY**

The OWNER will select and pay an independent testing laboratory to conduct all tests and inspections. Selection of the materials required to be tested shall be made by the laboratory or the OWNER's Representative and not by the Contractor. OWNER shall pay for the following:

- A. Any costs for required pick-up or delivery of samples occurring between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, excluding holidays;
- B. Any costs or expenses for material testing or inspection services performed as straight time;
- C. Any costs or expenses of inspection or testing incurred inside a fifty (50) mile radius from the Project Site, including, but not limited to, travel, shipping or supervision charges or expenses of any kind.

Contractor is liable for any and all overtime premiums incurred by OWNER for materials testing and inspection due to Contractor's acts or omissions. Contractor will pay for all costs borne by inspections outside the parameters listed by the OWNER above. Costs or expenses of inspections outside a fifty

(50) mile radius from the Project Site, including but not limited to, travel, shipping or supervision charges or expenses of any kind will be paid by the Contractor. OWNER shall invoice Contractor for such overtime premiums and deduct the invoice amount from Contractor's next payment if the Contractor delays the inspection schedule.

#### **13.5.3 ADVANCE NOTICE TO INSPECTOR**

The Contractor shall notify the Inspector forty eight (48) hours in advance of its readiness for required observation or inspection so that the Inspector may arrange for same. The Contractor shall notify the Inspector six (6) weeks in advance of the manufacture of material to be supplied under the Contract which must, by terms of the Contract, be tested in order that the Inspector may arrange for the testing of the material at the source of supply.

#### **13.5.4 TESTING OFF-SITE**

Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector that such testing and inspection will not be required, shall not be incorporated in the Work.

#### **13.5.5 ADDITIONAL TESTING OR INSPECTION**

If the Inspector, the Architect, the OWNER, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under paragraph 13.5.1, the Inspector will, upon written authorization from the OWNER, make arrangements for such additional testing, inspection, or approval. The OWNER shall bear such costs except as provided in paragraphs 13.5.2 and 13.5.6.

#### **13.5.6 COSTS FOR RETESTING**

If such procedures for testing, inspection, or approval under paragraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the OWNER, invoiced to the Contractor, and deducted from the next Progress Payment.

#### **13.5.7 COSTS FOR PREMATURE TEST**

In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the OWNER for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice of shall be deducted from the next Progress Payment.

#### **13.5.8 TESTS OR INSPECTIONS NOT TO DELAY WORK**

Tests or inspections conducted pursuant to the Contract shall be made promptly to avoid unreasonable delay in the Work.

### **13.6 TRENCH EXCAVATION.**

#### **13.6.1 TRENCHES GREATER THAN FIVE FEET**

Pursuant to Labor Code § 6705, if the Contract Sum exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation,

submit to the OWNER or a registered civil or structural engineer employed by the OWNER a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

#### **13.6.2 EXCAVATION SAFETY**

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

#### **13.6.3 NO TORT LIABILITY OF OWNER**

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

#### **13.6.4 NO EXCAVATION WITHOUT PERMITS**

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

#### **13.6.5 HAZARDOUS MATERIALS AND DIFFERING CONDITIONS**

As required by Public Contract Code Section 7104, if this Project involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify the OWNER of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by the OWNER; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, the OWNER shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

#### **13.7 WAGE RATES, TRAVEL, AND SUBSISTENCE.**

Contractor shall comply and shall ensure that all subcontractors comply with Sections 1770, 1771, 1772, 1773, 1774, and 1775 of the State of California Labor Code. Compliance with these sections is required by this Contract.

##### **13.7.1 WAGE RATES**

The Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from

the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov](http://www.dir.ca.gov). In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the OWNER's Purchasing Services Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the OWNER, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

#### **13.7.2 HOLIDAY AND OVERTIME PAY**

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of *per diem* wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed.

#### **13.7.3 WAGE RATES NOT AFFECTED BY SUBCONTRACTS**

The Contractor shall pay and shall cause to be paid each worker engaged in work on the Project not less than the general prevailing rate of *per diem* wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers. Contractor shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Contractor in the execution of the Work. Contractor shall cause all subcontracts to include the provision that all subcontractors shall pay not less than the prevailing rates to all workers employed by such subcontractors in the execution of the Work.

#### **13.7.4 TRAVEL AND SUBSISTENCE**

The Contractor shall pay and shall cause to be paid to each worker needed to execute the work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations in accordance with Labor Code Section 1773.8.

#### **13.7.5 CHANGE IN PREVAILING WAGE DURING CONSTRUCTION**

If during construction of the Project, the Director of Industrial Relations determines that there has been a change in any prevailing rate of *per diem* wages in the locality in which this public work is to be performed, such change shall not alter the wage rates in the contract awarded.

#### **13.7.6 FORFEITURE AND PAYMENTS**

Pursuant to Labor Code § 1775, the Contractor shall as a penalty to the OWNER, forfeit Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of *per diem* wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Contract by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commission and shall be based on consideration of the Contractor's mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of *per diem* wage, the previous record of the Contractor in meeting his or her prevailing rate of *per diem* wage obligations, or the Contractor's willful failure to pay the correct prevailing rate of *per diem* wages. A mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of *per diem* wage is not excusable if the Contractor had knowledge of it or the obligations under this part. The

difference between such prevailing rate of *per diem* wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of *per diem* wage shall be paid to each worker by the Contractor. The amount of this penalty shall be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the Contract Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Contract Sum. Review of any civil wage and penalty assessment shall be made pursuant to section 17420 of the California Labor Code.

#### **13.7.7 MINIMUM WAGE RATES**

Any worker employed to perform work on the Project, which work is not covered by any craft or classification listed in the general prevailing rate of *per diem* wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the Work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

#### **13.7.8 PER DIEM WAGES**

Pursuant to Labor Code § 1773.1, *per diem* wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code § 1773.8.

#### **13.7.9 POSTING OF WAGE RATES**

The Contractor shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

#### **13.8 RECORD OF WAGES PAID: INSPECTION.**

For purposes of 13.8, the term subcontractor shall not include suppliers, manufacturers, or distributors.

##### **13.8.1 APPLICATION OF LABOR CODE**

Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, 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 them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury. The responsibility for compliance with this Article shall rest upon the Contractor.

##### **13.8.2 PAYROLL RECORD SUBMISSION**

In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.



All payroll records shall be certified as being true and correct by Contractor or subcontractors keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

**13.8.2.1** A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.

**13.8.2.2** A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.

**13.8.2.3** A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either OWNER, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Contractor or subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by OWNER shall be marked or obliterated by Contractor in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

### **13.8.3 FORM OF CERTIFIED PAYROLL RECORDS**

Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

### **13.8.4 NONCOMPLIANCE**

In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to the OWNER for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

### **13.8.5 STOP WORK ORDERS**

Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the OWNER. Contractor shall defend, indemnify and hold the OWNER, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

## **13.9 APPRENTICES.**

### **13.9.1 APPRENTICE WAGES AND DEFINITIONS**

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is

employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in § 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing with § 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

#### **13.9.2 APPRENTICE LABOR POOL**

When the Contractor to whom the Contract is awarded by the OWNER, or any Subcontractor under him or her, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the Project, for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in order to comply with this section. Every Contractor and Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

#### **13.9.3 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS**

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the Contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

#### **13.9.4 JOURNEYMAN/APPRENTICE RATIO**

The Contractor or Subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards.

Upon proper showing by the Contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) Working Days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

#### **13.9.4.1      *Apprenticeable Craft or Trade***

"Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

- A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).
- B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.
- C. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.
- D. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

#### **13.9.5      *RATIO EXEMPTION***

When exemptions are granted to an organization which represents Contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member Contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

#### **13.9.6      *APPRENTICE FUND***

A Contractor to whom the Contract is awarded or any Subcontractor under him or her, who, in performing any of the work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Project, to which fund or funds other contractors in the area of the site of the Project are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Contractor or Subcontractor may add

the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code § 227.

#### **13.9.7 PRIME CONTRACTOR COMPLIANCE**

The responsibility of compliance with Paragraph 13.9 of these General Conditions and § 1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor. In the event Contractor willfully fails to comply with General Conditions, Paragraph 13.9, it will be considered in violation of the requirements of the Contract.

#### **13.9.8 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE**

All decisions of the joint apprenticeship committee under this paragraph 13.10 and Labor Code § 1777.5 are subject to Labor Code § 3081.

#### **13.9.9 NO BIAS**

It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in the Labor Code § 3077.

#### **13.9.10 VIOLATION OF LABOR CODE**

Any violation of this Section or of Labor Code Section 1777.5 shall be governed by Labor Code Section 1777.7. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7. The interpretation and enforcement of Section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council.

#### **13.10 ASSIGNMENT OF ANTITRUST CLAIMS.**

##### **13.10.1 APPLICATION**

Pursuant to Government Code § 4551, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the OWNER all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties. If the OWNER receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the OWNER any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the OWNER as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

##### **13.10.2 ASSIGNMENT OF CLAIM**

Upon demand in writing by the assignor, the OWNER shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been

injured by the violation of law for which the cause of action arose and the OWNER has not been injured thereby or the OWNER declines to file a court action for the cause of action.

#### **13.11 STATE AUDIT.**

Pursuant to and in accordance with the provisions of Government Code § 10532, or any amendments thereto, all books, records, and files of the OWNER, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after final payment is made under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period.

Contractor shall make available to the College any of the Contractor's other documents related to the Work immediately upon request of the College.

In addition to the State Auditor rights above, the College shall have the right to examine and audit all books, estimates, records, contracts, documents, Request for Proposal, proposal, bid, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the College, for a period of four (4) years after final payment.

#### **13.12 SMOKE-FREE AND DRUG-FREE WORKPLACE.**

Pursuant to OWNER Policy, no tobacco products shall be used by anyone at any time on property of the OWNER, including the Project Site except in designated areas.

In addition, the OWNER and the Project are "drug-free" workplaces. As such, the Contractor is subject to the requirements mandated by the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.). The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. It is the sole responsibility of the Contractor to police and oversee any and all personnel used in connection with the Work and the Project, whether employed directly or indirectly by Contractor. If Contractor fails to fully and adequately comply with the Drug-Free Workplace Act, the OWNER may enforce its lawful right to suspend pending or subsequent payments and to terminate the Contract, and may pursue all other rights and remedies it may have against the Contractor at law and/or in equity.

The Contractor shall also execute and submit to the OWNER the Drug-Free Workplace Certification included in the Appendix of the Contract Documents at the time of execution of the Contract. This certification indicates that the Contractor is aware of the provisions of the Drug-Free Workplace Act of 1990 and will adhere to the requirements of the Act.

#### **13.13 NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY**

Pursuant to Labor Code Section 1735 and other applicable provisions of law, the Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Project. The Contractor will take affirmative action to ensure that employees are treated during

employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

#### **13.14 PROHIBITED INTERESTS**

No College official or representative who is authorized in such capacity and on behalf of the College to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall be or become directly or indirectly interested financially in this Agreement.

#### **13.15 NOTICE OF TAXABLE POSSESSORY INTEREST**

In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

#### **13.16 CONTROLLING LAW**

Notwithstanding any subcontract or other contract with any subcontractor, supplier, or other person or organization performing any part of the Work, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

#### **13.17 JURISDICTION; VENUE**

Contractor and any subcontractor, supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of San Bernardino County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

#### **13.18 SURVIVAL OF OBLIGATIONS**

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

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### **ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT**

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#### **14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE.**

##### **14.1.1 GROUNDS FOR TERMINATION**

The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, for only the following reasons:

- A. Issuance of an order of a court or other public authority having jurisdiction;
- B. An act of government, such as a declaration of national emergency, making material unavailable;
- C. If repeated suspensions, delays, or interruptions by the OWNER as described in paragraph 14.3 constitute in the aggregate more than 100 percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less; or
- D. The OWNER has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence of financing or funding as required by paragraph 2.2.1.

#### **14.1.2 NOTICE OF TERMINATION**

If one of the above reasons exists, the Contractor may, upon written notice of seven (7) additional days to the OWNER, terminate the Contract and recover from the OWNER payment for Work satisfactorily completed and for reasonable costs accrued and any non-cancellable obligations as of the effective date of termination verified by the Architect with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead and profit. No damages or costs except those specified herein shall be recoverable by Contractor on account of termination by Contractor for cause.

#### **14.1.3 NOTICE OF TERMINATION - OWNER FAULT**

If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, Subcontractor, Sub-Subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible because the OWNER has persistently failed to fulfill the OWNER's obligations under the Contract with respect to matters important to the progress of the Work, the Contractor may, upon written notice of seven (7) additional days to the OWNER, terminate the Contract and recover from the OWNER as provided in paragraph 14.1.2.

### **14.2 TERMINATION BY THE OWNER FOR CAUSE.**

#### **14.2.1 GROUNDS FOR TERMINATION**

If the Contractor should be in violation of the Contract, then the OWNER, upon certification that sufficient cause exists to justify such action, may without prejudice to any other right or remedy and after giving the Contractor notice pursuant to Section 14.4.2, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method the OWNER may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract Sum shall exceed the expense of finishing the work including compensation to the OWNER for its additional services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the OWNER. The OWNER may terminate the Contract if the Contractor:

- A. Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials in order to maintain the Project Schedule or to fully and adequately complete the Project within the Completion Time.

- B. Fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code § 10262;
- C. Persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- D. Otherwise is in substantial breach of one or more provisions of the Contract.
- E. Is adjudged a bankrupt.
- F. Makes a general assignment for the benefit of its creditors.
- G. Has a receiver appointed on account of its insolvency.

#### **14.2.2 NOTIFICATION OF TERMINATION**

When any of the above reasons exist, the OWNER may, without prejudice to any other rights or remedies of the OWNER and after giving the Contractor and the Contractor's surety, if any, written notice of seven (7) days, terminate the Contract and, subject to any prior rights of the surety:

- A. Take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- B. Accept assignment of subcontracts pursuant to paragraph 5.4; and
- C. Complete the Work by whatever reasonable method the OWNER may deem expedient.
- D. OWNER will initiate procedures to declare the Contractor a non-responsible bidder on future OWNER projects.

#### **14.2.3 PAYMENTS WITHHELD**

If the OWNER terminates the Contract for one of the reasons stated in paragraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is complete.

#### **14.2.4 PAYMENTS UPON COMPLETION**

If the unpaid balance of the Contract Sum, including contract retentions, exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the OWNER. The amount to be paid to the Contractor, or OWNER, as the case may be, shall be certified by the Architect upon application. This payment obligation shall survive completion of the Contract.

### **14.3 TERMINATION OR SUSPENSION BY THE OWNER FOR CONVENIENCE.**

#### **14.3.1 SUSPENSION BY OWNER**

The OWNER may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the OWNER may determine.



#### 14.3.1.1 **Adjustments**

An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

- A. that performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
- B. that an equitable adjustment is made or denied under another provision of this Contract.

#### 14.3.1.2 **Adjustments for Fixed Cost**

Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

#### 14.4 **OWNER TERMINATION FOR CONVENIENCE:**

The College may terminate performance of the Work in whole or, in part, if the College determines that a termination is in the College's best interest.

The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the College, the extent of termination, and the effective date of such termination.

After receipt of Notice of Termination, and except as directed by the College and/or Construction Manager, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

- 1) Stop Work as specified in the Notice.
- 2) Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
- 3) Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
- 4) Terminate all Subcontracts to the extent that they relate to the portions of the Work terminated.
- 5) Place no further subcontracts or orders, except as necessary to complete the remaining portion of the Work.
- 6) Submit to the College through the Construction Manager, within ten (10) Days from the effective date of the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the

Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the College's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by the College and the Construction Manager no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by the College's Termination for Convenience."

- 7) These provisions are in addition to and not in limitation of any other rights or remedies available to the College.

Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the College and/or Construction Manager may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the College and/or the Construction Manager, or until the Contract is terminated.

#### **14.5 TERMINATION DUE TO DISCOVERY OF UNKNOWN OR CHANGED CONDITIONS**

The OWNER reserves the right to terminate this Contract should the OWNER determine not to proceed because of the discovery of any condition described in Article 4.5.5 or Article 10.5. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

### **END OF GENERAL CONDITIONS**