

MINUTES OF THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



**10.4**  
(MT 26362)

On motion of Supervisor Gutierrez, seconded by Supervisor Spiegel and duly carried by unanimous vote, IT WAS ORDERED that the recommendation from Housing Authority regarding the acceptance of American Rescue Plan Act (ARPA) Grant Funds from County in the Amount of \$151,149; Approve and Execute the Subrecipient Grant Agreement for the Use of ARPA Funds; Approve and Accept the Sole Bid for the Jack E. Marlowe Renovation Project located in the Unincorporated Community of Ripley Submitted by Honor Landscape; and Approve the Renovation Contract by and between HACR and Honor Landscape, District 4, is continued to December 10, 2024 at 9:30 a.m. or as soon as possible thereafter.

Roll Call:

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez  
Nays: None  
Absent: None

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on December 3, 2024, of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors  
Dated: December 3, 2024  
Kecia R. Harper, Clerk of the Board of Supervisors, in  
and for the County of Riverside, State of California.

(seal)

By:  Deputy

AGENDA NO.  
**10.4**

xc: HACR

**SUBMITTAL TO THE BOARD OF COMMISSIONERS  
HOUSING AUTHORITY  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM: 10.4**  
(ID # 26362)

**MEETING DATE:**

Tuesday, December 03, 2024

**FROM :** HOUSING AUTHORITY

**SUBJECT:** HOUSING AUTHORITY: Accept American Rescue Plan Act (ARPA) Grant Funds from County in the Amount of \$151,149; Approve and Execute the Subrecipient Grant Agreement for the Use of ARPA Funds; Approve and Accept the Sole Bid for the Jack E. Marlowe Renovation Project located in the Unincorporated Community of Ripley Submitted by Honor Landscape; and Approve the Renovation Contract by and between HACR and Honor Landscape; District 4. [\$151,149 Total Cost - 100% ARPA Funds] (CEQA Exempt) (Companion Item MT#26364) Clerk of the Board to file the Notice of Exemption)

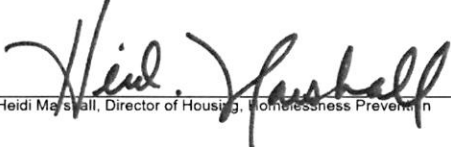
**RECOMMENDED MOTION:** That the Board of Commissioners:

1. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301, Existing Facilities Exemption, and Section 15061(b)(3) General Rule "Common Sense" Exemption;
2. Find that the project is a categorically excluded activity (subject to Title 24 Code of Federal Regulations (CFR) Section 58.5) and meets the conditions specified for such exemption pursuant to Title 24 CFR Section 58.35 (a) and in accordance with the National Environmental Policy Act of 1969;
3. Accept a grant in the amount of \$151,149 derived from County's ARPA to pay for costs associated with the renovation of Jack E. Marlowe Park located in the unincorporated community of Ripley at 24699 School Road, Ripley, CA, 92225;
4. Approve the attached Subrecipient Agreement for the Use of American Rescue Plan Act (ARPA) Funds (Subrecipient Agreement) between County of Riverside and the Housing Authority of the County of Riverside (HACR) and authorize the Chair of the Board of Commissioners to execute the Subrecipient Agreement on behalf of HACR;
5. Approve two addenda to the plans and specifications for the Project issued prior to the September 24, 2025 bid opening for the Jack E. Marlowe- Ripley Family Park Renovation Project (Project);
6. Reject all bids in response to Addendum 1 for Landscape Maintenance Services as not in the best interests of the County and set the construction budget for the Jack E. Marlowe Park Renovation Project at \$74,949;

**SUBMITTAL TO THE BOARD OF COMMISSIONERS HOUSING AUTHORITY  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

7. Accept the sole bid by Honor Landscape (Contractor), as the only responsive and responsible bidder, and award the Jack E. Marlow- Riley Family Park Contract (Renovation Contract) to Contractor;
8. Approve the Renovation Contract between the HACR and Contractor in the amount of \$68,135, and authorize Executive Director of HACR, or designee to execute the Renovation Contract on behalf of HACR;
7. Authorize the Executive Director of HACR, or designee, to take all necessary steps to implement and accomplish the Subrecipient Agreement and the Renovation Contract, including but not limited to, signing all administrative documents, amendment, change orders and addendums to the Renovation Contract, including amendments or change orders that do not exceed the original total budget by ten percent (10%) to facilitate successful completion of the project, subject to approval as to form by General Counsel; and
8. Authorize the Purchasing Agent to issue a Purchase Order to Contractor in an amount not to exceed \$68,135 for the Jack E. Marlowe Park Renovation Project Renovation Contract;
9. Direct Clerk of the Board to file the Notice of Exemption with the County Clerk and the State Clearinghouse within five business days of approval.

**ACTION:Policy**

  
Heidi Marshall, Director of Housing, Homelessness Prevention 10/24/2024

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**MINUTES OF THE BOARD OF COMMISSIONERS**

**SUBMITTAL TO THE BOARD OF COMMISSIONERS HOUSING AUTHORITY  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$151,149	\$0	\$151,149	\$0
<b>NET COUNTY COST</b>	\$0	\$0	\$0	\$0
<b>SOURCE OF FUNDS:</b> AMERICAN RESCUE PLAN ACT (ARPA) FUNDS 100%			<b>Budget Adjustment:</b> NO	
			<b>For Fiscal Year:</b> 2024/2026	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

The Housing Authority of the County of Riverside (HACR) is a public entity that was formed in 1942 to provide federally subsidized housing and housing assistance to low-income families, within the County of Riverside. HACR is subject to the requirements of Title 24 of the Code of Federal Regulations (CFR), Housing Authorities Law (Part 2 of Division 24 of the California Health and Safety Code commencing with Section 34200 et seq.) and HACR's own procurement policy. HACR is a committed partner in the community's effort to revitalize neighborhoods and foster economic development, as well as to provide quality, affordable housing.

The proposed project will provide much needed improvements to the Jack E. Marlowe Park located at 24699 School Road, Ripley, within the County of Riverside. In keeping with its mandate to provide efficient and effective services, HACR advertised and Invitation for Bids (IFB) No. 2024-005 for a comprehensive renovation, which includes landscape design and construction of Jack E. Marlowe Park, with a closing date of September 25, 2024. HACR received and opened one bid. Honor Landscape (Contractor) was the sole bidder that responded to the solicitation that was identified as both responsible and responsive.

HACR staff recommends that the Board of Commissioners approve and award the Jack E. Marlowe Renovation Contract between HACR and Honor Landscaping in the amount of \$68,135.00 and approve the project budget as follows which includes a contingency amount of 10 percent:

Original Contract Amount	\$68,135.00
Contingency (10%)	\$6,814.00
<b>TOTAL</b>	<b>\$74,949.00</b>

A 10% construction contingency in the amount of \$6,814.00 has been included in the project budget to account for errors and omissions in the construction documents or changes in the scope of the project due to unforeseen repairs or site conditions.

**SUBMITTAL TO THE BOARD OF COMMISSIONERS HOUSING AUTHORITY  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

The County is contributing \$74,949.00 towards the Project's construction cost, using American Rescue Plan Act (ARPA) funds allocated to Riverside County from California's direct allocation of federal ARPA funds.

The attached Subrecipient Agreement obligates \$151,149 of the ARPA funds. County Counsel has reviewed and approved as to form the attached form of the Subrecipient Agreement for the Use of ARPA Funds. Staff recommends that the Board approve the Subrecipient Agreement and Renovation Contract.

HACR staff reviewed the submitted bid and determined that Honor Landscape was the sole responsive and responsible bidder. County Counsel has reviewed the Renovation Contract and has approved it as to form.

**California Environmental Quality Act (CEQA):**

This project will provide a comprehensive renovation of the Jack E. Marlowe Park. The project is exempt from CEQA pursuant to Section 15301 Existing Facilities Exemption. This exemption includes the operation, repair, maintenance, leasing, or minor alteration of existing public or private structures or facilities, provided the exemption only involves negligible or no expansion of the previous site's use. The project as proposed is for renovation. There will be no expansion of the existing use of the project. Additionally, the project is exempt from CEQA pursuant to Section 15061(b)(3) as there is no possibility the project will have a significant impact on the environment.

**Impact on Residents and Businesses**

Approving this item will have a positive impact on the citizens and businesses of Riverside County. The proposed project is expected to accommodate a wide range of recreation needs based on the surrounding community. Additionally, the renovations to Jack E. Marlowe Park will create a space for all community members to congregate safely and enjoy nature; kids can play under their parent's watchful eye and community members can improve their health with equipment, all relaxing environments. Jack E. Marlowe Park will have amenities to keep visitors of all ages active and engaged. This improvement will positively impact the overall health of residents and improve the surrounding neighborhood.

**Contract History and Price Reasonableness**

HACR advertised an Invitation for Bids (IFB) No. 2024-006 with a bid opening date of August 16, 2024. Honor Landscape was the sole bidder and was found to be responsive and responsible. The cost proposed by the bid of \$74,949.00 is deemed to be appropriate, fair, and reasonable. However, the landscape maintenance services, that were added to the plans and specifications by Addendum 1, are not in the best interests of HACR and therefore it is recommended that the bid pertaining to landscape maintenance be rejected.

**Attachments:**

**SUBMITTAL TO THE BOARD OF COMMISSIONERS HOUSING AUTHORITY  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

- Notice of Exemption
- Renovation Contract
- Subrecipient Agreement for the Use of ARPA Funds
- Addendums 1 and 2
- Performance and Payment Bonds

  
Brianna Lontajo, Principal Management Analyst 11/27/2024

1                                   **JACK E. MARLOWE – RIPLEY FAMILY PARK CONTRACT**

2                                   **BY AND BETWEEN**

3                                   **THE HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE**

4                                   **AND**

5                                   **HONOR LANDSCAPE**

6                                   **FOR THE**

7                                   **JACK E. MARLOWE – RIPLEY FAMILY PARK RENOVATION PROJECT**

8                                   **LOCATED AT 24699 SCHOOL ROAD, RIPLEY, CA 92225**

9  
10 This Park Renovation Project Contract (“Contract”) is made by and between the **Housing Authority of**  
11 **the County of Riverside**, a public entity, corporate and politic, hereinafter referred to as  
12 “AUTHORITY”, or “HACR”, and **Honor Landscape**, a California corporation, hereinafter referred to as  
13 “CONTRACTOR”. AUTHORITY and CONTRACTOR are collectively referred to herein as the  
14 “Parties”.

15                                   **RECITALS**

- 16           A.     This Contract pertains to that certain real property owned by AUTHORITY located at  
17                   24699 School Road, Ripley, CA 92225, in the County of Riverside, hereinafter referred to  
18                   as the “Property”;
- 19           B.     The term “PROJECT” includes the performance, as set forth in the Contract Documents  
20                   (defined in Section 1.1. below), by the CONTRACTOR, of all work or improvements on,  
21                   in and about the Property entitled **JACK E. MARLOWE – RIPLEY FAMILY PARK**  
22                   **RENOVATION PROJECT**;
- 23           C.     CONTRACTOR was the only responsive and responsible bidder for AUTHORITY’S  
24                   Request for Proposals (“RFP”) no. 2024-006 for the JACK E. MARLOWE PARK  
25                   RENOVATION PROJECT on April 18th, 2024. CONTRACTOR was subsequently  
26                   awarded this PROJECT; and

1 D. AUTHORITY desires that CONTRACTOR complete the PROJECT on the terms and  
2 conditions hereinafter set forth, and CONTRACTOR agrees to perform the work to  
3 complete said PROJECT on the terms and conditions set forth below.

4 NOW THEREFORE, the AUTHORITY and CONTRACTOR, for the consideration set forth  
5 herein, mutually agree as follows:

6  
7 **ARTICLE 1**

8 **THE RENOVATION CONTRACT**

9 1.1 The Contract Documents means and includes, without limitation, all of the following which are  
10 incorporated herein by this reference and are made a part of this Contract as if fully set forth herein. The  
11 Contract Documents consist of the following component parts:

12 1.1.1 Exhibit A: Renovation General Conditions

13 1.1.2 Exhibit B: Performance, Payment and Labor and Material Bonds

14 1.1.3 Exhibit C: CONTRACTOR's Proposal Packet

15 1.1.4 Exhibit D: Scope of Work

16 1.1.5 Exhibit F: Form HUD-92010 Equal Employment Opportunity Certification

17 1.1.6 Exhibit G: Form HUD-5370 General Conditions for Construction Contracts – Public  
18 Housing Programs,

19 1.1.7 Exhibit H: Federal Prevailing Wage Decision Number CA20230017 MOD 13 7/13/2023

20 1.1.8 Exhibit I: American Rescue Plan Act Federal Provisions

21 1.1.9 RFP Documents, Contractor Proposal, Best and Final Offer: The Request or Proposals (RFP)  
22 documents, Contractor's Proposal (if no Best and Final Offers have been submitted),  
23 provided that, with the exception of Approved Deviations, the Contract Documents shall not  
24 include any portion of the Proposal or Best and Final Offer that deviates from the Project  
25 criteria.

26 1.1.10 Final Construction/Landscape Documents: The Final Construction/Landscape Drawings to  
27 be hereafter prepared by the Contractor and its sub-consultants that are approved by the  
28



1 Authority in accordance with the terms of the Contract Documents provided that, with the  
2 exception of Approved Deviations, the Contract Documents shall not include any portion of  
3 the Proposal or Best and Final Offer that deviates from the Project criteria.

4 1.1.11 Addenda: Not Used

5 1.1.12 Labor Compliance Program: It is in the best interest of the Project for the Contractor to avoid  
6 labor disputes, strikes, lockouts, work slow-downs, and work stoppages that would result in  
7 a delay in the construction process. The Authority will establish and enforce a Labor  
8 Compliance Program as required by Public Contract Code Section 20133(b)(3) The  
9 Contractor shall provide the Authority with all documentation required by the Authority to  
10 establish and enforce the labor compliance program.

11 1.2 Order of Priority: In the event of a conflict within the Contract Documents, the priority shall be:

12 1.2.1 Renovation Agreement

13 1.2.2 Scope of Work

14 1.2.3 HUD-5370 General Conditions for Construction Contracts- Public Housing Programs

15 1.2.4 Renovation General Conditions

16 1.2.5 Federal Provisions for American Rescue Plan Act

## 17 **ARTICLE 2**

### 18 **STATEMENT OF PROJECT WORK**

19 2.1 Scope of Work

20 2.1.1 Contractor shall provide, furnish, and perform all necessary planning, architectural,  
21 engineering, and all other renovation services of any type, procurement, permitting and  
22 support services, construction, landscaping, clean-up, and all other construction/Landscape  
23 services of any type, provide and furnish all necessary supplies, materials and equipment  
24 (except those to be provided by Authority, if any) and all necessary supervision, labor, and  
25 services required for the complete renovation, engineering, design, procurement, quality  
26 assurance, construction and all necessary installation, start-up and testing required for a  
27 complete, operational, and fully functional Project, as further described in Contractor's Best  
28

1 and Final Proposal (hereinafter, the all-inclusive obligations of the Contractor set forth in  
2 this sentence shall be referred to as the "Work"). Except with regard to any material to be  
3 provided and/or installed by Authority, Contractor shall fully commission and turn over a  
4 complete operational, and fully functional Project to Authority. Without limiting the  
5 generality of this Section, Contractor shall provide the following work, labor and services:

6 2.1.2 This Renovation Project will include, but is not limited to, any portion of the following:

- 7 a. Initial planning and site review: Verify existing conditions at the site and all work needed  
8 to complete the project.
- 9 b. Trim all large trees.
- 10 c. Remove and dispose of all debris.
- 11 d. Apply weed herbicide as needed.
- 12 e. Remove all the weeds at the soccer field, grade the field flat and level.
- 13 f. Plant 250 lbs. of Bermuda seed on the soccer field.
- 14 g. Install new Goal nets to be 24' x 8'.
- 15 h. Install 2 fabric shades over the playground.
- 16 i. Paint/fog coat over all graffiti on every structure throughout the park, including park sign.
- 17 j. Repair and replace any broken concrete slabs and concrete car stop parking bumpers,  
18 including repairing all cracks on concrete slabs throughout park.
- 19 k. Perform a thorough inspection of the existing Irrigation system. Replace commercial  
20 valves, PVC pipes, sprinkler and or bodies and nozzles as needed in order to achieve optimal  
21 performance of the irrigation system.
- 22 l. Prep the baseball field/diamond for immediate use
- 23 m. Prepare a detailed work plan indicating required and recommended improvements.
- 24 n. Coordinate design and construction activities with HACR staff.
- 25 o. Once approved, contractor shall complete the renovation of the Project according within  
26 the agreed upon time frame.
- 27
- 28

1 Contractor shall prepare complete designs, purchasing and procurement of the  
2 services, materials and equipment and for the construction/landscape of the complete,  
3 operational, and fully functional Project, and shall furnish the services of all necessary  
4 supervisors, designers, and other personnel necessary for prepared Work. Renovation Phase  
5 shall be completed within forty-five (45) days and provided to the Authority.

6 2.1.3 Contractor shall provide, install and complete as specified and pay for all labor, materials and  
7 equipment, tools, supplies, construction equipment and machinery, construction, start-up  
8 and testing, utilities, transportation, and other facilities and services (including any  
9 temporary materials, equipment, supplies and facilities) necessary for the proper execution  
10 and completion of the complete, operational, and fully functional Project.

11 2.1.4 Contractor shall supervise and direct the Work, and shall furnish the services of all  
12 supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to  
13 design, renovate and construct the complete, operational, and fully functional Project.  
14 Contractor shall provide, manage and organize such personnel as necessary to complete the  
15 Work in accordance with all requirements of the Contract Documents.

16 2.1.5 Contractor shall obtain, at Contractor's expense, all governmental and private approvals,  
17 licenses, and permits required to complete the Work (if applicable); provided, however,  
18 Authority will be responsible for paying the cost of all County imposed fees. Contractor  
19 shall design and construct complete, operational, and fully functional Project in full  
20 compliance with all applicable laws, codes and standards (both public and private), including  
21 but not limited to, the standards included, and warranties expressed in the Contract  
22 Documents and manufacturer's recommendations pertaining to individual items of  
23 equipment or systems.

24 2.1.6 CONTRACTOR shall perform all services Monday – Friday, 7:30 a.m. to 5:30 p.m.  
25

26 2.2 Site Conditions  
27  
28

1 Data provided in the specifications are believed to depict the conditions to be encountered by  
2 CONTRACTOR, but AUTHORITY does not guarantee such data as being all-inclusive or complete  
3 in every respect. Nothing contained herein shall relieve CONTRACTOR from making any and all  
4 investigations he/she may deem necessary to apprise him/herself of the Work. CONTRACTOR'S  
5 submission of its bid and execution of the Contract constitutes its representation, acknowledgement  
6 and agreement that it had sufficient time, access and opportunity prior to the bid closing to conduct  
7 a careful and thorough examination, to its satisfaction of: the Contract Documents, and other  
8 information provided by AUTHORITY prior to bid closing concerning the PROJECT, site or  
9 existing improvements; the visible conditions at the site and its surroundings, visible conditions of  
10 existing improvements and their existing uses, and local conditions in the vicinity of the site; the  
11 status of any construction at the site concurrently under construction; and all information concerning  
12 visible and concealed conditions above and below the surface of the ground at the site and in existing  
13 improvements, including without limitation, surveys, reports, data, as-built drawings of existing  
14 improvements and utility sources, that was either provided by AUTHORITY to CONTRACTOR or  
15 was reasonably available to CONTRACTOR for review in the public records.

16 2.3 Standard of Performance: In addition to and without limiting Contractor's other obligations  
17 under the Contract Documents, Contractor shall at all times in its performance of its obligations  
18 under the Contract Documents conform to the following general standards for construction of the  
19 type called for by this Renovation Contract for projects of a scope and complexity that is comparable  
20 to the Project; Contractor shall:

21 2.3.1 Comply with the requirements of the Contract Documents;

22 2.3.2 Comply with Applicable Laws;

23 2.3.3 Conform to the standard of care applicable to those who provide the renovation project services  
24 and construction of the type called for by this renovation Contract for projects of a scope and  
25 complexity that is comparable to the Project;

26 2.3.4 Furnish efficient business administration of the Work, utilizing sufficient senior level  
27 management and other qualified personnel to manage the Work; and  
28

1 2.3.5 Apply its professional skill and attention to completing the Work in an expeditious and  
2 economical manner, consistent with the expressed best interests of the Authority and within the  
3 limitations of the Contract Sum and Contract Time.  
4

### 5 **ARTICLE 3**

#### 6 **TIME OF COMMENCEMENT AND COMPLETION**

##### 7 3.1 Time for Completion

8 The Work, as defined in Exhibit D Scope of Work , to be performed under this Contract shall  
9 commence within ten (10) days after a Notice to Proceed is received by CONTRACTOR, or on the  
10 date specified in the Notice, whichever is later, and the Renovation Phase to be completed within  
11 **forty-five (45) days** following the said date. Time is of the essence under this Contract as to each  
12 provision in which time of performance is a factor. Contractor agrees to achieve Substantial  
13 Completion of the entire renovation Work within 45 calendar days after the Date of Commencement  
14 and achieve Final Completion of the Work with the time fixed by the Authority in the Certificate  
15 of Substantial Completion. Contract time may be extended only with the written authorization of  
16 the Authority.

##### 17 3.2 Liquidated Damages

18 3.2.1 If CONTRACTOR fails to complete the PROJECT within the time specified in the Contract,  
19 or any extension, as specified in HUD Form 5370, attached hereto as Exhibit "G", the CONTRACTOR  
20 shall pay to AUTHORITY as liquidated damages, the sum of **three hundred (\$300) dollars** for each day  
21 of delay. If different completion dates are specified in the contract for separate parts or stages of the Work,  
22 the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent  
23 that CONTRACTOR'S delay or nonperformance is excused under another clause in this Contract,  
24 liquidated damages shall not be due AUTHORITY. CONTRACTOR remains liable for damages caused  
25 other than by delay.

26 3.2.2 If AUTHORITY terminates this Agreement due to breach by CONTRACTOR the resulting  
27 damage will consist of liquidated damages until such reasonable time as may be required for final  
28

1 completion of the PROJECT together with any increased costs occasioned AUTHORITY in completing the  
2 PROJECT.

3 3.2.3 If AUTHORITY does not terminate CONTRACTOR'S right to proceed, the resulting  
4 damage will consist of liquidated damages until the PROJECT is completed or accepted.

5 3.2.4 Contractor and Authority agree to liquidate damages with respect to Contractor's failure to  
6 achieve Substantial Completion of the Work within the Contract Time. The Parties intend for the liquidated  
7 damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85.  
8 Contractor acknowledges and agrees that the liquidated damages are intended to compensate Authority  
9 solely for Contractor's failure to meet the deadline for Substantial Completion and shall not excuse  
10 Contractor from liability from any other breach, including any failure of the Work to conform to the  
11 requirements of the Contract Documents.

12 3.2.5 In the event that Contractor fails to achieve Substantial Completion of the Work within the  
13 Contract Time, Contractor agrees to pay Authority \$1,000 per day for each calendar day that Substantial  
14 Completion is delayed.

15 3.2.6 Contractor acknowledges and agrees that the foregoing liquidated damages have been set  
16 based on an evaluation by Authority of damages that it will incur in the event of the late completion of the  
17 Work. Contractor and Authority agree that because of the nature of the Project it would be impractical or  
18 extremely difficult to fix the amount of actual damages incurred by the Authority due to a delay in  
19 completion of the Work. Accordingly, the Authority and Contractor have agreed to such liquidated damages  
20 to fix Contractor's costs and to avoid later disputes. It is understood and agreed by Contractor that any  
21 liquidated damages payable pursuant to this Agreement are not a penalty and that such amounts are not  
22 manifestly unreasonable under the circumstances existing as of the effective date of this Agreement.

23 3.2.7 It is further mutually agreed that Authority shall have the right to deduct liquidated damages  
24 against progress payments or retainage and that the Authority will issue a unilateral Construction/landscape  
25 Change Directive and reduce the Contract Sum accordingly. In the event the remaining unpaid Contract  
26 Sum is insufficient to cover the full amount of liquidated damages, Contractor shall pay the difference to  
27 Authority.  
28

1  
2 **ARTICLE 4**

3 **CONTRACT SUM**

4 4.1 Total Compensation. Authority shall pay the Contractor in current funds for the Contractor 's  
5 complete performance of the Work, including, but not limited to the renovation/landscape and construction  
6 in accordance with the Contract Documents of the Contract Sum of Sixty-Eight Thousand One Hundred  
7 and Thirty-Five Dollars (\$68,135.00).

8 4.1.2 All Inclusive Price. The Contract Sum is the total amount payable by Authority to Contractor  
9 for performance of the Work under the Contract Documents and is deemed to cover all costs arising out of  
10 or related to the performance of the Work, including, without limitation, the effects of natural elements  
11 upon the Work, unforeseen difficulties or obstructions affecting the performance of the Work (including,  
12 without limitation, unforeseen conditions at the Site that do not constitute Differing Site Conditions) and  
13 fluctuations in market conditions and price escalations (whether occurring locally, nationally or  
14 internationally) from any cause, including, without limitation, causes beyond the control or foreseeability  
15 of the Contractor.

16 4.1.3 Authority Renovation Completion Allowance. The Authority will not provide a completion  
17 allowance stipend for participation in this project.

18 4.2 ALTERNATES None.

19 4.3 The Contract Sum set forth herein includes the payment by CONTRACTOR of all sales and use  
20 taxes required by local codes, or any existing law or any other law which may hereafter be adopted by  
21 federal, state or governmental authority, taxing the materials, services required, or labor furnished, and of  
22 any other tax levied by reason of the Work to be performed hereunder.

23 4.4 The Contract Sum is not subject to escalation; CONTRACTOR having satisfied themselves that the  
24 Contract Sum includes all labor and material increases anticipated throughout the duration of this Contract.

25  
26 **ARTICLE 5**

27 **PROGRESS PAYMENTS**

1 5.1 Based upon applications for payment submitted by CONTRACTOR to AUTHORITY, and  
2 certificates for payment issued by the Architect/Consultant, if any, AUTHORITY shall make progress  
3 payments on account of the Contract Sum to CONTRACTOR, as provided in the HUD General Conditions  
4 of the Construction Documents.

5 5.2 AUTHORITY shall promptly review applications for payment and provide its approval or  
6 disapproval, in whole or in part, within fifteen (15) calendar days after receipt of an application for payment  
7 requesting progress payment. Approved applications for progress payments will be paid by the 30<sup>th</sup> day of  
8 each month, provided that the application for payment has been submitted to AUTHORITY on or before  
9 the first working day of the month.

## 11 **ARTICLE 6**

### 12 **ARTICLE V CONTRACTOR'S DUTIES AND RESPONSIBILITIES**

#### 13 **5.1 GENERAL SCOPE OF WORK**

14 5.1.1 Contractor shall furnish all design/Landscape and other Services, provide all materials and  
15 undertake all efforts necessary or appropriate to construct the Project in accordance with the requirements  
16 of the Contract Documents, all governmental approvals, the approved Construction/Landscape Documents,  
17 all Applicable Law, and all other applicable safety, environmental and other requirements taking into  
18 account the constraints affecting the Project Site. Except as otherwise specifically provided in this Contract,  
19 all materials, services and efforts necessary to achieve Substantial Completion of the Project and elements  
20 thereof on or before the deadlines provided in the Contract Documents shall be Contractor's sole  
21 responsibility. The costs of all such materials, services and efforts are included in the Contract Sum.

22  
23 5.1.2 The scope of Services to be provided by Contractor is set forth in the Contract Documents as  
24 more particularly described in Exhibit B and the Criteria Documents.

#### 26 **5.2 BEFORE STARTING WORK**



1 Contractor shall submit the following to Authority for review and acceptance within fourteen (14) calendar  
2 days after the Date of Commencement fixed in Authority 's Notice to Proceed, and as a condition to  
3 payment: (i) detailed Project Schedule including each deadline specified in the Contract Documents; (ii)  
4 Schedule of Submittals; (iii) material Procurement Schedule; and (iv) a Schedule of Values in accordance  
5 with the requirements of the General Conditions and other Contract Documents.  
6

### 7 5.3 INITIAL CONFERENCE

8 Within twenty (20) calendar days after the Date of Commencement fixed in Authority 's Notice to Proceed,  
9 a conference attended by Authority and Contractor and others as appropriate will be held to establish a  
10 working understanding among the Parties as to the Work and to discuss the design concepts, updating  
11 schedules, progress meetings, procedures for handling submittals, processing Application for Payment,  
12 maintaining required records, coordination with Contractor Team Members, and other Project  
13 administration matters.  
14

### 15 5.4 EVALUATION OF PRELIMINARY SUBMITTALS

16 At least ten (10) calendar days before submission of the first Application for Payment, a conference attended  
17 by Contractor, Authority and others as appropriate, will be held to review for acceptability the submittals  
18 required by the Contract Documents. No progress payment shall be made to Contractor until the required  
19 submittals are acceptable to Authority. The detailed Project Schedule will be acceptable to Authority as  
20 providing an orderly progression of the Work to completion within any specified Milestones and the  
21 Contract Time, but such acceptance will neither impose on Authority responsibility for the sequencing,  
22 scheduling or progress of the Work nor interfere with nor relieve Contractor from Contractor's full  
23 responsibility therefore. The format and structure of the Project Schedule will be set forth in the Contract  
24 Documents and approved by Authority. Authority 's acceptance shall not be deemed to confirm that the  
25  
26  
27  
28

1 schedule is a reasonable plan for performing the Work. Contractor's schedule of submittal will be acceptable  
2 to Authority as providing a workable arrangement for reviewing and processing the required submittals.

### 3 5.5 DESIGN PROFESSIONAL LICENSING REQUIREMENTS 4

5 Authority does not intend to contract for, pay for, or receive any design services which are in violation of  
6 any professional licensing laws, and by execution of this Contract.

### 7 8 5.6 STANDARD OF CARE

9 All Services performed by Contractor, Team Members, Subcontractors, and their employees identified by  
10 the Contractor or other persons approved by the Authority shall be performed in an expeditious and  
11 professional manner using professionals properly licensed and duly qualified in the jurisdiction in which  
12 the Project is located. The professional obligations of such persons shall be undertaken and performed in  
13 the interest of the Contractor. All Services performed pursuant to this Agreement shall be performed with  
14 the degree of skill and learning. ("Standard of Care").  
15

16  
17 (1) The final Work required to be accomplished in a clear and concise manner, and meet the  
18 requirements and standards of all applicable governing agencies including, but not limited to, local, county,  
19 state, federal and CAL-OSHA standards.  
20

### 21 5.7 CONSTRUCTION/LANDSCAPE

22 Contractor shall perform Construction/Landscape Phase Series in accordance with the requirements  
23 of the General Conditions. The Contractor of record is the responsible entity for management, coordination,  
24 and resolution of all renovation related issues including submittals, and field observation of the work.  
25

26 Construct the Project so that the Project is substantially complete and suitable for commencement  
27 of maintenance period, as evidenced by the Authority's Certificate of Completion. Complete any and all  
28

1 final closeout procedures to include but not be limited to: operating and maintenance manuals, operational  
2 tests, system commissioning, equipment startup, user training, final as-built record drawings, punch list  
3 items, final project cleanup, and signage, necessary to open Sites to the public.

4 Contractor shall complete any outstanding Work necessary to obtain a final inspection approval for  
5 all renovation work from the appropriate HACR Representative.

6  
7 As a condition to final payment to Contractor, each Design Team Member shall provide written  
8 certification that the Work has been constructed in accordance with the Contract Documents and the design  
9 provided by such person.  
10

#### 11 ARTICLE VI CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

12  
13 In order to induce Authority to enter into this Agreement, Contractor makes the following representations  
14 and warranties:

15  
16 6.1 Contractor has visited the Site and has reasonably examined the nature and extent of the Work, Site,  
17 locality, actual conditions, as-built conditions, and all local and federal, state and local laws and regulations  
18 that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any  
19 aspect of the design and the means, methods, techniques, sequences or procedures of  
20 landscaping/renovation and/or construction to be employed by Contractor and safety precautions and  
21 programs incident thereto.

22  
23 6.2 Contractor has reasonably examined all reports of exploration and tests of subsurface conditions, as-  
24 built drawings, drawings or reports, available for design and construction purposes, of physical conditions,  
25 including those which are identified in Paragraph 1.3 hereinabove, or which may be apparent at the Site and  
26 accepts the criteria set forth in these documents and the General Conditions to the extent of the information  
27 contained in these documents upon which the Contractor is entitled to rely. Contractor agrees that except  
28

1 for the information so identified, Contractor does not and shall not rely on any other information contained  
2 in these documents.

3 6.3 After contract award, Contractor, will conduct or obtain any additional examinations, investigations,  
4 explorations, tests, reports and studies, including but not limited to geotechnical investigations upon which  
5 the design/landscape renovation will be based, that pertain to the surface and subsurface conditions, as-built  
6 conditions, underground facilities and all other physical conditions at or contiguous to the Site as Contractor  
7 considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract  
8 Time and in accordance with the other terms and conditions of the Contract Documents.

9  
10  
11 6.4 Contractor has correlated its knowledge and the results of all such observations, examinations,  
12 investigations, explorations, test, reports and studies with the terms and conditions of the Contract  
13 Documents.

14  
15 6.5 Contractor has given Authority prompt written notice of all conflicts, errors, ambiguities, or  
16 discrepancies that it has discovered before contract award in or among the Contract Documents and as-built  
17 drawings (if applicable) and actual conditions and the written resolution thereof through Addenda issued  
18 by Authority is acceptable to Contractor.

19  
20 6.6 Contractor is duly organized, existing and in good standing under applicable state law, and is duly  
21 qualified to conduct business in the State of California.

22  
23 6.7 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other  
24 Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create  
25 a default under any instrument, agreement, order or decree binding on Contractor.

26  
27 6.8 Contractor confirms its intent to include in the project the following pre-qualified subcontractors, who  
28 were listed in the Contractor's Statement of Qualifications earlier in this project. Contractor acknowledges

1 its responsibility to provide Authority with a complete and updated list of subcontractors as they become  
2 known on the project, and that such listing shall be in accordance with the requirements of California Public  
3 Contract Code §§ 20133 et seq. Specifically California Public Contract Code Section 20133(f) requires that  
4 all subcontractors not listed by the Contractor in its submission in response to the Request for Proposals be  
5 awarded in accordance with the renovation and/or design-build process set forth by the Authority . The  
6 Authority process allows the selection of subcontractors based upon the best value to the Project and  
7 requires the Contractor do both of the following: (1) Provide public notice of the availability of work to be  
8 subcontracted in accordance with the publication requirements applicable to the competitive bidding  
9 process of the Authority and (2) Provide a fixed date and time on which the subcontracted work will be  
10 awarded in accordance with the procedure established pursuant to Public Contract Code Section 20133(f).  
11  
12  
13

## 14 **ARTICLE 8**

### 15 **PROJECT CLOSEOUT**

16 7.1 Prior to completion of the PROJECT, AUTHORITY shall receive a written notice of completion  
17 from CONTRACTOR that PROJECT is ready for use. A HACR Representative will do a final walk through  
18 and approve the work performed. CONTRACTOR guarantees that the equipment, materials, and  
19 workmanship, not otherwise covered by a guarantee or warranty, will be free from defects in materials and  
20 workmanship for a period of one year following final acceptance/approval of the PROJECT.  
21

22 7.2 Verification from the AUTHORITY that CONTRACTOR has removed all waste materials, rubbish,  
23 tools, construction equipment, machinery, and surplus materials from PROJECT site. If CONTRACTOR  
24 has failed to remove any such items, AUTHORITY may remove such items, and CONTRACTOR shall pay  
25 AUTHORITY for all costs incurred in connection with such removal.

26 8.1 After recordation of the Notice of Completion, and expiration of the thirty (30) calendar days period  
27 for filing of stop notices, AUTHORITY shall settle all claims and disputes, notify the CONTRACTOR of  
28

1 final acceptance of the PROJECT, and make the final five percent (5%) retention payment, less any amounts  
2 which AUTHORITY is entitled to receive from CONTRACTOR under the terms of this Construction  
3 Contract, including liquidated damages.

## 4 5 **ARTICLE 9**

### 6 **APPLICABLE LAWS AND REGULATIONS**

7 9.1 2 CFR 200.326, Procurement/Contract Provisions: Pursuant to 2 CFR 200.326 the Parties shall  
8 comply with the provisions described in Appendix II to Part 200, Contract Provisions for non-Federal  
9 entity contracts under Federal awards, including, but not limited to the following:

10 9.1.1 Executive Order 11246. For all construction contracts awarded in excess of \$10,000 by  
11 AUTHORITY, CONTRACTOR hereby agrees to comply with Executive Order 11246, "Equal  
12 Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by  
13 Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity,"  
14 and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs,  
15 Equal Employment Opportunity, Department of Labor.

16 9.1.2 Copeland "Anti-Kickback Act". For all construction or repair contracts awarded by  
17 AUTHORITY, CONTRACTOR shall comply with the with the Copeland "Anti-Kickback" Act (40  
18 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and  
19 Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from  
20 the United States") ("Copeland Anti-Kickback Act"). The Copeland Anti-Kick Back Act provides that  
21 each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in  
22 the construction, completion, or repair of public work, to give up any part of the compensation to which  
23 he or she is otherwise entitled.

24 9.1.3 Reserved

25 9.1.4 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable,  
26 all contracts awarded by AUTHORITY in excess of \$100,000 that involve the employment of mechanics  
27 or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by  
28

1 Department of Labor regulations (29 CFR Part 5) ("Contract Work Hours and Safety Standards Act").  
2 Under 40 U.S.C. 3702 of the Contract Work Hours and Safety Standards Act, Contractor shall compute  
3 the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in  
4 excess of the standard work week is permissible provided that the worker is compensated at a rate of not  
5 less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work  
6 week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer  
7 or mechanic must be required to work in surroundings or under working conditions which are unsanitary,  
8 hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or  
9 articles ordinarily available on the open market, or contracts for transportation or transmission of  
10 intelligence.

11 9.1.5 Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33  
12 U.S.C. 1251–1387), as amended. For all contracts in excess of \$150,000, the CONTRACTOR shall  
13 comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42  
14 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387).  
15 Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental  
16 Protection Agency (EPA).

17 9.1.6 Energy Policy and Conservation Act. CONTRACTOR hereby agrees to comply with all  
18 mandatory standards and policies relating to energy efficiency, which are contained in the state energy  
19 conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89  
20 Stat. 781).

21 9.1.7 Labor Code Section 1861 Certification. By signing Contract below, CONTRACTOR  
22 certifies that s/he/it is aware of the provisions of Section 3700 of the California Labor Code which require  
23 every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in  
24 accordance with the provisions of the California Labor Code, and that s/he/it will comply with such  
25 provisions before commencing the performance of the Work.

26 9.1.8 Government Standards. It is the responsibility of CONTRACTOR to ensure that all items  
27 and services provided conform to all local, State and Federal law concerning safety (CalOSHA) and  
28

1 environmental control (EPA and Riverside County Pollution Regulations) and any other enacted  
2 ordinance, code, law or regulation. CONTRACTOR shall be responsible for all costs incurred for  
3 compliance with any such possible ordinance, code, law or regulation. No time extensions shall be  
4 granted or financial consideration given to CONTRACTOR for time or monies lost due to violations of  
5 any such ordinance, code, law or regulations that may occur.

6 9.1.9 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an  
7 award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it  
8 will not and has not used Federal appropriated funds to pay any person or organization for influencing or  
9 attempting to influence an officer or employee of any agency, a member of Congress, officer or employee  
10 of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract,  
11 grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-  
12 Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are  
13 forwarded from tier to tier, up to the non-Federal award.

14 9.1.10 Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the  
15 definition of “funding agreement” under 37 CFR § 401.2 (a) and Authority wishes to enter into a contract  
16 with a small business firm or nonprofit organization regarding the substitution of parties, assignment or  
17 performance of experimental, developmental, or research work under that “funding agreement,” Contractor  
18 must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit  
19 Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative  
20 Agreements,” and any implementing regulations issued by the awarding agency.

21 9.1.11 Procurement of Recovered Materials-Contractor shall comply with 2 CFR Section 200.322,  
22 Procurement of recovered materials.

## 23 24 **ARTICLE 10**

### 25 **ADDITIONAL FEDERALLY REQUIRED ORDERS/ASSURANCES**

26 10.1 CONTRACTOR agrees that they will comply with the following orders and directives, and makes  
27 the following assurances, where applicable:  
28



1           10.1.1 Executive Order 11061, as amended, which directs the Secretary of HUD to take all action  
2 which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.

3           10.1.2 Title VI of the Civil Rights Act of 1964 (Public Law 88-352) provides that no person in the  
4 United States shall, on the basis of race, color, national origin or sex, be excluded from participation in,  
5 denied the benefits of, or subjected to, discrimination under any program or activity which receives federal  
6 financial assistance. The AUTHORITY hereby extends this requirement to CONTRACTOR and its  
7 subcontractors and consultants. Specific prohibited discriminatory actions and corrective action are  
8 described in Title V, Subtitle C, Chapter 2 of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).

9           10.1.3 Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), popularly known as the Fair  
10 Housing Act, provides for fair housing throughout the United States and prohibits any person from  
11 discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage  
12 services, including in any way making unavailable or denying a dwelling to any person because of race,  
13 color, religion, sex or national origin. Pursuant to this statute, the AUTHORITY requires that  
14 CONTRACTOR administer all programs and activities, which are related to housing and community  
15 development, in such a manner as affirmatively to further fair housing.

16           10.1.4 Age Discrimination Act of 1975.

17           10.1.5 Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).

18           10.1.6 HUD Information Bulletin 909-23 which is the Notice of Assistance Regarding Patent and  
19 Copyright Infringement; Clean Air and Water Certification; and Energy Policy and Conversation Act.

20           10.1.7 That the funds provided by AUTHORITY and HUD hereunder shall not be used, directly or  
21 indirectly, to employ, award a contract to, or otherwise engage the services of any debarred, suspended or  
22 ineligible contractor.

23           10.1.8 That none of the personnel who are employed in the administration of the work required by  
24 this Contract shall, in any way or to any extent, be engaged in conduct of political activities in violation of  
25 Title V, Chapter 15, of the United States Code.

26 10.2 The mention herein of any statute or Executive Order is not intended as an indication that such  
27 statute or Executive Order is necessarily applicable, nor is the failure to mention any statute or Executive  
28

1 Order intended as an indication that such statute or Executive Order is not applicable. Therefore, each  
2 provision of law and each clause, which is required by law to be inserted in this Contract, shall be deemed  
3 to have been inserted herein, and this Contract shall be read and enforced as though such provision or clause  
4 had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or  
5 is inserted incorrectly, this Contract shall forthwith be physically amended to make such insertion or  
6 correction upon the application of either part.

7  
8 **ARTICLE 11**

9 **HUD SECTION 3 REQUIREMENTS**

10 11.1 As detailed within 24 CFR 135.38, Section 3 clause, the following required clauses are hereby  
11 included as a part of this Contract.

12 11.1.1 The work to be performed under this Contract is subject to the requirements of Section 3 of  
13 the Housing and Urban Development Act of 1968, as amended 12 U.S. C. 1701u (Section 3). The purpose  
14 of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance  
15 or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and  
16 very low-income persons, particularly persons who are recipients of HUD assistance.

17 11.1.2 CONTRACTOR agrees to comply with HUD's regulations in 24 CFR Part 135, which  
18 implement Section 3. As evidenced by the execution of this Contract, CONTRACTOR certifies that they  
19 are under no contractual or other impediment that would prevent them from complying with Part 135  
20 regulations.

21 11.1.3 CONTRACTOR agrees to send to each labor organization or representative of workers with  
22 which CONTRACTOR has a collective bargaining agreement or other understanding, if any, a notice  
23 advising the labor organization or workers' representative of the CONTRACTOR'S commitments under  
24 this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both  
25 employees and applicants for training and employment positions can see the notice. The notice shall  
26 describe the Section 3 preference, shall set forth minimum number and job titles for each; and the name  
27  
28

1 and location of the person(s) taking applications for each of the positions; and the anticipated date the work  
2 shall being.

3 11.1.4 CONTRACTOR agrees to include this Section 3 clause in every subcontract subject to  
4 compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provide in an  
5 applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is  
6 in violation of the regulations in 24 CFR Part 135. CONTRACTOR will not subcontract with any  
7 subcontractor where CONTRACTOR has notice or knowledge that the subcontractor has been found in  
8 violation of the regulations in 24 CFR Part 135.

9 11.1.5 CONTRACTOR certifies that any vacant employment positions, including training  
10 positions, that are filled (1) after CONTRACTOR is selected but before the contract is executed, and (2)  
11 with persons other than those to whom the regulations of 24 CFR Part 135 require employment  
12 opportunities to be directed, were not filled to circumvent CONTRACTOR'S obligations under 24 CFR  
13 Part 135.

14 11.1.6 Noncompliance with HUD's regulations in 24 CFR Part 125 may result in sanctions,  
15 termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

16 11.1.7 With respect work performed in connection with Section 3 covered Indian Housing  
17 assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e)  
18 also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent  
19 feasible, (i) preference and opportunities for training and employment shall be given to Indians, and (ii)  
20 preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-  
21 owned Economic Enterprises. Parties to this Contract that are subject to the provisions of Section 3 and  
22 section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of  
23 compliance with section 7(b).

24  
25 **ARTICLE 12**  
26 **BREACH AND TERMINATION**  
27  
28

1 12.1 Waiver by AUTHORITY of any breach of this Contract shall not constitute a waiver of any other  
2 breach or of any future breach. No payment made hereunder shall be construed to be an acceptance of  
3 defective work or improper materials.

4 12.2 AUTHORITY shall have the right to terminate this Contract in the event of a default by  
5 CONTRACTOR (for cause) or for Convenience (without cause) as set forth in the HUD General  
6 Conditions, attached hereto as Exhibit "G" and incorporated herein by this reference.

7 12.3 In addition to any right of termination reserved to AUTHORITY by the HUD General Conditions,  
8 AUTHORITY may terminate this Contract if CONTRACTOR is adjudged bankrupt, a receiver is appointed  
9 because of CONTRACTOR'S insolvency, or CONTRACTOR makes a general assignment for the benefit  
10 of his/her creditors, fails to make prompt payment to subcontractor(s), or for material or labor, persistently  
11 disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, fails to  
12 construct the PROJECT in accordance with the Drawings and Specifications, or otherwise substantially  
13 violates any provision of the Contract Documents.

14 12.4 AUTHORITY shall give CONTRACTOR and his surety five (5) calendar days written notice prior  
15 to terminating this Contract pursuant to this section, provided however, that CONTRACTOR shall, upon  
16 receipt of such notice, immediately stop the installation of improvements or other permanent construction  
17 work encompassing part of the PROJECT. Upon termination, AUTHORITY may take possession of the  
18 PROJECT and all materials, equipment, tools and construction equipment and machinery owned by the  
19 CONTRACTOR and located at the PROJECT site and may finish the PROJECT by whatever method it  
20 may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment  
21 under this Contract.

22 12.5 AUTHORITY shall not be deemed to have waived any of its other rights or remedies against  
23 CONTRACTOR by exercising its right of termination under this section.

24 12.6 Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a  
25 right or rights provided for by this Contract shall be tried in a court of competent jurisdiction in the County  
26 of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change  
27 of venue in such proceedings to any other county.  
28

1  
2 **ARTICLE 13**

3 **CLAIMS RESOLUTION**

4 13.1 This Article 13 is intended to help resolve disputes between the Parties related to this PROJECT.  
5 Such disputes shall be brought to the attention of AUTHORITY at the earliest possible time, so that such  
6 disputes may be promptly resolved, if possible, or other appropriate action or investigation may be promptly  
7 undertaken. Public works claims which arise between CONTRACTOR and AUTHORITY shall be resolved  
8 using the following procedure:

9 13.1.1 A "claim" means a separate demand by CONTRACTOR sent by registered mail or  
10 certified mail return receipt requested for one or more of the following: (a) a time extension including,  
11 without limitation, for relief from damages or penalties for delay assessed by AUTHORITY; (b) payment  
12 by AUTHORITY of money or damages arising from Work done by or on behalf of CONTRACTOR and  
13 payment for which is not otherwise expressly provided or to which CONTRACTOR is not otherwise  
14 entitled; (c) payment of an amount that is disputed by AUTHORITY. CONTRACTOR shall furnish  
15 reasonable documentation to support the claim.

16 13.1.2 Upon receipt of a claim, AUTHORITY shall conduct a reasonable review of the  
17 claim and within forty-five (45) days, or an extended period as may be set by mutual agreement of the  
18 Parties, provide CONTRACTOR with a written statement identifying what portion of the claim is still  
19 disputed and what portion is undisputed. (If consultation with the Board of Commissioners is required,  
20 AUTHORITY may have additional time as provided in CA Public Contract Code Section 9204.) Any payment  
21 due on an undisputed portion of the claim shall be processed and made within sixty (60) days after  
22 AUTHORITY issues its written statement.

23 13.1.3 If AUTHORITY fails to issue a written statement, the claim shall be deemed rejected  
24 in its entirety. A claim that is denied by reason of AUTHORITY'S failure to respond to a claim, or its  
25 failure to otherwise meet the applicable time requirements, shall not constitute an adverse finding with  
26 regard to the merits of the claim or the responsibility or qualifications of the CONTRACTOR.

1           13.1.4 If CONTRACTOR disputes AUTHORITY'S written response, or if AUTHORITY  
2 fails to respond within the time prescribed, CONTRACTOR may demand in writing, sent by registered mail  
3 or certified mail return receipt requested, an informal meet and confer conference to attempt to reach  
4 settlement of the portion of the claim in dispute. Upon receipt of the demand, AUTHORITY shall schedule  
5 a meet and confer conference within thirty (30) days.

6           13.1.5 Within ten (10) business days following the conclusion of the meet and confer  
7 conference, if the claim or any portion thereof remains in dispute, AUTHORITY shall provide  
8 CONTRACTOR a written statement identifying the portion of the claim that remains in dispute and the  
9 portion that is undisputed. Any payment due on an undisputed portion shall be processed and made within  
10 sixty (60) days after AUTHORITY issues its written statement.

11           13.1.6 Any disputed portion of the claim, as identified by CONTRACTOR in writing, shall  
12 be submitted to nonbinding mediation, with AUTHORITY and CONTRACTOR sharing the mediator costs  
13 equally. AUTHORITY and CONTRACTOR shall mutually agree to a mediator within ten (10) business  
14 days after the disputed portion of the claim has been identified in writing. If the Parties cannot agree upon  
15 a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party  
16 to mediate the disputed portion of the claim. Each Party shall bear the fees and costs charged by its  
17 respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful to  
18 resolve all issues, the parts of the claim remaining in dispute shall be subject to other applicable legal  
19 procedures.

20           13.1.7 As used herein, mediation includes any nonbinding process, including but not limited  
21 to neutral evaluation or a dispute review board, in which an independent third party or board assists the  
22 Parties in dispute with resolution through negotiation or by issuance of an evaluation.

23           13.1.8 Additional applicable requirements, including but not limited to subcontractor  
24 claims, may be stated in California Public Contract Code Section 9204.

25           13.1.9 Any legal action related to the performance of the work, or the terms of the Contract  
26 Documents shall be filed only in the Superior Court of the State of California located in Riverside,  
27 California.

1  
2 **ARTICLE 14**

3 **MISCELLANEOUS PROVISIONS**

4 14.1 CONTRACTOR shall give all notices and comply with all laws, rules, regulations, ordinances, and  
5 orders of any governmental entity relating to the work. Should CONTRACTOR become aware that any  
6 provisions of this Contract are at variance with any such rule, law, regulation, ordinance, or order; he/she  
7 shall promptly give notice in writing to AUTHORITY of such variance.

8 14.2 The Contracting Officer must be notified in writing by CONTRACTOR within ten (10) calendar  
9 days of any and all backordered materials and/or any incomplete services, and the estimated delivery date.  
10 Unless otherwise stipulated in the Contract Documents, any order that will take more than a maximum of  
11 ten (10) calendar days past the original agreed upon delivery date, may at the option of AUTHORITY, be  
12 canceled and ordered from another source, if, in the opinion of the Contracting Officer, it is in the best  
13 interests of AUTHORITY to do so.

14  
15 14.3 INDEPENDENT CONTRACTOR

16 Contractor is, and shall be, acting at all times in the performance of this Agreement as an independent  
17 Contractor. Contractor shall secure at its expense, and be responsible for any and all payment of all taxes,  
18 social security, state disability insurance compensation, unemployment compensation and other payroll  
19 deductions for Contractor and its officers, agents and employees and all business licenses, if any, in  
20 connection with the services to be performed hereunder.

21  
22 14.4 AUTHORITY EMPLOYEES AND OFFICIALS

23 Contractor shall employ no Authority official nor any regular Authority employee in the Work performed  
24 pursuant to this Agreement. No officer or employee of Authority shall have any financial interest in this  
25 Agreement in violation of applicable provisions of law.

26 Contractor agrees to provide or has already provided information on former Authority administrative  
27 officials (as defined below) who are employed by or represent Contractor. The information provided  
28

1 includes a list of former Authority administrative officials who terminated Authority employment within  
2 the last five years and who are now officers, principals, partners, associates or members of the business.  
3 The information also includes the employment with or representation of Contractor. For purposes of this  
4 provision, " Administrative Official" is defined as a member of the Board of Supervisors or such officer  
5 staff, County administrative officer or member of such officer staff, County department or group head,  
6 assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety  
7 Management Unit.

8 14.5 NOTICES Any notices or special instruction required to be given in writing under this Agreement  
9 shall be given either by personal delivery to Contractor's agent (as designated in Section 1 hereinabove) or  
10 to Authority's Engineer and County Counsel as the situation shall warrant, or by enclosing the same in a  
11 sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as  
12 follows:

13 COUNTY: HACR  
14 Heidi Marshall, Executive Director  
15 5555 Arlington Ave, Riverside CA 92504

16 CONTRACTOR: Juan Murillo-CEO  
17 Gabriella Lara-Secretary  
18 Honor Landscape  
19 PO Box 7154  
20 La Quinta, CA 92248

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22  
23 14.5 CONTRACTOR'S LICENSE NOTICE

24 Contractors are required by law to be licensed and regulated by the Contractors State License Board, which  
25 has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or  
26 omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or  
27 omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation.  
28



1 Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board,  
2 P.O. Box 26000, Sacramento, California 95826.

3  
4 14.6 CONTRACTOR'S LICENSE NOTICE Contractors are required by law to be licensed and regulated  
5 by the Contractors State License Board, which has jurisdiction to investigate complaints against contractors  
6 if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation.  
7 A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years  
8 of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar,  
9 Contractors State License Board, P.O. Box 26000, Sacramento, California 95826.

10  
11 14.7 It is hereby declared to be the intention of the Parties that the sections, paragraphs, sentences, clauses  
12 and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this  
13 Contract shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a  
14 court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any  
15 of the remaining clauses, sentences, paragraphs and sections of this Contract.

16 14.8 In the event of a conflict between the HUD General Conditions and the Scope of Work, the General  
17 Conditions shall prevail. In the event of a conflict between this Contract and any applicable state or local  
18 law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or  
19 regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive  
20 Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

21 14.6 The persons executing this Contract on behalf of the Parties warrant and represent that they have  
22 the authority to execute this Contract on behalf of each respective Party and further warrant and represent  
23 that they have the authority to bind each respective Party to the performance of its obligation hereunder.

24  
25  
26  
27 **(Remainder of Page Intentionally Blank)**

**(Signatures on next page)**

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1 or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive  
2 Order shall prevail.

3 14.6 The persons executing this Contract on behalf of the Parties warrant and represent that they have  
4 the authority to execute this Contract on behalf of each respective Party and further warrant and represent  
5 that they have the authority to bind each respective Party to the performance of its obligation hereunder.  
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9 **(Remainder of Page Intentionally Blank)**

10 **(Signatures on next page)**  
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18 **IN WITNESS WHEREOF**, the Parties hereto have executed this Contract as of the day and year set  
19 forth below.  
20

21 **AUTHORITY:**

22 HOUSING AUTHORITY OF THE COUNTY OF  
23 RIVERSIDE, a public entity, corporate and politic

**CONTRACTOR:**

HONOR LANDSCAPE, a California  
corporation

24  
25  
26 By: \_\_\_\_\_  
Heidi Marshall  
Executive Director

By: \_\_\_\_\_  
  
Juan Murillo  
Chief Executive Officer

1 Dated: 11/22/2024

Dated: 11/22/2024

2  
3 By:   
4 Gabriela Lara  
5 Secretary

6 Dated: 11/22/2024

7  
8 APPROVED AS TO FORM:  
9 Amrit Dhillon  
10 Deputy County Counsel

11 By: \_\_\_\_\_  
12 Amrit Dhillon,  
13 Deputy County Counsel

14  
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20 **EXHIBIT A**  
21 **RENOVATION GENERAL CONDITIONS**  
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1           **WHEREAS**, on October 4, 2022 (Minute Order 3.44), the Board approved the second  
2 installment allocation of ARPA funds to focus on projects and/or programs that serve as a  
3 pathway to create affordable housing with necessary supporting infrastructure to assist low-  
4 income communities disproportionately affected by the COVID-19 pandemic;

5           **WHEREAS**, SUBRECIPIENT is proposing to utilize ARPA Grant funds to pay for the  
6 Jack E. Marlowe Renovation (“Project”). The proposed project will completely renovate the  
7 Jack E. Marlowe Park, located at 24699 School Road, Ripley, within the County of Riverside,  
8 State of California. After the renovation of Jack E. Marlowe Project is complete, the contractor  
9 will provide landscape maintenance for two (2) years with no increases in maintenance  
10 services;

11           **WHEREAS**, Jack E. Marlowe Park is a community park located in unincorporated  
12 community of Ripley. The proposed project is expected to accommodate a wide range of  
13 recreation needs based on the surrounding community. Additionally, the renovations to Jack E.  
14 Marlow Park will create a space for all community members to congregate safely and enjoy  
15 nature; kids can play under their parent’s watchful eye and community members can improve  
16 their health with equipment, all relaxing environments. Jack E. Marlowe Park will have  
17 amenities to keep visitors of all ages active and engaged. This improvement will positively  
18 impact the overall health of residents and improve the surrounding neighborhood;

19           **WHEREAS**, the purpose of this Agreement is for COUNTY to provide financial  
20 assistance to SUBRECIPIENT in the maximum grant amount of One Hundred Fifty-One  
21 Thousand One Hundred and Forty-Nine Dollars (\$151,149.00) consisting of SLFRF funds; to  
22 fund a portion of the Project’s costs, as more fully described herein;

23           **WHEREAS**, pursuant to 31 CFR Part 35.6, one of the Eligible Uses (as defined under  
24 ARPA Rules) of the SLFRF funds a program, service, capital expenditure, or other assistance  
25 that is provided to a disproportionately impacted household, population, or community,  
26 including: Investments in communities to promote improved health outcomes and public safety  
27 such as parks; Facilities and equipment related to the provision of these services to the  
28 disproportionately impacted household, population, or community;

1           **WHEREAS**, SUBRECIPIENT, as a public entity, is eligible under the Act to receive  
2 ARPA funds to provide those services that conform with the Eligible Uses of the Act as  
3 described herein;

4           **WHEREAS**, SUBRECIPIENT is eligible under the Acts to receive ARPA funds to  
5 perform those activities described herein; and

6           **WHEREAS**, the SUBRECIPIENT has submitted its proposal to the COUNTY for  
7 funding the activities described herein.

8           **NOW THEREFORE, the COUNTY and SUBRECIPIENT** mutually agree as follows:

9           1.     **PURPOSE.** SUBRECIPIENT shall carry out the Project described in **Exhibit**  
10 **“A”**, by utilizing the sum of One Hundred and Fifty-One Thousand One Hundred Forty-Nine  
11 Dollars (\$151,149.00) in ARPA Program funds (“ARPA Grant”), as set forth and in the manner  
12 provided in the Scope of Work attached hereto as **Exhibit "A"** and incorporated herein by this  
13 reference. SUBRECIPIENT shall undertake and complete the ARPA activities required herein  
14 and at the time frame as set forth in the Implementation Schedule and Budget Attachment,  
15 attached hereto as **Exhibit “B”** and incorporated herein by this reference. SUBRECIPIENT  
16 shall utilize the ARPA Grant as required herein and pursuant to the Act and ARPA rules and  
17 regulations. Any and all work or services provided hereunder shall be in full conformity with  
18 the Act and the ARPA Rules. Any and all work or services provided hereunder shall be in full  
19 conformity with the Act and any amendments thereto and the federal regulation and guidelines  
20 now or hereinafter enacted pursuant to the Act..

21           2.     **TERM.** The term of this Agreement shall be for a period commencing on the  
22 Effective Date, and terminating on September 30, 2026, unless sooner terminated as provided  
23 in **Section 5** herein.

24           3.     **DISBURSEMENT OF FUNDS.** The COUNTY shall pay to the SUBRECIPIENT  
25 the ARPA Grant as specified in **Section 1** above for all approved costs. The SUBRECIPIENT  
26 shall not submit more often than monthly to the ARPA Administrator of COUNTY a certified  
27 statement setting forth in detail the expenditures made for which it is asking reimbursement  
28 along with pertinent supporting documentation. The COUNTY shall promptly review the  
monthly expenditure statement and reimburse the SUBRECIPIENT for the approved costs in

1 accordance with its usual accounting procedures. The COUNTY may require from  
2 SUBRECIPIENT such supporting documentation as may be necessary and appropriate for the  
3 COUNTY to make its determination as to allowable costs. Each disbursement of ARPA Grant  
4 funds shall be made within thirty (30) days after SUBRECIPIENT has submitted its statement  
5 of expenditure.

6 4. RECORDS AND INSPECTIONS. The SUBRECIPIENT shall maintain financial,  
7 programmatic, statistical, client data, and other supporting records of its operations and financial  
8 activities in accordance with the *Uniform Administrative Requirements, Cost Principles, and*  
9 *Audit Requirements for Federal Awards* (2 (CFR) Part 200) and 601(d) of the Social Security  
10 Act.

11 Pursuant to 2 CFR Section 200.333, such records shall be open to inspection and audit by  
12 the authorized representatives of the COUNTY, the U.S. Treasury, and the Controller General,  
13 during regular working hours.

14 Said records shall be retained for a period of less than five (5) years from the date that the  
15 activity or program funded with the ARPA Grant is closed out by the COUNTY. Exceptions to  
16 the five (5) year retention period requirements pursuant to 2 CFR 200.333:

- 17 i. if any litigation, claim, or audit is started prior to the expiration of the five  
18 (5) year period;
- 19 ii. when the SUBRECIPIENT is notified in writing by the COUNTY, U.S.  
20 Department of Treasury, or other Federal agency to extend the retention period;
- 21 iii. records for equipment or real property acquired with ARPA Grant funds  
22 must be retained for five (5) years after final disposition;
- 23 iv. when the records are transferred by the SUBRECIPIENT to the COUNTY,  
24 HUD, or other Federal agency, the five (5) year period is not applicable;
- 25 v. Reserved;
- 26 vi. Reserved.

27 SUBRECIPIENT shall obtain an external audit in accordance with the Uniform  
28 Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2  
CFR Section 200.500). Audits shall usually be performed annually but not less frequently than



1 every two years. Nonprofit institutions and government agencies that expend less than \$750,000  
2 a year in federal awards are exempt from federal audit requirements, but records must be  
3 available for review by appropriate officials of the federal grantor agency or sub-granting entity.  
4 The audit report shall be submitted to the COUNTY within 180 days after the end of the  
5 COUNTY'S fiscal year.

6 SUBRECIPIENT shall maintain a separate account for ARPA Grant funds.

7 5. TERMINATION.

8 a. SUBRECIPIENT may not terminate this Agreement except upon express  
9 written consent of COUNTY, pursuant to 2 CFR Section 200.339 (a)(3). Said notice shall  
10 include the effective date thereof.

11 b. Notwithstanding the provisions of **Section 5a** above, COUNTY may  
12 suspend or terminate this Agreement forthwith for cause upon a ten (10) day written notice to  
13 SUBRECIPIENT of the action being taken. Cause shall be established as follows:

14 (i) In the event SUBRECIPIENT fails to perform the covenants herein  
15 contained at such times and in such manner as provided in this Agreement; or

16 (ii) In the event there is a conflict with any federal, state or local law,  
17 ordinance, regulation or rule rendering any of the provisions of this Agreement invalid or  
18 untenable; or

19 (iii) In the event the funding from the U.S. Department of Treasury,  
20 referred to in the recitals herein, is reduced, terminated or otherwise becomes unavailable.  
21 COUNTY shall provide written notice to SUBRECIPIENT within five (5) days from the date  
22 U.S. Department of Treasury reduces, suspends, or terminates the ARPA funding. This  
23 Agreement shall be either terminated or amended to reflect said reduction in ARGA Grant  
24 funds.

25 c. This Agreement may be terminated and/or funding suspended, in whole or  
26 in part, for cause in accordance with the Uniform Administrative Requirements, Cost Principles,  
27 and Audit Requirements for Federal Awards (2 CFR Section 200.339). Cause shall be based on  
28 the failure of the SUBRECIPIENT to materially comply with either the terms or conditions of  
this Agreement. Upon suspension of funding, the SUBRECIPIENT agrees not to incur any costs

1 related thereto, or connected with, any area of conflict from which the COUNTY has  
2 determined that suspension of funds is necessary. SUBRECIPIENT acknowledges that failure  
3 to comply with Federal statutes, regulations, or the terms and conditions of this Agreement may  
4 be considered by the COUNTY in evaluating future ARPA and non-ARPA funding applications  
5 submitted by SUBRECIPIENT.

6 d. Upon termination of this Agreement, SUBRECIPIENT agrees to return  
7 any unencumbered funds which it has been provided by COUNTY. In accepting said funds,  
8 COUNTY does not waive any claim or cause of action it may have against SUBRECIPIENT  
9 for breach of this Agreement.

10 e. Upon termination of this Agreement, SUBRECIPIENT shall not incur any  
11 obligations after the effective date of such termination, unless expressly authorized in writing  
12 by COUNTY in the notice of termination.

13 6. RESERVED.

14 7. PAYMENT OF FUNDS. The Board of Supervisors of the COUNTY shall  
15 determine the final disposition and distribution of all funds received by COUNTY under the  
16 Acts. COUNTY, through its Department of Housing and Workforce Solutions, shall make  
17 payments of ARPA funds to SUBRECIPIENT as designated in the Implementation Schedule  
18 and Budget Attachment, attached hereto as **Exhibit "B"** for the Project as more fully described  
19 in the Scope of Work, attached hereto as **Exhibit "A"**.

20 All disbursements of ARPA Grant funds will be made as follows:

21 a. Payments shall be made to a SUBRECIPIENT upon written request after  
22 this Agreement has been fully executed on a reimbursement basis and made within thirty (30)  
23 days after the SUBRECIPIENT has submitted written notice identifying payments made and  
24 requesting reimbursement. Payments shall be based on actual approved and documented  
25 expenses by SUBRECIPIENT.

26 b. In no event shall COUNTY be held liable for expenses incurred by  
27 SUBRECIPIENT in excess of the ARPA Grant allocation as set forth in **Section 1, PURPOSE,**  
28 above.

c. Reserved.

1           d.       No later than thirty (30) days prior to the termination of this Agreement,  
2 SUBRECIPIENT shall provide COUNTY with its estimate of the amount of funds which will  
3 remain unexpended upon such termination. Notwithstanding any provision contained in this  
4 **Section 7**, COUNTY shall, after a thirty (30) day written notice is given SUBRECIPIENT, have  
5 the right to (1) reduce the payment of funds hereunder, (2) renegotiate the actual levels of  
6 expenditures in the event SUBRECIPIENT'S rate of expenditures will result in unexpended  
7 funds at the expiration of this Agreement, and (3) reprogram funds associated with a project on  
8 which there has been no substantial progress or activity.

9           8.       PERFORMANCE EVALUATION. SUBRECIPIENT shall permit COUNTY,  
10 State or Federal officials to monitor, assess, or evaluate SUBRECIPIENT'S performance under  
11 this Agreement on an as needed basis to be determined by the COUNTY based on monitoring  
12 and performance evaluations. Said monitoring, assessment, or evaluation to include, but are  
13 not limited to, audits, inspections within the program area, and interviews with  
14 SUBRECIPIENT'S employees, agents, independent contractors, and subcontractors providing  
15 the services under this Agreement and recipients thereof.

16           9.       COMPLETION SCHEDULE. SUBRECIPIENT shall proceed consistent with the  
17 implementation schedule ("Implementation Schedule and Budget Attachment") as set forth in  
18 Exhibit "B", as such schedule may be amended by both Parties in writing.

19           10.      RESERVED.

20           11.      RESERVED.

21           12.      ASSIGNABILITY. SUBRECIPIENT shall not assign any of its rights, duties, or  
22 obligations pursuant to this Agreement to any person or entity without the prior written consent  
23 of COUNTY in its sole and absolute discretion, including but not limited to the ability to  
24 subcontract all or a portion of its rights, duties, and obligations hereunder.

25           13.      INSURANCE. Without limiting or diminishing the SUBRECIPIENT'S obligation  
26 to indemnify or hold the COUNTY harmless, SUBRECIPIENT shall procure and maintain or  
27 cause to be maintained, at its sole cost and expense, the following insurance coverage's during  
28 the term of this Agreement.

          a.       Workers' Compensation:

1 If the SUBRECIPIENT has employees as defined by the State of California, the  
2 SUBRECIPIENT shall maintain statutory Workers' Compensation Insurance (Coverage A) as  
3 prescribed by the laws of the State of California. Policy shall include Employers' Liability  
4 (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person  
5 per accident. The policy shall be endorsed to waive subrogation in favor of the County of  
6 Riverside.

7 b. Commercial General Liability:

8 Commercial General Liability insurance coverage, including but not limited to,  
9 premises liability, contractual liability, products and completed operations liability, personal and  
10 advertising injury, and cross liability coverage, covering claims which may arise from or out of  
11 SUBRECIPIENT'S performance of its obligations hereunder. Policy shall name the County of  
12 Riverside as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per  
13 occurrence combined single limit. If such insurance contains a general aggregate limit, it shall  
14 apply separately to this agreement or be no less than two (2) times the occurrence limit.

15 c. Vehicle Liability:

16 If vehicles or mobile equipment are used in the performance of the obligations  
17 under this Agreement, then SUBRECIPIENT shall maintain liability insurance for all owned,  
18 non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence  
19 combined single limit. If such insurance contains a general aggregate limit, it shall apply  
20 separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall  
21 name the County of Riverside as Additional Insured.

22 d. General Insurance Provisions - All lines:

23 (i). Any insurance carrier providing insurance coverage hereunder shall be  
24 admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8)  
25 unless such requirements are waived, in writing, by the County of Riverside's Risk Manager. If  
26 the County's Risk Manager waives a requirement for a particular insurer such waiver is only  
27 valid for that specific insurer and only for one policy term.

28 (ii). The SUBRECIPIENT'S insurance carrier(s) must declare its insurance self-  
insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such  
retentions shall have the prior written consent of the County Risk Manager before the

1 commencement of operations under this Agreement. Upon notification of self-insured retention  
2 unacceptable to the COUNTY, and at the election of the County's Risk Manager,  
3 SUBRECIPIENT'S carriers shall either; 1) reduce or eliminate such self-insured retention as  
4 respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of  
5 losses and related investigations, claims administration, and defense costs and expenses.

6 (iii). SUBRECIPIENT shall cause SUBRECIPIENT'S insurance carrier(s) to  
7 furnish the County of Riverside with either 1) a properly executed original Certificate(s) of  
8 Insurance and certified original copies of Endorsements effecting coverage as required herein,  
9 and 2) if requested to do so orally or in writing by the County Risk Manager, provide original  
10 Certified copies of policies including all Endorsements and all attachments thereto, showing such  
11 insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall  
12 contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given  
13 to the County of Riverside prior to any material modification, cancellation, expiration or  
14 reduction in coverage of such insurance. In the event of a material modification, cancellation,  
15 expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County  
16 of Riverside receives, prior to such effective date, another properly executed original Certificate  
17 of Insurance and original copies of endorsements or certified original policies, including all  
18 endorsements and attachments thereto evidencing coverage's set forth herein and the insurance  
19 required herein is in full force and effect. *SUBRECIPIENT shall not commence operations until*  
20 *the COUNTY has been furnished original Certificate (s) of Insurance and certified original*  
21 *copies of endorsements and if requested, certified original policies of insurance including all*  
22 *endorsements and any and all other attachments as required in this Section 13. An individual*  
23 *authorized by the insurance carrier to do so on its behalf shall sign the original endorsements*  
24 *for each policy and the Certificate of Insurance.*

25 (iv). It is understood and agreed to by the Parties hereto that the  
26 SUBRECIPIENT'S insurance shall be construed as primary insurance, and the COUNTY'S  
27 insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be  
28 construed as contributory.

(v). If, during the term of this Agreement or any extension thereof, there is a

1 material change in the Scope of Services; or, there is a material change in the equipment to be  
2 used in the performance of the Scope of Services or, the term of this Agreement, including any  
3 extensions thereof, exceeds five (5) years, the COUNTY reserves the right to adjust the types of  
4 insurance required under this Agreement and the monetary limits of liability for the insurance  
5 coverage's currently required herein, if; in the County Risk Manager's reasonable judgment, the  
6 amount or type of insurance carried by the SUBRECIPIENT has become inadequate.

7 (vi). SUBRECIPIENT shall pass down the insurance obligations contained  
8 herein to all tiers of subcontractors working under this Agreement.

9 (vii). The insurance requirements contained in this Agreement may be met with  
10 a program(s) of self-insurance acceptable to the COUNTY.

11 (viii). SUBRECIPIENT agrees to notify COUNTY of any claim by a third party  
12 or any incident or event that may give rise to a claim arising from the performance of this  
13 Agreement.

14 14. HOLD HARMLESS AND INDEMNIFICATION. SUBRECIPIENT shall  
15 indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts  
16 and Departments, their respective directors, officers, Board of Supervisors, elected and  
17 appointed officials, employees, agents and representatives individually and collectively  
18 hereinafter referred to as "Indemnitees" from any liability whatsoever, based or asserted upon  
19 any acts or services of SUBRECIPIENT, its officers, employees, subcontractors, agents or  
20 representatives arising out of or in any way relating to this Agreement, including but not limited  
21 to property damage, bodily injury, or death or any other element of any kind or nature whatsoever  
22 arising from the performance of SUBRECIPIENT, its officers, agents, employees,  
23 subcontractors, or representatives from this Agreement. SUBRECIPIENT shall defend, at its  
24 sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation,  
25 defense and settlements or awards, the Indemnitees in any claim or action based upon such  
26 alleged acts or omissions.

27 With respect to any action or claim subject to indemnification herein by SUBRECIPIENT,  
28 SUBRECIPIENT shall, at their sole cost, have the right to use counsel of their own choice and  
shall have the right to adjust, settle, or compromise any such action or claim without the prior

1 consent of COUNTY; provided, however, that any such adjustment, settlement or compromise  
2 in no manner whatsoever limits or circumscribes SUBRECIPIENT'S indemnification to  
3 Indemnitees as set forth herein.

4 SUBRECIPIENT'S obligation hereunder shall be satisfied when SUBRECIPIENT has  
5 provided to COUNTY the appropriate form of dismissal relieving COUNTY as Indemnitees  
6 from any liability for the action or claim involved.

7 The specified insurance limits required in this Agreement shall in no way limit or  
8 circumscribe SUBRECIPIENT'S obligations to indemnify and hold harmless the Indemnitees  
9 herein from third party claims. The hold harmless and indemnification obligation set forth herein  
10 shall survive the termination and expiration of this Agreement.

11 15. FEDERAL REQUIREMENTS. SUBRECIPIENT shall comply with the  
12 provisions of the Act and ARPA Rule and any applicable amendments thereto and the federal  
13 regulations and guidelines now or hereafter enacted pursuant to the Act. SUBRECIPIENT shall  
14 abide by the provisions of the COUNTY'S ARPA program policies.

15 16. ENVIRONMENTAL REVIEW. SUBRECIPIENT does not assume the  
16 COUNTY'S Federal environmental responsibilities described at 24 CFR 570.604. Pursuant to  
17 Section 15051 (d) of the Title 14 of the California Administrative Code, COUNTY is designated  
18 as the lead agency for the Project that is the subject matter of this Agreement.

19 17. RESERVED.

20 18. COMPLIANCE WITH LAWS, REGULATIONS, NONDISCRIMINATION,  
21 AND EQUAL OPPORTUNITY.

22 By executing this Agreement, SUBRECIPIENT hereby certifies that it will adhere to and comply  
23 with all federal, state and local laws, regulations and ordinances. In particular, SUBRECIPIENT  
24 shall comply with the Act and ARPA Rules and the following as they may be applicable to  
25 SUBRECIPIENT in connection with the ARPA Grant funds:

26 a. Compliance with Executive Order 11246 of September 24, 1965, entitled  
27 "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967,  
28 and as supplemented in Department of Labor Regulations (41 CFR Part 60). The SUBRECIPIENT  
will not discriminate against any employee or applicant for employment because of race, color,

1 religion, sex, or national origin. SUBRECIPIENT shall ensure that all qualified applicants will  
2 receive consideration for employment without regard to race, color, religion, sex or national origin.  
3 The SUBRECIPIENT will take affirmative action to ensure that applicants are employed and the  
4 employees are treated during employment, without regard to their race color, religion, sex, or  
5 national origin. Such actions shall include, but are not limited to, the following: employment, up-  
6 grading, demotion, or transfer; recruitment or recruitment advertising; rates of pay or other forms  
7 of compensation; and selection for training, including apprenticeship. The SUBRECIPIENT  
8 agrees to post in a conspicuous place, available to employees and applicants for employment,  
9 notices to be provided by the County setting forth the provisions of this non-discrimination clause;

10           b. Executive Order 11063, as amended by Executive Order 12259, and  
11 implementing regulations at 24 CFR Part 107;

12           c. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended,  
13 and implementing regulations;

14           d. The Age Discrimination Act of 1975 (Pub. L.94-135), as amended, and  
15 implementing regulations;

16           e. The regulations, policies, guidelines and requirements of the Uniform  
17 Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2  
18 CFR Part 200) as they relate to the acceptance and use of federal funds under the federally-assigned  
19 program;

20           f. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and implementing  
21 regulations issued at 24 CFR Part 1;

22           g. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284) as amended;

23           h. *Rights to Data and Copyrights*: Contractors and consultants agree to comply  
24 with all applicable provisions pertaining to the use of data and copyrights pursuant to 48 CFR Part  
25 27.404-3, Federal Acquisition Regulations (FAR).  
26

27           i. *Air Pollution Prevention and Control* (formally known as the *Clean Air Act*)  
28



1 (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. Section 1251 *et*  
2 *seq.*), as amended: Contracts and subgrants of amounts in excess of \$100,000 shall contain a  
3 provision that requires the recipient to agree to comply with all applicable standards, orders or  
4 regulations issued pursuant to the *Clean Air Act* (42 U.S.C. 7401 *et seq.*) and the *Federal Water*  
5 *Pollution Control Act* as amended (33 U.S.C. Section 1251 *et seq.*). Violations shall be reported  
6 to the Federal awarding agency and the Regional Office of the Environmental Protection Agency  
7 (EPA).

8           j. *Anti-Lobbying Certification (31 U.S.C. 1352)*: The language of the certification  
9 set forth below shall be required in all contracts or subcontracts entered into in connection with  
10 this grant activity and all SUBRECIPIENTS shall certify and disclose accordingly. This  
11 certification is a material representation of fact upon which reliance was placed when this  
12 transaction was made or entered into. Submission of this certification is a prerequisite for making  
13 or entering into this transaction imposed by. Section 1352, Title 31, U.S. Code. Any person who  
14 fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and  
15 no more than \$100,000 for such failure.

17           “The undersigned certifies, to the best of his or her knowledge or belief, that: No Federal  
18 appropriated funds have been paid or will be paid, by or on behalf of it, to any person for  
19 influencing or attempting to influence an officer or employee of any agency, a Member of  
20 Congress, an officer or employee of Congress, or an employee of a Member of Congress in  
21 connection with the awarding of any Federal contract, the making of any Federal grant, the making  
22 of any Federal loan, the entering into of any cooperative agreement, and the extension,  
23 continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or  
24 cooperative agreement;

25 If any funds other than Federal appropriated funds have been paid or will be paid to any person for  
26 influencing or attempting to influence an officer or employee of any agency, a Member of  
27 Congress, an officer or employee of Congress, or an employee of a Member of Congress in  
28 connection with this Federal contract, grant loan or cooperative agreement, he/she will complete  
and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its  
instructions.”

1           k. *Debarment and Suspension (Executive Orders (E.O.) 12549 and 12689)*: No  
2 contract award shall be made to parties listed on the government wide exclusions in the System  
3 for Award Management (SAM), in accordance with OMB guidelines at 2 CFR 180 that implement  
4 Executive Orders (E.O.s) 12549 and 12689, “Debarment and Suspension.” SAM Exclusions  
5 contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as  
6 parties declared ineligible under statutory or regulatory authority other than E.O. 12549.  
7 Contractors with awards that exceed the small purchase threshold shall provide the required  
8 certification regarding its exclusion status and that of its principal employees.

9           1. *Drug-Free Workplace Requirements*: The Anti-Drug Abuse Act of 1988 (Pub.  
10 L. 100-690) requires SUBRECIPIENTS (including individuals) of federal agencies, as a prior  
11 condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each  
12 potential recipient must certify that it will comply with drug-free workplace requirements.

13           m. *Access to Records and Records Retention*: The SUBRECIPIENT or Contractor,  
14 and any sub-consultants or sub-contractors, shall allow all duly authorized Federal, State, and/or  
15 County officials or authorized representatives access to the work area, as well as all books,  
16 documents, materials, papers, and records of the SUBRECIPIENT or Contractor, and any sub-  
17 consultants or sub-contractors, that are directly pertinent to a specific program for the purpose of  
18 making audits, examinations, excerpts, and transcriptions. The SUBRECIPIENT or Contractor,  
19 and any sub-consultants or sub-contractors, further agree to maintain and keep such books,  
20 documents, materials, papers, and records, on a current basis, recording all transactions pertaining  
21 to this Agreement in a form in accordance with generally acceptable accounting principles. All  
22 such books and records shall be retained for such periods of time as required by law, provided,  
23 however, notwithstanding any shorter periods of retention, all books, records, and supporting detail  
24 shall be retained for a period of at least five (5) years after the expiration of the term of this  
25 Agreement, or final payment is made, whichever is later.

26           n. *Federal Employee Benefit Clause*: No member of or delegate to the Congress  
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1 of the United States, and no Resident Commissioner shall be admitted to any share or part of this  
2 Agreement or to any benefit to arise from the same.

3           o. *Energy Efficiency*: Mandatory standards and policies relating to energy  
4 efficiency which are contained in the State energy conservation plan issued in compliance with the  
5 Energy Policy and Conservation Act (Pub. L. 94 - 163, Dec. 22, 1975; 42 U.S.C. Section 6201, et.  
6 seq., 89 Stat.871).

7           p. *Procurement of Recovered Materials (2 CFR 200.322.)*: A non-Federal entity  
8 that is a state agency or agency of a political subdivision of a state and its contractors must comply  
9 with 42 U.S.C. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource  
10 Conservation and Recovery Act. The requirements of Section 6002 include procuring only items  
11 designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that  
12 contain the highest percentage of recovered materials practicable, consistent with maintaining a  
13 satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the  
14 value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste  
15 management services in a manner that maximizes energy and resource recovery; and establishing  
16 an affirmative procurement program for procurement of recovered materials identified in the EPA  
17 guidelines. The requirements of 2 CFR 200.322, as amended effective November 12, 2020, are  
18 hereby included in this Agreement as appropriate and to the extent consistent with law.

19           q. *Contract Work Hours and Safety Standards Act (CWHSA) (30 U.S.C. 3701-*  
20 *3708)*: SUBRECIPIENT shall comply with all applicable provisions of the CWHSA.

21           r. *Displacement, relocation, and acquisition*. The relocation requirements of  
22 Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and  
23 Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part  
24 42. SUBRECIPIENT must ensure that it has taken all reasonable steps to minimize the  
25 displacement of persons as a result of this Project.

26           s. *Lead-based paint*. The ARPA-Assisted Units are subject to the lead-based  
27  
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1 paint requirements of 24 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning  
2 Prevention Act (42 U.S.C. 4821, et seq.). The lead-based paint provisions of 24 CFR 982.401 (j),  
3 except 24 CFR 982.401 (j)(1)(i), also apply, irrespective of the applicable property standard under  
4 §92.251.

5 t. *Labor.* SUBRECIPIENT shall comply with any applicable labor regulations  
6 and all other State and Federal laws in connection with the construction of the improvements  
7 which comprise the Project, including if applicable, requirements relating to Davis Bacon.  
8 SUBRECIPIENT agrees and acknowledges that it is the responsibility of SUBRECIPIENT to  
9 obtain a legal determination, at SUBRECIPIENT'S sole cost and expenses as to whether Davis  
10 Bacon wages must be paid for during the construction of the Project. SUBRECIPIENT agrees to  
11 indemnify, defend, and hold COUNTY harmless from and against any and all liability arising out  
12 of a related to SUBRECIPIENT'S failure to comply with any and applicable prevailing wage  
13 requirements.

14 u. *Model Energy Code* published by the Council of American Building Officials.

15 v. *Consultant Activities.* No person providing consultant services in an employer-  
16 employee type relationship shall receive more than a reasonable rate of compensation for personal  
17 services paid with ARPA funds.

18 w. *Uniform Administrative Requirements* of 2 CFR Part 200 as now in effect and  
19 as may be amended from time to time. Federal awards expended as a recipient or a subrecipient,  
20 as defined therein, would be subject to single audit. The payments received for goods or services  
21 provided as a vendor would not be considered Federal awards.

22 x. SUBRECIPIENT shall include written agreements that include all provisions  
23 of **Section 18** if SUBRECIPIENT provides ARPA funds to for-profit owners or developers, non-  
24 profit owners or developers, sub-recipients, homeowners, homebuyers, tenants receiving tenant-  
25 based rental assistance, or contractors.

26 y. *Immigration requirements of Federal Register*, Vol. 62, No. 221, Department  
27  
28

1 of Justice Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility  
2 Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996  
3 (“PRWORA”). Final Attorney General’s Order issued pursuant to PRWORA is specified under  
4 Federal Register Vol. 66, No. 10, Department of Justice Final Specification of Community  
5 Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation.

6 z. SUBRECIPIENT shall comply with all applicable local, state and federal laws  
7 in addition to the above-mentioned laws.

8 19. SUBRECIPIENT MONITORING. SUBRECIPIENT shall comply with all  
9 COUNTY ARPA program subrecipient monitoring requirements as required by the Uniform  
10 Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2  
11 CFR Part 200), as amended.

12 20. AFFIRMATIVE ACTION COMPLIANCE. Each subrecipient or subcontractor  
13 with less than fifty (50) employees shall comply with Section 202 of Part II of Executive Order  
14 11246, as amended. SUBRECIPIENT shall insure that subcontractors, if any, falling within the  
15 scope of this provision shall comply in full with the requirements thereof. The equal opportunity  
16 clause contained in section 202 of Executive Order 11246, as amended, is hereby incorporated  
17 into this Agreement by reference.

18 21. PROHIBITION AGAINST CONFLICTS OF INTEREST.

19 a. SUBRECIPIENT and its assigns, employees, agents, consultants, officers  
20 and elected and appointed officials shall become familiar with and shall comply with the ARPA  
21 Conflict of Interest regulations under the ARPA Rules, and the Uniform Administrative  
22 Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200).

23 b. The SUBRECIPIENT shall maintain a written code or standards of  
24 conduct that shall govern the performance of its officers, employees or agents engaged in the  
25 award and administration of contracts supported by Federal funds.

26 c. No employee, officer or agent of the SUBRECIPIENT shall participate in  
27 the selection, or in the award, or administration of, a contract supported by Federal funds if a  
28 conflict of interest, real or apparent, would be involved.

d. Reserved

1 e. Reserved

2 f. Prior to receiving any funding under this Agreement, SUBRECIPIENT  
3 shall provide COUNTY with a list of all employees, agents, consultants, officers and elected  
4 and appointed officials who are in a position to participate in a decision-making process,  
5 exercise any functions or responsibilities, or gain inside information with respect to the ARPA  
6 activities funded under this Agreement. SUBRECIPIENT shall also promptly provide written  
7 disclosure to COUNTY of any potential conflict, including even the appearance of conflict, that  
8 may arise with respect to the ARPA activities funded under this Agreement.

9 g. Reserved.

10 22. RESERVED.

11 23. LOBBYING. SUBRECIPIENT certifies to the best of its knowledge and belief,  
12 that:

13 a. No federally-appropriated funds have been paid or will be paid, by or on  
14 behalf of the undersigned, to any person for influencing or attempting to influence an officer or  
15 employee of any agency, a member of Congress, an officer or employee of Congress, or an  
16 employee of a member of Congress in connection with the awarding of any federal contract, the  
17 making of any federal grant, the making of any federal loan, the entering into of any cooperative  
18 agreement, and the extension, continuation, renewal, amendment, or modification of any federal  
19 contract, grant, loan, or cooperative agreement.

20 b. If any funds other than federally-appropriated funds have been paid or will  
21 be paid to any person for influencing or attempting to influence an officer or employee of any  
22 agency, a member of Congress, an officer or employee of Congress, or an employee of a  
23 member of Congress in connection with this federal contract, grant, loan, or cooperative  
24 agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form  
25 to Report Lobbying," in accordance with its instructions.

26 c. SUBRECIPIENT shall require that the language of this certification be  
27 included in the award documents for all subawards at all tiers (including subcontracts,  
28 subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-

1 recipients shall certify and disclose accordingly. This certification is a material representation  
2 of fact upon which reliance was placed when this transaction was made or entered into.

3 24. ELIGIBILITY OF CONTRACTORS AND SUBCONTRACTORS. No ARPA  
4 Grant funds allocated to SUBRECIPIENT through this Agreement may be used, directly or  
5 indirectly, to employ, award contracts to, or otherwise engage the services of, or fund any  
6 contractor or subcontractor during any period of debarment, suspension, or placement in  
7 ineligibility status under the provision of 24 CFR 24.

8 25. RESERVED.

9 26. FLOOD INSURANCE. No site proposed on which renovation, major  
10 rehabilitation, or conversion of a building is to be assisted under this part, other than by grant  
11 amounts allocated to the State, may be located in an area that has been identified by the Federal  
12 Emergency Management Agency as having special flood hazards, unless the community in  
13 which the area is situated is participating in the National Flood Insurance Program and the  
14 regulations issued thereunder (44 CFR Parts 59 through 79) or less than a year has passed since  
15 the Federal Emergency Management Agency notification regarding such hazards, and the  
16 SUBRECIPIENT will ensure that flood insurance on the structure is obtained in compliance  
17 with Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

18 27. NOTICES. Any notices required or desired to be served by either party upon the  
19 other shall be addressed to respective Parties as set out below or to such other addresses as from  
20 time-to-time shall be designated by the respective Parties and are deemed received two days  
21 after their deposit in the United States mail, postage prepaid:

22 COUNTY  
23 3403 10<sup>th</sup> St, Suite 300, Riverside, CA 92501  
24 Attention: Housing and Workforce Solutions

25 HACR  
26 5555 Arlington Avenue, Riverside, CA 92507  
27 Attention: Deputy Director

28 28. BINDING ON SUCCESSORS. SUBRECIPIENT, its heirs, assigns and  
successors in interest shall be bound by all the provisions contained in this Agreement, and all  
of the Parties thereto shall be jointly and severally liable hereunder.

1           29.    RESERVED.

2           30.    ASSURANCES AND WARRANTIES.    SUBRECIPIENT represents and  
3 warrants (1) that it has access to professional advice and support to the extent necessary to  
4 enable SUBRECIPIENT to fully comply with the terms of the Agreement and to otherwise  
5 carry out the Project, (2) that it is duly organized, validly existing and in good standing under  
6 the laws of the State of California, (3) that it has the full power and authority to undertake the  
7 Project and to execute this Agreement, (4) that the persons executing and delivering this  
8 Agreement are authorized to execute and deliver such documents on behalf of SUBRECIPIENT  
9 and (5) that neither SUBRECIPIENT nor any of its principals is presently debarred, suspended,  
10 proposed for debarment, declared ineligible, or voluntarily excluded from participation in  
11 connection with the transaction contemplated by this Agreement.

12           31.    RESERVED.

13           32.    RESERVED.

14           33.    RESERVED.

15           34.    JURISDICTION AND VENUE. Any action at law or in equity arising under this  
16 Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining  
17 the validity of any provision of this Agreement shall be filed only in the Superior Court of the  
18 State of California, located in Riverside, California, and the Parties hereto waive any provisions  
19 of law providing for a change of venue to another location.

20           35.    SEVERABILITY. In the event any provision in this Agreement is held by a court  
21 of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will  
22 nevertheless continue in full force without being impaired or invalidated in anyway.

23           36.    WAIVER. Any waiver by COUNTY of any breach of any one or more of the  
24 terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach  
25 of the same or of any other term of this Agreement. Failure on the part of COUNTY to require  
26 exact, full and complete compliance with any terms of this Agreement shall not be construed as  
27 in any manner changing the terms or preventing COUNTY from enforcement of the terms of  
28 the Agreement.

          37.    ENTIRE AGREEMENT. This Agreement, including any attachments or exhibits



1 hereto constitutes the entire Agreement of the Parties with respect to its subject matter and  
2 supersedes all prior and contemporaneous representations, proposals, discussions, and  
3 communications, whether oral or in writing. No oral understanding or agreement not  
4 incorporated herein shall be binding on any of the Parties hereto. Each of the attachments and  
5 exhibits attached hereto is incorporated herein by this reference.

6 38. ADMINISTRATION/CONTRACT LIAISON; MINISTERIAL ACTS. The  
7 Director of HWS, or designee(s), and the Executive Director of SUBRECIPIENT, or  
8 designee(s), are authorized to administer this Agreement and take such ministerial actions as  
9 may be necessary or appropriate to implement the terms, provisions, and conditions of this  
10 Agreement as it may be amended from time to time by COUNTY.

11 39. INTERPRETATION AND GOVERNING LAW. This Agreement and any  
12 dispute arising hereunder shall be governed by and interpreted in accordance with the laws of  
13 the State of California. This Agreement shall be construed as a whole according to its fair  
14 language and common meaning to achieve the objectives and purposes of the Parties hereto,  
15 and the rule of construction to the effect that ambiguities are to be resolved against the drafting  
16 Party shall not be employed in interpreting this Agreement, all Parties having been represented  
17 by counsel in the negotiation and preparation hereof.

18 40. AUTHORITY TO EXECUTE. The persons executing this Agreement or exhibits  
19 attached hereto on behalf of the Parties to this Agreement hereby warrant and represent that  
20 they have the authority to execute this Agreement and warrant and represent that they have the  
21 authority to bind the respective Parties to this Agreement and to the performance of its  
22 obligations hereunder.

23 41. EFFECTIVE DATE. The Effective Date of this Agreement is the date the Parties  
24 sign the Agreement. If the Parties sign the Agreement on more than one date, then the last date  
25 the Agreement is signed by a Party shall be the Effective Date.

26 42. COUNTERPARTS. This Agreement may be signed by the different Parties  
27 hereto in counterparts, each of which shall be an original but all of which together shall  
28 constitute one and the same Agreement.

43. LETTER TO PROCEED. SUBRECIPIENT shall not initiate nor incur expenses  
for the ARPA Grant-funded Project covered under the terms of this Agreement prior to

1 receiving written authorization to proceed from COUNTY.

2 44. REPROGRAMMING OF FUNDS. If COUNTY determines that substantial  
3 progress toward completion of a Project is not made during the term of this Agreement, the  
4 entitlement funds associated with the Project may be reprogrammed by COUNTY after a thirty  
5 (30) day written notice is provided to SUBRECIPIENT.

6 45. EMPLOYMENT OPPORTUNITIES TO BE CAUSED BY PROJECT.  
7 SUBRECIPIENT agrees to, and will require any lessee or assignee to notify Riverside County  
8 Workforce Development Center of any and all job openings that are caused by this Project.

9 46. SOURCE OF FEDERAL FUNDING. SUBRECIPIENT acknowledges that the  
10 source of funding pursuant to this Agreement is SLFRF funds (CFDA 14.231), and the Grant  
11 Award Number is: B-18-UC-06-0506.

12 47. ASSIGNMENT. The SUBRECIPIENT shall not delegate or make any assignment  
13 or transfer in any form with respect to this Agreement, without prior written approval of the  
14 COUNTY

15 48. MODIFICATION OF AGREEMENT. This Agreement can be modified or  
16 amended only by a writing signed by the duly authorized and empowered representatives of  
17 COUNTY and SUBRECIPIENT, respectively.

18 49. RESERVED.

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Remainder of Page Intentionally Blank

[Signatures on Following Page]

1 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of  
2 the day and year set forth below.

3  
4 **SUBRECIPIENT:**

**COUNTY:**

5 HOUSING AUTHORITY OF THE  
6 COUNTY OF RIVERSIDE, a public entity,  
7 corporate and politic

COUNTY OF RIVERSIDE, a political  
subdivision of the State of California

8 By: \_\_\_\_\_  
9 V. Manuel Perez, Chair  
10 Board of Commissioners

By: \_\_\_\_\_  
Chuck Washington, Chair  
Board of Supervisors

11 Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

12  
13 ATTEST:  
14 Kimberly A. Rector, Clerk of Board

ATTEST:  
Kimberly A. Rector, Clerk of Board

15 By: \_\_\_\_\_  
16 Deputy


By: \_\_\_\_\_  
Deputy

17 Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

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20 APPROVED AS TO FORM:  
21 MINH C. TRAN  
22 GENERAL COUNSEL

APPROVED AS TO FORM:  
MINH C. TRAN  
COUNTY COUNSEL

23  
24 By:  \_\_\_\_\_  
25 Amrit P. Dhillon,  
26 Deputy County Counsel

By:  \_\_\_\_\_  
Paula S. Salcido,  
Deputy County Counsel

**Exhibit “A”**  
**Scope of Work**

1. The work under this Contract shall be performed at the Jack E. Marlowe located in the unincorporated community of Ripley, County of Riverside, State of California (“Property”) and shall include furnishing all labor, material, equipment, tools, supplies, and services and incidentals, and performing all work necessary for the Renovation of the Jack E. Marlowe Park.
2. Jack E. Marlowe Park Renovation Project Overview: This Renovation Project will include, but are not limited to, any portion of the following:
  - a. Initial planning and site review: Verify existing conditions related to the existing project at hand at the proposed site; see scope of work for final determination for project completion restoration.
  - b. Prepare a detailed work plan indicating required and recommended milestones, deliverables and submittals, review timeframes, and critical actions or decisions required of HACR. Make modifications and updates to the work plans as requested by HACR staff.
  - c. Coordinate design and landscape/restoration activities with HACR Development staff.
  - d. The design of the Project shall meet all relevant requirements of the applicable jurisdictions, codes, and regulations, such as State Fire Marshall, local Fire Departments, Americans with Disabilities Act (“ADA”), Title 24, and any other applicable laws.
  - e. Once approved, contractor shall complete the construction/renovation of the Project. After renovation is complete, the Contractor will continue weekly maintenance, which will begin within two (2) weeks after renovation, for a total of years (2); totaling twenty-four (24) months.

1  
2 **Exhibit “B”**  
3 **Implementation Schedule and Budget Attachment**

4 **Grantee:** Housing Authority of the County of Riverside  
5 **Address:** 5555 Arlington Avenue, Riverside, California  
6 **Project Title:** Jack E. Marlowe Renovation Project  
7 **Location:** 24699 School Road, Ripley, California 92225

8 **Project Description:**

9 The Housing Authority of the County of Riverside has applied to the County of Riverside  
10 (“County”) for ARPA funding in the amount of \$151,149 to pay for the comprehensive renovation,  
11 which includes landscape design and construction of Jack E. Marlowe Park and to provided two  
12 years of continued maintenance once renovation is complete.

13 **IMPLEMENTATION SCHEDULE**

<b>Milestone</b>	<b>Completion Date</b>
(1) County Approval	November 2024
(2) Financing Commitment	November 2024
(3) Jack E. Marlowe Renovation Project	January 2025
(4) Renovation completion Deadline	January 2025

17  
18 **BUDGET**

<b>Funding Sources</b>	<b>Amount</b>
Renovation of Jack E. Marlowe Park	\$68,135
10% Contingency	\$6,814
2 years’ weekly maintenance (\$3,175 a month x 12 months)	\$76,200
<b>Total</b>	<b>\$151,149.00</b>



# HOUSING AUTHORITY of the County of Riverside

*Main Office*  
5555 Arlington Avenue  
Riverside, CA 92504-2506  
(951) 351-0700  
Admin FAX (951) 688-6873  
Housing FAX (951) 354-  
6324  
TDD (951) 351-9844

## ADDENDUM # 1

*Indio Office*  
44-199 Monroe, Suite B  
P.O. Box 1747  
Indio, CA 92201-1747  
(760) 863-2828  
(760) 863-2838 FAX  
TDD (760) 863-2830

*Website: harivco.org*

Date: September 26, 2024  
From: Rigo Beltran  
Project: RFP No. 2024-006 JACK E MARLOWE – RIPLEY FAMILY  
PARK PROJECT  
Location: 24699 SCHOOL ROAD, RIPLEY, CA 92225

Bid Due Date: **Monday, October 10, 2024 @ 4:00pm PST.** The following  
are clarifications and/or revisions to RFP 2024-006:

- 1. The Successful Proposer will also provide landscape maintenance at the Park for two (2) years after the completion of the project. Please add this cost to your proposal in a separate line. This landscape maintenance may be subcontracted out by the Successful Proposer.**
- 2. The Contractor shall guarantee no fee increases for the two years of this maintenance service.**

FOR: Housing Authority of the County of Riverside

BY: Rigo Beltran  
Rigo Beltran - HACR Representative



# HOUSING AUTHORITY of the County of Riverside

*Main Office*  
5555 Arlington Avenue  
Riverside, CA 92504-2506  
(951) 351-0700  
Admin FAX (951) 688-6873  
Housing FAX (951) 354-  
6324  
TDD (951) 351-9844

## ADDENDUM # 2

Date: September 26, 2024  
From: Rigo Beltran  
Project: RFP No. 2024-006 JACK E MARLOWE – RIPLEY FAMILY  
PARK PROJECT  
Location: 24699 SCHOOL ROAD, RIPLEY, CA 92225

*Indio Office*  
44-199 Monroe, Suite B  
P.O. Box 1747  
Indio, CA 92201-1747  
(760) 863-2828  
(760) 863-2838 FAX  
TDD (760) 863-2830

*Website: harivco.org*

**Bid Due Date: Monday, October 10th, 2024 @ 4:00pm PST.**

The following are clarifications and/or revisions to RFP 2024-006:

- 1. This is a Davis-Bacon Wages Job. Wage Determination: CA20240017 6/28/24 MOD 8.**
- 2. Please see attachment. Page 2 of 2.**

FOR: Housing Authority of the County of Riverside

BY: Rigo Beltran  
Housing Authority Representative

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**EXHIBIT A**  
**RENOVATION GENERAL CONDITIONS**



**GENERAL CONDITIONS OF**  
**THE STANDARD FORM CONSTRUCTION CONTRACT**  
**BETWEEN HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE AND**  
**CONTRACTOR**

(LONG FORM)

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**GENERAL CONDITIONS OF**  
**THE STANDARD FORM CONSTRUCTION CONTRACT**  
**BETWEEN HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE AND**  
**CONTRACTOR**

(LONG FORM)

**ARTICLE 1**  
**GENERAL PROVISIONS**

**1.1 DEFINITIONS**

1.1.1 **Acceptance.** "Acceptance" means the point that the Project is formally accepted by the Board of Supervisors and a Notice of Completion is recorded by Authority.

1.1.2 **Authority.** "Authority" means the Housing Authority of the Authority of Riverside, a public entity, corporate and politic, in its capacity as housing successor to the former Redevelopment Agency for the Authority of Riverside, hereafter referred to as "Authority" or "Authority".

1.1.3 **Authority Amount.** "Authority Amount" means the component amount calculated on behalf of Authority pursuant to Paragraph 15.1.5, below, that is used to determine the total net amount payable to Contractor or Authority in the event of a partial or full termination or discontinuance of the Work.

1.1.4 **Authority Consultant.** "Authority Consultant" means a consultant, other than Architect, engaged by Authority (or engaged as a subconsultant to the Architect or a Authority Consultant) to provide professional advice to Authority with respect to the design, construction or management of the Project.

1.1.5 **Authority Review Date.** "Authority Review Date" means an end date set forth in the Construction Schedule or Submittal Schedule within which Authority, Architect or a Authority Consultant is to provide information, review documents or render decisions, approvals or disapprovals.

1.1.6 **Authority Review Period.** "Authority Review Period" means a period of time set forth in the Construction Schedule or Submittal Schedule within which Authority, Architect or a Authority Consultant is to provide information, review documents or render decisions, approvals or disapprovals.

1.1.7 **Authority Risk Manager.** "Authority Risk Manager" means the individual employee of the Authority acting as its risk manager.

1.1.8 **Authority Website.** "Authority Website" means the website maintained by Authority at <https://harivco.org>.

1.1.9 **Act of God.** "Act of God" means earthquake, natural flood, tornado or other unusually severe natural or weather phenomenon occurring at the Site and causing Delay to performance of the Work at the Site; provided, however, that precipitation and winds shall not be an Act of God unless it exceeds in any given month the 10-year average of monthly levels as established by the National Oceanic and Atmospheric Administration ("NOAA") according to NOAA's records of measurable precipitation and winds taken at NOAA's recording station located within the Riverside Authority basin area that is nearest to the Site.

1.1.10 **Addendum.** "Addendum" means written or graphic information (including, without limitation, Drawings or Specifications) issued prior to the Bid Closing Deadline, which modifies or interprets the Bidding Documents by additions, deletions, clarifications or corrections.



1.1.11 **Admitted Surety.** "Admitted Surety" means a surety insurer that is duly certified pursuant to California Insurance Code §995.120 to transact business as a surety in the State of California.

1.1.12 **Allowable Costs.** "Allowable Costs" means those costs listed in Paragraph 7.7.3, below, that are used in calculating Contract Adjustments to the Contract Price.

1.1.13 **Allowable Markups.** "Allowable Markups" means those percentage markups listed in Paragraph 7.7.5, below, used in calculating Contract Adjustments to the Contract Price.

1.1.14 **Alternate.** "Alternate" means a proposed alternative described in the Bidding Documents adding to, or deleting from, the Bidding Documents a particular material, system, product or method of construction.

1.1.15 **Applicable Laws.** "Applicable Laws" means all statutes, ordinances, rules, regulations, policies and guidelines enacted by Governmental Authorities (including, without limitation, Environmental Laws and Disability Laws), codes adopted or promulgated by Governmental Authorities (including, without limitation, building and health and safety codes), lawful orders of Governmental Authorities and common law, including, but not limited to, principles of equity applied by the courts of the State of California, which are in effect at the time the Work is performed.

1.1.16 **Application for Payment.** "Application for Payment" means Contractor's itemized application for Progress Payment or Final Payment prepared, submitted and substantiated in accordance with the requirements of the Contract Documents.

1.1.17 **Architect.** "Architect" means the design professional retained by Authority that is primarily responsible for the preparation of the Drawings and Specifications for the Project.

1.1.18 **Award.** "Award" means either (1) a minute order duly adopted by the Board of Supervisors approving Authority's entering into the Construction Contract with Contractor or (2) execution of the Construction Contract by the Clerk of the Board.

1.1.19 **Base Bid.** "Base Bid" means the sum of money stated in a Bid for which the Bidder proposes to perform the Work, exclusive of adjustments for Alternates.

1.1.20 **Bid.** "Bid" means the completed and signed Bid Form and other Bid Submittals submitted by a Bidder to Authority in response to the Notice Inviting Bids and in accordance with the Instructions to Bidders.

1.1.21 **Bid Amount.** "Bid Amount" means the dollar amount that is used as the basis for determining which Bidder has submitted the lowest Bid price for purposes of Award pursuant to the Authority's chosen method of Award set forth in Paragraph 4.5.3 of the Instructions to Bidders.

1.1.22 **Bid Bond.** "Bid Bond" means alternative form of Bid Security submitted by a Bidder that consists of a surety bond issued by a Surety.

1.1.23 **Bid Closing Deadline.** "Bid Closing Deadline" means the deadline (date and time) for receipt of Bids by Authority that is stated in the Bidding Documents, as adjusted by Addendum.

1.1.24 **Bid Form.** "Bid Form" means the form prescribed by the Bidding Documents to be completed and signed by a Bidder showing the dollar amount(s) of its Bid.

1.1.25 **Bid Security.** "Bid Security" means a deposit of cash, certified or cashier's check or bond submitted by a Bidder in accordance with the Bidding Documents guaranteeing that if Award is made to the Bidder, the Bidder will enter into the Construction Contract and furnish the Performance Bond and Payment Bond and other Post-Award Submittals.

1.1.26 **Bid Submittal.** "Bid Submittal" means a document that Bidder is required by the Bidding Documents to submit with or as part of its Bid.

1.1.27 **Bidder.** "Bidder" means a person or entity submitting a Bid for Award of the Construction Contract.

1.1.28 **Bidding Documents.** "Bidding Documents" means the following collection of documents prepared and issued by Authority relating to the Project:

- .1 Notice Inviting Bids;
- .2 Instructions to Bidders;
- .3 Bid Form;
- .4 Standard Form of Construction Contract Between Authority and Contractor (unsigned);
- .5 General Conditions to Standard Form of Construction Contract Between Authority and Contractor (Long Form);
- .6 Specifications;
- .7 Plans and Drawings;
- .8 Addenda;
- .9 Reference Documents;
- .10 Safety Program; and
- .11 those documents, or those portions or provisions of documents, that, although not listed in Subparagraph 1.1.22.2 through Subparagraph 1.1.22.10, above, are expressly cross-referenced therein or attached thereto, including, without limitation, all documents submitted by Contractor as part of its Bid or Post-Award Submittals.

1.1.29 **Board of Supervisors.** "Board of Supervisors" means the Board of Supervisors for the Authority of Riverside.

1.1.30 **Change.** "Change" means a modification, change, addition, substitution or deletion in the Work or in Contractor's means, methods, manner, time or sequence of performing the Work arising from any cause or circumstances, including, without limitation, either directly at the request of Authority or constructively by reason of other circumstances. Use of the term "Change," in any context, in the Contract Documents shall not be interpreted as implying that Contractor is entitled to a Contract Adjustment on any basis other than as permitted by the terms of the Contract Documents for Compensable Change, Deleted Work or Compensable Delay.

1.1.31 **Change Order.** "Change Order" means a written instrument, signed in accordance with the requirements of the General Conditions, setting forth the agreement of Authority and Contractor on the terms of a Contract Adjustment.

1.1.32 **Change Order Request.** "Change Order Request" means Contractor's written request for a Contract Adjustment pursuant to Paragraph 7.6.2, below.

1.1.33 **Claim.** "Claim" means a written demand or assertion by Contractor seeking, as a matter of right, an interpretation of contract, payment of money, recovery of damages or other relief. A Claim does not include the following: (1) tort claims for personal injury or death; (2) stop payment notice claims; (3) a determination of the right of Authority to specific performance or injunctive relief to compel performance; (4) a determination of the right of Authority to suspend, revoke or limit the Contractor's Prequalification status or rating or to debar Contractor from bidding or contracting with Authority; or (5) a determination of the right of Authority under Applicable Laws to terminate the Construction Contract and/or recovery of penalties imposed upon Contractor for violation of statutory obligations under Public Contract Code §4100 *et seq.*

**1.1.34 Close-Out Documents.** "Close-Out Documents" means all Record Documents, warranties, guarantees, technical information, operations manuals, replacement parts, excess and attic stock and other documents (including, without limitation, electronic versions and hard copies) and things required to be submitted by Contractor under the Contract Documents as a condition of Final Completion or Final Payment.

**1.1.35 Compensable Change.** "Compensable Change" means circumstances involving the performance of Extra Work:

- .1 that are the result of
  - (1) Differing Site Conditions,
  - (2) amendments or additions to Applicable Laws, which amendments or additions are enacted after the Bid Closing Deadline,
  - (3) a Change requested by Authority in accordance with the conditions of authorization applicable to Compensable Changes set forth in Article 7, below, or
  - (4) other circumstances involving a Change in the Work for which Contractor is given under the Contract Documents a specific and express right to a Contract Adjustment to the Contract Price;
- .2 that are not caused, in whole or in part, by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, or violation of an Applicable Law, or by a failure of Contractor or a Subcontractor, of any Tier, to comply with the Contract Documents;
- .3 for which a Contract Adjustment is neither prohibited by nor waived under the terms of the Contract Documents; and
- .4 that if performed would require Contractor to incur additional and unforeseeable Allowable Costs that would not have been required to be incurred in the absence of such circumstances.

**1.1.36 Compensable Delay.** "Compensable Delay" means a Delay to the critical path of activities affecting Contractor's ability to achieve Substantial Completion of the entirety of the Work within the Contract Time:

- .1 that is the result of
  - (a) a Compensable Change,
  - (b) the active negligence of Authority, Architect, a Authority Consultant or a Separate Contractor,
  - (c) a breach by Authority of an obligation under the Contract Documents, or
  - (d) other circumstances involving Delay for which Contractor is given under the Contract Documents a specific and express right to a Contract Adjustment adjusting the Contract Price;
- .2 that is not caused, in whole or in part, by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, or a violation of an Applicable Law, or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; and
- .3 for which a Contract Adjustment to the Contract Time is neither prohibited by nor waived under the terms of the Contract Documents.

**1.1.37 Construction Change Directive.** "Construction Change Directive" means a written instrument signed in accordance with the requirements of Article 7, below, that: (1) directs the performance of a Change that does not involve a Contract Adjustment; (2) establishes a mutually agreed basis for compensation to Contractor for a Compensable

Change under circumstances where performance of the Compensable Change needs to proceed in advance of the Authority performing a full evaluation of the Contractor's rights relative to a Contract Adjustment; or (3) directs performance of Work or a Change with respect to which there exists a dispute or question regarding the terms of a Contract Adjustment.

**1.1.38 Construction Contract.** "Construction Contract" means the written form of Standard Form of Construction Contract Between Authority and Contractor included in the Bidding Documents signed by Authority and Contractor.

**1.1.39 Construction Schedule.** "Construction Schedule" means the detailed, critical path schedule prepared by Contractor in accordance with the requirements of the Contract Documents showing Contractor's plan for performance of the Work within the Contract Time.

**1.1.40 Contract Adjustment.** "Contract Adjustment" means an adjustment, additive or deductive, to the Contract Price or Contract Time that is permitted by the Contract Documents due to circumstances constituting a Compensable Change, Compensable Delay or Deleted Work.

**1.1.41 Contract Documents.** "Contract Documents" means the following collection of documents:

- .1 Construction Contract;
- .2 Addenda;
- .3 General Conditions;
- .4 Specifications;
- .5 Plans and Drawings;
- .6 Modifications;
- .7 Reference Documents;
- .8 Change Orders;
- .9 Unilateral Change Orders;
- .10 Construction Change Directives;
- .11 Safety Program;
- .12 other documents that comprise exhibits, attachments or riders to the documents listed in preceding Subparagraph 1.1.35.1 through Subparagraph 1.1.35.11, above;
- .13 executed Declaration of Sufficiency of Funds;
- .14 executed Non-Collusion Declaration; and
- .15 if the Bidding Documents limit bidding to Prequalified Bidders, those written representations, obligations or responsibilities made, acknowledged or assumed by the Bidder as part of the applicable Prequalification conducted by Authority, including, without limitation, any continuing obligations assumed by Contractor to disclose false or misleading information, report changes in ownership or management and comply with minimum safety requirements.

**1.1.42 Contract Price.** "Contract Price" means the dollar amount set forth in the Construction Contract as the total compensation payable by Authority to Contractor for complete performance by Contractor in accordance with the Contract Documents of the Work and other obligations assumed by Contractor under the Contract Documents.

1.1.43 **Contract Time.** "Contract Time" means the total number of Days set forth in the Construction Contract within which Contractor is obligated to achieve Substantial Completion and/or Final Completion of the Work, as extended or shortened by Contract Adjustments.

1.1.44 **Contractor.** "Contractor" means the person or entity identified by Authority as the Bidder receiving Award of the Construction Contract.

1.1.45 **Contractor Amount.** "Contractor Amount" means the component amount calculated on behalf of Contractor pursuant to Paragraph 15.1.5, below, that is used to determine the total net amount payable to Contractor or Authority in the event of a partial or full termination or discontinuance of the Work.

1.1.46 **Contractor's Own Expense.** "Contractor's Own Expense" means that Contractor agrees to assume sole responsibility to pay and be responsible for any resulting or associated Loss and Delay, without any Contract Adjustment and without any other form of compensation or reimbursement, of any kind, by Authority.

1.1.47 **Date of Commencement.** "Date of Commencement" means the starting date used for calculation of the Contract Time, and is the date, no earlier than the first working day following issuance of the Notice to Proceed, that is fixed in the Notice to Proceed issued by the Authority or, if no Notice to Proceed is issued, the Day that the Contractor actually commences Work at the Site in accordance with Paragraph 8.1.1, below.

1.1.48 **Day.** "Day", whether capitalized or not, and unless otherwise specifically provided, means calendar day, including weekends and Holidays.

1.1.49 **Declaration of Sufficiency of Funds.** "Declaration of Sufficiency of Funds" means the declaration, in the form included in the Bidding Documents, required to be submitted by Contractor under circumstances where Contractor has not executed a collective bargaining agreement covering the workers who will be employed to perform the Work.

1.1.50 **Defective Work.** "Defective Work" means materials, equipment, labor, workmanship, construction services or other construction work comprising the Work by Contractor or a Subcontractor that (1) is faulty, omitted, incomplete, or deficient, or (2) does not conform to Applicable Laws, the Contract Documents, or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.

1.1.51 **Delay.** "Delay" means any circumstances involving delay, disruption, hindrance or interference.

1.1.52 **Deleted Work.** "Deleted Work" means Work that is eliminated or its scope or cost reduced pursuant to a Change Order or Unilateral Change Order.

1.1.53 **Department of Industrial Relations.** "Department of Industrial Relations" means The Department of Industrial Relations of the State of California.

1.1.54 **Design Discrepancy.** "Design Discrepancy" means an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws contained in the Bidding Documents, Contract Documents, Reference Documents or other information made available by Authority to Contractor prior to or after the Bid Closing Deadline.

1.1.55 **Design Documents.** "Design Documents" means all originals, copies and drafts of plans, drawings, tracings, specifications, programs, reports, calculations, presentation materials, models, building information models and other writings or materials containing designs, specifications or engineering information related to the Work or Project prepared by Architect, Authority Consultants, Contractor, Separate Contractors or Subcontractors including, without limitation, computer aided design materials, electronic data files and paper copies. The term "Design Documents" includes both the written documents and all building and other designs depicted therein.

1.1.56 **Design Intent.** "Design Intent" means the general intended design objectives of the Design Documents prepared by Architect and Authority Consultants, as described in Paragraph 1.2.1, below.

**1.1.57 Designation of Subcontractors.** "Designation of Subcontractors" means the list of proposed Subcontractors prepared by the Bidder pursuant to California Public Contract Code §§4100 et seq.

**1.1.58 Differing Site Condition.** "Differing Site Condition" means an unforeseen condition that constitutes a basis for Contract Adjustment pursuant to Paragraph 4.3.8, below.

**1.1.59 Director of Facilities Management.** "Director of Facilities Management" means the Director for Facilities Management, or his/her designee.

**1.1.60 Disability Laws.** "Disability Laws" means applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any Government Authority, which regulate, relate to or impose liability or standards of conduct with respect to, or accessibility for, persons with disabilities, including, without limitation, the Americans with Disabilities Act (42 USCA §§ 12101 et seq.) and the Fair Housing Amendments Act of 1988 (42 USCA §§ 3604 et seq.).

**1.1.61 Discovery Date.** "Discovery Date", generally used in reference to Contractor's obligation to give written notice of certain facts, conditions or circumstances, means the earlier of the dates that Contractor or any Subcontractor either: (1) discovered such facts, conditions or circumstances; or (2) should have discovered such facts, conditions or circumstances in the exercise of the level of care required by the terms of the Standard of Performance.

**1.1.62 Drawings.** "Drawings" means graphic and pictorial documents showing the design, location and dimensions of the Project, and generally includes plans, elevations, subparagraphs, details, schedules and diagrams. The term "Drawings" is used interchangeably with "Plans".

**1.1.63 Environmental Laws.** "Environmental Laws" means all applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees and permits or other requirements of any Governmental Authority, which regulate, relate to, or impose liability or standards of conduct concerning any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof), occupational or environmental conditions on, under, or about the Site or Existing Improvements (including, without limitation, soil, groundwater, and indoor and ambient air conditions), environmental protection (natural or manmade resources), or occupational health or industrial hygiene (but only to the extent related to Hazardous Substances on, under, or about the Site or Existing Improvements), as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 [42 U.S.C.A. §§ 6901 et seq.]; the Clean Water Act (also known as the Federal Water Pollution Control Act) [33 U.S.C.A. §§ 1251 et seq.]; the Toxic Substances Control Act [15 U.S.C.A. §§ 2601 et seq.]; the Hazardous Substances Transportation Act [49 U.S.C.A. §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C.A. §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 U.S.C.A. §§ 6901 et seq.]; the Clean Air Act [42 U.S.C.A. §§ 7401 et seq.]; the Safe Drinking Water Act [42 U.S.C.A. §§ 300f et seq.]; the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 U.S.C.A. §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 U.S.C.A. §§ 11001 et seq.]; the Occupational Safety and Health Act [29 U.S.C.A. §§ 655 and 657]; the Residential Lead-Based Paint Exposure Act (Title X of the Housing and Community Development Act of 1992) [15 U.S.C.A. §§ 2681 et seq.]; the Lead-Based Paint Poisoning Prevention Act [42 U.S.C.A. §§ 4821 et seq.]; the Federal Endangered Species Act, the California Endangered Species Act, the Migratory Bird Treaty Act, the National Environmental Policy Act, the California Environmental Quality Act, Porter Cologne Water Quality Act (California Water Code §§ 13000 et seq), and all similar federal, state or local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements.

**1.1.64 Escrow Agent.** "Escrow Agent" means an entity serving as escrow agent pursuant to California Public Contract Code §22300 in connection with the deposit of securities or retention.

**1.1.65 Escrow Bid Documents.** "Escrow Bid Documents" means all written documentation and electronic files reflecting the basis for and calculation of a Bid, including, without limitation, estimates, quantity take-offs, price quotations, product data, pricing data, memoranda, narratives, add/deduct sheets and reports (including, without limitation, reports on conditions at, under, or in the vicinity of the Site). The term "Escrow Bid Documents" does not include copies of Bidding Documents if they are not needed to comply with the requirements of the Bidding Documents applicable to submission of Escrow Bid Documents.

1.1.66 **Event of Contractor Default.** "Event of Contractor Default" means any of the events constituting default by Contractor as set forth in Paragraph 15.1.1, below.

1.1.67 **Evidence of Insurance.** "Evidence of Insurance" means the statement, completed by Bidder in the form included in the Bidding Documents, evidencing the Bidder's compliance with the insurance requirements of the Bidding Documents.

1.1.68 **Excusable Delay.** "Excusable Delay" means a Delay, other than a Compensable Delay, to Contractor's ability to achieve Substantial Completion or Final Completion of the Work within the Contract Time that is: (1) not caused, in whole or in part, by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; (2) unforeseeable, unavoidable and beyond the control of Contractor and the Subcontractors, of every Tier; and (3) the result of a Force Majeure Event. Without limitation to the foregoing, neither the bankruptcy, insolvency nor financial inability of Contractor or a Subcontractor, of any Tier, nor any failure by a Subcontractor, of any Tier, to perform any obligation imposed by contract or Applicable Laws shall constitute a ground for Excusable Delay.

1.1.69 **Existing Improvements.** "Existing Improvements" means all improvements located on the Site as of the Bid Closing Deadline, whether above or below the surface of the ground, including, but not limited to, existing buildings, utilities, infrastructure improvements and other facilities.

1.1.70 **Extra Work.** "Extra Work" means labor, materials, equipment, services or other work, not reasonably inferable by Contractor or its Subcontractors from the design and other information set forth in the Bidding Documents, the performance of which requires the expenditure by Contractor of additional and unforeseen Allowable Costs. References to Extra Work shall not be interpreted to mean or imply that Contractor is entitled to a Contract Adjustment unless such Extra Work constitutes a Compensable Change.

1.1.71 **Final Completion, Finally Complete.** "Final Completion" and "Finally Complete" mean the point at which the following conditions have occurred with respect to the entire Work:

- .1 the Work is fully completed, including all minor corrective, or "punch list," items;
- .2 all permits, approvals and certificates by Governmental Authorities, such as, but not necessarily limited to, a permanent or temporary certificate of occupancy required to occupy and use the Work have been issued free of any conditions that are the result of an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents;
- .3 the Work and the related portions of the Site have been thoroughly cleared of all construction debris and cleaned in accordance with the requirements of the Contract Documents, including, but not necessarily limited to where applicable, the following: removal of temporary protections; removal of marks, stains, fingerprints and other soil and dirt from painted, decorated and natural-finished woodwork and other Work; removal of spots, plaster, soil and paint from ceramic tile, marble and other finished materials; all surfaces, fixtures, cabinet work and equipment are wiped and washed clean and in an undamaged, new condition; all aluminum and other metal surfaces are cleaned in accordance with recommendations of the manufacturer; and all stone, tile and resilient floors are cleaned thoroughly in accordance with the manufacturer's recommendations and buff dried by machine to bring the surfaces to sheen;
- .4 all conditions set forth in the Contract Documents for Substantial Completion of the Work have been, and continue to be, fully satisfied;
- .5 all conditions pertaining to the Work and required for the release of Authority's obligations (including, but not limited to, release of Authority's bond obligations) to Governmental Authorities (including, but not limited to, matters involving grading, flood control, public works, transportation and traffic) have been satisfied; and
- .6 Contractor has delivered to Authority all Close-Out Documents.

1.1.72 **Final Completion Punch List.** "Final Completion Punch List" means the list of minor items of Work to be completed or corrected by Contractor for Final Completion.

1.1.73 **Final Payment.** "Final Payment" means payment by Authority to Contractor of the entire unpaid balance of the Contract Price due to Contractor following Final Completion.

1.1.74 **FM.** "FM" means Facilities Management for the Authority of Riverside.

1.1.75 **Force Majeure Event.** "Force Majeure Event" means, and is restricted to, any the following: (1) Acts of God occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of Governmental Authorities (including, without limitation, unreasonable and unforeseeable Delay in the issuance of permits or approvals by Governmental Authorities that are required for the Work); (4) epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work to the extent such strikes and other organized labor action are beyond the control of Contractor and its Subcontractors, of every Tier, and to the extent the effects thereof cannot be avoided by use of replacement workers or implementation of a dual gate system of entry to the Site; or (6) unusual shortages in materials that are supported by documented proof that (a) Contractor made every effort to obtain such materials from all available sources, (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current rates taking into account the quantities involved and the usual industry practices in obtaining such quantities, and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated as of the Bid Closing Deadline.

1.1.76 **Fragnet.** "Fragnet" means a contemporaneous, fragmentary scheduling network, which graphically identifies the sequencing of all critical and non-critical new activities and/or activity revisions affected by a Compensable Delay or Excusable Delay with logic ties to all affected existing activities noted on the Construction Schedule, that isolates and quantifies a time impact of a specific issue, determines and demonstrates any such specific Delay in relation to past and/or other current Delays and provides a method for incorporating all Contract Adjustments to the Contract Time into an update of the approved Construction Schedule.

1.1.77 **General Conditions.** "General Conditions" means the herein set forth general terms and conditions governing performance of the Work.

1.1.78 **General Requirements.** "General Requirements" means the portion of the Specifications so titled setting forth additional requirements for administration of the Work.

1.1.79 **Good Faith Determination.** "Good Faith Determination" means a determination made by the Director of Facilities Management or other authorized representative of Authority, which he/she believes in good faith to be a proper exercise of Authority's rights and to have a reasonable basis in fact, whether or not such determination is in fact proper, reasonable or correct or adjudged to be so.

1.1.80 **Governmental Authority.** "Governmental Authority" means the United States, the State of California, the Authority of Riverside (acting in its regulatory, rather than proprietary, capacity), the City in which the Project is located, any other local, regional, state or federal political subdivision, authority, agency, department, commission, board, bureau, court, judicial or quasi-judicial body, and any legislative or quasi-legislative body, or instrumentality of any of them, which exercises jurisdiction over the Project, Work, Site, Contractor or Authority, including, without limitation, any Governmental Authority having jurisdiction to review and approve or reject the Contract Documents or the Work based on compliance or non-compliance with Applicable Laws.

1.1.81 **Governmental Authority Review Period.** "Governmental Authority Review Period" means a period of time set forth in the Construction Schedule or Submittal Schedule for Governmental Authority review, and/or approval, of the Work.

1.1.82 **Guarantee To Repair Period.** "Guarantee To Repair Period" means the period of time set forth in [Section 13.3](#), below, for repair or replacement of Defective Work.

1.1.83 **Hazardous Substance.** "Hazardous Substance" means either of the following: (1) any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes,"



"extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste," "contamination" or words of similar import under any Environmental Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally; or (2) any substance that because of its quantity, concentration or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any Governmental Authority to be a hazardous waste or hazardous substance.

1.1.84 **Holiday.** "Holiday" means a Day recognized by Authority as being a legal holiday for its staff and employees.

1.1.85 **Indemnitees.** "Indemnitees" means those persons or entities listed in Paragraph 3.18.1, below, as the "Indemnitees".

1.1.86 **Inspector of Record.** "Inspector of Record" means a person designated by the Authority to perform inspections on behalf of the Authority, who may be an employee or an independent consultant to Authority.

1.1.87 **Installation Subcontractor.** "Installation Subcontractor" means a Subcontractor who performs a portion of the Work that includes providing substantial, rather than minor and incidental, services for the installation of temporary or permanent materials, equipment or facilities at the Site.

1.1.88 **Instructions to Bidders.** "Instructions to Bidders" means the portion of the Bidding Documents setting forth the requirements to be followed by Bidders in preparing and submitting Bids.

1.1.89 **Intellectual Property Rights.** "Intellectual Property Rights" means all intellectual property rights, including, without limitation, patent, trademark, trade dress, copyright, industrial design rights, priority rights and trade secrets.

1.1.90 **Key Personnel, Key Persons.** "Key Personnel" and "Key Persons" mean those individuals employed by Contractor as described in Paragraph 3.8.1, below, and any replacements thereto approved by Authority, whose personal performance is deemed of the essence to the Construction Contract.

1.1.91 **Loss, Losses.** "Loss" and "Losses" mean any and all economic and non-economic losses, costs, liabilities, claims, damages, cost escalations, actions, judgments, settlements, expenses, fines, penalties and punitive damages including, without limitation, actual attorney's fees, expert and non-expert witness fees, arbitrator and arbitration fees, court costs (statutory and non-statutory), and mediation and mediator fees.

1.1.92 **Modification.** "Modification" means a document, other than a Change Order or Construction Change Directive, approved and signed by Authority and Contractor after execution of the Construction Contract, agreeing to alter, amend or modify the Contract Documents.

1.1.93 **Mold.** "Mold" means mold, mildew, spores or other microorganisms of any type, nature or description, or any by-product thereof, the presence of which poses an actual or potential threat to human health, including, without limitation, any species of organisms of the kingdoms of fungi or mycota, including yeasts, smuts, rusts, mildews, mold and mushrooms, or any microbial contamination, either airborne or surface, which arises out of or is related to the presence of fungi or spores (including, without limitation, aspergillus, cladosporium, penicillium and stachybotrys chartarum).

1.1.94 **Non-Collusion Declaration.** "Non-Collusion Declaration" means the form, so titled, required by California Public Contract Code §7106 and the Bidding Documents to be submitted by Bidder with its Bid.

1.1.95 **Notice Inviting Bids.** "Notice Inviting Bids" means the notice issued by or on behalf of Authority inviting submission of Bids for the Project.

1.1.96 **Notice Inviting Prequalification Statements.** "Notice Inviting Prequalification Statements" means the formal notice issued by Authority inviting contractors to participate in Authority's process for Prequalification of Bidders.

**1.1.97 Notice of Change.** "Notice of Change" means a formal written notice required to be submitted by Contractor pursuant to Paragraph 7.6.1, below, notifying Authority of circumstances that Contractor believes may give rise to a Contract Adjustment.

**1.1.98 Notice of Completion.** "Notice of Completion" means a "notice of completion" as defined in California Civil Code §9204.

**1.1.99 Notice of Delay.** "Notice of Delay" means a formal written notice prepared and submitted by Contractor pursuant to Paragraph 8.2.2, below, notifying Authority of circumstances that Contractor believes may give rise to a Contract Adjustment to the Contract Time for Excusable Delay or Compensable Delay or a Contract Adjustment to the Contract Price for Compensable Delay.

**1.1.100 Notice of Final Completion.** "Notice of Final Completion" means the written notice by Authority confirming the date of actual Final Completion.

**1.1.101 Notice of Intent to Award.** "Notice of Intent to Award" means the written notice by or on behalf of Authority stating Authority's intent to Award the Construction Contract.

**1.1.102 Notice of Substantial Completion.** "Notice of Substantial Completion" means the written notice by Authority confirming the date of actual Substantial Completion.

**1.1.103 Notice to Proceed.** "Notice to Proceed" means the written notice issued by Authority to Contractor to begin the Work.

**1.1.104 Payment Bond, Performance Bond.** "Payment Bond" and "Performance Bond" mean the surety bonds required to be provided by Contractor pursuant to Article 12, below.

**1.1.105 Plans.** "Plans" means the graphic and pictorial portions of the Contract Documents prepared by Architect or its Subconsultants showing the design, location and dimensions of the Work, including, without limitation, plans, elevations, details, schedules and diagrams. The term "Plans" is used interchangeably with "Drawings".

**1.1.106 Post-Award Submittals.** "Post-Award Submittals" means the documents described in the Bidding Documents that the apparent successful Bidder is required to submit after opening of Bids as a condition of Award.

**1.1.107 Pre-Bid Conference.** "Pre-Bid Conference" means the conference, specified in the Notice Inviting Bids as either mandatory or optional, held prior to the Bid Closing Deadline for the purpose of, without limitation, introducing the Bidders to the Project, and which conference may, or may not, include a review of the Site.

**1.1.108 Prequalification.** "Prequalification" means a process for Prequalification of contractors for bidding that is conducted by Authority pursuant to California Public Contract Code §20101 or as otherwise permitted by Applicable Laws.

**1.1.109 Prequalification Documents.** "Prequalification Documents" means the collection of documents issued to and submitted by individuals or entities pursuant to a Prequalification conducted by Authority.

**1.1.110 Prequalified Bidder.** "Prequalified Bidder" means a contractor that is prequalified as part of a Prequalification conducted by Authority pursuant to Public Contract Code §20101.

**1.1.111 Product Data.** "Product Data" means illustrations, standard schedules, charts, instructional brochures, diagrams and other information furnished by Contractor to illustrate a material, product or system for the Work.

**1.1.112 Progress Payment.** "Progress Payment" means a monthly payment of a portion of the Contract Price prior to Final Completion based on Contractor's progressed performance of the Work.

1.1.113 **Project.** "Project" means the improvements comprising, or necessary or appurtenant to the use of, the work of improvements described generally in the Bidding Documents, of which the Work may be the entirety of such improvements or only a part.

1.1.114 **Project Documents.** "Project Documents" means all writings (hard copy and electronic) in the possession of Contractor at the Site or elsewhere that relate in any way to the Project or Work.

1.1.115 **Project Team.** "Project Team" means Authority, Architect, Authority Consultants, Contractor, the Subcontractors, the Separate Contractors, Inspectors of Record and other firms or individuals retained by Authority, or retained by others with Authority's approval, participating in the planning, programming, design, construction or inspection of the Work.

1.1.116 **Reasonable Order of Magnitude Estimate.** "Reasonable Order of Magnitude Estimate" means a general estimate prepared by Contractor, or jointly by Contractor and Authority, without the benefit of complete or definitive pricing by Subcontractors, of the projected additional cost and time associated with Contractor's performance of a particular item or items of Extra Work or Deleted Work described in a Construction Change Directive. Unless otherwise agreed to in writing between Authority and Contractor, a Reasonable Order of Magnitude Estimate does not constitute either an authorization or agreement by Authority to any Contract Adjustment or a guarantee or promise by Contractor with respect to the amount of any Contract Adjustment that may be associated with a Compensable Change or Deleted Work.

1.1.117 **Record Documents.** "Record Documents" means the collection of documents assembled and prepared by Contractor (including, without limitation, the Record Drawings and Specifications) showing the condition of the Work as actually built.

1.1.118 **Record Drawings, Record Specifications.** "Record Drawings" and "Record Specifications" mean the Drawings and Specifications marked by Contractor to show the condition, location and placement of the Work as actually built, including, without limitation, the locations of mechanical, electrical, plumbing or similar portions of the Work that are depicted diagrammatically in the Drawings.

1.1.119 **Reference Documents.** "Reference Documents" means reports, studies, surveys and other information provided by Authority for Contractor's review and consideration in preparing its Bid, including, without limitation, information describing the Site (including surface or subsurface conditions), Existing Improvements or Hazardous Substances at the Site.

1.1.120 **Request for Extension.** "Request for Extension" means a formal written request submitted by Contractor pursuant to Paragraph 8.2.3, below, setting forth the justification and support for Contractor's request for a Contract Adjustment to the Contract Time.

1.1.121 **Request for Information.** "Request for Information" means a written request by Contractor for clarification of what it perceives to be a discrepancy in the Contract Documents (including, without limitation, information in the Contract Documents constituting a Design Discrepancy or a variance between the information in the Bidding Documents or Contract Documents and conditions at the Site or in Existing Improvements).

1.1.122 **Safety Program.** "Safety Program" means the formal, written program prepared by Contractor setting forth detailed procedures and precautionary measures for protecting persons and property from injury or damage.

1.1.123 **Samples.** "Samples" means physical examples that, when approved by Authority and Architect, illustrate materials, equipment or workmanship by which the Work is to be evaluated and judged as part of the Submittal process.

1.1.124 **Schedule of Values.** "Schedule of Values" means a detailed, itemized breakdown of the Contract Price, which provides for an allocation of the dollar values to each of the various parts of the Work.

1.1.125 **Self-Performed Work.** "Self-Performed Work" means Work related to a Compensable Change or Deleted Work that is performed or to be performed by Contractor's own laborers who are employed by Contractor,

rather than by the employees of a Subcontractor, using materials and equipment purchased by Contractor directly from a supplier or manufacturer.

**1.1.126 Separate Contractor.** "Separate Contractor" means a contractor, subcontractor, supplier or vendor under contract directly to Authority to provide services, materials, labor, equipment or other work to the Project.

**1.1.127 Shop Drawing.** "Shop Drawing" means a drawing, diagram, schedule and other data specially prepared for the Work by Contractor or a Subcontractor to illustrate some portion of the Work.

**1.1.128 Site.** "Site" means: (1) the parcel of land owned by Authority on which the Project is to be constructed and such additional parcels as may be purchased by Authority for such construction; (2) all areas adjacent to such parcels that may be used by Contractor or the Subcontractors for staging, storage, parking or temporary offices; and (3) all land areas, both private and public, adjacent to such parcels on which Work is required to be performed under the Contract Documents, Applicable Laws or permits relating to the Project.

**1.1.129 Specifications.** "Specifications" means the portion of the Contract Documents consisting of the written requirements for materials, equipment, standards and workmanship for the Work and performance of related services.

**1.1.130 Standard of Performance.** "Standard of Performance" means the general standard governing Contractor's performance of its obligations under the Construction Contract and General Conditions as set forth in Section 2.2 of the Construction Contract.

**1.1.131 State Water Resources Control Board.** "State Water Resources Control Board" means the State Water Resources Control Board of the State of California.

**1.1.132 Storm Water Permit.** "Storm Water Permit" means any applicable storm water, urban runoff or statewide general NPDES permit issued by the State of California or the United States pursuant to the provisions of the Clean Water Act (Title 33U.S.C. §§1251 et seq.) and/or Porter Cologne Water Quality Control Act (California Water Code §§13000 et seq.) and including any related regulations issued by the State of California or the United States.

**1.1.133 Sub-Bidder.** "Sub-Bidder" means a person or entity that submits a bid to a Bidder for some portion of the Work that is to be performed by that person or entity acting as a first-Tier Subcontractor.

**1.1.134 Subcontractor.** "Subcontractor" means a person or entity that has a contract to perform a portion of the Work, including without limitation, subcontractors, sub-subcontractors, suppliers, equipment operators, manufacturers and vendors, of any and every Tier.

**1.1.135 Submittal.** "Submittal" means a Shop Drawing, Product Data, Sample, detailed design, exemplar, fabrication and installation drawing, list, graph, operating instruction or other document required to be submitted by Contractor under the Contract Documents.

**1.1.136 Submittal Schedule.** "Submittal Schedule" means the schedule prepared by Contractor showing the timing for submission and review of Submittals during construction.

**1.1.137 Substantial Completion, Substantially Complete.** "Substantial Completion" and "Substantially Complete" mean the point at which the following conditions have occurred with respect to the entire Work or a portion of the Work designated by Authority in writing to be Substantially Completed prior to Substantial Completion of the entire Work:

.1 such Work is sufficiently and entirely complete in accordance with Contract Documents so that such Work can be fully enjoyed and beneficially occupied and utilized by Authority for its intended purpose (except for minor items which do not impair Authority's ability to so occupy and use such Work);

.2 all permits, approvals and certificates by Governmental Authorities, such as, but not necessarily limited to, a permanent or temporary certificate of occupancy required to occupy and use such Work have been issued free of any conditions that are the result of an act or omission of Contractor or a Subcontractor, of any Tier,

constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; and

.3 all building systems included in such Work are operational as specified, all designated or required inspections and certifications by Governmental Authorities have been made and posted and instruction of Authority's personnel in the operation of the systems has been completed.

**1.1.138 Substantial Completion Punch List.** "Substantial Completion Punch List" means the list of items of Work to be completed or corrected by Contractor for Substantial Completion.

**1.1.139 Substitution.** "Substitution" means a material, product or item of material or equipment proposed by the Bidder or Contractor in place of that specified in the Bidding Documents or Contract Documents.

**1.1.140 Substitution Request Form.** "Substitution Request Form" means the form, so titled, that is included in the Bidding Documents for use by the Bidders when requesting a Substitution.

**1.1.141 Supplementary Conditions.** "Supplementary Conditions" means those portions of the Specifications that supplement, by addition, modification or deletion, a specific portion of the General Conditions.

**1.1.142 Surety.** "Surety" means Contractor's surety(ties) issuing the Bid Bond, Performance Bond or Payment Bond.

**1.1.143 Tier.** "Tier" means the contractual level of a Subcontractor with respect to Contractor. For example, a "first-tier" Subcontractor is under contract with Contractor. A sub-subcontractor under contract with a first-tier Subcontractor is in the "second tier," and so on. Use of the phrase "of every Tier", or similar phraseology, in the Contract Documents shall not be interpreted as implying that other provisions of the Contract Documents, where such phrase is not used, are intended to be limited in application to only the first Tier or to only certain other Tiers of Subcontractors.

**1.1.144 Time Impact Analysis.** "Time Impact Analysis" means a written report evaluating the impact of an Excusable or Compensable Delay, which shall include, at a minimum, the following: (1) a narrative description of the Delay and its impact on the critical path to achievement of a Substantial Completion or Final Completion of the Work or a portion of the Work designated by Authority within the Contract Time; (2) a Fragnet; (3) the number of Days of extension sought by Contractor as a Contract Adjustment to the Contract Time; (4) a computation of the Days of Compensable Delay multiplied times the liquidated damages payable to Contractor pursuant to Section 3.3 of the Construction Contract, if any, sought by Contractor; (5) a statement that Contractor has complied with the requirements of the General Conditions for written notice of Delays, along with the dates and copies of such notices; (6) the measures taken by Contractor and Subcontractors to prevent or minimize the Delay; and (7) Contractor's recommendations for reordering or re-sequencing the Work to avoid or minimize further Delay.

**1.1.145 Unexcused Delay.** "Unexcused Delay" means any Delay that is not a Compensable Delay or Excusable Delay or that constitutes a Compensable Delay or Excusable Delay for which Contractor is not entitled to a Contract Adjustment to the Contract Time, including, without limitation, the following: (1) Delay caused by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; (2) Delay for which Contractor has failed to provide a timely and complete Notice of Delay or Request for Extension; or (3) Delay associated with any circumstances where the costs or risk associated with such circumstances are designated in the Contract Documents as being at Contractor's risk or Contractor's Own Expense.

**1.1.146 Unilateral Change Order.** "Unilateral Change Order" means a writing signed by Authority in accordance with Article 7, below, in which Authority unilaterally sets forth its Good Faith Determination of the undisputed portion of an otherwise disputed Contract Adjustment.

**1.1.147 Work.** "Work" means all labor, materials, equipment, services, permits, licenses, taxes and other things necessary for Contractor to perform its obligations under the Contract Documents, including, without limitation, any Changes requested by Authority, in accordance with the Contract Documents and all Applicable Laws. The Work may constitute the whole or a part of the Project.

1.1.148 **Worker's Compensation Certificate.** "Worker's Compensation Certificate" means the statement, completed by Bidder in the form included in the Instruction to Bidders, evidencing the Bidder's compliance with the worker's compensation insurance requirements of the Bidding Documents and Applicable Laws.

## 1.2 CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS

1.2.1 **Design Intent.** The intent of the Contract Documents is for Contractor to provide all items necessary to produce a work of improvement that is complete as a whole and that is, in all of its parts, suitable for use and occupancy for its intended purpose, including, without limitation, all equipment, casework, mechanical, electrical and similar devices of whatever nature, completely installed, hooked-up and made fully operational and functional.

1.2.2 **Complementary.** Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. Any Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both.

1.2.3 **Technical Words.** Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood construction industry meanings and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.2.4 **Trade Names.** It is not the intention of the Contract Documents to go into detailed descriptions of any materials or methods commonly known to the trade under a "trade name" or "trade term." The mere mention or notation of such "trade name" or "trade term" shall be considered a sufficient notice to the Contractor that it will be required to complete the Work so named with all its appurtenances according to first-class practices of the trade.

1.2.5 **Incidental Items.** The naming of any material or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and labor therefor, in accordance with first-class practices of the trade involved, unless specifically noted otherwise.

1.2.6 **Drawing Dimensions.** Figured, derived or numerical dimensions on scale Drawings shall govern over Drawings without figured dimensions. The Drawings shall not be scaled to determine dimensions, and (except in the case of diagrammatic Drawings) dimensions shall be calculated from figures shown on the Drawings. Obvious discrepancies between scale and figured dimensions, not marked "not to scale," must be brought to the Architect's attention before proceeding with the Work affected by the discrepancy. Contractor shall carefully check and compare all portions of the Drawings and Specifications so as to correctly interpolate the intended dimensions for any portion of the Work that is not explicitly dimensioned in the Contract Documents.

1.2.7 **Drawings, Specifications.** In general, the Drawings will show dimensions, positions, and kind of construction and the Specifications will define materials, quality and standards. Work not particularly shown, detailed, marked or specified shall be the same as similar parts that are shown, detailed, marked or specified.

1.2.8 **Typical Work.** Work not particularly shown, detailed, marked or specified shall be the same as similar parts that are shown, detailed, marked or specified.

1.2.9 **Divisions of the Work.** All the Work mentioned or indicated in the Contract Documents shall be performed by Contractor as part of the Work unless specifically indicated in the Contract Documents to be done by others. The organization of the Specifications into divisions, sections and articles and the arrangement of the Drawings shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by the Subcontractors.

1.2.10 **Applicable Laws.** Compliance with Applicable Laws shall be considered as a part of the Work.

1.2.11 **Interpretations of Laws.** In the event of a conflict between or among Applicable Laws governing performance of the Work, the more stringent shall govern. Contractor assumes, at Contractor's Own Expense, sole responsibility for, and the risk associated with, interpretations of Applicable Laws made by Contractor not predicated on written orders issued by Governmental Authorities that by their terms are applicable to the Project, including, without limitation, interpretations or assumptions made by Contractor based on decisions, orders or approvals (written or

unwritten) issued by or on behalf of Governmental Authorities in connection with work on other projects or properties near or in the general vicinity of the Site.

**1.2.12 Modifiers.** The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an." If a modifier or an article is not included in one statement and appears in another, it is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters whether or not non-limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

**1.2.13 Singular, Gender, Captions.** When appropriate to the context, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only as a matter of reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

**1.2.14 Cross-References.** Any cross-references indicated between various paragraphs or other portions of the Specifications, Drawings or other Contract Documents are provided for the convenience of Contractor and shall not be deemed to be all-inclusive.

**1.2.15 Diagrammatic Design.** Drawings and diagrams for mechanical, plumbing, electrical, fire sprinkler, fire alarm and low voltage Work shall be considered as diagrammatic only and shall not be used for any structural guidance or physical layout. Because such Drawings are diagrammatic, Contractor shall be responsible to provide any and all numbers and lengths of fittings, wire, conduit, connections, attachments or similar materials or devices needed to complete the Work, without Contract Adjustment, whether or not they exceed the numbers of pieces or the lengths indicated by such Drawings. Contractor is solely responsible to carefully plan and coordinate in advance, by means of coordination drawings prepared by Contractor or a Subcontractor, the installation of any Work shown diagrammatically and shall do so in such a manner as to make maximum use of the space available and anticipate and avoid wherever possible conflict and interferences among such portions of the Work and with other portions of the Work, including structural members.

**1.2.16 Demolition.** Existing Improvements at the Site of which no specific description is made in the Contract Documents, but which could be reasonably assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by Contractor without Contract Adjustment. If Contractor is unsure whether a specific Existing Improvement at the Site which is not specifically described in the Contract Documents should be removed and disposed of, Contractor shall promptly ask the Authority whether such Existing Improvement is to be removed or remain in place, and shall comply with any directive given in response.

**1.2.17 Omissions.** Items missing from the Contract Documents shall nevertheless be provided by the Contractor, without Contract Adjustment, to the extent reasonably inferable from the Contract Documents as being necessary to satisfy the Design Intent.

**1.2.18 Conflicts.** Notwithstanding the provisions of Paragraph 1.2.19, below, in the event of conflict between any of the Contract Documents, the provision placing a more stringent requirement or greater burden on the Contractor or requiring the greater quantity or higher quality material or workmanship shall prevail, unless otherwise directed by the Authority in writing.

**1.2.19 Order of Precedence.** Conflicts that cannot be resolved in accordance with the rules of interpretation set forth elsewhere in this Section 1.2, shall be interpreted in accordance with the following order of precedence (the first being the highest order of precedence):

**.1** Applicable Laws (provided, however, and notwithstanding Subparagraph 1.2.19.10, below, where the Contract Documents or manufacturer's recommendations or specifications require standards higher than those of Applicable Laws, the Contract Documents or manufacturer's recommendations or specifications shall control);

- .2 Change Orders, Unilateral Change Orders and Construction Change Directives;
- .3 Addenda;
- .4 Construction Contract;
- .5 Supplementary Conditions;
- .6 General Conditions;
- .7 General Requirements;
- .8 Specifications;

.9 Drawings, subject to the following: (1) large scale plans and details take precedence over small scale Drawings in all cases; (2) full scale Drawings have precedence over both large and small scale Drawings in all cases; (3) detailed Plans and/or Drawings shall have precedence over general Plans and/or Drawings; (4) architectural and structural Drawings take precedence over electrical and mechanical Drawings in regard to location and arrangement of fixtures, outlets, and equipment; and (5) electrical and mechanical Drawings take precedence in describing and specifying equipment and in describing the diagrammatic requirements;

.10 standard and reference specifications which include industry norms, such as, but not limited to, ANSI and ASTM; and

- .11 Reference Documents.

1.2.20 **Conditions Precedent.** Wording used in the Contract Documents indicating that a right of the Contractor or an obligation of the Authority is subject to or conditioned upon the occurrence of a condition or event, whether or not such condition or event is within the control of Contractor, Authority or others and whether or not such condition or event is expressly stated to be a "condition precedent", shall be understood and interpreted to mean that the stated condition or event is a condition precedent to the existence, arising, performance and exercise of such right or obligation.

### 1.3 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 **Property of Authority.** Subject to the provisions of Paragraph 2.4.4, below, all Design Documents, Contract Documents and Project Documents that are prepared by Contractor or a Subcontractor, of any Tier, for use in connection with the Project, including any designs, building designs or other depictions underlying or shown in them, and the Intellectual Property Rights thereto, shall be deemed the sole and exclusive property of Authority and ownership thereof is irrevocably vested in Authority, whether the Project is executed or not.

1.3.2 **Assignment of Rights.** Contractor shall, without further consideration, obtain any and all Intellectual Property Rights in the Project Documents and Design Documents prepared by Contractor or any Subcontractor, of any Tier, for use in connection with the Project, including any designs, building designs or other depictions underlying or shown in them, free and clear of any liens or other encumbrances, claims or rights of third parties, transfer such rights, if necessary in writing, to Authority and cooperate with Authority in securing and registering such rights, such that Authority shall own all Intellectual Property Rights and any other tangible and/or intangible property rights associated therewith. Such transfer and assignment will be effective for the entire duration of the copyrights and include, but are not be limited to, all rights in related plans, specifications, documentation, derivative works and moral rights.

1.3.3 **Contractor's Warranty.** Contractor represents and warrants that the Project Documents and Design Documents prepared by Contractor or any Subcontractor for use on the Project, and the use of such Project Documents in the ordinary course, are free of any claim of infringement or any other violation of any Intellectual Property Right or other right of any third party.



1.3.4 **Non-Exclusive License.** Without derogation of Authority's rights under this Section 1.3, Contractor and Subcontractors, of every Tier, are granted a limited, non-exclusive license, revocable at will of Authority, to use and reproduce applicable portions of the Design Documents, Contract Documents and Project Documents as appropriate to and for use in the execution of the Work and for no other purpose.

1.3.5 **Reproduction.** Contractor shall do all reproduction and distribution of such reproducible prints of Contract Documents and Design Documents as are necessary for the complete pricing and performance of the Work, including, without limitation, all Changes. The costs of such reproduction shall be at Contractor's Own Expense.

1.3.6 **Delivery to Authority.** All Design Documents and Contract Documents (including originals and copies), and one (1) copy of all other Project Documents, in the possession of Contractor or Subcontractors shall be delivered to Authority upon the earlier of Final Completion of the Work or termination of the Construction Contract; provided, however, that Contractor shall have the right to retain one (1) copy of the Contract Documents and Submittals as a permanent record.

1.3.7 **Subcontractors.** Contractor shall take all necessary steps to ensure that a provision is included in all contracts with Subcontractors, of every Tier, who perform Work on the Project protecting and preserving Authority's rights as set forth in this Section 1.3.

## ARTICLE 2 AUTHORITY RIGHTS AND OBLIGATIONS

### 2.1 INFORMATION, APPROVALS AND SERVICES REQUIRED OF AUTHORITY

2.1.1 **Legal Descriptions.** Authority shall furnish, within a reasonable time after written request by Contractor, a legal description of the Site and information describing legal limitations affecting the Site that are recorded with applicable Governmental Authorities, such as, but not limited to, easements.

2.1.2 **Permits and Fees.** Authority shall secure and pay for only those permits and fees which are expressly stated to be the responsibility of Authority under the Contract Documents. Authority shall pay for all hook-up fees (not including "tap fees", which are the responsibility of Contractor pursuant to Paragraph 3.14.3, below) in order to establish a new account with a utility provider.

2.1.3 **Authority Approvals.** Information, approvals and decisions required of Authority or a Authority Consultant for which a Authority Review Period or Authority Review Date is included in the Construction Schedule that is approved by Authority shall be provided in accordance with the Construction Schedule. If a Authority Review Period or Authority Review Date is not set forth in the Construction Schedule approved by Authority, then such information, approvals and decisions shall be provided upon written request by Contractor without unreasonable Delay. Notwithstanding the foregoing, failure by Authority, Architect or a Authority Consultant to provide any information, approvals or decisions shall not be considered as a basis for Contract Adjustment to the Contract Time unless and until, and in calculating a Contract Adjustment any Delay or extension of the Contract Time resulting from a late-issuance of such information, approval or decision shall not commence until after:

.1 in the case of information, approval or decision for which there is a Authority-approved Authority Review Period or Authority Review Date in the Authority-approved Construction Schedule, seven (7) Days have passed since the Authority and the individual from whom such information, approval or decision is sought have received from Contractor a written notice containing all the following:

(1) a detailed description of the information, approval or decision required;

(2) a statement that the Authority Review Period or Authority Review Date has expired or passed; and

(3) a statement, prominently displayed, that: "PURSUANT TO PARAGRAPH 2.1.3 OF THE GENERAL CONDITIONS, THE FAILURE TO PROVIDE THE REQUESTED INFORMATION, APPROVAL OR

DECISION WITHIN 7 CALENDAR DAYS FROM THIS NOTICE MAY RESULT IN A REQUEST FOR A CONTRACT ADJUSTMENT"; or

.2 in the case of information, approval or decision for which there is no Authority Review Period or Authority Review Date set forth in the Authority-approved Construction Schedule, thirty (30) Days have passed since the Authority and the individual from whom such information, approval or decision is sought have received from Contractor a written notice that includes the statements set forth Clauses (1) and (2) of Subparagraph 2.1.3.1, above, and that includes a statement, prominently displayed, that: "PURSUANT TO PARAGRAPH 2.1.3 OF THE GENERAL CONDITIONS, THE FAILURE TO PROVIDE THE REQUESTED INFORMATION, APPROVAL OR DECISION WITHIN 30 CALENDAR DAYS FROM THIS NOTICE MAY RESULT IN A REQUEST FOR A CONTRACT ADJUSTMENT".

2.1.4 **Approvals.** Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of Authority, Architect or any other Project Team member, or by tests, inspections or approvals required or performed by persons other than the Contractor.

2.1.5 **Non-Specified Items.** Authority reserves the right to approve materials and sources of supply of materials that are not specified in the Contract Documents and that are used for the performance of the Work.

## 2.2 AUTHORITY'S RIGHT TO STOP THE WORK

If Contractor fails to correct Defective Work as required by Section 13.2 of these General Conditions, fails to perform the Work in accordance with the Contract Documents or violates any Applicable Law, Authority may immediately order Contractor to stop the Work, or any portion thereof, until the cause for such direction has been eliminated by Contractor. Contractor shall immediately comply with such notice at Contractor's Own Expense. Nothing stated herein or elsewhere in the Contract Documents shall be interpreted as placing upon Authority a duty or responsibility to Contractor or any other party to exercise its right to stop the Work.

## 2.3 AUTHORITY'S RIGHT TO CARRY OUT THE WORK

If Contractor fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools and services to maintain the Construction Schedule, or otherwise fails to comply with any requirement of the Contract Documents, and fails to cure such failure in the manner required by Subparagraph 15.1.1.4, below, Authority may correct such failure. In such case, Authority shall be entitled to recover from Contractor or deduct from payments then or thereafter due Contractor for any Loss resulting from such failure, including compensation for the additional services and expenses of Authority, Authority Consultants and others whose services are reasonably required and made necessary thereby. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall promptly pay the amount of the shortfall to Authority.

## 2.4 ACCOUNTING, RECORDS AND AUDIT

2.4.1 **Accounting System.** Contractor shall exercise such controls as may be necessary for proper financial management of the Work. Such accounting and control systems shall comply with prevailing custom and practice for similar projects, be satisfactory to Authority and shall include preservation of the books and records described in Paragraph 2.4.2, below, subject to Contractor's obligations under Paragraph 1.3.6, above, for a period of ten (10) years after Final Completion of the Work, or for such longer period as may be required by Applicable Laws.

2.4.2 **Books and Records.** Contractor shall keep, and shall require provisions to be included in all contracts entered into by Subcontractors, of every Tier, requiring the Subcontractors, of every Tier, to keep, full and detailed books, records, information, materials and data, of every kind and character (hard copy, as well as computer readable data if it exists) that have any bearing on or pertain to any matters, rights, duties or obligations relating to the Project, Work or Construction Contract, including, without limitation, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, change orders, change order requests, estimates, field orders, construction change directives, schedules, requests for information, diaries, logs, reports, shop drawings, samples, exemplars, drawings, specifications, invoices, delivery tickets, receipts, vouchers, cancelled checks, memoranda, accounting records; job cost reports, job cost files (including complete documentation of negotiated settlements), backcharges, general ledgers; documentation of cash and trade discounts earned, insurance rebates and dividends, and other documents relating in

any way to any claims, charges or time extensions asserted by Contractor or any of the Subcontractors, of any Tier, or relating to any credits, rebates or discounts owing to Authority.

**2.4.3 Inspection and Copying.** Contractor shall allow, and shall require provisions to be included in all contracts entered into by Subcontractors, of every Tier, allowing, Authority and the auditor for the State of California (and the authorized representative(s), auditors, attorneys and accountants of each) upon twenty-four (24) hours notice to Contractor, full access to inspect and copy all its aforesaid books and records at a location within the Southern California area. Such right of audit may be exercised by either Authority or the auditor for the State of California as often as reasonably necessary to verify Contractor's continuing compliance with the Contract Documents.

**2.4.4 Confidential Information.** Nothing stated in this Section 2.4 or elsewhere in the Contract Documents shall be interpreted as a waiver by Contractor or any Subcontractor of any rights of privilege or confidentiality that are provided for by Applicable Law nor as authorizing the inspection of books and records that contain information concerning estimating means or methods that is not, in whole or part, relevant to a charge or demand being asserted by Contractor or a Subcontractor involving Extra Work, Deleted Work, Delay or a Claim.

**2.4.5 Withholding of Payment.** In addition to and without limitation upon Authority's other rights and remedies for breach, including any rights of Authority to withhold payment that are set forth elsewhere in the Contract Documents, Authority shall have the right, exercised in its sole discretion, to withhold from any payment due to Contractor under an Application for Payment a sum of up to ten percent (10%) of the total amount set forth in such Application for Payment until Contractor and the Subcontractors have complied with any outstanding and unsatisfied obligation under this Section 2.4. Upon compliance with this Section 2.4, any such monies withheld shall be released to Contractor.

**2.4.6 Specific Performance.** Contractor agrees that any failure to provide access to books and records as required by this Section 2.4 will result in irreparable harm and prejudice to Authority and shall, without the necessity of posting of any bond or undertaking, be specifically enforceable by means of a mandatory injunctive order (temporary, preliminary, provisional or otherwise) issued by a court of competent jurisdiction, which order the Authority and Contractor hereby consent to being issued based upon affidavits and without the necessity of oral testimony.

## **2.5 AUTHORITY FURNISHED MATERIALS**

**2.5.1 Supply by Authority.** Authority shall have the right to furnish materials, products or equipment directly for processing and incorporation by Contractor in lieu of Contractor providing materials, products or equipment specified in the Contract Documents to be provided by Contractor as part of the Work.

**2.5.2 Deleted Work.** If the materials, products or equipment provided by Authority pursuant to Paragraph 2.5.1, above, then a Change Order shall be executed deleting such materials, products or equipment from the Work along with a Contract Adjustment reducing the Contract Price in the manner provided for in Article 7, below, applicable to Contract Adjustments for Deleted Work.

**2.5.3 Delivery Deadlines.** Without limitation to Contractor's obligations under Article 8, below, upon receipt of written instruction by Authority of its intent to provide materials, products or equipment pursuant to this Section 2.6, Contractor shall notify Authority promptly in writing of any deadlines within which such materials, products or equipment must be received at the Site in order to avoid Delay.

**2.5.4 Delivery to Site.** Contractor shall, upon their delivery to the Site, properly receive and unload materials, products or equipment furnished by Authority pursuant to this Section 2.5.

**2.5.5 Care, Custody and Control.** Contractor assumes full and unconditional responsibility for care, custody and control of the materials, products or equipment that are furnished by Authority pursuant to this Section 2.5, whether or not they have been accepted by Authority, and assumes sole responsibility for any subsequent loss, injury or damage thereto occurring prior to Final Completion.

**2.5.6 Notice of Deficiencies.** Contractor shall carefully inspect any materials, products or equipment furnished by Authority pursuant to this Section 2.5 and immediately notify Authority of any defect or deficiency in such materials, products or equipment or any nonconformity in such materials, products or equipment with the requirements

of the Contract Documents or with the requirements of the other documentation provided to Contractor setting forth the conditions of Authority's purchase. Contractor shall not accept any materials, products or equipment furnished by Authority with respect to which Contractor has provided such notice of defect, deficiency or non-conformity unless and until instructed to do so in writing by Authority.

**2.5.7 Incorporation in Work.** Contractor shall, as part of the Work and without Contract Adjustment, provide any and all processing, fabrication, cutting, shaping, fitting, assembly and installation of materials, products or equipment furnished by Authority pursuant to this Section 2.5 in full compliance with the requirements of the Contract Documents and the manufacturer's instructions and recommendations.

## **2.6 AUTHORITY INSTALLED ITEMS**

Contractor shall notify Authority, a reasonable time in advance, of the Contractor's scheduled dates for installation of items that are specified in the Contract Documents to be placed on, attached to or incorporated into the Work by Authority or Separate Contractors. In the event that Contractor fails to do so or if due to Unexcused Delay the Authority is unable after such notice by Contractor to so place, affix or incorporate such items, then Contractor shall be responsible, in addition to any amounts due to Authority for liquidated damages, to reimburse Authority for costs of storage or rental of temporary replacement items until such time as the Work is in a condition suitable for such items to be placed, affixed or incorporated.

## **2.7 AUTHORITY'S ADDITIONAL RIGHTS**

The rights stated in this Article 2 are in addition to and not in limitation of any other rights of Authority granted elsewhere in the Contract Documents or under Applicable Laws.

# **ARTICLE 3 CONTRACTOR PERFORMANCE**

## **3.1 CONTRACTOR STATUS**

**3.1.1 Independent Contractor.** Contractor is, and shall at all times be deemed to be, an independent contractor and is wholly responsible for the performance of the obligations required of it by the terms of the Contract Documents.

**3.1.2 Agents, Employees.** Contractor wholly assumes responsibility for the acts and omissions of its agents and employees and the agents and employees of each Subcontractor, of every Tier, as they relate to the Work. Contractor, its agents and employees, shall not be entitled to any rights or privileges of Authority's employees and nothing contained in the Contract Documents and no course of conduct shall be construed as creating the relationship of employer and employee, or principal and agent, between Authority and any agent or employee of Contractor or any Subcontractor. Authority shall have the right, but not the obligation, to monitor the employment and other activities of Contractor and the Subcontractors to determine compliance with the terms of the Contract Documents.

**3.1.3 Licenses.** Contractor and the Subcontractors, of every Tier, shall maintain, such contracting, professional and business licenses as may be required by Applicable Laws for the duration of time that Contractor is performing the Work under the Contract Documents, including the period of any warranty provided covering all or any portion of the Work.

**3.1.4 Subcontractors.** Contractor is responsible to Authority for acts and omissions of the Subcontractors and their agents and employees and other persons performing portions of the Work under a contract with a Subcontractor, of any Tier.

**3.1.5 Design Services.** Contractor shall provide professional services if such services are expressly, or by reasonable implication, required by the Contract Documents for a portion of the Work or are required in order for Contractor to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Professional design services or certifications so required of Contractor shall be furnished by design professionals exercising the highest standard of care and utilizing designs and engineering that comply with all systems, materials or equipment, performance and design criteria set forth in the Contract Documents. Certification by a properly

licensed design professional, including such professional's signature and seal, shall appear on all drawings, calculations, specifications, certifications and other documents prepared by such professional. Submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted. Authority, Architect and Authority Consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

### 3.2 REVIEW OF DOCUMENTS, SITE AND EXISTING IMPROVEMENTS

**3.2.1 Contractor's Duty of Review.** Contractor's submission of its Bid and execution of the Construction Contract constitutes its representation, acknowledgement and agreement that it had sufficient time, access and opportunity prior to the Bid Closing Deadline to conduct a careful and thorough examination, to its satisfaction, of:

.1 the Bidding Documents, Contract Documents, Reference Documents and other information provided by Authority to Contractor prior to the Bid Closing Deadline concerning the Project, Site or Existing Improvements;

.2 the visible conditions at the Site and its surroundings, visible conditions of Existing Improvements and their existing uses by Authority or the public, routes of ingress and egress, and local conditions in the vicinity of the Site (including, without limitation, sources and availability of labor, materials and equipment);

.3 the status of any construction at the Site concurrently under construction; and

.4 all information concerning visible and concealed conditions above and below the surface of the ground at the Site and in Existing Improvements (including, without limitation, surveys, reports, data, as-built drawings of Existing Improvements and utility sources, capacities and locations) that was either (1) provided by Authority to Contractor or other Bidders (including, but not limited to, the Bidding Documents and Reference Documents) or (2) reasonably available to Contractor for review in the public records of the Authority of Riverside or the City in which the Project is located.

#### 3.2.2 Contract Adjustments.

.1 **Differing Site Conditions.** Except as otherwise provided in Subparagraph 3.2.3, below, the Contractor's right to a Contract Adjustment in the event Contractor encounters conditions at the Site or in Existing Improvements that vary from those indicated by the Contract Documents or other information that was either reviewed by Contractor or that Contractor was given the opportunity to review prior to the Bid Closing Deadline shall be governed exclusively by Paragraph 4.3.8, below, pertaining to Differing Site Conditions.

.2 **Design Discrepancies.** Except as otherwise provided in Subparagraph 3.2.3, below, and subject to the Contractor's compliance with the other provisions of the Contract Documents governing the Contractor's right to a Contract Adjustment (including, without limitation, Article 7 and Article 8, below), Contractor shall be entitled to a Contract Adjustment due to Design Discrepancies, subject to the following conditions and limitations:

(1) **Compensable Change.** There shall be no Contract Adjustment to the Contract Price for Extra Work that the Contractor is required to perform as a result of a Design Discrepancy unless all of the following conditions have been met prior to Contractor or any Subcontractor performing any portion of the Work involving or affected by such Design Discrepancy:

(a) the circumstances giving rise to such Extra Work conform to all of the requirements of Subparagraph 1.1.29.2 through Subparagraph 1.1.29.4, above, applicable to Compensable Changes;

(b) Contractor has submitted to Authority and Architect a Request for Information in compliance with Paragraph 3.2.5, below, seeking clarification of such Design Discrepancy;

(c) Contractor has submitted to Authority a timely and complete Notice of Change in accordance with Article 7, below, describing such Extra Work in detail;

(d) Contractor has received a Construction Change Directive signed by Authority in accordance with Article 7, below, directing that Contractor perform the portion of the Work in question; and

(e) unless otherwise provided in such Construction Change Directive, Contractor has submitted to Authority a Change Order Request in accordance with the requirements of Article 7, below, setting forth the particulars of its request for Contract Adjustment on account of such Extra Work.

(2) **Compensable Delay.** There shall be no Contract Adjustment to the Contract Price or Contract Time for Delay as a result of a Design Discrepancy unless all of the following conditions have been met prior to Contractor or any Subcontractor performing any portion of the Work involving or affected by such Design Discrepancy:

(a) if the Delay is the result, in whole or in part, of Extra Work, all of the requirements of Subparagraph 3.2.2.2 (1), (a) through (e), above, have been met;

(b) the circumstances giving rise to such Delay conform to all of the requirements of Subparagraph 1.1.30.2 and Subparagraph 1.1.30.3, above, applicable to Compensable Delay; and

(c) Contractor has submitted to Authority a timely and complete Notice of Delay and a timely and complete Request for Extension in accordance with Article 8, below, setting forth the particulars of its request for Contract Adjustment on account of such Compensable Delay.

(3) **Differing Site Conditions.** The Contractor's right to a Contract Adjustment as a result of variances between (a) the Contract Documents or other documents or information described in Paragraph 3.2.1, above, that, prior to the Bid Closing Deadline was either reviewed by Contractor or was available to Contractor for review prior to the Bid Closing Deadline and (b) conditions at the Site or in Existing Improvements shall, notwithstanding the fact that the circumstances asserted by Contractor as a basis for such Contract Adjustment may involve, relate to or arise out of a Design Discrepancy, be governed by the provisions of the Contract Documents setting forth the Contractor's right to Contract Adjustments on the grounds of Differing Site Conditions.

### **3.2.3 WAIVER BY CONTRACTOR.**

**CONTRACTOR AGREES THAT IT SHALL NOT BE ENTITLED TO, AND HEREBY CONCLUSIVELY WAIVES, ANY RIGHT TO CONTRACT ADJUSTMENT, AS WELL AS THE RIGHT TO ANY OTHER OR FURTHER RECOURSE OR RIGHT OF RECOVERY FROM AUTHORITY, ON ACCOUNT OF LOSSES OR DELAYS THAT ARE A RESULT OF EITHER A DIFFERING SITE CONDITION OR A DESIGN DISCREPANCY, IF PRIOR TO THE BID CLOSING DEADLINE SUCH DIFFERING SITE CONDITION OR DESIGN DISCREPANCY WAS:**

(1) **DISCOVERED BY CONTRACTOR AND CONTRACTOR, NOTWITHSTANDING SUCH DISCOVERY, FAILED TO REPORT SUCH DIFFERING SITE CONDITION OR DESIGN DISCREPANCY TO AUTHORITY IN WRITING PRIOR TO THE BID CLOSING DEADLINE;**

(2) **ALTHOUGH NOT ACTUALLY DISCOVERED BY CONTRACTOR PRIOR TO THE BID CLOSING DEADLINE WAS REASONABLY DISCOVERABLE BY CONTRACTOR UNDER THE STANDARD OF PERFORMANCE SPECIFIED IN THE CONSTRUCTION CONTRACT, INCLUDING, WITHOUT LIMITATION, A DIFFERING SITE CONDITION OR DESIGN DISCREPANCY THAT WAS OVERLOOKED BY CONTRACTOR DUE TO A FAILURE BY CONTRACTOR TO FULLY FAMILIARIZE ITSELF PRIOR TO THE BID CLOSING DEADLINE WITH ANY OF THE DOCUMENTS, INFORMATION OR CONDITIONS REFERRED TO IN PARAGRAPH 3.2.1, ABOVE.**

**3.2.4 Continuing Obligation.** In addition and without limitation to Contractor's obligations under Paragraph 3.2.1, above, or elsewhere in the Contract Documents, Contractor shall have the continuing obligation until Final Completion to promptly report to Authority, by means of submission by Contractor of a Request for Information that complies with the requirements of Paragraph 3.2.5, below, any and all of the following:

.1 information contained in the Bidding Documents, Contract Documents, Reference Documents or other documentation that was either reviewed by Contractor or that Contractor was given the opportunity to review prior to the Bid Closing Deadline, as well as any visible conditions at the Site, in Existing Improvements or in the vicinity

of the Project, that Contractor knows, or in the exercise by Contractor of its duties under the Standard of Performance should have known, may render a portion of the Work in any respect, wholly or partially, unsuitable or incomplete to meet the requirements of the Contract Documents, the Design Intent or Applicable Laws, and

**.2** conditions in the Work that constitute Defective Work or that cause or are likely to cause any other portion of the Work to be Defective Work.

Without limitation to Authority's other rights under the Contract Documents, any portion of the Work, Existing Improvements or the work of Separate Contractors or Authority's own forces requiring replacement, repair or correction due to a failure by Contractor or any Subcontractor, of any Tier, to comply with its continuing obligation under this Paragraph 3.2.4 shall be promptly replaced, repaired or corrected to Authority's satisfaction, at Contractor's Own Expense.

### **3.2.5 Requests for Information.**

**.1 Time for Submittal.** Requests for Information shall be submitted no later than three (3) Days after the date Contractor learns of the circumstances giving rise to the question contained in the Request for Information. Requests for Information shall be submitted by or through the Contractor and not directly by Subcontractors.

**.2 Content.** Each Request for Information shall, in addition to the Contractor's specific question or request, include the following:

**(1)** a detailed description of the circumstances giving rise to the Contractor's request or question, including, without limitation, any related Design Discrepancy;

**(2)** Contractor's request for clarification, including, without limitation, any request for further detailing or correction of the Contract Documents; and

**(3)** a statement of whether Contractor believes it is entitled to a Contract Adjustment by reason of the circumstances described.

**.3 Form.** Contractor shall submit Requests for Information using forms provided or approved by Authority.

**.4 Unnecessary, Multiple Requests.** Contractor shall carefully review, coordinate and consolidate (where appropriate to prevent piecemeal submission) Requests for Information (whether originating with Contractor or the Subcontractors) prior to submitting them in order to eliminate unnecessary or duplicative requests.

**.5 Responses.** Responses to Requests for Information shall be furnished with reasonable promptness so as to not unreasonably Delay progress of the Work; provided, however, that the timing of a response by the Architect, Authority or a Authority Consultant to a Request for Information shall not constitute grounds for a Contract Adjustment unless Contractor has complied with the requirements set forth in this Paragraph 3.2.5 and, if applicable, Paragraph 2.1.3, above.

**.6 Back Charges by Authority.** Authority shall have the right to deduct from payments due to Contractor sums expended by Authority for the services of the Architect, Inspectors of Record or Authority Consultants due to a failure by Contractor to comply with this Paragraph 3.2.5.

### **.7 WAIVER BY CONTRACTOR.**

**FAILURE BY CONTRACTOR TO SUBMIT A REQUEST FOR INFORMATION IN ACCORDANCE WITH AND UNDER CIRCUMSTANCES IN WHICH A REQUEST FOR INFORMATION WAS REQUIRED BY THIS PARAGRAPH 3.2.5 SHALL RESULT IN CONTRACTOR WAIVING ITS RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF ANY LOSS OR DELAY THAT COULD HAVE BEEN AVOIDED IF SUCH REQUEST FOR INFORMATION HAD BEEN PROPERLY PREPARED AND TIMELY SUBMITTED.**

3.2.6 **Correction of Work.** Contractor shall, at Contractor's Own Expense, correct or replace in accordance with the direction of Authority any portion of the Work that is performed by Contractor or a Subcontractor knowing that it involves, or that Contractor or Subcontractor in the exercise of reasonable care and diligence should have known involves, a portion of the Contract Documents that contains an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws, without first notifying and obtaining the written approval of Authority and Architect.

### 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 **General Obligation.** Contractor shall provide competent, fully qualified personnel to supervise, administer, manage and direct the Work, competently and efficiently, at all times devoting their best skill and attention to perform the Work in accordance with the Contract Documents.

3.3.2 **Supervisory Staff.** Contractor shall employ a competent project manager, superintendent, scheduler, forepersons and necessary assistants during performance of the Work. Contractor's superintendent and forepersons shall be present at the Site at all times that the Work is in progress and at any time that any employee of Contractor or a Subcontractor is present at the Site. Contractor's project manager and superintendent shall, unless excused from attendance by the Authority, attend all job meetings. Contractor's project manager and superintendent must be able to fluently read and write in English. Contractor's superintendent shall not perform the Work of any trade, pick up materials, or perform any Work not directly related to the supervision of the Work and shall be available twenty-four (24) hours a Day, seven (7) Days a week, to respond to emergencies.

3.3.3 **Authority Supplementary Personnel.** Without limitation upon any of the rights or remedies of the Authority under the Contract Documents or under Applicable Laws, in the event that Contractor fails to have personnel on Site to supervise the Work, the Authority shall have the right, but not the obligation, upon twenty-four (24) hours' telephonic or email notice by the Authority to Contractor, to provide such supervision on a temporary basis and to deduct from the sums owing to Contractor the actual costs of such temporary supervision. Contractor shall, notwithstanding the Authority's providing such temporary supervision, remain solely responsible for all actions and omissions of its personnel and of the Subcontractors.

3.3.4 **Means, Methods, Procedures.** Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and coordinating all portions of the Work, unless the Contract Documents specify other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall nonetheless be fully and solely responsible for the adequacy and safe implementation of such means, methods, techniques, sequences or procedures. If Contractor believes that such specified means, methods, techniques, sequences or procedures may not be safe or adequate, Contractor shall give written notice to Authority and Architect and shall not proceed with that portion of the Work without further written instruction from Authority or Architect. In response to such notice, Authority may order Contractor to improve the character or increase the efficiency of the means, methods, techniques, sequences or procedures employed, and Contractor shall conform to such order; but the failure of Authority to order such improvement or increase of efficiency will neither relieve Contractor from its sole responsibility for safety at the Site nor relieve Contractor from its obligation to perform the Work in accordance with the Contract Documents and Applicable Laws.

### 3.4 LABOR, MATERIALS AND EQUIPMENT

3.4.1 **Costs of Work.** Contractor shall provide and pay for labor, materials, tools, equipment, machinery, water, heat, utilities, transportation, facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether incorporated or to be incorporated into the Work.

3.4.2 **Coordination.** Contractor shall provide supervision sufficient to ensure proper coordination for the timely and efficient performance and completion of the Work.

3.4.3 **Field Conditions.** Before commencing the Work or any activities on the Site, Contractor shall take field measurements and verify field conditions and carefully compare such field measurements and conditions with the information in the Contract Documents and other information obtained by or available to Contractor.



3.4.4 **Layout.** Contractor is solely responsible for (1) the accurate layout of all portions of the Work, (2) the accuracy of the Project lines and levels, (3) erection of the Work square, plumb, level, true to line and grade, in the exact plane, and to the correct elevation and (4) sloping of surfaces to drain as indicated by the Contract Documents, or, if not indicated, as needed to provide for adequate drainage.

### 3.4.5 **Materials, Equipment**

**.1 Delivery, Storage, Inventory.** Materials and equipment shall be: (1) furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work; and (2) if located on the Site, properly stored and protected as reasonable and necessary, or as directed by Authority, to prevent Loss from any foreseeable cause, including, without limitation, theft. In the event that Authority gives direction as to the location for storage or protection of materials or equipment on the Site, Contractor shall nonetheless remain solely responsible for its safe and secure storage and protection. No part of any such stored materials and equipment shall be removed from its place of storage except for immediate installation in the Work. Contractor shall keep an accurate inventory of all such stored materials and/or equipment in a manner satisfactory to Authority.

**.2 Purchases.** Contractor shall place orders for materials and/or equipment as specified so that delivery of same may be made without Delay to the Work. Contractor shall, upon request from Authority, furnish to Authority documentary evidence showing that orders have been placed. Authority reserves the right in the event Contractor fails, within three (3) Days after receipt of written notice by Authority to Contractor to comply with the requirements of this Subparagraph 3.4.5.2, to deduct the costs paid or payable by Authority associated with such purchases from payments otherwise owing to Contractor. Contractor shall, if requested by Authority, accept assignment of any such contracts entered into by Authority without a Contract Adjustment.

**.3 Title.** No material, supplies or equipment for the Work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies and equipment installed or incorporated in the Work and agrees upon Final Completion to deliver the Work, including the premises, land, improvements and appurtenances on or to which the Work is placed, located or affixed, to Authority free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any of the Work shall have any right of lien upon the Site, or any Existing Improvement or appurtenance thereon, except that (1) nothing stated in this Subparagraph 3.4.5.3 shall be interpreted as a waiver by Contractor or any Subcontractor of its right under Applicable Laws to serve a stop payment notice for Work that is not paid for by Authority as required under the terms of the Contract Documents; and (2) Contractor may install metering devices or other equipment of utility companies or political subdivisions, title to which may be retained by such utility company or political subdivision, provided that in the event of installation of any such metering device or utility equipment, Contractor shall advise Authority as to the owner, and the precise location, thereof.

**.4 Substitutions.** No substitution of materials, equipment, articles, processes or other items of the Work required under the Contract Documents will be made without written approval of Authority, which approval may be granted or denied in the sole and absolute discretion of Authority. With respect to any such substitution made or requested by Contractor, neither the occurrence of a substitution made or requested by Contractor nor the approval or disapproval by Authority of a substitution that is made in accordance with this Subparagraph 3.4.5.4 shall give rise to any right of Contractor to a Contract Adjustment. Contractor shall, notwithstanding Authority's or Architect's approval, remain solely responsible for the sufficiency and suitability of all substitutions requested by Contractor and approved, or otherwise made, by Contractor.

**.5 Parts List.** Contractor will provide a printed parts list for all items which might be subject to replacement and for which parts lists are either expressly required by the Contract Documents or customarily provided according to usual commercial practices.

**.6 Manuals.** As part of its obligation for submission of Record Documents, four (4) hard copies and one (1) electronic version of operations and maintenance manuals shall be prepared and transmitted by Contractor to Authority prior to and as a condition of Final Completion. Final Payment will not be due until Authority has received all such manuals and all other manuals covering the Work that are either required to be provided by the terms of the Contract Documents or if not required are customarily provided according to usual commercial practices applicable to

the portion of Work involved. Operating instructions will be included within the equipment manuals and will state all information necessary for Authority to operate, use, maintain and service the equipment fully and efficiently.

**.7 Start Up.** Contractor will be responsible for start-up of all systems and equipment purchased as part of the Work and has included sufficient amounts in its Bid to cover contingencies arising out of the start-up of such systems and equipment. Contractor will comply fully with each manufacturer's specifications and instructions. Systems and equipment specified to be furnished with manufacturer's supervision of start-up will be placed in operation only under such supervision.

### 3.5 CONTRACTOR'S WARRANTY

**3.5.1 General Warranty.** In addition to other warranties and guarantees required by the Contract Documents, Contractor shall, and hereby does, warrant and guarantee that: (1) the Work will conform to the requirements of Contract Documents, including, without limitation, any performance standards that are part thereof; (2) all Work for which there is not a specific requirement, criteria, specification or standard set forth in the Contract Documents will conform to the Standard of Performance; (3) all labor, equipment, materials and other items of Work will be when installed new and free of liens, claims and security interests; (4) without limitation to the other requirements of this warranty, all labor, installation and workmanship will be performed in a good and workmanlike manner; and (5) all labor, materials, equipment, services and work shall be free of defects for a period of one (1) year after Final Completion. If required by Authority, Contractor shall furnish satisfactory evidence as to the kind and quality of services, labor, installation, materials and equipment used. Manufactured items installed in the Work, unless otherwise specifically stated in the Contract Documents, are to be installed in strict accordance with manufacturer's current printed instructions.

**3.5.2 Repair, Replacement.** Without limitation upon the Authority's other rights or remedies under the Contract Documents or Applicable Laws, any and all Work that, for reasons other than (1) ordinary wear and tear or (2) abuse or neglect by persons or entities other than the Contractor or the Subcontractors, is not in conformance with the warranties or guarantees required by the Contract Documents or Applicable Laws shall be repaired or replaced, together with the repair or replacement of any other Work, Existing Improvements or the work of the Separate Contractors, the Authority's own forces or others, which may be removed, displaced or damaged in so doing. The Contractor shall notify the Authority in writing upon completion of such repair or replacement. In the event of failure by the Contractor to commence and pursue with diligence said replacement or repair within ten (10) Days after being notified by the Authority, the Authority is hereby authorized to proceed with such replacement and repair as the Authority deems necessary and expedient and to charge such costs to Contractor at Contractor's Own Expense.

**3.5.3 Not a Limitation.** The warranties stated in this Section 3.5 are in addition to any other warranties or guarantees that are required under any other provision of the Contract Documents or Applicable Laws. Nothing stated in this Section 3.5 shall be interpreted as a limitation upon the Authority's rights under any warranties or guarantees provided for under any other provision of the Contract Documents or under Applicable Laws that afford the Authority greater rights than the rights afforded to Authority under this Section 3.5.

**3.5.4 Assignment.** Contractor does hereby unconditionally and irrevocably assign to Authority all warranties and guarantees issued or made by any Subcontractor, of any Tier (including, without limitation, any manufacturer, supplier and distributor) in connection with the Work. Such assignment shall not relieve Contractor of, or otherwise limit, any of its obligations contained in the Contract Documents, including, without limitation, the general responsibility and liability of Contractor for a breach by a Subcontractor (including, without limitation, any manufacturer, supplier and distributor, of any Tier) of a warranty or guarantee given by such Subcontractor in connection with the Work.

**3.5.5 Close-Out.** Unless sooner requested by Authority, Contractor shall furnish to Authority, as part of the Close-Out Documents and as a condition to Final Payment, all written guarantees or warranties that are required by the terms of the Contract Documents. All such guarantees and warranties shall be: (1) in writing; (2) indexed and bound; (3) accompanied by such certifications and instruction materials as may be required by the Contract Documents; and (4) issued to Authority or assignable by their terms, and in fact assigned, to Authority.

## 3.6 TAXES

**3.6.1 Payment by Contractor.** Contractor shall pay, at Contractor's Own Expense, all local, state and federal taxes, including, without limitation, all sales, consumer, business license, use and similar taxes on materials, labor or other items furnished for the Work or portions thereof provided by Contractor or the Subcontractors, of all Tier, all taxes arising out of its operations under the Contract Documents and all benefits, insurance, taxes and contributions for social security and unemployment insurance which are measured by wages, salaries or other remuneration paid to Contractor's employees. If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed, and the sale is exempt from such excise tax because it is a sale to a state or local government, then Authority, upon request, will execute documents necessary to show: (1) that Authority is a political subdivision of the State for the purposes of such exemption; and (2) that the sale is for the exclusive use of Authority. No excise tax for such materials shall be included in any price (including, without limitation, the Bid) submitted by Contractor for the Work or for Changes in the Work.

**3.6.2 Tax Exempt Projects.** If applicable to the Project, Contractor shall comply with Applicable Laws concerning tax-exempt construction projects.

**3.6.3 Records of Taxes.** Contractor and the Subcontractors shall keep sufficient records to verify the amount of sales and use taxes paid. Copies shall be submitted with each monthly Application for Payment. Failure to keep or submit such records, resulting in the inability of Authority to claim a refund for taxes for such materials, shall render Contractor liable to Authority for the amount of such tax refund.

## 3.7 PERMITS, FEES AND LEGAL NOTICES

**3.7.1 Permits.** Contractor shall obtain and pay for all permits and approvals that are not stated in the Contract Documents to be the responsibility of the Authority. Such permits and approvals that are the responsibility of the Contractor may include local building or land use permits, California Department of Fish and Game Streambed Alteration Agreements (Section 1600 et seq.), California Department of Fish and Game collection permits, U.S. Army Corps of Engineers 404 fill and dredge authorization, Clean Water Act Section 401 authorization (managed by the local California Regional Water Quality Control Boards) land owner agreements, or other regulatory permits or approvals required for the implementation of the Project. All permits, licenses and certificates obtained by Contractor shall be delivered to Authority prior and as a condition to Final Completion and Contractor's right to Final Payment.

**3.7.2 Applicable Laws, Notices.** Contractor shall comply with, and give notices required by, Applicable Laws bearing on performance of the Work.

**3.7.3 Bonds, Undertakings.** Contractor shall, without Contract Adjustment, procure and obtain all bonds required of the Authority or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay, without Contract Adjustment, all charges for all approvals for street closings, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

**3.7.4 Notice of Violations.** Contractor shall immediately notify Authority in writing of any instruction received from Authority, or any other Project Team member that, if implemented, would cause a violation of any Applicable Law.

**3.7.5 Governmental Authority Approvals.** Where the Contract Documents state, or Applicable Laws require, that materials, processes or procedures must be approved by a Governmental Authority, Contractor shall be responsible for satisfying the requirements and obtaining the approval of such Governmental Authority.

## 3.8 CONTRACTOR'S PERSONNEL

**3.8.1 Key Persons.** Contractor's employees acting as project manager, scheduler and superintendent constitute Key Persons. Individuals acting as Key Persons who are not already identified in Contractor's Post-Award Submittals shall be identified in writing to Authority prior to commencement of the Work.

**3.8.2 Background Check.** Contractor shall perform, prior to commencing Work on the Site, a thorough background check of each of the Key Persons and shall not, without prior written approval of Authority, employ any person to act as a Key Person if such background check, or other information known to Contractor, discloses a felony conviction or other matter which casts any reasonable doubt on the competency, reliability or honesty of such person.

**3.8.3 Project Manager.** The Key Person acting as project manager shall be deemed to have full authority to contractually bind Contractor, including, without limitation, the authority to bind Contractor to the terms of Contract Adjustments.

**3.8.4 Transfer.** Contractor's Key Personnel are deemed of essence to the Construction Contract. No Key Person shall, for so long as he/she is employed by Contractor, be transferred to any other project nor any of his/her responsibilities reassigned at any time during performance of the Work without the prior written approval of Authority, which approval may be granted or withheld in Authority's sole and absolute discretion.

**3.8.5 Removal.** Authority shall have the right, at any time, to direct the removal and replacement of any Key Person if his/her performance is determined by Authority, in its sole and absolute discretion, to be unsatisfactory.

**3.8.6 Replacement.** Any individual proposed by Contractor as a replacement for a Key Person must be approved in advance by Authority, such approval not to be unreasonably withheld, after submission by Contractor to Authority of complete information concerning such individual's experience and qualifications.

**3.8.7 Communications.** Important communications by Key Persons shall be confirmed in writing by Contractor. Other communications by Key Persons shall be confirmed on written request in each case.

**3.8.8 Contact Information.** Contractor shall provide to Authority, prior to the start of the Work, telephone numbers where Key Persons can be reached 24-hours a day, 7 Days a week.

**3.8.9 Signatures.** Prior to commencing the Work, Contractor shall submit to Authority a facsimile of the signatures of the Key Person acting as project manager, as well as any other representatives of Contractor with authority to sign on behalf of and contractually bind Contractor.

**3.8.10 Exclusion from Site.** Contractor shall at all times maintain good discipline and order at the Site among its employees and the employees of the Subcontractors. Any person in the employ of Contractor or any of the Subcontractors, of any Tier, whom Authority deems, in its sole and absolute discretion, incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the Site and shall not again be employed on the Site except with written approval of Authority.

### **3.9 CONTRACTOR'S CONSTRUCTION SCHEDULE**

**3.9.1 Preparation.** Within twenty-one (21) Days after issuance by Authority of the Notice of Intent to Award, the Contractor shall prepare and submit a Construction Schedule for the Work, both in hard copy and electronically, for the Authority's approval. The Construction Schedule shall in all respects conform to and be consistent with the time requirements for the Project set forth in the Construction Contract.

**3.9.2 Format.** The Construction Schedule shall be in the form of a critical path progress schedule that shows, in graphic form, a plan for performance of the Work within the Contract Time. It shall be prepared, using Primavera P3, as a time-scaled bar chart showing: (1) continuous flow from left to right and activities and milestones that are critical to Substantial Completion and Final Completion of the Work; (2) identification of "float"; and (3) a clearly highlighted critical path. Durations and specific calendar days shall be clearly and legibly shown for the early and late start and finish of each activity. With the exception of Authority Review Periods and Governmental Authority Review Periods, any activity with more than fifteen (15) Days in duration will be segmented into fifteen (15) Day increments. No more than ten percent (10%) of the activities shall be shown as critical. Techniques or methods designed to suppress depiction of available float are strictly prohibited.

**3.9.3 Detail.** Activities shown in the Construction Schedule shall be in sufficient detail to demonstrate a practical plan to complete the design, engineering, fabrication and construction within the Contract Time and shall, at a minimum, include the following:

- .1 the start and finish date of each activity;
- .2 the anticipated percent of completion at the end of each month;
- .3 the weighted labor value expressed as a percentage of the total labor cost of the Work for each activity;
- .4 the final manpower curves by trade;
- .5 the anticipated purchase and delivery of major materials and equipment;
- .6 the Authority's occupancy requirements;
- .7 receipt and incorporation of materials, products or equipment to be furnished by Authority (if any);
- .8 Authority Review Periods and Authority Review Dates that are acceptable to and approved by Authority;
- .9 Governmental Authority Review Periods; and
- .10 the activities identified as being on the critical path to Substantial Completion and Final Completion of the Work.

**3.9.4 Updates.** Throughout the performance of the Work, weekly updates shall be delivered, in hard copy and, if required by Authority, in an electronic form satisfactory to Authority. In addition, Contractor shall regularly prepare and submit to Authority short term, three (3) week "look-ahead" schedules generated from the Construction Schedule approved by Authority. Except to the extent permitted by Contract Adjustment to the Contract Time approved by Authority in a duly executed Change Order or Unilateral Change Order, in no event shall the Contractor's updates or "look ahead" schedules alter the dates for Substantial Completion or Final Completion set forth in the Construction Schedule approved by Authority.

**3.9.5 Governing Schedule.** The governing schedule for the Work shall be the updated Construction Schedule approved by the Authority. Unless otherwise directed in a writing signed by Authority, no other schedule shall be used or relied upon by the Contractor or its Subcontractors in planning or performing the Work or in connection with any request for a Contract Adjustment to the Contract Time.

**3.9.6 Submittal Schedule.** Within twenty-one (21) Days after the receipt by the Contractor of the Notice of Intent to Award, the Contractor shall prepare and submit, in accordance with the Contract Documents, a Submittal Schedule for the Authority's approval. The Submittal Schedule shall be coordinated with the Construction Schedule and allow time for review of the Submittals as may be required by the Contract Documents, or if none is required, a reasonable time for such review. Contractor shall keep the Submittal Schedule current and updated in the same manner as required for updating of the Construction Schedule.

**3.9.7 Schedule Responsibility.** Contractor is and shall remain solely responsible, notwithstanding the Authority's review or approval thereof, for the accuracy, suitability and feasibility of all schedules it prepares for the Project, including, without limitation, the Construction Schedule, Submittal Schedule, "look ahead" schedules, recovery schedules and any updates thereof.

**3.9.8 Condition of Payment.** Compliance by Contractor with the requirements of this Section 3.9 and the other provisions of the Contract Documents pertaining to preparing, submitting, revising and updating the Construction Schedule and Submittal Schedule is a condition to Authority's obligation to make payment to Contractor. Recognizing that scheduling is a continuing, cumulative and recurring obligation, failure by Authority or to assert a right to withhold payment under this Paragraph 3.9.8 due to a noncompliance by Contractor with its schedule obligations shall not waive or diminish the Authority's right to withhold or disapprove of future payments on account of such prior, or any other past or future, noncompliance of the same or similar nature.

**3.9.9 Scheduling by Authority.** Without limitation to Authority's other rights under the Contract Documents, if Contractor fails after written notice by Authority to perform any part of its obligations relating to scheduling, Authority shall have the right, but not the obligation, to retain one or more schedule consultants to perform, in whole or in part, the Contractor's obligations or supplement the scheduling services provided by Contractor and to reimburse Authority for the costs of such consultant services by withholding such costs from payments to Contractor.

### **3.10 DOCUMENTS AT SITE, REPORTING, MEETINGS**

#### **3.10.1 Documents at Site**

**.1 Contract Documents, Submittals.** Contractor shall at all times while performing Work at the Site maintain, in good order, at the Site: (1) one legible set of the permitted Contract Documents; (2) one legible copy of the current version of the other Contract Documents; (3) one legible and current version of approved Shop Drawings, Product Data, Samples and other Submittals; (4) one approved Storm Water Pollution Prevention Plan (SWPPP); and (5) one copy of all reports prepared pursuant to the Mitigation, Monitoring, and Reporting Program (MMRP) requirements of the California Environmental Quality Act.

**.2 Record Documents.** Contractor shall maintain Record Drawings and Specifications in a satisfactory record condition by posting, on a weekly basis (or, in the case of building or site mechanical, electrical, plumbing or fire sprinkler systems, as soon thereafter as is reasonable and practical), thoroughly and neatly, on the Drawings and Specifications all Changes to the Work and the location of the Work, including, without limitation, the location of portions of the Work shown diagrammatically, as occurs in the actual construction of the Work. The Record Drawings and Specifications and other Record Documents shall be prepared or converted, if requested by Authority, to electronic form (such as, AutoCAD, Adobe Acrobat or other software satisfactory to Authority). All Record Drawings and Specifications and other Record Documents shall be deemed the sole property of Authority and, at the earlier of Final Completion or termination of the Construction Contract, shall be turned over to Authority. At the time they are so turned over to Authority, they shall be manually signed by Contractor's superintendent certifying that, to the best of his/her knowledge, they are true and accurate and that the indications thereon represent the actual condition of the Work.

**.3 Availability for Review.** Copies or originals of all documents required to be maintained by Contractor at the Site or required to be submitted to Authority or the Architect shall be available at all times at the Site while Work is being performed for review by Authority, Inspector of Record, Architect and Governmental Authorities.

**.4 Condition of Payment.** Compliance by Contractor with the requirements of this Paragraph 3.10.1 shall be deemed a condition to Contractor's right to payment upon its Applications for Payment.

#### **3.10.2 Daily Reports.**

**.1 Delivery.** At the end of each Day that Contractor performs the Work on the Site, Contractor shall submit a daily report to Authority (on the form provided or approved by Authority) together with applicable delivery tickets for all labor, materials and equipment furnished that Day. If requested by Authority, daily reports shall be delivered electronically.

**.2 Content.** Daily Reports shall include the following information:

(1) Labor - The names of the workers, and for each such worker his/her classification and hours worked.

(2) Material - A list of the different materials used and for each different material the quantity used.

(3) Equipment - The type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.

(4) **Inspection and Testing Activities** – A list of inspections performed by name of inspector and testing company and the type of inspection, items of the Work involved and a description of the outcome of such inspection or test.

(5) **Visitors, Guests, Dignitaries** – A list of visitors and guests by name, title, company and purpose of visit.

(6) **Areas of the Work** – A statement of the areas of the Site on which the Work was performed and a detailed description of the stage, status and progress of the Work in each such area at the beginning and end of the Day.

(7) **Accidents, Delays, Defective Work** – A description in detail of any injuries to the workers, accidents or delays that occurred or Defective Work that was encountered.

(8) **Other Services and Expenditures** – A description of other services and expenditures in such detail as Authority may require.

**.3 Payment.** Timely and complete submission of daily reports by Contractor shall be a condition to Contractor's right to payment under the Construction Contract.

**3.10.3 Progress Meetings.** Contractor shall attend all progress meetings at the Site, at which meetings progress of the Work shall be reported in detail with reference to the then-current updated Construction Schedule approved by the Authority. Progress meetings shall be held weekly, or at such other time or frequency as Authority, in its sole and absolute discretion, deems necessary. A representative of each Subcontractor then actively performing Work, or immediately scheduled to become active, shall have a competent and knowledgeable representative present at such progress meeting to report on the condition of the Work of such Subcontractor and to receive relevant information. Meeting notes shall be taken by the Authority or Architect and distributed to all meeting attendees and all other affected parties.

**3.10.4 Notice Requirements.** Under no circumstances shall information contained in Contractor's daily job reports, monthly reports or job meeting minutes relieve Contractor of its obligations to comply with, serve as a substitute for, nor constitute a waiver by Authority of its right to insist upon, Contractor's compliance with the provisions of the Contract Documents relative to timely and complete notice to Authority of Changes, Delays, Claims or other matters for which written notice is required by the Contract Documents.

**3.10.5 Availability for Review.** Copies or originals of all Record Documents, daily reports, job meeting minutes and other documents required to be maintained or actually maintained by Contractor at the Site or required to be submitted to Authority or Architect shall be available at the Site for review by Authority, Architect, Inspectors of Record, Authority Consultants and Governmental Authorities.

### 3.11 SUBMITTALS

**3.11.1 Not Contract Documents.** Shop Drawings, Product Data, Samples and other Submittals are not Contract Documents. Their purpose is to demonstrate for those portions of the Work for which Submittals are required the way Contractor proposes to conform the Work to the designs and other information in the Contract Documents.

**3.11.2 Coordination with Others.** Contractor shall cooperate in the coordination of Contractor's Shop Drawings, Product Data, Samples and other Submittals with related documents submitted by the Separate Contractors.

#### 3.11.3 Submission by Contractor.

**.1 Submission.** All Shop Drawings, Product Data, Samples and other Submittals required by the Contract Documents shall be submitted to Architect for its review and approval, with a copy to Authority and to such of Authority's Consultants or Separate Contractors as Authority may direct in writing. Informational submittals (i.e., Submittals upon which no responsive action is expected) shall be limited to those Submittals so identified in the Contract

Documents. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.

**.2 Contractor Approval.** The Contractor shall review, stamp "approved" and submit Contractor's Shop Drawings, Product Data, Samples and other Submittals to the Architect, in accordance with the latest Submittal Schedule approved by the Authority. The Contractor's approval and submission of Submittals constitutes a representation that the Contractor has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents and with the Submittals for related Work. Submittals without evidence thereon of the Contractor's approval shall be returned, without further consideration, for resubmission in accordance with these requirements.

**.3 Transmittal.** All Submittals shall be accompanied by an accurately completed transmittal in the form required by Authority. With respect to Submittals of documents, the transmittal shall give a list of the numbers of the sheets submitted. All sheets shall be marked with the name of the Project and the name of Contractor shall be numbered consecutively and referenced to the sheets or paragraphs of the Drawings and Specifications affected. A separate transmittal form shall be used for each specific item or class of material or equipment for which a Submittal is required. Transmission of Submittals of various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency dictates review of the group or package as a whole. Any Submittal not accompanied by such transmittal form, or where all applicable items on the form are not completed, may be returned for re-submittal without review.

**.4 Timing.** Submittals shall be provided within the time frame specified in the Contract Documents, in accordance with the Construction Schedule and Submittal Schedule and at a time sufficiently early to allow review of the same by the Architect without causing Delay to construction progress. Contractor will be responsible to pay, at Contractor's Own Expense, additional services fees and costs incurred by Authority to the Architect, Inspectors of Record and Authority Consultants in order to expedite review of Submittals which are not submitted in a timely fashion.

**.5 Content.** Submittals shall consist of the appropriate combination of catalog sheets, material lists, manufacturer's brochures, technical bulletins, specifications, diagrams and product samples, necessary to describe a system, product or item. Submittals shall show in detail the size, sections and dimensions of all members, the arrangement and construction of all connections, joints and other pertinent details, and all holes, straps and other fittings for attaching the Work. When required by the Architect or the Contract Documents, engineering computations shall be submitted.

**.6 Professional Certifications.** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

**.7 Multiple Submittals.** Except where the preparation of a Submittal is dependent upon the approval of a prior Submittal, all Submittals pertaining to the same class or portion of the Work shall be submitted simultaneously.

**.8 Notation of Revisions.** Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or other Submittals, to revisions other than those requested and approved by Architect on previous Submittals.

**.9 Duplicates.** Contractor shall be responsible for delivering duplicates of Submittals to all other persons whose work or services are dependent thereon.

**3.11.4 Review of Submittals.** Review of Submittals by Architect, Authority or Authority Consultants is subject to the limitations of [Paragraph 4.2.6](#), below. Contractor shall, notwithstanding any review or approval thereof by Authority, Architect or a Authority Consultant, be solely responsible for the content of all Submittals. Without limitation to the foregoing, deviations in Submittals from requirements of the Contract Documents shall remain the sole responsibility of Contractor unless Contractor has specifically informed Architect in writing of such deviation at the time of submission of the Submittal and Architect has given specific written approval thereof.



**3.11.5 Contract Adjustments.** Subject to Contractor's rights and obligations under Article 7, below, revisions indicated on Shop Drawings, Product Data, Samples or other Submittals shall not be considered as a basis for Contract Adjustments.

**3.11.6 Compliance with Contract.** Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or other Submittals until the respective Submittal has been returned by the Architect with an indication that it has been reviewed and that the Work addressed by the Submittal may proceed. Such Work shall be in accordance with such Submittals, unless such Submittal indicates that there are corrections to be made. If corrections are indicated to be made then the Work shall be in accordance with the re-submitted and corrected Submittal that is reviewed and returned to the Contractor by the Architect.

## **3.12 USE OF SITE**

**3.12.1 Staging Area.** Contractor will be assigned staging space on or adjacent to the Site, and all field offices, materials and equipment shall be kept within this area. Unless otherwise required by the Contract Documents, Contractor shall be responsible for restoring such areas and surrounding areas to the condition they were in prior to Contractor's commencement of the Work.

**3.12.2 Existing Improvements.** During the installation of the Work, Contractor shall ensure that Existing Improvements are adequately protected. Upon Final Completion of the Work, all Existing Improvements not required by the Contract Documents to be demolished as part of the Work that have been damaged by the actions or inactions of Contractor or its Subcontractors shall be restored to the condition they were in prior to Contractor's commencement of the Work.

**3.12.3 Operations at Site.** Contractor shall confine its activity, access and parking at the Site to areas permitted by Applicable Laws and Authority and shall not unreasonably encumber the Site with materials or equipment. Contractor acknowledges that it is experienced in performing construction within limited and confined areas and spaces such as those that are anticipated to exist on this Project and agrees to assume responsibility, without a Contract Adjustment, to take all special measures (including, without limitation, those related to protection, storage, staging and deliveries) as may be necessary to adapt its performance to the constraints of the Site.

**3.12.4 Coordination.** Contractor shall coordinate Contractor's operations with, and secure the approval of, Authority before using any portion of the Site.

**3.12.5 Unauthorized Use.** Personnel of Contractor and the Subcontractors shall not occupy, live upon or otherwise make use of the Site during any time that the Work is not being performed at the Site, except as otherwise approved by Authority.

**3.12.6 Site Security.** Contractor is responsible for the security of the Site and all of the Work, as well as the work of the Separate Contractors or Authority's own forces that occurs on the Site. Fences, barricades and other perimeter security shall be maintained in good condition and secured with locking devices. Damage to fences, barricades or other perimeter security, regardless of the cause, shall be repaired immediately at Contractor's Own Expense. Graffiti and unauthorized postings shall be removed or painted over so as to maintain a clean and neat appearance. Mobile equipment and operable machinery shall be kept locked or otherwise made inoperable whenever left unattended.

**3.12.7 Persons on Site.** Contractor shall not allow any person, other than the workers on the Project, authorized representatives of a union, or other individuals authorized by Authority, to come upon any portion of the Site where the Work is being performed. Only authorized personnel will be permitted on the Site. Contractor shall at all times maintain good discipline and order among its employees and the employees of the Subcontractors. Any person in the employ of Contractor or of any Subcontractors whom Authority may deem, in its sole and absolute discretion, incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the Site and shall not again be employed on the Site except with written approval of Authority and all Losses to Contractor or Authority associated therewith shall be borne by Contractor at Contractor's Own Expense.

**3.12.8 Authority Uses and Activities.** Contractor shall, prior to performing the Work at an operating or occupied Authority facility, become informed and take into specific account the uses by Authority and others of the Site

and Existing Improvements, including, without limitation, business operations, public uses, employee uses, visitor uses, planned functions and ceremonies, and coordinate its planning, staging, scheduling, barricading and other performance of the Work so as to cause the minimum amount of interference or disturbance, whether before or after operating hours.

**3.12.9 Dust, Fumes, Noise.** Contractor shall take preventive measures to minimize, and eliminate wherever reasonably possible, generation of dust, fumes and noise.

**3.12.10 Confinement of Operations.** Contractor shall confine apparatus, the storage of materials and the operations of the workers to limits indicated by Contract Documents or as otherwise directed by Authority in writing.

**3.12.11 Prohibited Substances.** Contractor shall not permit (1) the possession or use of alcohol or controlled substances on the Site or (2) smoking in other than designated smoking areas approved by Authority.

**3.12.12 Survey Markers.** Contractor shall not disturb or cover any survey markers, monuments or other devices marking property boundaries or corners. If such markers are covered they shall be uncovered and if disturbed they shall be replaced by Contractor by means of the services of a licensed land surveyor. The costs of such uncovering and replacement shall be at Contractor's Own Expense.

**3.12.13 Drainage, Erosion.** Contractor is responsible for and shall make corrections to changes in patterns of surface water drainage resulting from, and related erosion control made necessary by, the performance of the Work.

**3.12.14 Trenches.** As required by California Labor Code §6705, if the Contract Price exceeds Twenty-Five Thousand Dollars (\$25,000) and involves the excavation of any trench or trenches five (5) feet or more in depth, Contractor shall, in advance of commencing excavation, submit to Authority a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring Systems Standards established by the Construction Safety Orders of the California Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer, employed by Contractor at Contractor's Own Expense. Nothing in this Paragraph 3.12.14 shall be deemed to allow the use of a system less effective than that required by such Construction Safety Orders. No excavation of such trench or trenches shall be commenced until such plan has been approved by Authority and Architect. Nothing in this Paragraph 3.12.14 shall be construed to impose any liability, including, without limitation, any tort liability, upon the Authority or upon any of its officers, agents, representatives or employees.

### **3.13 CUTTING AND PATCHING**

Contractor shall be responsible for all cutting, fitting or patching required to complete the Work and to make its parts fit together properly both among themselves and with any Existing Improvements and the work of the Separate Contractors and of Authority's own forces. In all cases, cutting shall be performed under the supervision of competent mechanics skilled in the applicable trade and openings shall be cut as small as possible to prevent unnecessary damage. Contractor shall not damage or endanger a portion of the Work, Existing Improvements or fully or partially completed construction of Authority's own forces or of the Separate Contractors by cutting, patching, excavating or otherwise altering such construction. Contractor shall not cut or otherwise alter such Existing Improvements or construction by Separate Contractors or by Authority's own forces except with the written consent of such Separate Contractors or Authority, which consent shall not be unreasonably withheld, delayed or conditioned. When asked, Contractor shall not unreasonably withhold from the Separate Contractors or Authority the Contractor's consent to Separate Contractors' or Authority's own forces' cutting or other alteration of the Work as required to complete the work of the Separate Contractors or Authority's own forces.

### **3.14 UTILITIES AND SANITARY FACILITIES**

**3.14.1 Contractor Responsibility.** Except as otherwise required by California Government Code §4215, Contractor shall contact all relevant utility providers and arrange for obtaining all available information, concerning location of subsurface utility lines. Prior to commencement of any digging, Contractor shall make its own investigation, including exploratory excavations, to determine the locations and type of Work which could result in damage to such utilities. In accordance with California Government Code §§4216 et seq., except in an emergency, Contractor shall contact the appropriate regional notification center at least two (2) the working days, but not more than fourteen (14) Days, prior to commencing any excavation, if the excavation will be conducted in an area which is known, or reasonably

should be known, to contain sub-service installations, and shall obtain an inquiry identification number from the regional notification center. Contractor shall not assume, unless actual observed surface conditions at the Site indicate otherwise, that utilities are located in the same location as indicated on the as-built records or other information obtained by Contractor. Contractor shall conduct potholing in advance of digging in any areas where there are not apparent surface conditions at the Site indicating the actual location of underground utilities and be at all times vigilant in watching for any conditions encountered, above or below the surface of the ground, that might indicate that underground utilities are at locations other than those indicated by the as-built records or other information obtained by Contractor. Contractor shall perform its digging operations in a slow and meticulous manner so as to avoid wherever reasonably possible damaging existing underground utilities. Contractor shall, at Contractor's Own Expense, make good any Loss to Authority or others as a result of Contractor's failure to perform any of its obligations under this Paragraph 3.14.1. Nothing stated in this Paragraph 3.14.1 shall be interpreted as requiring Contractor to do subsurface exploration or potholing for the purpose of locating subsurface utilities at the Site prior to the Bid Closing Deadline or as precluding the Contractor from receiving a Contract Adjustment for unknown subsurface utilities constituting Differing Site Conditions that are encountered in the course of performing the Site investigation or potholing required by this Paragraph 3.14.1.

**3.14.2 Authority Responsibility.** If and to the extent required by California Government Code §4215, Authority assumes the responsibility for removal, relocation, and protection of those existing main or trunkline utility facilities located at the Site at the time of commencement of the Work that are not identified in the Contract Documents. Provided that Contractor has exercised the Standard of Care in performing the Work in accordance with the Contract Documents, Contractor shall be entitled to a Contract Adjustment for, relocating, repairing or removing any utility facilities not indicated in the Contract Documents with reasonable accuracy, including, without limitation, equipment on the Site necessarily idled thereby. Delays caused by Authority's or a utility owner's failure to provide for the removal or relocation of such utility facilities shall constitute a Compensable Delay. Nothing herein shall be deemed to require Authority to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings or meter junction boxes located on or adjacent to the Site.

**3.14.3 Temporary Utilities.** All utilities, including but not limited to electricity, water, gas and telephone, used in performance of the Work (including, without limitation, meters and temporary distribution systems from distribution points to points on Site where a utility is needed and "tap fees") shall be furnished and paid for by Contractor or, if furnished by Authority, shall be paid for by Contractor at Contractor's Own Expense. Upon Final Completion of the Work, Contractor shall remove all temporary distribution systems. If the Work involves an addition to an existing facility, Contractor may, with written permission of Authority, granted or withheld in Authority's sole and absolute discretion, use Authority's existing utilities by making prearranged payments to Authority for utilities used by Contractor. When it is necessary to interrupt any existing utility service to make connections, a minimum of two (2) working days' advance notice shall be given to Authority. Interruptions shall be of the shortest possible duration and shall be scheduled during a time of Day that minimizes its impact on the operations of the existing facility. Any Loss to Authority or Contractor associated with interruption of a utility service as a result of Contractor's breach of, or failure to fully comply with, its obligations under this Paragraph shall be paid for by Contractor at Contractor's Own Expense.

**3.14.4 Sanitary Facilities.** Contractor shall provide sanitary temporary toilet facilities, for the use of all the workers, in no fewer numbers than required by Applicable Laws, plus such additional facilities as may be directed by Authority. Such facilities shall be maintained in a sanitary condition at all times. Use of existing or permanent toilet facilities shall not be permitted except by written consent of Authority.

### **3.15 CLEANING UP**

**3.15.1 Contractor Responsibility.** Contractor at all times shall keep the Site free from debris such as waste, rubbish and excess materials and equipment caused by the performance of the Work. At the end of each Day that Work is performed, Contractor shall not leave debris under, in or about the Site but shall promptly dispose of or remove same from the Site. Without limitation to the other clean up requirements of the Contract Documents, upon Final Completion, Contractor shall: (1) clean the interior and exterior of the buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections and any areas where debris has collected so surfaces are free from foreign material or discoloration; (2) clean and polish all glass, plumbing fixtures, finish hardware and similar finish surfaces and equipment; and (3) remove temporary fencing, barricades, planking, sanitary facilities and similar temporary facilities from the Site.

**3.15.2 Cleanup by Authority.** If Contractor fails upon 24 hours' notice by Authority to perform its obligation to clean up, Authority may arrange to do so, and the cost thereof shall be borne by Contractor at Contractor's Own Expense.

### **3.16 ACCESS TO THE WORK**

**3.16.1 Authority.** Authority, Inspectors of Record, Architect and Authority Consultants, and their representatives, and such other persons as authorized by Authority, shall at all times have access to the Work, either in preparation or in progress. Contractor shall provide safe and proper facilities for such access so that they and their representatives may perform their functions safely.

**3.16.2 Separate Contractors.** Authority, using its own forces or those of Separate Contractors, may, at any time during the performance of the Work, enter the Site for the purpose of performing construction or for any other purpose. Contractor shall cooperate with Authority, Authority's own forces and Separate Contractors and not interfere with other work being done by them or on their behalf.

**3.16.3 Delivery Routes.** Contractor shall arrange for delivery of material over routes designated by Authority.

### **3.17 INTELLECTUAL PROPERTY RIGHTS**

Contractor shall pay all royalties and license fees relating to use of Intellectual Property Rights pertaining to Work performed. Contractor shall defend suits or claims for infringement of Intellectual Property Rights and shall defend, indemnify and hold harmless the Indemnitees from Loss on account thereof in accordance with the terms of Section 3.18, below, unless the infringement is due to a particular design, process, product or product of a particular manufacturer that is required by the Contract Documents; provided, however, that if Contractor has information leading it to believe that the use of a particular design, process or product required by the Contract Documents would constitute an infringement of an Intellectual Property Right, then Contractor shall nonetheless be responsible to provide such defense, indemnification and hold harmless if such information is not promptly furnished in writing to Authority.

### **3.18 INDEMNIFICATION**

**3.18.1 Contractor's Indemnity Obligation.** To the fullest extent permitted by Applicable Laws, Contractor agrees to indemnify, immediately defend at its own expense and hold harmless, Authority, Board of Supervisors, and each of their respective members, officers, employees, agents, insurers and volunteers ("Indemnitee(s)"), through legal counsel reasonably acceptable to Authority, from any and all Losses, whether real or alleged, regardless of whether caused in part by such Indemnitee or its agents, servants or independent contractors who are directly responsible to such Indemnitee, arising out of or relating to any of the following:

- .1** any act or omission of Contractor or a Subcontractor, of any Tier;
- .2** the activities of Contractor or a Subcontractor, of any Tier, on the Site or on other properties related to performance of the Work or the preparation for performance of the Work;
- .3** the payment or nonpayment of any Subcontractor, of any Tier, for the Work performed, except where such nonpayment is the result of a breach by Authority of its payment obligations under the Contract Documents;
- .4** the existence or dispersal of any Hazardous Substances or Mold on the Site as a result of the failure of Contractor or a Subcontractor, of any Tier, to comply with its obligations under the Contract Documents;
- .5** the violation by Contractor or a Subcontractor, of any Tier, of an obligation under Section 3.17, above, involving infringement of an Intellectual Property Right; or
- .6** the violation by Contractor or a Subcontractor, of any Tier, of any Applicable Law, including, without limitation, the violation of any requirement of the State of California General Permit for Storm Water Discharges Associated with Construction Activity and subsequent amendments or orders for construction activities as applicable thereto (including, without limitation, the requirements of a Storm Water Pollution Prevention Plan) or the violation of

any applicable requirement of any local or regional Air Quality Management District (AQMD) (including, without limitation, a violation of any of the requirements set forth in the Authority MOU with AQMD dated January 6, 2004 Agenda Item 3.1 (for projects in the Coachella Valley) or AQMD Rule 403 (for projects west of the Coachella Valley));

PROVIDED, HOWEVER, that nothing contained herein shall be construed as obligating Contractor to indemnify an Indemnatee for Losses resulting from the sole negligence, active negligence or willful misconduct of such Indemnatee or its agents, servants or independent contractors who are directly responsible to such Indemnatee or from a defect in design furnished by such Indemnatee, where such sole negligence, active negligence, willful misconduct or design defect has been determined by agreement of Contractor and that Indemnatee or has been adjudged by the final and binding findings of a court or arbitrator of competent jurisdiction. In instances where the active negligence or willful misconduct of an Indemnatee or its agents, servants or independent contractors who are directly responsible to such Indemnatee or a defect in a design furnished by such an Indemnatee accounts for only a portion or percentage of the Loss involved, the obligation of Contractor will be for that portion or percentage of the Loss not due to such active negligence, willful misconduct or design defect.

**3.18.2 Indemnification of Adjacent Property Owners.** In the event Contractor enters into an agreement with the owners of any adjacent property to enter upon such property for the purpose of performing the Work or other activities incidental to the Work, Contractor shall fully indemnify, defend and hold harmless any person or entity which owns or has any interest in such adjacent property against any Loss resulting from the acts or omissions of the Contractor or its Subcontractors. The form and content of such indemnification agreement shall be approved by Authority prior to commencement of any Work on or around such property.

**3.18.3 Insurance and Employment Benefits.** The indemnification, defense and hold harmless obligations of Contractor under this Section 3.18, as well as any such obligations stated elsewhere in the Contract Documents: (1) shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which any Indemnatee, Contractor or any Subcontractor carries or is required to carry under the terms of the Contract Documents; (2) is independent of and in addition to the Indemnitees' rights under the insurance to be provided by an Indemnatee, Contractor or any Subcontractor; and (3) shall not be limited, in the event of a claim against an Indemnatee by an employee of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or Subcontractor under any worker's compensation act, disability benefit act or other employee benefit program.

**3.18.4 Subcontractor Indemnity Agreements.** Contractor agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Section 3.18 from each and every Subcontractor, of every Tier.

**3.18.5 Implied Indemnity Rights.** Notwithstanding anything stated in this Section 3.18 or elsewhere in the Contract Documents to the contrary, an Indemnatee's right to seek equitable indemnity and contribution from Contractor is in no way diminished, limited or precluded by any agreement by Contractor to provide express contractual indemnity to such Indemnatee. Contractor's obligations under this Section 3.18 shall be deemed to completely eliminate and preclude any right by Contractor to seek contractual or equitable indemnity or contribution from any Indemnatee for any Loss covered by the Contractor's express indemnification obligations under this Section 3.18.

**3.18.6 Obligation to Defend.** The Contractor's obligation to defend under this Section 3.18 includes, without limitation, the obligation to immediately reimburse an Indemnatee for any attorney's fees, court costs (statutory and non-statutory), arbitration and mediation expenses, professional, expert and consultant fees, investigative costs, postage costs, document copying costs, telecopy costs and any and all other costs and expenses associated with defense of such Indemnatee as and when incurred by any Indemnatee in defense of a claim by any third person or entity as a result of Contractor's failure or refusal to comply with its immediate defense obligation to such Indemnatee. Nothing stated in this Section 3.18 or elsewhere in the Contract Documents shall be interpreted as providing or implying that the obligation of Contractor to defend an Indemnatee against an alleged Loss that is within the scope of the Contractor's indemnification obligation under this Section 3.18 or under any other provision of the Contract Documents is to any extent released, excused, limited or relieved by a finding, determination, award or judgment by a court or arbitrator that the alleged Loss was due to circumstances not within the scope of such indemnification obligation.

### 3.19 LABOR, WAGES, PAYROLL RECORDS

**3.19.1 Public Work.** This Work is a "public work" as defined in Labor Code §1720 and must be performed in accordance with the requirements of Labor Code §§1720 to 1850 and Title 8 California Code of Regulations §§16000 to 17270, which govern the payment of prevailing wage rates on public works projects.

**3.19.2 Prevailing Wage Rates.** Pursuant to the provisions of Article 2 (commencing at §1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime Work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to execute the Work from the Director of the Department of Industrial Relations. These rates are on file with Authority and copies will be made available to any interested party on request. Contractor shall post a copy of such wage rates at the Site. The adoption of such wage rates is not a representation that labor can be obtained at these rates. It is the responsibility of Contractor to inform itself as to the local labor conditions. Holiday and overtime Work, when permitted by Applicable Laws, shall be paid for at a rate of at least one and one-half times the adopted 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.

**3.19.3 Unclassified Workers.** Any worker employed to perform the Work not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director of the Department of Industrial Relations shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the Work to be performed by him/her, and such minimum wage rate shall be retroactive to time of initial employment of such person on the Project in such classification.

**3.19.4 Per Diem Wages.** Contractor shall pay or shall cause to be paid each worker engaged in the Work not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between Contractor or any of the Subcontractors and such workers. Pursuant to California Labor Code §1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay.

**3.19.5 Applicable Laws.** Contractor represents and warrants that the Contractor's Bid and the Contract Price includes funds sufficient to allow Contractor to comply with all Applicable Laws governing the labor or services to be provided. Contractor shall defend and indemnify the Indemnitees in accordance with Section 3.18, above, for any violation of any Applicable Law, including but not limited to California Labor Code §2810, and agrees to pay all assessments, including wages and penalties, made against Authority in relation to such violations.

**3.19.6 Posting at Site.** Contractor shall post at appropriate conspicuous points on the Site the prevailing wage rates of the Department of Industrial Relations in accordance with 8 California Code of Regulations 16100(b).

**3.19.7 Worker Hours.** As provided in Article 3 (commencing at §1810), Chapter 1, Part 7, Division 2 of the California Labor Code, eight (8) hours of labor shall constitute a legal day's work. The standard work day of any worker employed at any time by Contractor or any of the Subcontractors performing the Work, or any part of the Work, shall, except as hereinafter provided, be limited and restricted by Contractor to eight (8) hours per day, between the hours of 6:00 A.M. and 6:00 P.M. (unless otherwise required by Applicable Laws), plus one-half hour unpaid lunch approximately midway through the shift, provided that Contractor or any of the Subcontractors may establish a four day/ten-hour schedule consistent with Applicable Laws pertaining to payment of prevailing wages and the provisions any applicable collective bargaining agreement. A regular-work week shall constitute forty (40) hours during any one week. Notwithstanding the provisions hereinabove set forth, the parties hereto may agree to changes in the work day or the work week as permitted by Applicable Laws, and Contractor and all Subcontractors must pay the appropriate prevailing wage rate for those hours and days worked.

**3.19.8 Overtime.** Overtime work performed by employees of Contractor or any of the Subcontractors shall be compensated according to the applicable general prevailing rate established by the Department of Industrial Relations for holiday and overtime work for each craft, classification or type of worker in the locality in which the Work is to be performed.

**3.19.9 Payroll Records.** It shall be the sole responsibility of Contractor to ensure compliance with the provisions of Applicable Laws and the Contract Documents relating to maintenance and submission of payroll records.

Pursuant to the provisions of California Labor Code §1776, Contractor shall keep, and shall cause each Subcontractor performing any portion of the Work to keep, accurate certified payroll records, showing the name, address, social security number, worker classification and 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 Contractor in connection with the Work. Certified payroll records must be in the payroll reporting format prescribed by the Division of Labor Standards Enforcement. If there is no work by Contractor or a Subcontractor in a given week, Contractor must keep and submit a certified "Nonperformance" payroll record, indicating "no work" for that week. Contractor shall submit all certified payroll records to Authority in complete, unredacted form with an original signature on the Statement of Compliance, along with, and as a condition to, its Applications for Payment. Additionally, payroll records shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

.1 a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request;

.2 a certified copy of all such payroll records shall be made available for inspection or furnished upon request to Authority, the Division of Labor Standards Enforcement and/or the Division of Apprenticeship Standards of the Department of Industrial Relations or such other person or entity as designated by Authority;

.3 a certified copy of all such payroll records shall be made available upon request by the public for inspection or the copying thereof, provided that (1) such request is made by the public through either Authority, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the Department of Industrial Relations, (2) such requested payroll records have not previously been provided pursuant to Subparagraph 3.19.9.2, above, then the requesting individual or entity shall, prior to being provided the records, reimburse the costs of preparation by Contractor, the Subcontractors and the entity through which the request was made, and (3) the public shall not be given access to records at the principal office of Contractor;

.4 Contractor and each Subcontractor shall within ten (10) Days after receipt of a written request file a certified copy of such payroll records with the person or entity that requested the records;

.5 Contractor shall provide, and shall cause each Subcontractor to provide, payroll records as defined in Title 8 California Code of Regulations §16000 to Authority within ten (10) Days after receipt of written request, at no cost to Authority;

.6 any copy of such payroll records made available for inspection by, and copies furnished to, the public shall be redacted in a manner so as to prevent disclosure of an individual's name, address, and social security number, except that any copy made available for inspection by, and copies furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Section 175a) shall be marked or redacted only to prevent disclosure of an individual's name and social security number, and in either event, the name and address of Contractor or the Subcontractor performing the Work shall not be so obliterated; and

.7 any copy made available to an agency included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonr copies of certified payroll records;

.8 Contractor shall inform Authority concurrently with the submission of its initial Application for Payment, of the location of such payroll records, including the street address, city and Authority, and thereafter shall, within five (5) working days, provide a notice of any change of location and address of such payroll records.

**3.19.10 Apprentices.** Contractor acknowledges that, even if performance of the Work involves a dollar amount greater than or a number of working days greater than that specified in California Labor Code §1777.5, it shall be the sole responsibility of Contractor, for all apprentice occupations, to ensure compliance with California Labor Code §1777.5, including, without limitation, the following provisions:

.1 Apprentices of any crafts or trades may be employed and, when required by California Labor Code §1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the California Labor Code.

.2 Every such apprentice shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

.3 Only apprentices, as defined in California Labor Code §3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at §3070), Division 3 of the California Labor Code, are eligible to be employed at the apprentice wage rate on Public Works. The employment and training of each apprentice shall be in accordance with either: (1) the apprenticeship standards and apprentice agreements under which he or she is training, or (2) the rules and regulations of the California Apprenticeship Council.

.4 Contractor and any of the Subcontractors employing workers in any apprenticeable craft or trade in performing any of the Work shall apply to the applicable joint apprenticeship committee for a certificate approving Contractor or the Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

.5 Prior to commencing the Work, Contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the Site of the Work. The information submitted shall include an estimate of journeyman hours to be performed under the Construction Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to Authority if requested by Authority.

.6 The ratio of the Work performed by apprentices to journeymen employed in a particular craft or trade on the Work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates, where Contractor or the Subcontractor agrees to be bound by those standards, but, except as otherwise provided in this Paragraph, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of journeyman work. Apprentices may comprise up to thirty percent (30%) of the work force of each particular craft, classification or type of worker employed, unless the applicable joint apprenticeship committee establishes a lower percentage. To the extent possible, fifty percent (50%) of the apprentice work force shall consist of first-year apprentices.

.7 The interpretation and enforcement of California Labor Code §1777.5 shall be in accordance with the rules and procedures of the California Apprenticeship Council.

.8 Contractor and all the Subcontractors shall comply with California Labor Code §1777.6, which forbids certain discriminatory practices in the employment of apprentices.

.9 Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work, paying special attention to California Labor Code §§1777.5, 1777.6, and 1777.7 and Title 8, California Code of Regulations, §§200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California.

**3.19.11 Pre-Construction Meetings, Interviews.** Contractor shall attend any pre-construction meetings held by Authority to discuss labor requirements. Contractor and the Subcontractors shall allow Authority, Authority Consultants and the Department of Industrial Relations, and designated representatives of each, to conduct, at their discretion, interviews of workers at the Site during working hours.

#### **3.19.12 Penalties for Violations.**

.1 **Prevailing Wage Violations.** Pursuant to California Labor Code §1775, Contractor and any of the Subcontractors shall, as a penalty, pay an amount not to exceed Two Hundred Dollars (\$200) for each Day, or portion thereof, for each worker paid less than the prevailing rates, determined by the Director of the Department of Industrial Relations, for the trade or craft in which such worker is employed by Contractor or, except as provided by said §1775, by any of the Subcontractors, of any Tier, for performance of the Work. The amount of this penalty shall be determined by the Labor Commissioner and shall be based on consideration of both: (1) whether the failure of Contractor or the Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, whether the error was promptly and voluntarily corrected upon being brought to the attention of Contractor or the Subcontractor; and (2) whether Contractor or the Subcontractor has a prior record of failing to meet its prevailing wage obligations.



The difference between the amount owed to each worker pursuant to such prevailing wage rates, and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

**.2 Working Hour Violations.** Pursuant to Labor Code §1813, Contractor shall pay a penalty of Twenty-Five Dollars (\$25) per worker employed in the performance of the Work by Contractor or by any of the Subcontractors for each Day during which such worker is required or permitted to work more than eight (8) hours in any Day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at §1810), Chapter 1, Part 7, Division 2 of the California Labor Code.

**.3 Payroll Record Violations.** Pursuant to California Labor Code §1776, Contractor shall in the event of a failure to comply within ten (10) Days with any written notice requesting the records enumerated in subdivision (a) of said §1776, pay a penalty of One Hundred Dollars (\$100) for each Day, or portion thereof, for each worker, until Contractor has strictly complied with such request. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

**.4 Apprenticeship Violations.** Pursuant to California Labor Code §1777.7, if Contractor or the Subcontractor is determined by the Chief of the Division of Apprenticeship Standards (the "Chief") to have knowingly committed a first-time violation of California Labor Code §1777.5, Contractor or the Subcontractor shall pay, as a civil penalty, an amount not exceeding One Hundred Dollars (\$100) for each full Day of noncompliance, provided that the amount of this penalty may be reduced by the Chief if the penalty would be disproportionate to the severity of the violation. In lieu of this penalty, the Chief may, for a first-time violation and with the concurrence of the joint apprenticeship committee, order Contractor or the Subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance. If such violation by Contractor or the Subcontractor is a second or subsequent violation committed within a three (3) year period from a previous violation of §1777.5, Contractor or the Subcontractor shall pay, as a civil penalty, to Authority the sum of not more than Three Hundred Dollars (\$300) for each full Day of noncompliance. Authority shall withhold the amount of the civil penalty from contract progress payments then due or to become due. In addition, if Contractor or the Subcontractor is determined to have knowingly committed a serious violation of any provision of §1777.5, the Chief may deny to Contractor or the Subcontractor, and to its responsible officers, the right to bid on or be awarded a contract to perform work as a subcontractor on any subsequent project for Authority for a period of up to one (1) year for the first violation and for a period of up to three (3) years for a second or subsequent violation.

**3.19.13 Subcontractor Provisions.** Contractor shall include, and shall require the Subcontractors to include, contractual provisions in all contracts they enter into for the performance of the Work requiring compliance with the provisions of this Section 3.19 at no additional cost.

**3.19.14 Condition of Payment.** Compliance by Contractor with the requirements of this Section 3.19 and each of its Paragraphs shall be a condition to Contractor's right to payment under its Applications for Payment. Without limitation to the foregoing, payments to Contractor shall not be made when payroll records are delinquent or inadequate.

## **3.20 LABOR CODE §2810**

**3.20.1 Application.** The provisions of this Section 3.20 apply only if the Contractor has not executed a collective bargaining agreement covering the workers who will be employed to perform the Work.

**3.20.2 Declaration by Contractor.** If a Declaration of Sufficiency of Funds has not been submitted by Contractor as a Post-Award Submittal, then it must be submitted prior to Award. In executing the Construction Contract, Contractor warrants and represents that all of the statements contained in its Declaration of Sufficiency of Funds remain true and correct as of the date of execution of the Construction Contract and may be relied upon by Authority in determining whether there appears to be sufficient funds in the Contractor's Bid to allow the Contractor to comply with all Applicable Laws governing the labor or services to be provided for the performance of the Work. The truth and accuracy of the statements contained in said Declaration and in this Paragraph 3.20.2 constitute a material part of the Contractor's consideration for, and a material inducement to the Authority's entering into, the Construction Contract.

**3.20.3 Continuing Duty.** To the extent that any of the information provided in the Declaration of Sufficiency of Funds submitted by Contractor relating to numbers of workers or independent contractors that will be employed or

utilized for performance of the Work was or is based upon a best estimate, rather than actual figures or information, then the Contractor assumes the continuing duty to the Authority to ascertain the actual figures and information requested in the Declaration of Sufficiency of Funds and to provide such actual figures and information to the Authority in the form of a revised and updated Declaration of Sufficiency of Funds once the actual figures and information become known.

### 3.21 URBAN RUNOFF AND STORM WATER COMPLIANCE

**3.21.1 Contractor's Responsibility.** If and to the extent storm water permitting, control, mitigation or discharge control is required by Applicable Laws, the Contractor shall: (1) prior to starting any Work at the Site, sign and implement the Storm Water Management Plans or Storm Water Pollution Prevention Plans as previously prepared by the Authority's Consultant for civil engineering or by others; (2) take all necessary steps to monitor, report, enforce and otherwise implement and comply with the requirements of the Storm Water Permit, Storm Water Management Plans and Storm Water Pollution Prevention Plans and all Applicable Laws pertaining to the elimination or mitigation of storm water pollutant discharge to separate storm sewer systems or other watercourses, including without limitation, applicable requirements of the State Water Resources Control Board, Santa Ana, San Diego, and/or Colorado Region Water Quality Control Boards and municipal storm water management programs; (3) adhere to and implement the Special Provisions for Urban Runoff and Water Pollution Control set forth in the Specifications; and (4) ensure that the Work is constructed in conformance with those post-construction best management practices (BMPs) identified within the project-specific Water Quality Management Plan (WQMP).

**3.21.2 Inspections, Reports.** Contractor shall immediately notify the person identified to Contractor as the Authority's "project manager" for the Project of all inspections by Government Authorities (including, but not limited to, any regional board staff) and, if practicable, arrange for participation by such Governmental Authorities in any other pertinent inspections conducted at the Site. Contractor shall provide to Authority copies of all reports and monitoring information related to the matters covered by this Section 3.21.

**3.21.3 Violations.** The Contractor recognizes and understands that failure to comply with the requirements of any applicable storm water-related permit issued by the State of California of the United States pursuant to the Clean Water Act (Title 33 U.S.C. §§ 1251 et seq) and/or the Porter Cologne Water Quality Control Act (California Water Code §§13000 et seq.) is a violation of Applicable Laws. Contractor shall be responsible for all Losses and for any liability (including, without limitation, fines, penalties and other administrative liabilities and costs) imposed by Applicable Laws as a result of the Contractor's failure to comply with Applicable Laws, including, without limitation, the requirements of this Section 3.21.

**3.21.4 Condition of Payment.** Compliance by the Contractor with the requirements of this Section 3.21 shall be a condition to the Contractor's right to payment under its Applications for Payment.

**3.21.5 Costs of Compliance.** The Contractor represents and warrants that it has included in its Bid all costs of compliance with the requirements of this Section 3.21.

### 3.22 SOLID WASTE MANAGEMENT

Contractor shall comply with all provisions of Applicable Laws (including, without limitation, the requirements of the California Public Resources Code, rules and regulations of the California Integrated Waste Management Board and provisions of any Site-specific plans adopted by Authority) that are applicable to the activities of contractors performing construction or related activities on the Site. Compliance by Contractor with the requirements of this Section 3.22 shall be a condition to Contractor's right to payment under its Applications for Payment.

### 3.23 CEQA COMPLIANCE

No Work that is subject to California Environmental Quality Act (CEQA) shall proceed by Contractor until Contract Documents satisfying the CEQA process are reviewed and approved by the Authority. Contractor shall comply with all applicable CEQA requirements. If there is a federal nexus (e.g. a source of federal funding) to the Project, compliance by Contractor with the National Environmental Policy Act (NEPA) will be required in addition to and in conjunction with compliance with requirements of CEQA. The Contractor shall comply with the conditions identified on the Plans and

Specifications for compliance with the California Environmental Quality Act, including, without limitation, all requirements pertaining to Mitigation, Monitoring, and Reporting Program (MMRP).

### 3.24 AQMD COMPLIANCE

Contractor is responsible for full and complete compliance with, as applicable: (1) AQMD Rule 403.1, Authority Ordinance 742, the Authority MOU with AQMD dated January 6, 2004 Agenda Item 3.1 (for projects in the Coachella Valley); or (2) AQMD Rule 403 (for projects west of the Coachella Valley). Any fines imposed by AQMD on the Authority, as well as any other Loss to Authority, as a result of non-compliance by Contractor with the applicable provisions of the foregoing requirements are the responsibility of Contractor and upon request by Authority will be paid to Authority by Contractor or may be withheld by Authority from amounts due to Contractor under its Applications for Payment.

## ARTICLE 4 CONSTRUCTION ADMINISTRATION

### 4.1 ARCHITECT

**4.1.1 Scope of Authority.** The Architect shall have the authority to act on behalf of Authority only as expressly provided in the Contract Documents and subject to such limitations on authority as set forth in Paragraph 4.1.2, below. As clarification of the foregoing, if the Contract Documents provide that the Architect has the right to approve of, consent to or direct that Contractor take or forbear from taking an action, such authority shall be limited to issuing such approval, consent or direction and shall not include, or be interpreted to include, authority to bind Authority with respect to any of the matters set forth in Paragraph 4.1.2, below. If Contractor's compliance with such approval, consent or direction of the Architect would involve or require authorization by Authority within the scope of the matters set forth in Paragraph 4.1.2, below, Contractor has the obligation, in addition to complying with the Architect's approval, consent or direction, to take steps in accordance with the Contract Documents to obtain such authorization of Authority as may be required and failing to do so shall not have any right to recourse or recovery from Authority on account of Contractor's action taken or Work performed in response to such approval, consent or direction by Architect.

**4.1.2 Limitations on Authority.** Without limitation to the other limitations on the Architect's authority expressed or implied under Paragraph 4.1.1, above, and notwithstanding anything else set forth in the Contract Documents to the contrary, Architect does not have authority to: (1) obligate or commit Authority to any payment of money; (2) obligate Authority to any adjustment to the Contract Price or Contract Time; (3) relieve Contractor of any of its obligations under the Contract Documents; (4) approve or order any Work involving Delay or Extra Work; or (5) perform any act, make any decision or give any direction or approval that is described in these General Conditions as an act, decision, direction or approval that is to be performed, made or given by any person or entity other than Architect.

**4.1.3 Work Stoppage.** Architect's authority includes, without limitation, the authority to stop the Work whenever such stoppage may be necessary, in Architect's opinion, for the proper execution of the Work. Any Work that is stopped or disapproved by order of Architect shall be resumed if and when Authority so directs in writing, with or without the concurrence of the Architect.

**4.1.4 Replacement.** Authority may, in its sole discretion, substitute another person or entity, or add persons or entities, to perform the functions of Architect or to exercise some or all of the authority of Architect provided for in the Contract Documents.

**4.1.5 Authority Rights.** All rights and authority conferred upon Architect under the Contract Documents constitute rights that Authority may, in its sole and absolute discretion, exercise in writing on its own behalf, irrespective of whether the Authority has ordered the removal, replacement or a change in the authority of the Architect.

### 4.2 ADMINISTRATION OF THE CONSTRUCTION CONTRACT

**4.2.1 Observations of the Work.** Architect will visit the Site as appropriate to the stage of the Work to observe the Work in progress. Observations shall be for the purpose of ascertaining the progress of the Work and that the character, scope, quality and detail of construction (including workmanship and materials) comply with the Contract Documents, the Architect's directives, approved Submittals and clarifications issued by Architect. Observations shall be separate from any inspections which may be provided by others.

**4.2.2 Means, Methods.** Construction means, methods, techniques, sequences, procedures and safety precautions and programs in connection with the Work are solely the responsibility of Contractor. Neither Authority nor Architect: (1) has control over or charge of, nor are they responsible for, Contractor or any Subcontractor's construction means, methods, techniques, sequences, procedures, safety precautions or programs in connection with the Work, all of which are, as between Contractor and Authority, solely Contractor's responsibility; (2) is responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents; or (3) has control over, charge of, or responsibility for acts or omissions of Contractor, the Subcontractors or their agents or employees, or of any other persons performing portions of the Work.

**4.2.3 Communications by Contractor.** Authority shall be provided by Contractor with copies of all communications from Contractor or the Subcontractors to Separate Contractors or the Architect. Contractor shall not rely on oral or other non-written communications.

**4.2.4 Review of Applications for Payment.** If requested by Authority, Architect will review and certify all Applications for Payment by Contractor, including Applications for Payment requesting Progress Payments and Final Payment. In such cases, if the Architect and Authority do not concur in respect to the amount to be paid to Contractor, Authority's determination of the amount due will prevail.

**4.2.5 Rejection of the Work.** Architect will have authority to reject Work that does not conform to the Contract Documents and to require additional inspection or testing, in accordance with Article 10, below, whether or not such Work is fabricated, installed or completed. Whenever Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, Architect will have authority to require additional inspection or testing of the Work in accordance with Article 10, below, whether or not such Work is fabricated, installed or completed. Neither Architect's authority to act under this Paragraph 4.2.5 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 Architect to Contractor, the Subcontractors, their agents or employees, or other persons performing any of the Work. Authority shall have the right, notwithstanding a recommendation by the Architect pursuant to this Paragraph 4.2.5 to reject a portion of the Work, to elect to accept the Work rejected by Architect and to direct in writing the manner in which the Work is to be performed and Contractor shall comply therewith.

**4.2.6 Review of Submittals.** Architect and such other Authority Consultants as Architect or Authority determines appropriate will review, approve or take other appropriate action upon the Contractor's Submittals. Such review, approval and other action taken in regard to a Submittal is for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents and is not conducted for the purpose of determining the technical accuracy and completeness of the Submittal, checking details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the sole responsibility of Contractor. Actions by Architect and Authority Consultants in connection with review of a Submittal by Contractor will be taken with such promptness as to cause no unreasonable Delay in the Work of Contractor or in the activities of the Separate Contractors or Authority, while allowing sufficient time in their judgments to permit adequate review. Whether or not Authority has identified a particular Submittal for review by Architect or a Authority Consultant, Contractor shall in all cases submit Submittals sufficiently in advance to allow time to permit adequate review by Architect and other Authority Consultants. Neither Architect's nor any Authority Consultant's review of a Submittal shall: (1) relieve Contractor of its obligations under Section 3.11, above; (2) constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect or Authority Consultant at the time such Submittal is returned to Contractor; (3) be construed as an approval of any construction means, methods, techniques, sequences or procedures; and (4) if it involves review or approval of a specific item, be construed as indicating approval of an assembly of which such item is a component.

**4.2.7 Changes.** After consultation with the Architect, Authority will prepare the Change Orders, Unilateral Change Orders and Construction Change Directives for execution and take appropriate action thereon in accordance with Article 7, below.

## **4.3 CLAIMS**

**4.3.1 Submission of Claims.** All Claims by Contractor shall be submitted in accordance with the procedures set forth in this Section 4.3.

#### 4.3.2 Arising of Claim.

.1 **Changes.** A Claim by Contractor involving a Contract Adjustment due to a Compensable Change or Deleted Work arises upon issuance of a decision denying, in whole or in part, Contractor's Change Order Request. Such Claim shall be prepared and submitted in accordance with the requirements of this Section 4.3, including, without limitation, Paragraphs 4.3.3 through 4.3.5, below.

.2 **Other Claims.** Claims by Contractor other than those described in Subparagraph 4.3.2.1, above, arise at the time that Authority receives written notice by Contractor of Contractor's intent to file the Claim. Such notice of intent shall be given no later than five (5) Days after the Discovery Date relative to such circumstances (even if Contractor has not yet experienced a Loss or Delay due to such circumstances) and shall state the event or condition giving rise to the Claim and its probable effect, if any, upon the Contract Price and Contract Time. **FAILURE BY CONTRACTOR TO SUBMIT A NOTICE OF INTENT TO FILE CLAIM IN ACCORDANCE WITH THIS SUBPARAGRAPH 4.3.2.2 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO FURTHER RECOURSE OR RECOVERY UPON SUCH CLAIM.**

4.3.3 **Content of Claims.** A Claim must include the following:

- .1 a statement that it is a Claim and a request for a decision on the Claim;
- .2 a detailed description of the act, error, omission, unforeseen condition, event or other circumstance giving rise to the Claim;
- .3 supporting documentation as follows: (1) if the Claim involves a Contract Adjustment due to Compensable Change or Deleted Work, documentation demonstrating that a complete Notice of Change and Change Order Request were timely and properly submitted as required by Article 7, below; (2) if the Claim involves an adjustment to the Contract Time, documentation demonstrating that a complete Notice of Delay and Request for Extension were timely and properly submitted as required by Article 7 and Article 8, below; and (3) if the Claim does not involve a Contract Adjustment on the basis of Compensable Change or Deleted Work, documentation demonstrating that a notice of intent to file the Claim was timely and properly submitted as required by Subparagraph 4.3.2.2, above;
- .4 a detailed justification for any remedy or relief sought by the Claim, including, without limitation, all of the following: (1) a detailed cost breakdown in the form required for submittal of Change Order Requests, which complies with the prohibition on "total cost" calculations set forth in Paragraph 7.7.15, below; and (2) job cost records substantiating the actual costs that have been incurred; and
- .5 a written certification, signed by a responsible managing officer or principal of Contractor's organization who has the authority to sign contracts on behalf of Contractor and who has personally investigated the matters alleged in the Claim, in the following form:

"I hereby certify under penalty of perjury that I am a managing officer or principal of (Contractor) and that I have reviewed the Claim presented herewith on Contractor's behalf and/or on behalf of (Subcontractor(s)) and that the following statements are, to the best of my knowledge after diligent inquiry into the circumstances of such Claim, true and correct:

(i) the facts alleged in or that form the basis for the Claim are true and accurate;

(ii) I do not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading;

(iii) I have, with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by Contractor and by any Subcontractor, of

any Tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the losses or damages alleged to have been suffered by Contractor and/or such Subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim;

(iv) I have, with respect to any request for extension of time or claim of delay, disruption, hindrance or interference alleged in or that forms the basis for the Claim, reviewed the job schedules (including those maintained by Contractor and by any Subcontractor, of any Tier, that is asserting all or any portion of the Claim) and confirmed that the delays or disruption alleged to have been suffered by Contractor and/or such Subcontractor were in fact experienced for the durations, in the manner, and with the consequent effects on the time and/or sequence of performance of the Work, as alleged in the Claim; and,

(v) Contractor has not received payment from Authority for, nor has Contractor previously released Authority from, any portion of the Claim.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

**4.3.4 Noncompliance.** Failure by Contractor to comply with Paragraph 4.3.3, above, shall give Authority the right, without obligation, to deny the Claim or return the Claim without any response.

**4.3.5 Submission of Claims.**

**.1 Time for Filing.** All Claims and supporting documentation and certifications required to be submitted by Contractor must be submitted to the Authority within thirty (30) Days after the Claim arises (as "arises" is defined in Paragraph 4.3.2, above). No Claims by Contractor are permitted after Final Payment.

**.2 Manner of Filing.** A Claim shall be submitted by registered or certified mail, return receipt requested.

**.3 Condition Precedent.** Contractor's strict compliance with the requirements of this Section 4.3 as to a Claim shall be considered a condition precedent to Contractor's right to initiate or seek determination of its rights in any legal proceedings with respect to such Claim.

**4.3.6 Response to Claims by Contractor.**

**.1 Claims Response.** Authority shall provide a reasonable review and issue a written Good Faith Determination within forty-five (45) Days of receipt of the Claim, unless Authority and Contractor have by mutual agreement extended the time period. The written Good Faith Determination shall identify which portion of the Claim is disputed by Authority and which portion is undisputed.

**.2 Meeting with Board.** If Authority should need to submit and gain approval of the Board of Supervisors prior to providing the Contractor the written statement identifying the undisputed and disputed portions of the Claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed time extension, Authority shall have three (3) days following the next duly publicly noticed meeting of the Board of

Supervisors after the forty-five (45) day period, or agreed extension, to provide Contractor a written statement identifying the disputed portion and undisputed portion of the Claim.

**.3 Payments on Undisputed Portion(s).** Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after Authority issues its written statement. Amounts not paid in a timely manner shall bear interest at 7 percent per annum.

**.4 Failure of Authority to Respond.** If Authority should fail to respond to a Claim from Contractor within the time periods set forth in this 4.3.6 or otherwise meet the time requirements, the Claim shall be deemed rejected in its entirety. A Claim that is denied by reasons of Authority's failure to have responded to the Claim, or its failure to otherwise meet the requirements of Public Contract Code §9204, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.

#### **4.3.7 Meet and Confer.**

**.1 Dispute by Contractor.** If Contractor disputes Authority's Good Faith Determination and written response of a Claim by Contractor, or if Authority fails to respond within the prescribed time set forth herein, the Contractor may demand, in writing sent by registered or certified mail return receipt requested, an informal conference to meet and confer for settlement of the issues still in dispute. Upon receipt of such demand, Authority shall schedule a meet and confer conference within thirty (30) Days.

**.2 Conclusion of Meet and Confer.** Within ten (10) business days following conclusion of the meet and confer conference, if the Claim or any portion thereof remains in dispute, Authority shall provide the Contractor with a written statement identifying the portion of the Claim still in dispute and the portion that is undisputed. Any payment due on the undisputed portion shall be processed and made within sixty (60) days after such written statement is issued. Amounts not paid in a timely manner shall bear interest at 7 percent per annum.

**.3 Mediation.** Any disputed portion of the Claim as identified by the Contractor in writing, shall be submitted to non-binding mediation with the Authority and Contractor sharing the associated costs equally. The Authority and Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing. 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. Mediation includes any non-binding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assist the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

**.4** If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this section.

#### **4.3.8 Subcontractor Claims.**

**.1 Subcontractor Claim.** If a subcontractor or lower tier subcontractor has a claim against the Authority, the Contractor may present to the Authority a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the subcontractor or a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the Authority shall furnish reasonable documentation to support the claim.

**.2 Contractor Response.** Within forty five (45) days of receipt of the written request by the subcontractor, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the Authority and, if the Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

#### **4.3.9 Claims Based on Differing Site Conditions.**

**.1 Contractor Responsibility.** Save and except as hereinafter provided in this Paragraph 4.3.9 for Contract Adjustments due to Differing Site Conditions, Contractor agrees at Contractor's Own Expense to assume the risk and costs of Extra Work and Delay due to concealed or unknown conditions, surface or subsurface, at the Site or in Existing Improvements.

**.2 Differing Site Conditions.** Differing Site Conditions are those conditions at the Site or in Existing Improvements and not otherwise reasonably ascertainable by Contractor in the performance of its obligations under the Contract Documents (including, without limitation, conditions not reasonably ascertainable by Contractor from documents or information described in Paragraph 3.2.1, above, that were provided or available to Contractor for its review prior to the Bid Closing Deadline) that constitute: (1) hazardous materials that constitute hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of Applicable Laws; (2) subsurface or concealed conditions at the Site or concealed conditions in Existing Improvements which differ materially from those indicated by the Contract Documents or other information that was either reviewed by Contractor or that Contractor was given the opportunity to review prior to the Bid Closing Deadline; or (3) unknown physical conditions at the Site or concealed conditions in Existing Improvements of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

**.3 Notice of Change.** If Contractor encounters conditions it believes constitute Differing Site Conditions, then Contractor shall, before such conditions are disturbed, give Notice of Change as required by Paragraph 7.6.1, below, stating, without limitation, a detailed description and precise location of the conditions encountered.

**.4 Investigation by Authority.** Upon receipt of notice from Contractor as required by Subparagraph 4.3.9.3, above, Authority shall promptly investigate Contractor's report of Differing Site Conditions.

**.5 Change Order Request.** If Contractor intends to seek a Contract Adjustment based upon Differing Site Conditions, it shall submit a complete and timely Change Order Request in accordance with Paragraph 7.6.2, below, setting forth its request for a Contract Adjustment.

**.6 Contract Adjustments.** If, following Contractor's compliance with its obligations under this Paragraph 4.3.9, Authority finds that Differing Site Conditions exist, then, unless the Contractor's right to Contract Adjustment has been waived as pursuant to Paragraph 3.2.3, above, a Contract Adjustment shall be made for the resulting Compensable Change and Compensable Delay, in such amount and duration as Authority determines by issuance of a Good Faith Determination are reasonable and permitted by these General Conditions.

#### **.7 WAIVER BY CONTRACTOR.**

**FAILURE BY CONTRACTOR TO STRICTLY COMPLY WITH THE REQUIREMENTS OF THIS PARAGRAPH 4.3.9 PERTAINING TO CONTRACT ADJUSTMENT BASED ON A CLAIM FOR DIFFERING SITE CONDITIONS SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO FURTHER RECOURSE OR RECOVERY UPON SUCH CLAIM.**

**.8 Final Completion.** No claim by Contractor for additional compensation for Differing Site Conditions shall be allowed if asserted after Final Payment.

**4.3.10 Continuous Work.** Contractor shall, notwithstanding the existence of a Claim by Contractor that is disputed by Authority, maintain continuous performance, without interruption, suspension or slowing, of the Work and its other obligations (1) pending issuance by Authority of a Good Faith Determination of the Claim and (2) thereafter in compliance with the terms of such Good Faith Determination.

#### **4.4 NOTICE OF THIRD-PARTY CLAIMS**

Authority shall provide notification to Contractor within a reasonable time after receipt of any third-party claim relating to the Construction Contract. Authority shall be entitled to recover from Contractor its reasonable costs of providing such notification.



#### 4.5 WAIVERS OF RIGHTS BY CONTRACTOR

**AUTHORITY AND CONTRACTOR ACKNOWLEDGE THAT IT IS IN THE INTERESTS OF BOTH PARTIES THAT CHANGES, DELAYS AND CLAIMS BE IDENTIFIED, QUANTIFIED, EVALUATED AND FINALLY RESOLVED PROMPTLY, CONTEMPORANEOUSLY WITH THE CIRCUMSTANCES FROM WHICH THEY ARISE, AND THAT THERE BE CERTAINTY WITH RESPECT TO THE FINALITY OF ANY RESOLUTION OF RELATED DISPUTES. ON THOSE PREMISES, AND IN FURTHER RECOGNITION OF THE FACT THAT IT WOULD BE EXREMELY DIFFICULT OR IMPOSSIBLE TO QUANTIFY, DEMONSTRATE OR PROVE THE HARM TO AUTHORITY IF ANY OF THE FOREGOING PREMISES IS NOT ACHIEVED DUE TO A FAILURE BY CONTRACTOR TO COMPLY WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS CONCERNING TIMELY NOTICE OR SUBMISSIONS OF NOTICES AND CLAIMS RELATING TO CHANGES, DELAY AND CONTRACT ADJUSTMENTS, AUTHORITY AND CONTRACTOR AGREE THAT FAILURE BY CONTRACTOR TO CONFORM TO SUCH REQUIREMENTS OF THE CONTRACT DOCUMENTS SHALL IN AND OF ITSELF CONSTITUTE SUFFICIENT CAUSE AND GROUNDS, WITHOUT THE NECESSITY OF AUTHORITY DEMONSTRATING ANY ACTUAL HARM OR PREJUDICE, FOR IMPOSING UPON CONTRACTOR A FULL AND UNCONDITIONAL WAIVER BY CONTRACTOR OF ITS RIGHT TO A CONTRACT ADJUSTMENT AND OF ITS RIGHTS AND RECOURSE FOR RECOVERY OF ANY RELATED LOSS BY ANY LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.**

#### 4.6 GOOD FAITH DETERMINATIONS

Wherever in the Contract Documents it is provided that the Authority may or shall make a determination or decision in the exercise of good faith (including, without limitation, provisions for a Good Faith Determination by Authority), any such determination or decision that the person exercising such right on behalf of Authority believes in good faith to be a proper exercise of Authority's rights and to have a reasonable basis in fact, whether or not such determination is in fact proper, reasonable or correct or adjudged to be so, shall be complied with by Contractor without Delay to Contractor's performance of the Work. However, unless the Contract Documents expressly provides otherwise, neither such good faith determination or decision nor Contractor's compliance therewith shall be interpreted as precluding the Contractor from exercising its rights to seek adjudication of its rights in the manner permitted by these General Conditions or Applicable Laws.

#### 4.7 ESCROW BID DOCUMENTS

If the Bidding Documents obligate Contractor to submit Escrow Bid Documents, then submission by Contractor of its Escrow Bid Documents shall constitute a warranty and representation by Contractor that it has no other written documents or electronic files containing any information that Contractor was required to include, but failed to include, as part of its performing such obligation and Contractor agrees it shall have no right to submit for consideration by Authority, or offer into evidence in legal proceedings, in support of a request for Contract Adjustment or a Claim any such documentation or electronic files that Contractor so failed to include in its Escrow Bid Documents.

### ARTICLE 5 SUBCONTRACTORS

#### 5.1 SUBSTITUTION

**5.1.1 Substitutions Allowed.** There shall be no substitution of or addition to the Subcontractors except as permitted by Chapter 4 (commencing at §4100), Division 2, Part 1 of the California Public Contract Code (the "Act").

**5.1.2 Contractor's Own Expense.** Any increase in the cost or time of performance of the Work resulting from the replacement, substitution or addition of a Subcontractor shall be borne solely by Contractor at Contractor's Own Expense.

**5.1.3 Substantiation of Compliance.** At any time during performance of the Work it shall be the responsibility and burden of Contractor, if requested by Authority, to present clear and convincing evidence that Contractor is, and all times during the bidding and Award of the Construction Contract was, in full compliance with all of the applicable provisions of the Act. Failure by Contractor to present such evidence when requested shall be deemed a breach of this Section 5.1 and of the Act, thereby entitling Authority to exercise any or all of its rights and remedies

under the Contract Document or Applicable Laws, including, without limitation, the right to cancel the Construction Contract or assess any penalties provided for by the Act.

5.1.4 **Splitting Prohibited.** Any attempt by Contractor to avoid compliance with the Act, such as, but not limited to, by splitting the work of subcontracts with Subcontractors into separate contracts or changes orders so as to not exceed the monetary threshold of the Act applicable to listing of Subcontractors, is strictly prohibited.

## 5.2 SUBCONTRACTUAL RELATIONS

5.2.1 **Written Agreements.** Contractor shall, by written agreement entered into between the Contractor and Subcontractors no later than twenty (20) Days after Award, require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents and to assume toward Contractor all the obligations and responsibilities which Contractor, by the Contract Documents, assumes toward Authority and the Architect. Each subcontract agreement shall preserve and protect the rights of Authority and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against Authority. Contractor shall require each first-Tier Subcontractor to enter into similar agreements with their sub-subcontractors. Copies of applicable portions of the Contract Documents shall be made available by Contractor to the first-Tier Subcontractors and each Subcontractor shall similarly make copies of such Contract Documents available to each Subcontractor of a lower-Tier with which it contracts. Without limitation to the foregoing, each contract that is entered into by a Subcontractor, of any Tier, shall, without limitation, require the Subcontractor:

- .1 to perform the Work in accordance with the terms of the Contract Documents;
- .2 to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Authority by the Contract Documents;
- .3 to preserve and protect the rights of Authority under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights;
- .4 to waive all rights (including, without limitation, rights of subrogation) that the Subcontractor or its insurers may have against Authority and others required by the Contract Documents to be named as additional insureds, for Losses covered by insurance carried by Contractor or Authority, except for such rights as the Subcontractor may have to the proceeds of such insurance held by Authority or such other additional insured;
- .5 to afford Authority and entities and agencies designated by Authority the same rights and remedies afforded to them under the Contract Documents with respect to access to, and the right to audit and copy at Authority's cost, all of the Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, memoranda and other records and documents relating to the Work and requiring the Subcontractor to preserve all such records and other items for a period of ten (10) years after Final Completion;
- .6 to recognize the rights of the Authority under Section 5.3, below, including, without limitation, the Authority's right to (1) accept assignment of the Subcontractor's agreement, (2) accept assignment of Contractor's rights as obligee under a performance bond furnished by a first-Tier Subcontractor, (3) to retain the Subcontractor pursuant to the terms of its agreement with Contractor to complete the unperformed obligations under its agreement, and, (4) if requested by the Authority, to require that the Subcontractor execute a written agreement on terms acceptable to the Authority confirming that the Subcontractor is bound to the Authority under the terms of its agreement with Contractor;
- .7 to submit applications for payment, requests for change orders and extensions of time and claims, and to comply with all other notice and submission requirements of the Contract Documents, sufficiently in advance to allow Contractor time to comply with its obligations under the Contract Documents;
- .8 to purchase and maintain insurance in accordance with the requirements of the Contract Documents;

.9 to defend and indemnify the Indemnitees on the same terms as provided in Section 3.18, above;

.10 to comply with the nondiscrimination (Article 16, below) and prevailing wage (Section 3.19, above) provisions of these General Conditions;

.11 limiting the Subcontractor's right to additional compensation or extension of time due to Differing Site Conditions and Design Discrepancies in accordance with the provisions of Section 3.2, above;

.12 to provide for a right of termination for convenience by Contractor that limits the Subcontractor's right to compensation to an allocable share of the subcontract price that corresponds to the percentage of the Work properly performed by the Subcontractor, with no additional sum payable for any other Losses, including, without limitation, prospective damages, lost profits or consequential damages, of any kind; and

.13 to provide that time is of the essence to each of the Subcontractor's obligations.

**5.2.2 Copies.** Contractor shall, upon request by Authority made at any time, furnish to Authority true, complete, and executed copies of all contracts with the Subcontractors and amendments, modifications and change orders thereto. Progress payments shall not be made for items of the Work for which Authority has not received such documents following request therefor by Authority.

**5.2.3 No Brokering.** Contractor shall not permit any portion of the Work to be contracted to a firm acting as a broker, factor or other entity not actually performing a substantial portion of the Work with its own forces; provided, however, that nothing herein shall be interpreted as precluding the right of a Subcontractor who has agreed to provide all of the materials and labor for a trade to subcontract the labor portion only to a sub-subcontractor.

**5.2.4 Third-Party Rights.** Contractor acknowledges that Authority is an intended third-party beneficiary to all contracts between Contractor and its first-Tier Subcontractors. Notwithstanding the foregoing or anything else to the contrary in the Contract Documents, there is no intent on the part of Authority or Contractor to create any rights (including, without limitation, third-party beneficiary rights) in favor of any Subcontractor, of any Tier, against Authority and nothing contained in the Contract Documents and no course of conduct, act or omission on the part of Authority shall be construed as creating a direct or indirect contractual right in favor of any Subcontractor, of any Tier, and against Authority.

**5.2.5 All Subcontractor Tiers.** It is the Contractor's obligation to see to it that all obligations of the Contractor are assumed by (or, "flow down") to the Subcontractors, of every Tier, by the inclusion of contractual provisions requiring each of the Subcontractors, of every Tier, to bind not only themselves but their lower-Tier Subcontractors to the obligations assumed by Contractor under the Contract Documents.

### 5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

**5.3.1 Contingent Assignment.** Contractor hereby contingently assigns to Authority, or to such person or entity as Authority, in its sole and absolute discretion, designates, all of its interest in subcontracts entered into by Contractor with its first-Tier Subcontractors. If a first-Tier Subcontractor has provided a performance bond, then Contractor's rights under such performance bond are likewise hereby deemed contingently assigned to Authority or its designee and provision shall be made in the performance bond for surety's consent to such contingent assignment.

**5.3.2 Acceptance by Authority.** The contingent assignments provided for by this Section 5.3 will be effective only as to those subcontracts and performance bonds which Authority or its designee accepts in writing. Said acceptance is the sole condition upon which the effectiveness of such assignments are contingent. Authority or its designee may accept any such assignment at any time during the course of the Work and prior to Final Completion. Such contingent assignments are part of the consideration to Authority for entering into the Construction Contract with Contractor and may not be withdrawn prior to Final Completion.

**5.3.3 Authority Obligation.** Authority's or its designee's sole obligation in the event it accepts a contingent assignment of a subcontract under this Section 5.3 shall be to pay in accordance with the terms of such subcontract for Work performed after written notice of acceptance of such assignment. In the event Authority directs that such

assignment be made to Authority's designee, then such designee only, and not Authority, shall be solely liable under such assignment for Work performed after written notice of acceptance of such assignment.

#### 5.4 COMMUNICATIONS BY AUTHORITY

Authority shall have the right to communicate, orally or in writing, with the Subcontractors with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Nothing herein shall be interpreted as extending to Authority the right as part of such communications to direct the manner in which any Subcontractor performs the Work. Except as otherwise provided in the Construction Contract or these General Conditions, Contractor shall be provided with a copy of all such communications that are in writing. Such communications shall not create, or be interpreted as creating, any contractual obligation of Authority to any Subcontractor.

#### 5.5 DOCUMENT AVAILABILITY

Contractor shall make available to each proposed Subcontractor with whom it enters into a contract for performance of any portion of the Work, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound so as to ensure that all matters disclosed thereby are taken into consideration and included in the terms of such contracts and shall identify to such Subcontractor the terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. The Subcontractors shall similarly be required to make copies of applicable portions of such documents available to their respective proposed sub-subcontractors or sub-subconsultants.

#### 5.6 NO LIABILITY OF AUTHORITY

Nothing set forth in this Article 5, and no action taken by Authority with respect to review or approval of the Subcontractors or their contracts, shall impose any liability or responsibility upon Authority nor relieve Contractor of its responsibilities under the Contract Documents or Applicable Laws.

### ARTICLE 6 AUTHORITY'S OWN FORCES AND SEPARATE CONTRACTORS

#### 6.1 AUTHORITY'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD SEPARATE CONTRACTS

6.1.1 **Right of Authority.** Authority reserves the right to perform construction or operations related to the Project with Authority's own forces and to award other contracts to Separate Contractors in connection with other portions of the Project or other construction or operations on the Site.

6.1.2 **Separate Contractors.** Contractor shall ascertain to its own satisfaction the scope of the Project and the nature of any other contracts that have been or may be awarded by Authority to Separate Contractors in prosecution of the Project. Contractor shall look solely to such Separate Contractors, and Authority shall not be responsible, for any Losses for which Contractor is not provided a right or recovery by means of a right to Contract Adjustment for Compensable Change or Compensable Delay, that are suffered by Contractor or the Subcontractors, of any Tier, resulting directly or indirectly from the conduct of such work by the Separate Contractors.

6.1.3 **Coordination.** Nothing in the Contract Documents creates or will create any duty on the part of Authority to coordinate the Work of Contractor with the work of Separate Contractors. Contractor shall, when directed to do so by Authority, participate with the Separate Contractors and Authority in reviewing the Separate Contractors' construction schedules. Contractor and Separate Contractors will coordinate all work with the other so as to facilitate the general progress of the Project. Contractor agrees that any recovery of Losses for which Contractor is not provided a right or recovery by means of a right to Contract Adjustment for Compensable Change or Compensable Delay, that are suffered by Contractor due to a failure by a Separate Contractor to coordinate its work with the Work of Contractor will be sought directly against the Separate Contractors as set forth elsewhere in this Article 6.

6.1.4 **Disputes.** Contractor and Authority agree that Separate Contractors in direct contractual privity with Authority are third party beneficiaries of the Contract Documents, but only to the extent of claims and causes of action

against Contractor arising out of or resulting from Contractor's performance or failure of performance under the Contract Documents or any act or omission of Contractor or the Subcontractors causing Loss to such Separate Contractors. Contractor consents to being sued by Separate Contractors for Losses caused by Contractor or any of the Subcontractors. Contractor hereby waives lack of privity of contract with such Separate Contractors as a defense to such actions.

**6.1.5 Remedy.** If Contractor as a result of the acts or omissions of one or more of the Separate Contractors suffers a Loss that is not compensated by means of a right given to Contractor under the Contract Documents to a Contract Adjustment, then Contractor's sole remedy is to assert a claim or cause of action directly against the Separate Contractor(s) causing the Loss and Contractor hereby releases, acquits, holds harmless and forever discharges Authority of and from any and all liability for such Loss.

## **6.2 MUTUAL RESPONSIBILITY**

**6.2.1 Use of Site.** Nothing contained in the Contract Documents shall be interpreted as granting Contractor exclusive use or occupancy of the Site. Contractor shall afford Authority's own forces and the Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Contractor shall not Delay the work of the Separate Contractors or Authority's own forces.

**6.2.2 Adjoining Work.** If part of Contractor's performance of the Work depends for proper execution or results upon construction or operations by Authority's own forces or Separate Contractors, Contractor shall, prior to proceeding with that portion of the Work, carefully inspect such construction and operations and promptly report in writing to the Authority apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Contractor will be responsible, at Contractor's Own Expense, for Losses to Authority resulting from any such discrepancies or defects not reported in accordance with this Paragraph 6.2.1 that were apparent or that should have been apparent to Contractor on careful inspection.

**6.2.3 Damage.** Contractor shall promptly remedy Loss caused by Contractor or its Subcontractors to completed construction or partially completed construction on the Site, or to property of Authority or the Separate Contractors.

**6.2.4 Disputes.** Contractor shall notify the Authority in writing within five (5) Days if it believes it has experienced or is experiencing any Delay or Loss due to the activities of Authority's own forces or the Separate Contractors or in the event of any dispute with Authority's own forces or a Separate Contractor.

**6.2.5 Settlement of Disputes.** If Contractor or any Subcontractor causes a Loss to a Separate Contractor, then Contractor will promptly settle the matter directly with the Separate Contractor and will defend, indemnify and hold Authority and the other Indemnitees harmless from any and all effects of such Loss in accordance with the terms of Section 3.18, above.

## **6.3 ALLOCATION OF CLEANUP COSTS**

If a dispute arises among Contractor, the Separate Contractors and/or Authority as to the responsibility for maintaining the Site and surrounding area free from waste materials and rubbish, Authority may clean up such waste materials and rubbish and allocate the cost among those responsible as Authority determines in good faith to be just.

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

### **7.1 CHANGES**

**7.1.1 General.** Authority is authorized to make Changes in the Work in accordance with the provisions of this Article 7.

**7.1.2 Contract Adjustments.** Contract Adjustments shall only be permitted as follows: (1) the Contract Price shall only be adjusted by means of a Change Order or Unilateral Change Order for Compensable Change, Deleted

Work or Compensable Delay; and (2) the Contract Time shall be adjusted by means of a Change Order or Unilateral Change Order for Excusable Delay, Compensable Delay or Deleted Work. All Contract Adjustments to the Contract Price shall conform, without limitation, to the requirements of this Article 7. All Contract Adjustments to the Contract Time shall conform, without limitation, to the applicable requirements of this Article 7 and Article 8, below.

**7.1.3 Exclusive Rights.** The rights expressly set forth in the Contract Documents for Contract Adjustments constitute Contractor's exclusive rights for additional compensation or extensions of time and are intended to be in lieu of and wholly replace any other such rights and remedies that Contractor has under Applicable Laws for recovery or relief on account of Loss or Delay in connection with performance of the Work, it being the intent of the Authority and Contractor that if circumstances arise for which the Contract Documents do not provide to Contractor an express right to a Contract Adjustment, then such omission of an express right shall conclusively be deemed to mean that no right to a Contract Adjustment was intended; and, consistent with that intent, no right to a Contract Adjustment on account of such circumstances shall by any means, legal or equitable, of interpretation, construction, inference, implication or application be considered, found or adjudged to exist.

**7.1.4 Written Authorization.** Any Change performed by Contractor pursuant to any direction other than a duly authorized and executed Change Order, Unilateral Change Order or Construction Change Directive shall be at Contractor's Own Expense.

**7.1.5 Prompt Performance.** Subject to the procedures set forth in this Article 7 and elsewhere in the Contract Documents, all Changes shall be performed promptly and without Delay.

## **7.2 SIGNATURES AND AUTHORIZATIONS**

**7.2.1 Parties.** A Change Order shall be executed by Authority and Contractor. A Unilateral Change Order shall be executed by the Authority. Construction Change Directives shall be executed in accordance with Section 7.5, below.

**7.2.2 Form.** Change Orders, Unilateral Change Orders and Construction Change Directives shall be executed using forms furnished by Authority or, if requested by Authority, using forms furnished by Contractor that are approved by Authority.

### **7.2.3 Authorization.**

#### **.1 Compensable Changes.**

**(1) Director of Facilities Management.** A Compensable Change shall be performed by Contractor only if authorized by a Change Order, Unilateral Change Order or Construction Change Directive signed by the Director of Facilities Management in accordance with the requirements of this Article 7; provided, however, that the Director of Facilities Management's authority to bind the Authority to a Contract Adjustment shall be subject to the limitations of Public Contract Code §20142.

**(2) Authority's Project Manager.** The person identified by Authority as its "project manager" for the Project shall have the right to exercise the Director of Facilities Management's authority under this Paragraph 7.2.3, but only if and to the extent that such authority is expressly given to such project manager in a writing signed by the Director of Facilities Management (and not by a designee of the Director of Facilities Management).

**(3) Board of Supervisors.** Except as otherwise provided in Subparagraph 7.2.3.1 (4), below, if a Contract Adjustment increasing the Contract Price would exceed the limitations of Public Contract Code §20142, then in addition to written authorization by the Director of Facilities Management, such Compensable Change shall be performed only if approved by a vote of the Board of Supervisors in accordance with the requirements of Applicable Laws.

**(4) Disputed Changes.** If a dispute arises between Authority and Contractor over (a) whether a particular portion of the Work constitutes a Compensable Change or (b) the amount of the Contract Adjustment to which Contractor is entitled on account of a Compensable Change, then, notwithstanding such dispute, the Contractor shall, if ordered to do so in a Construction Change Directive signed by the Director of Facilities

Management, perform the disputed Work without Delay. Such direction by Authority shall not be interpreted as an agreement or admission by Authority that the disputed Change constitutes Extra Work or a Compensable Change for which Contractor is entitled to a Contract Adjustment. Compliance by Contractor with such direction shall not be interpreted as a waiver of Contractor's right to a Contract Adjustment if and to the extent that Contractor is entitled to a Contract Adjustment or Claim under the terms of the Contract Documents, including, without limitation, the right of Contractor to recover upon a Claim for the amount of any excess in the event that it is adjudged that the amount of the Contract Adjustment to which Contractor is entitled exceeds the limits of Public Contract Code §20142.

**.2 WRITING OF ESSENCE. IT IS OF THE ESSENCE TO THE CONSTRUCTION CONTRACT BETWEEN CONTRACTOR AND AUTHORITY THAT ALL CHANGES MUST BE AUTHORIZED IN ADVANCE, IN WRITING, AS REQUIRED BY THIS ARTICLE 7. ACCORDINGLY, NO VERBAL DIRECTIONS, COURSE OF CONDUCT BETWEEN THE PARTIES, EXPRESS OR IMPLIED ACCEPTANCE OF CHANGES OR OF THE WORK, OR CLAIM THAT THE AUTHORITY HAS BEEN UNJUSTLY ENRICHED (WHETHER OR NOT THERE HAS BEEN SUCH ENRICHMENT) SHALL BE THE BASIS FOR A CONTRACT ADJUSTMENT IF CONTRACTOR HAS NOT OBTAINED ADVANCE WRITTEN AUTHORIZATION IN THE MANNER REQUIRED BY THIS ARTICLE 7.**

### **7.3 CHANGE ORDERS**

**7.3.1 Purpose.** The purpose of a Change Order is to establish the terms of the Authority's and Contractor's mutual agreement to a Contract Adjustment.

**7.3.2 Content.** A Change Order is a written instrument, prepared by the Authority, stating:

- .1** a Compensable Change or Deleted Work;
- .2** a Compensable Delay or Excusable Delay;
- .3** the amount of the Contract Adjustment, if any, to the Contract Price; and/or
- .4** the extent of the Contract Adjustment, if any, to the Contract Time.

### **7.4 UNILATERAL CHANGE ORDERS**

**7.4.1 Purpose.** The purpose of a Unilateral Change Order is to establish the Authority's estimate of a disputed Contract Adjustment.

**7.4.2 Good Faith Determination.** The Authority's determination in a Unilateral Change Order of a Contract Adjustment shall be based upon a Good Faith Determination by Authority of the Contract Adjustment that is appropriate under the circumstances and consistent with the terms of the Contract Documents.

**7.4.3 Claim by Contractor.** If Contractor disputes any portion of the Authority's Good Faith Determination of a Contract Adjustment that is set forth in a Unilateral Change Order, Contractor shall file, within thirty (30) Days after issuance of the Unilateral Change Order by Authority, a Claim pursuant to Section 4.3, above. The amount of the Contract Adjustment requested in the Claim shall not exceed the difference between the amount (either in terms of dollar amount or number of Days) of the Contract Adjustment requested by Contractor and the amount (either in terms of dollar amount or number of Days) of the Contract Adjustment granted in the Unilateral Change Order. Contractor shall have no reserved right, and hereby waives any such right that may exist under Applicable Laws, to seek in such Claim a Contract Adjustment or recovery that is based upon any amount (either in terms of dollar amount or number of Days) that is in excess of such difference.

#### **7.4.4 WAIVER BY CONTRACTOR.**

**FAILURE BY CONTRACTOR TO SUBMIT A CLAIM PURSUANT TO SECTION 4.3, ABOVE, WITHIN THIRTY (30) DAYS AFTER ISSUANCE OF A UNILATERAL CHANGE ORDER BY AUTHORITY SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY**

**CONTRACTOR OF THE RIGHT TO FURTHER RECOURSE OR RECOVERY BASED ON AN ASSERTION THAT THE AMOUNT OF THE CONTRACT ADJUSTMENT ON ACCOUNT OF THE CHANGE OR DELAY DESCRIBED IN SUCH UNILATERAL CHANGE ORDER SHOULD BE DIFFERENT THAN THE AMOUNT OF THE AUTHORITY'S GOOD FAITH DETERMINATION OF THE CONTRACT ADJUSTMENT AS SET FORTH IN SUCH UNILATERAL CHANGE ORDER.**

## **7.5 CONSTRUCTION CHANGE DIRECTIVES**

**7.5.1 Purpose.** The purpose of a Construction Change Directive is to: (1) direct the performance of a Change that does not involve a Contract Adjustment; (2) establish a mutually agreed basis for compensation to Contractor for a Compensable Change under circumstances where performance of the Compensable Change needs to proceed in advance of the Authority performing a full evaluation of the Contractor's rights relative to a Contract Adjustment; or (3) direct performance of Work or a Change with respect to which there exists a dispute or question regarding the terms of a Contract Adjustment.

**7.5.2 No Contract Adjustment.** A Construction Change Directive that directs the performance of Work or a Change that does not involve a Contract Adjustment to the Contract Price or Contract Time may be authorized by either the Director of Facilities Management or the Authority's project manager and shall be promptly performed by Contractor so as to not cause Delay to any other portion of the Work. A Construction Change Directive directing performance of a Change that does not contain any statement indicating that a Contract Adjustment is requested or required shall be conclusively presumed to be a Change that is not a Compensable Change and no Contract Adjustment increasing the Contract Price or Contract Time will be made on account thereof.

**7.5.3 Agreed Contract Adjustment.** A Construction Change Directive that contains a complete or partial agreement by the Authority and Contractor with respect to the Contractor's right to, or the amount of, a Contract Adjustment shall be authorized in accordance with, conform to the requirements of and be binding upon Authority and Contractor as provided for in, this Paragraph 7.5.3.

**.1 Complete Agreement.** Each Construction Change Directive involving a Compensable Change or Deleted Work with respect to which there is complete agreement on the terms of the Contract Adjustment shall comply with the following:

**(1) Statement of Agreement.** A statement shall be included that the Authority and Contractor are in agreement on all of the terms of the Contract Adjustment related to performance of such Compensable Change and set forth a full description of the terms of the Contract Adjustment, including, without limitation, its effect on the Contract Price and Contract Time.

**(2) Legal Effect.**

**(a) Upon Contractor.**

**THE AGREED TERMS OF THE CONTRACT ADJUSTMENT WITH RESPECT TO WHICH THERE IS A STATEMENT OF FULL AGREEMENT ON THE TERMS OF THE CONTRACT ADJUSTMENT FOR A CHANGE IN THE WORK SHALL BE FINAL AND BINDING UPON CONTRACTOR. ANY RIGHT OR CLAIM BY CONTRACTOR FOR ANY ADDITIONAL COMPENSATION OR EXTENSION OF TIME RELATING DIRECTLY OR INDIRECTLY TO SUCH CHANGE SHALL BE CONCLUSIVELY DEEMED WAIVED BY CONTRACTOR, EVEN IF THE CIRCUMSTANCES GIVING RISE TO SUCH ADDITIONAL COMPENSATION OR EXTENSION OF TIME WERE NOT SUSPECTED BY OR KNOWN TO THE CONTRACTOR AT THE TIME OF EXECUTION OF THE CONSTRUCTION CHANGE DIRECTIVE AND IF SUSPECTED OR KNOWN WOULD HAVE BEEN CONSIDERED BY CONTRACTOR TO HAVE BEEN MATERIAL TO CONTRACTOR'S AGREEMENT TO THE CONTRACT ADJUSTMENT SET FORTH IN THE CONSTRUCTION CHANGE DIRECTIVE.**

**(b) Upon Authority.** In recognition of the fact that Construction Change Directives may be issued under circumstances in which the Authority may not have had the access to pertinent information required for the Authority to fully evaluate the circumstances giving rise to the Change, it is agreed that neither the issuance nor execution of, nor any statement contained in, nor any course of conduct in connection with, a Construction Change Directive (including, without limitation, a Construction Change Directive that constitutes a full



agreement by Authority and Contractor on the terms of a Contract Adjustment) shall be interpreted as a waiver, release or settlement of any of Authority's rights relating to the subject matter of the Construction Change Directive, or as creating or implying any right of Contractor to a Contract Adjustment, if it is found by Authority upon further investigation that circumstances existed, not known to Authority at the time of executing the Construction Change Directive, demonstrating that the Contractor was not in fact entitled to a Contract Adjustment or was entitled to a Contract Adjustment on different terms than those agreed to in the Construction Change Directive.

**.2 Partial Agreement.** Each Construction Change Directive involving a Compensable Change or Deleted Work with respect to which there is only agreement on a portion of the terms of a Contract Adjustment shall comply with the following:

**(1) Agreed Terms.** The Construction Change Directive shall state those terms of the Contract Adjustment as to which there is agreement.

**(a) Legal Effect.** Except to the extent of any additional open (i.e., non-agreed) terms stated or reserved in the Construction Change Directive, such agreement shall have the same legal effect set forth in Subparagraph 7.5.3.1 (2), above.

**(b) Time and Materials.** In the event that Authority and Contractor agree in the Construction Change Directive to the "time and materials" method of calculation set forth in Subparagraph 7.7.1.1 (4), below, but do not agree upon a maximum price, then the total cost to Authority for the Work covered by the Construction Change Directive shall under no circumstances exceed a price that is reasonable, competitive and fair to Authority given the amount and type of Work involved and the circumstances under which the Compensable Change is performed.

**(2) Open Terms.** The Construction Change Directive shall state those terms of the Contract Adjustment that are "open" or "disputed"; meaning those terms as to which the Authority and Contractor did not reach agreement.

**(a) ROM Estimate.** If such open terms involve the amount of the Contract Adjustment to the Contract Price or Contract Time on account of a Compensable Change, then the Construction Change Directive shall also include a Reasonable Order of Magnitude Estimate prepared by Contractor, or prepared by Authority and acknowledged in writing as accepted by Contractor, of the probable amount of the Contract Adjustment to the Contract Price and Contract Time associated with performance of the Compensable Change.

**(b) Legal Effect.** A Reasonable Order of Magnitude Estimate constitutes neither (i) a guarantee by Contractor that the amount of the Contract Adjustment to the Contract Price or Contract Time that may be associated with the Compensable Change or Deleted Work covered by such Construction Change Directive may not exceed the Reasonable Order of Magnitude Estimate nor (ii) authorization or agreement by Authority to a Contract Adjustment based on the amounts set forth in such Reasonable Order of Magnitude Estimate.

**(c) Time and Materials.** If Authority and Contractor state in the Construction Change Directive an agreement that the Contractor is entitled to a Contract Adjustment to the Contract Price on account of a Compensable Change, but do not state therein an agreement upon the method of calculation to be used for the Contract Adjustment from among the optional methods of calculation set forth in Paragraph 7.7.1, below, and if the Authority nonetheless directs Contractor to perform the Compensable Change pending future agreement on the amount of the Contract Adjustment, then it shall be conclusively presumed that Authority and Contractor have agreed that such Compensable Change shall be performed and compensated based upon the "time and materials" method of calculation set forth in Subparagraph 7.7.1.1 (4), below, and that the total Contract Adjustment for performance thereof shall under no circumstances exceed a price that is reasonable, competitive and fair to Authority given the amount and type of Work involved and the circumstances under which the Compensable Change is performed.

**7.5.4 Disputed Contract Adjustment.** Each Construction Change Directive involving a Contract Adjustment with respect to which there is a dispute or partial agreement shall, if Contractor is ordered to do so in a Construction Change Directive signed by the Director of Facilities Management, be performed by Contractor without Delay. Except as otherwise provided elsewhere in this Section 7.5, with respect to any open terms as to which the Authority and Contractor have not reached agreement both Authority and Contractor shall be deemed to have reserved their respective rights and defenses.

**7.5.5 Other Notices.** With respect to any Contract Adjustment or portion of a Contract Adjustment that is not fully resolved in a Construction Change Directive, neither issuance nor execution of such Construction Change Directive shall be interpreted as relieving Contractor of its obligation to comply with the requirements of these General Conditions relative to timely submission of notices required by the Contract Documents, including, without limitation, Notice of Change, Change Order Request, Notice of Delay or Request for Extension.

## **7.6 PROCEDURES**

### **7.6.1 Notice of Change.**

**.1 Submission.** Contractor shall submit a written Notice of Change to Authority if any instruction, request, drawing, specification, action, condition, omission, default or other circumstance occurs that constitutes a Compensable Change, Deleted Work, Compensable Delay or other matter that may involve or require a Contract Adjustment (additive or deductive). Such notice shall be provided prior to commencement of performance of the Work affected and no later than three (3) working days after the Discovery Date of such circumstance.

**.2 Form.** Notices of Change shall be provided using forms furnished by Authority or, if requested by Authority, using forms furnished by Contractor that are approved by Authority. Failure by Authority to request or approve a particular form shall not relieve Contractor of its obligation to provide a Notice of Change in a written form that complies with the requirements specified in Subparagraph 7.6.1.3, below.

**.3 Content.** Each Notice of Change in order to be considered complete shall include:

**(1)** a general statement of the circumstances giving rise to the Notice of Change (including, without limitation, identification of any related Construction Change Directive);

**(2)** a Reasonable Order of Magnitude Estimate by Contractor of any related Contract Adjustments (additive and deductive) to the Contract Price; and,

**(3)** if such circumstances involve a right to adjustment of the Contract Time due to Compensable Delay or Excusable Delay that has not been waived pursuant to Subparagraph 8.2.2.4, below, or Subparagraph 8.2.3.4, below, Contractor shall include, if not previously provided, a complete and timely Notice of Delay.

### **.4 WAIVER BY CONTRACTOR.**

**FAILURE BY CONTRACTOR TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE UNDER CIRCUMSTANCES WHERE A NOTICE OF CHANGE INVOLVING A CHANGE IS REQUIRED BY THIS PARAGRAPH 7.6.1 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE.**

**.5 Deductive Adjustments.** Failure by Contractor to submit a timely or proper Notice of Change under circumstances in which a Notice of Change is required shall in no way affect Authority's right to any deductive Contract Adjustment on account of such circumstances.

### **7.6.2 Change Order Request.**

**.1 Submission.** With respect to any matter that may involve or require a Contract Adjustment (additive or deductive) of the Contract Price, Contractor shall, within fourteen (14) Days after receipt by the Authority of a Notice of Change pursuant to Paragraph 7.6.1, above, submit to the Authority a written Change Order Request.

**.2 Form.** Change Order Requests shall be provided using forms furnished by Authority or, if requested by Authority, using forms furnished by Contractor that are approved by Authority. Failure by Authority to request or approve a particular form shall not relieve Contractor of its obligation to provide a Change Order Request in a written form that complies with the requirements stated in Subparagraph 7.6.2.3, below.

**.3 Content.** Each Change Order Request in order to be considered complete shall include:

(1) a detailed description of the circumstances for the Compensable Change, Deleted Work or Compensable Delay;

(2) a complete, itemized cost breakdown (additive and deductive) of the Allowable Costs that form the basis for the Contractor's request for Contract Adjustment, including: (a) if the pricing is based on time and materials charges, all of Contractor's and each Subcontractor's Allowable Costs (including, without limitation, quantities, hours, unit prices, and rates) and Allowable Markups and (b) if the pricing is in the form of a lump sum price a detailed breakdown of the lump sum price into its component and individual items of Allowable Costs and Allowable Markup; and

(3) if such circumstances involve a right to a Contract Adjustment of the Contract Time due to Compensable Delay or Excusable Delay that has not been waived pursuant to Subparagraph 8.2.2.4, below, or Subparagraph 8.2.3.4, below, Contractor shall include, if not previously provided, a complete and timely Request for Extension.

#### **.4 WAIVER BY CONTRACTOR.**

**FAILURE BY CONTRACTOR TO PROVIDE A COMPLETE AND TIMELY CHANGE ORDER REQUEST UNDER CIRCUMSTANCES WHERE A CHANGE ORDER REQUEST INVOLVING A CHANGE IS REQUIRED BY THIS PARAGRAPH 7.6.2 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE.**

**.5 Deductive Adjustments.** Failure by Contractor to submit a timely or proper Change Order Request under circumstances in which a Change Order Request is required shall in no way affect Authority's right to any deductive Contract Adjustment on account of such circumstances.

**7.6.3 Formal Notice of Essence.** Contractor recognizes and acknowledges that timely submission of a formal Notice of Change and Change Order Request, whether or not the circumstances of the Change may be known to the Authority or available to Authority through other means, is not a mere formality but is of crucial importance to the ability of Authority to promptly identify, prioritize, evaluate and mitigate the potential effects of Changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in Requests for Information, statements at regular job meetings or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of Paragraph 7.6.1, above, and Paragraph 7.6.2, above, shall therefore be insufficient.

### **7.7 PRICING**

#### **7.7.1 Basis of Calculation.**

**.1 Changes Not Involving Time.** Contract Adjustments to the Contract Price on account of Compensable Changes or Deleted Work, other than Contract Adjustments to the Contract Price for Compensable Delay, shall be calculated according to one of the following methods:

(1) **Lump Sum.** By mutual acceptance of a lump sum proposal from Contractor based solely on Allowable Costs and Allowable Markups, that is properly itemized and supported by sufficient substantiating data to permit evaluation.

(2) **Unit Prices.** By the unit prices set forth in the Construction Contract or such other unit prices as are subsequently and mutually agreed to in writing between the Authority and Contractor, with no amount added thereto for Allowable Markups.

(3) **Estimating Guides.** For Compensable Changes with respect to which Authority elects to make a unilateral and final determination pursuant to Paragraph 7.7.11, below, by the sum of all the following:

(a) **Materials.** The reasonable value of materials and equipment documented as having been actually incorporated into the Work, which reasonable value may be less but shall never be more than Contractor's actual Allowable Costs therefor.

(b) **Labor.** An estimate of the reasonable costs of labor, installation and other services using the lower of the estimated prices for the locale of the Project (or if prices are not reported for the locale of the Project, the estimated prices that are reported for the region in which the Project is located) as reported in following recognized estimating guides: (i) R. S. Means Company, Inc. Building Construction Cost Data, Western Region - Latest Edition, P.O. Box 800 Kingston, MA 02364-800; or (ii) Lee Saylor, Inc. Current Construction Costs - Latest Edition, 9420 Topanga Canyon Boulevard, Woodland Hills, CA 91311.

(c) **Allowable Markup.** The amount that results when the applicable Allowable Markup is applied to the sum of the amounts derived from preceding Clauses (a) and (b) of this Subparagraph 7.7.1.1 (3).

(4) **Time and Materials.**

(a) **Compensable Changes.**

(i) **Contract Adjustment.** With respect to Compensable Changes, if none of the methods provided for in Subparagraphs 7.7.1.1 (1) through 7.7.1.1 (3), above, is applicable, then the additive amount increasing the Contract Price shall be calculated by taking (A) the total of the reasonable expenditures by Contractor and its Subcontractors, documented in the manner required by Paragraph 7.7.2, below, for Allowable Costs that are actually and directly incurred and paid in the performance of the Compensable Change, not to exceed for any Compensable Change a price that is reasonable, competitive and fair to Authority given the amount and type of Work involved and the circumstances under which the Compensable Change is performed, and (B) adding thereto the amount which results when the applicable Allowable Markups are applied to such total specified in preceding Clause (A) of this Subparagraph 7.7.1.1 (4) (a) (1).

(ii) **T & M/Guaranteed Maximums.** A Contract Adjustment that is calculated pursuant to this Subparagraph 7.7.1.1 (4) shall be subject to a not-to-exceed or guaranteed maximum price if such not-to-exceed or guaranteed maximum price has been mutually agreed upon between Authority and Contractor.

(iii) **Lump Sum Options.** If Contractor has reason to believe that a lump sum or unit price for a Subcontractor's performance of a portion of Extra Work authorized to be performed on a time and materials basis is available and Contractor has reason to believe such price is lower than the price that would be charged by the Subcontractor pursuant to the foregoing time and materials calculation, then Contractor has an obligation to inform Authority of that fact (along with the provision to the Authority of a complete itemized breakdown in accordance with Subparagraph 7.6.2.3(2), above) so as to afford Authority the opportunity, on a fully informed basis as to the component Allowable Costs and Allowable Markups that comprise such price, to avail itself of such favorable pricing.

(b) **Deleted Work.** With respect to Deleted Work (whether or not the Deleted Work involves a related Compensable Change as described in Paragraph 7.7.8, below), if none of the methods provided for in Subparagraphs 7.7.1.1 (1) through 7.7.1.1 (3), above, is applicable, then, in addition to the reduction, if any, that may be due to Owner pursuant to Subparagraph 8.2.6.2, below, (pertaining to Contract Adjustments shortening the Contract Time due to Deleted Work) and any additional reductions or credits to which Authority may be entitled under Paragraph 7.7.5, below, the Contract Price shall be reduced by the greater of either:

(i) the value assigned to the Deleted Work in the Schedule of Values attached to the Construction Contract, inclusive of all estimated markups by Contractor and any Subcontractor for overhead and profit set forth in the Schedule of Values (or, if insufficient detailed information on costs, overhead and profit for the Deleted Work is explicitly assigned in the Schedule of Values, as derived from the cost, bidding and/or estimating information that formed the basis for the establishment of the values set forth in such Schedule of Values); or

(ii) a reasonable estimate of the value of the Deleted Work (inclusive of all costs, overhead and profit) as of the date that the Construction Contract was executed by Authority and Contractor.

**.2 Changes Involving Time.** Contract Adjustments that are based on an extension of the Contract Time for Compensable Delay or a shortening of the Contract Time due to Deleted Work shall be calculated in the manner stated in the provisions of Section 3.3 of the Construction Contract and Article 8, below. Contract Adjustments that are based on an acceleration in performance of the Work that is ordered by Authority in writing to overcome a Compensable Delay for which the Contractor is entitled to an extension of the Contract Time that has been properly requested and is not granted by Authority due to a Authority decision to accelerate rather than extend the Contract Time shall be calculated in the manner stated in the provisions of Article 8, below.

**7.7.2 Time and Materials Documentation.** Without limitation to any other provisions of the Contract Documents, Contractor's right to reimbursement of Allowable Costs incurred by Contractor or Subcontractors in the performance of a Compensable Change for which the Contract Adjustment is calculated pursuant to the time and materials method set forth in Subparagraph 7.7.1.1 (4), above, shall be conditioned on Contractor's compliance with the following conditions with respect to documentation of the Extra Work that is involved in the performance of the Compensable Change:

**.1 Labor.** At the close of each Day on which such Extra Work is performed, Contractor shall submit to Authority and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by Authority, that sets forth with respect to each and all of the actual hours spent in performance of the Extra Work on the Day that the Extra Work was performed the following: the names of the workers, their classifications, hours worked and hourly rates. Such forms shall include a written certification by Contractor's project manager or superintendent at the time of submission that the information contained therein is complete and accurate.

**.2 Materials, Equipment.** At the close of each Day on which such Extra Work is performed, Contractor shall submit to Authority and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by Authority, that sets forth with respect to each and all of the materials and equipment used or consumed in the performance of the Extra Work on the Day that the Extra Work was performed, the following: a list of the materials and equipment, prices or rates charged, in the case of equipment a description of the type of equipment, identification number, and hours of operation (including loading and transportation), and copies of delivery tickets, invoices or other documentation confirmatory of the foregoing.

**.3 Other Expenditures.** At the close of each Day on which such Extra Work is performed, Contractor shall submit to Authority and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by Authority, that sets forth a list of other expenditures constituting Allowable Costs incurred in performance of the Extra Work on the Day that the Extra Work was performed, along with documentation verifying the amounts thereof in such detail as Authority may require.

**.4 Subsequent Documentation.** Documentation not available on any Day that a portion of the Extra Work is performed shall be submitted as soon as they are available but not later than twenty-one (21) Days after the earlier of the Day of delivery or incorporation of the particular item of Extra Work at the Site.

**.5 Subcontractor Costs.** Extra Work performed by Subcontractors on a time and materials basis shall documented in the same manner as required of Contractor under this Paragraph 7.7.2. If Owner approves of a lump sum price for a Subcontractor's performance of Extra Work, then Contractor shall submit in lieu of the documentation otherwise required by this Subparagraph 7.7.2.5, such documentation as may be requested by Owner confirming the Extra Work performed on any given Day.

**.6 Authentication.** In addition to the foregoing, Authority may require that Contractor comply with other reasonable requirements pertaining to observation and verification of time and materials work and authentication of time and materials tickets and invoices by persons designated by Authority for such purpose.

**.7 WAIVER BY CONTRACTOR.**

**THE FAILURE OF CONTRACTOR TO SUBMIT AUTHENTICATION OF COSTS IN THE MANNER REQUIRED BY THIS PARAGRAPH 7.7.2 SHALL, IF AUTHORITY ELECTS IN ITS REASONABLE DISCRETION TO TREAT IT AS**

**SUCH, CONSTITUTE A WAIVER BY CONTRACTOR OF ANY RIGHT TO A CONTRACT ADJUSTMENT FOR THE ALLOWABLE COSTS INCURRED FOR PERFORMANCE OF THAT PORTION OF THE EXTRA WORK FOR WHICH CONTRACTOR HAS FAILED TO PROVIDE SUCH AUTHENTICATION.**

**7.7.3 Allowable Costs.** The term "Allowable Costs" (1) means the costs that are listed in this Paragraph 7.7.3 and (2) excludes costs that do not constitute Allowable Costs under Paragraph 7.7.4, below:

**.1 Labor.** Straight-time wages and, if specifically authorized by Authority in writing, overtime wages for employees employed at the Site, including wages for employees of Subcontractors performing engineering or fabrication detailing at locations other than at the Site. The use of a labor classification which would increase the Allowable Costs for Extra Work will not be permitted unless Contractor establishes the necessity for the use of such labor classification. Overtime wages and salaries shall only constitute an Allowable Cost to the extent permitted by the Contract Documents and only as specifically authorized by Authority in writing setting forth the amount of overtime anticipated, which amount shall be deemed the maximum amount of overtime reimbursable as an Allowable Cost. As part of the Allowable Costs permitted by this Subparagraph 7.7.3.1, Contractor shall be entitled to be reimbursed wages paid to a "time and materials clerk" employed by Contractor to track and document Compensable Changes that are authorized or permitted to be performed on a time and materials basis pursuant to Subparagraph 7.7.1.1 (4), above, provided that the time expended by such employee is verified by contemporaneously maintained time sheets maintained by such clerk showing the actual time spent tracking and documenting the performance of Compensable Changes separately from other tasks or functions performed by such clerk.

**.2 Benefits.** To the extent based on wages reimbursable under Subparagraph 7.7.3.1, above, net actual employer costs of payroll taxes (FICA, Medicare, SUTA, FUTA), insurance (as adjusted for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, or the like), health and welfare, pension, vacation, apprenticeship funds and benefits required by lawful collective bargaining agreements.

**.3 Materials.** Costs of materials used or consumed in the Work. Such costs for Extra Work shall be at a price that is competitive to the price charged for similar materials delivered within the general vicinity of the Site by other subcontractors, suppliers, manufacturers and distributors. The cost for any such item that is not new shall mean "fair market value" based on the estimated price a reasonable purchaser would pay to purchase the used material at the time it was used or consumed for the Work, which fair market value must be declared by Contractor and approved by Authority prior to such use or consumption.

**.4 Taxes.** Sales taxes on the costs of the materials described in Subparagraph 7.7.3.3, above.

**.5 Equipment Rental.** Rental charges for necessary machinery and equipment, exclusive of hand tools, whether rented from Contractor or others. No charge shall be allowed or credit required for items which have a replacement value of One Hundred Dollars (\$100) or less. The allowable rental rates shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, loading, transportation, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals. If equipment used for Extra Work is used intermittently and, when not in use, could be returned to its rental source at less expense to Authority than holding it at the Site, it shall be returned, unless Contractor elects to keep it at the Site at no expense to Authority. Under no circumstances shall the aggregate rentals chargeable for any item of equipment exceed the following percentages of the fair market value of the item at the time of its first use for the Work, which fair market value must be declared by Contractor and approved by Authority prior to the first use of such item in or for the Work: (1) if the item is owned by the Contractor or any company affiliated with Contractor, the aggregate rentals shall not exceed 75% of such fair market value; and (2) if the item is not owned by the Contractor or any company affiliated with Contractor, the aggregate rentals shall not exceed 100% of such fair market value. All equipment shall be acceptable to Authority, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and manufacturer's approved modifications shall be used to classify equipment, and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer. The cost of major repairs or overhauls of rented equipment or machinery shall be deemed a cost of business of the lessor of such equipment or machinery and shall not be reimbursable as an Allowable Cost.

**.6 Subcontractors.** Payments made by Contractor to Subcontractors; provided, however, that: (1) such payments are not otherwise precluded from reimbursement by the terms of the Contract Documents; (2) such payments are for Work performed in accordance with the requirements of the Contract Documents; (3) such payments

are for amounts properly due and owing by Contractor under the terms of the governing contract between Contractor and such Subcontractor; and (4) in the case of payments for extra work performed by a Subcontractor pursuant to a change order executed between Contractor and a Subcontractor the change order was executed under circumstances in which the Subcontractor was entitled under the terms of its contract with Contractor to receive the amount of additional compensation agreed to in the change order.

**.7 Royalties, Permits.** Costs of royalties and permits.

**.8 Bonds.** Costs of bonds required to be furnished by Contractor (not Subcontractors) under the terms of the Contract Documents; provided, however, that such additional costs chargeable for Extra Work or credited for Deleted Work shall not exceed two percent (2%) of the costs described in Subparagraphs 7.7.3.1 through 7.7.3.7, above.

**7.7.4 Costs Not Allowed.** Allowable Costs shall not include any of the costs associated with any of the following (whether incurred by Contractor or a Subcontractor):

- .1** superintendent(s);
- .2** assistant superintendent(s);
- .3** project engineer(s);
- .4** project manager(s);
- .5** scheduler(s);
- .6** estimator(s);
- .7** drafting or detailing (except as otherwise permitted by Paragraph 7.7.3.1, above)
- .8** vehicles not dedicated solely to the performance of the Work;
- .9** small tools with a replacement value not exceeding One Hundred Dollars (\$100);
- .10** office expenses, including staff, materials and supplies;
- .11** on-Site and off-Site trailer and storage rental and expenses;
- .12** Site fencing not added solely due to the performance of Extra Work;
- .13** utilities, including gas, electric, sewer, water, telephone, telefax and copier equipment;
- .14** computer and data-processing personnel, equipment and software;
- .15** federal, state or local business, income and franchise taxes;
- .16** insurance (including, without limitation, general liability, automobile and worker's compensation);
- .17** without limitation to Contractor's right to liquidated damages under Section 3.3 of the Construction Contract, Losses, of any kind, incurred by Contractor or a Subcontractor, of any Tier, that arise from or relate to Delay (including Excusable Delay, Compensable Delay or Unexcused Delay) or acceleration to overcome the effects of such Delay; and
- .18** costs and expenses of any kind or item not specifically and expressly included in Paragraph 7.7.3, above.

**7.7.5 Allowable Markups.** Allowable Markups consist of the percentages set forth provided for by this Paragraph 7.7.5. Allowable Markups are deemed to cover, without limitation, the following: (1) direct and indirect overhead (including, without limitation, consumables, small tools and cleanup) and profit of the Contractor; (2) direct and indirect overhead (including, without limitation, consumables, small tools and cleanup) and profit of the Subcontractors, of every Tier; and (3) all costs that are not reimbursable to Contractor under Paragraph 7.7.4, above. Subject to the exclusions and limitations set forth in Paragraph 7.7.7, below, or elsewhere in the Contract Documents, Allowable Markups include and are limited to the following:

**.1 Self-Performed Work**

**(1) Compensable Change.** With respect to all or that portion of a Compensable Change involving Self-Performed Work, the Allowable Markup to Contractor shall be not more than five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the Allowable Costs incurred by Contractor in the performance thereof, including, without limitation, Allowable Costs for materials or equipment purchased by Contractor from a first-Tier Subcontractor that is not an Installation Subcontractor.

**(2) Deleted Work.** With respect to all or that portion of Deleted Work involving Self-Performed Work, Authority shall be entitled to a credit equal to five percent (5%) of the amount of the credit for the savings to Contractor for the Self-Performed Work as calculated pursuant to Subparagraph 7.7.1.1 (4), (b), above.

**.2 Installation Subcontractors (First-Tier)**

**(1) Compensable Change.** With respect to all or that portion of a Compensable Change that is performed by a first-Tier Installation Subcontractor, the Allowable Markups to the first-Tier Installation Subcontractor and the Contractor shall be as follows:

**(a)** The Allowable Markup to the first-Tier Installation Subcontractor shall be not more than fifteen percent (15%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the Allowable Costs incurred by such first-Tier Installation Subcontractor in the performance of such Compensable Change.

**(b)** The Allowable Markup to Contractor shall be five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the sum of (i) the Allowable Costs incurred by such first-Tier Subcontractor in the performance of such Compensable Change and (ii) the amount which results when the Allowable Markups thereon that are permitted pursuant to preceding Clause (a) of this Subparagraph 7.7.5.2 (1) are multiplied times such Allowable Costs.

**(2) Deleted Work.** With respect to all or that portion of Deleted Work that was to have been performed by a first-Tier Installation Subcontractor, the Contract Price shall be reduced as provided in Subparagraph 7.7.1.1 (4), (b), above. In addition, a credit shall be due from Contractor of five percent (5%) of the amount of the total credit due pursuant to Subparagraph 7.7.1.1 (4), (b), above.

**.3 Installation Subcontractors (Second-Tier)**

**(1) Compensable Change.** With respect to all or that portion of a Compensable Change that is performed by a second-Tier Installation Subcontractor, the Allowable Markups to such second-Tier Installation Subcontractor, to the first-Tier Installation Subcontractor that is above and in the same vertical contractual line of Tiers with such second-Tier Installation Subcontractor and to the Contractor, shall be as follows:

**(a)** The Allowable Markup to the second-Tier Installation Subcontractor shall be not more than five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the Allowable Costs incurred by such second-Tier Installation Subcontractor in the performance of such Compensable Change.

**(b)** The Allowable Markup to the first-Tier Installation Subcontractor that is above and in the same vertical contractual line of Tiers with such second-Tier Installation Subcontractor shall be not more than fifteen percent (15%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times



the sum of (i) the Allowable Costs incurred by such second-Tier Installation Subcontractor in the performance of such Compensable Change and (ii) the amount which results when the Allowable Markups thereon pursuant to preceding Clause (a) of this Subparagraph 7.7.5.3 (1) are multiplied times such Allowable Costs.

(c) The Allowable Markup to Contractor shall be five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the sum of (i) the Allowable Costs incurred by the second-Tier Installation Subcontractor in the performance of such Compensable Change and (ii) the amounts which result when the Allowable Markups thereon that are permitted pursuant to Clauses (a) and (b) of this Subparagraph 7.7.5.3 (1) are multiplied times such Allowable Costs.

(2) **Deleted Work.** With respect to all or that portion of Deleted Work that was to have been performed by a second-Tier Installation Subcontractor, the Contract Price shall be reduced as provided in Subparagraph 7.7.1.1 (4), (b), above. In addition, a credit shall be due from Contractor of five percent (5%) of the amount of the total credit due pursuant to Subparagraph 7.7.1.1 (4), (b), above.

#### **.4 Other Subcontractors.**

(1) **Compensable Changes:** With respect to any other Subcontractor, of any Tier, performing all or a portion of a Compensable Change who is not an Installation Subcontractor or who is an Installation Subcontractor below the second-Tier, the following shall apply:

(a) No markup shall be allowed to such other Subcontractor.

(b) The Subcontractor that is positioned in the Tier immediately above such other Subcontractor shall be entitled to an Allowable Markup of not more than five percent (5%) upon the Allowable Costs incurred by such other Subcontractor in the performance thereof.

(c) No other Allowable Markup by any Subcontractor of any Tier above such other Subcontractor shall be permitted.

(d) Contractor shall be entitled to an Allowable Markup of five percent (5%) of the sum of (i) the Allowable Costs of such other Subcontractor incurred in the performance of such Compensable Change and (ii) the amount which results when the Allowable Markup permitted by Clause (b) of this Subparagraph 7.7.5.4 (1) is multiplied times such Allowable Costs.

(2) **Deleted Work.** With respect to all or that portion of Deleted Work that was to have been performed by such other Subcontractor who is not an Installation Subcontractor or who is an Installation Subcontractor below the second-Tier, the Contract Price shall be reduced as provided in Subparagraph 7.7.1.1 (4), (b), above. In addition, a credit shall be due from Contractor of five percent (5%) of the amount of the total credit due pursuant to Subparagraph 7.7.1.1 (4), (b), above.

**7.7.6 Review of Markups.** It is Contractor's responsibility to review information submitted by Subcontractors to ensure that all markups comply with the requirements of the Contract Documents. Payment by the Authority of markups that exceed Allowable Markups shall not be considered as a waiver by Authority of the right to require repayment by Contractor of any markup charged that is in excess of Allowable Markups and such excess amounts shall be promptly paid by Contractor to Authority.

**7.7.7 Exclusions and Limitations.** Allowable Markups are not permitted:

.1 on agreed unit prices;

.2 on materials, products or equipment furnished by Authority;

.3 on liquidated damages payable to Contractor pursuant to Section 3.3 of the Construction Contract for Compensable Delay;

.4 to a Subcontractor who contracts to perform a Compensable Change that is in fact wholly performed by another Subcontractor (for purposes of this Paragraph 7.7.7, "wholly performed" means that all of the Compensable Change, other than supervision or minor labor or materials, are furnished by such other Subcontractor); or

.5 on any cost or compensation with respect to which the Contract Documents state that there shall be "no Allowable Markup", "no markup for overhead and profit" or words of similar meaning.

**7.7.8 Net Calculations.** If any one Change or collection of Changes in the same or related portions of the Work, or in multiple portions of Work covered by a single bulletin or instruction by Authority, involve both Compensable Change and Deleted Work, and if the added Allowable Costs resulting from the Compensable Change exceed the reduction calculated in accordance with Subparagraph 7.7.1.1 (4), (b), above, (excluding any Allowable Markup to the Contractor) then the calculation of Allowable Markups to Contractor shall be based on and limited to the resulting net increase in the Allowable Costs.

**7.7.9 Unit Prices.** Unless otherwise stated in the Contract Documents, unit prices stated in the Contract Documents or subsequently agreed upon by Authority and Contractor shall be deemed to include and encompass all costs of performance, overhead and profit, including, without limitation, all Allowable Costs and Allowable Markups. If the unit price stated in the Contract Documents is based on an estimated quantity established by Authority in the Construction Contract and the actual quantity of such unit-priced item varies by more than 25% above or below the estimated quantity, an equitable adjustment in the Contract Price shall be made upon demand of either Authority or Contractor. Such equitable adjustment shall be based solely upon any increase or decrease in Allowable Costs (without any Allowable Markups), due solely to the variation above 125% or below 75% of the estimated quantity.

**7.7.10 Discounts.** For purposes of determining Allowable Costs of a Compensable Change, all trade discounts, rebates, refunds, and returns from the sale of surplus materials and equipment shall accrue and be credited to Authority, and Contractor shall take all necessary steps to ensure that such discounts, rebates, refunds, and returns are secured.

**7.7.11 Prompt Pricing.** It is fundamental to the Authority's objective of controlling costs that performance of Compensable Changes on a time and materials basis of compensation and without a not-to-exceed price be curtailed. Contractor recognizes that prompt pricing by Contractor is critical to this objective. Accordingly, in addition to and without limitation on any of the Authority's other rights or remedies, including, without limitation, its right to enforce a waiver under Subparagraph 7.6.2.4, above, it is agreed that if Contractor fails to timely submit a complete Change Order Request in accordance with Paragraph 7.6.2, above, with respect to any circumstance, event or occurrence constituting a Compensable Change then: (1) any Delay to the performance of the Work associated with the performance, delayed performance or nonperformance of such Compensable Change shall be conclusively deemed to be an Unexcused Delay; and (2) the Authority shall have the option, exercised in its sole discretion, to unilaterally fix and determine the amount of the Contract Adjustment to the Contract Price for such Compensable Change based on the "estimating guide" method set forth in Subparagraph 7.7.1.1 (3), above, which determination shall be conclusively final and binding upon Contractor.

**7.7.12 Final Payment.** No Claim by Contractor for a Contract Adjustment shall be allowed if asserted after Final Payment.

**7.7.13 Full Resolution.** Except as otherwise stated in Paragraph 7.7.14, below, the signing of a Change Order by Contractor and the Authority shall be conclusively deemed to be a full resolution, settlement and accord and satisfaction with respect to any and all Loss and Delay, whether known or unknown at the time of execution of the Change Order, related to the subject matter of the Change Order, including, without limitation, all rights to recovery of costs, expenses or damages for delay, disruption, hindrance, interference, extended or extraordinary (direct and indirect) overhead, multiplicity of changes, loss of productivity, labor, wage or material cost escalations, inefficiency, legal expenses, consultant costs, interest, lost profits or revenue, bond and insurance costs, changes in taxes and other similar and related Losses. The foregoing provisions of this Paragraph 7.7.13 shall, whether or not they are expressly stated or referenced on the face of a Change Order, be deemed to be part of the terms of the Change Order and shall be deemed to supersede and govern over any other provision contained in any proposal, estimate or other documents attached to or referenced in such Change Order that conflicts with the provisions of this Paragraph 7.7.13. **ANY RIGHT OR CLAIM BY CONTRACTOR FOR ANY ADDITIONAL COMPENSATION OR EXTENSION OF TIME RELATING**

DIRECTLY OR INDIRECTLY TO A COMPENSABLE CHANGE DESCRIBED IN A FULLY EXECUTED CHANGE ORDER SHALL BE CONCLUSIVELY DEEMED WAIVED BY CONTRACTOR, EVEN IF THE CIRCUMSTANCES GIVING RISE TO SUCH ADDITIONAL COMPENSATION OR EXTENSION OF TIME WERE NOT SUSPECTED BY OR KNOWN TO THE CONTRACTOR AT THE TIME OF EXECUTION OF THE CONSTRUCTION CHANGE DIRECTIVE AND IF SUSPECTED OR KNOWN WOULD HAVE BEEN CONSIDERED BY CONTRACTOR TO HAVE BEEN MATERIAL TO CONTRACTOR'S AGREEMENT TO THE CONTRACT ADJUSTMENT SET FORTH IN THE CHANGE ORDER.

**7.7.14 Reserved Rights.** Change Orders shall be executed by Contractor without any express reservation of rights by Contractor to reserve for the future the assertion of any right of recovery from the Authority for Loss or Delay arising out of or relating to the subject matter of the Change Order. Execution of a Change Order, Unilateral Change Order or Construction Change Directive shall not be interpreted as a waiver, release or settlement of any rights or claims that the Authority may have for any of the following: (1) Defective Work; (2) liquidated damages or actual Losses for Delay; or (3) recoupment by Authority (by way of withholding of funds, set off or recovery from Contractor) of amounts paid by Authority for costs or markups on costs that the Authority discovers, following payment of such amounts to Contractor, do not constitute proper charges to Authority, or that constitute charges that are not properly substantiated, under the terms of the Contract Documents.

**7.7.15 No "Total Cost" Calculations.** Contractor represents and warrants that it has the ability to generate and maintain complete and accurate cost accounting records that, if required, will reflect the actual costs of the Work incurred or avoided for multiple Compensable Changes and, on an event-by-event basis, the effect of multiple and concurrently occurring or caused Compensable Delays on the progress of the Work. Accordingly, Contractor agrees that all Change Order Requests and Claims shall be itemized in a manner that, with reasonable mathematical certainty and without reliance upon probabilities or inferences, segregates on a discrete, event-by-event basis the direct, actual Allowable Costs associated with each individual Compensable Change or Compensable Delay. Unless otherwise agreed to by Authority in writing in the exercise of its sole discretion, Change Order Requests and Claims shall not be based, in whole or in part, upon any methodology (such as "total cost" or "modified total cost" methodologies) that purports to establish Contractor's entitlement to additional compensation inferentially based, solely or principally, on the difference between Contractor's total costs for the Work or a portion of the Work and its original Bid.

**7.7.16 Multiple Changes.** The Authority reserves the absolute right to make whatever Changes, including, without limitation, Compensable Changes or Deleted Work, that it determines, in its sole discretion, are necessary or otherwise desirable. Under no circumstances shall the individual or cumulative number, value or scope of such Changes, or their individual and cumulative impact on the Work, become a basis for Contractor to assert any claim for breach of contract, abandonment, rescission, termination, cardinal change or reformation of the Construction Contract, nor shall such circumstances be the basis for Contractor, or any of the Subcontractors, of any Tier, to assert a right of recovery of any Loss if such right is not permitted by, or is in excess of that allowed under, the Contract Documents.

**7.7.17 Continuous Performance.** Subject to Contractor's rights under Section 15.4, below, no dispute or disagreement with respect to any Changes or Delay, including, without limitation, disputes over Contractor's right to or the terms of a Contract Adjustment, shall relieve or excuse Contractor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work, including performance of any disputed Changes.

## **ARTICLE 8 CONTRACT TIME**

### **8.1 COMMENCEMENT AND COMPLETION**

**8.1.1 Date of Commencement.** The Date of Commencement shall not be postponed by the failure of Contractor or of persons or entities for whom Contractor is responsible to perform an obligation. Contractor shall not knowingly, except by agreement or instruction of the Authority in writing, commence operations on the Site or elsewhere prior to receipt of a Notice to Proceed. Contractor shall not commence any Work at the Site prior to its obtaining the insurance required by Article 11, below, and the Performance Bond and Payment Bond required by Article 12, below, and the Date of Commencement of the Work shall not be changed by the effective date of such insurance or bonds.

8.1.2 **Substantial, Final Completion.** Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the Contract Time, as adjusted for extensions of time duly permitted, authorized and noticed pursuant to Section 8.2, below.

8.1.3 **Adjustments to Contract Time.** Subject to the limitations set forth in this Article 8 and elsewhere in the Contract Documents, the Contract Time shall be extended for Compensable Delays and Excusable Delays and shall, where appropriate, be shortened for Deleted Work.

8.1.4 **Early Completion.** Nothing stated in these General Conditions or elsewhere in the Contract Documents shall be interpreted as creating any contractual right, express or implied, on the part of Contractor to finish the Work earlier than the Contract Time. Contractor has included in its Contract Price the costs of all Contractor's and its Subcontractors' direct and indirect overhead, including but not limited to all staff, temporary facilities, temporary utilities and home office overhead for the entire duration of the Contract Time. These costs have been included in the Contract Price notwithstanding Contractor's anticipation of possibly completing the Work in fewer Days than established by the Contract Time. Under no circumstances (including, without limitation, circumstances in which the Authority has approved in writing of Contractor completing early) shall the Authority be liable to Contractor for any Losses, of any kind, due to the inability of Contractor to complete the Work earlier than the Contract Time, regardless of the cause, including, without limitation, Delays due to acts or omissions (intentional or negligent) of the Authority, Inspectors of Record, Authority Consultants, Separate Contractors or others. If the Contractor anticipates completing early, it must obtain in advance Authority's approval in writing of such early completion. Approval by Authority of such early completion may be granted or withheld in the Authority's sole and absolute discretion.

## 8.2 DELAYS AND EXTENSIONS OF TIME

### 8.2.1 Adjustments to Contract Time

.1 **Extensions.** Provided that Contractor has complied with the provisions of this Section 8.2 (including, without limitation, the requirements pertaining to timely delivery of a Notice of Delay and Request for Extension), if, as a result of Excusable Delay or Compensable Delay to the actual, as-built critical path of activities leading to achievement of Substantial Completion, Contractor is unable to achieve Substantial Completion within the Contract Time for Substantial Completion, then the Contract Time for Substantial Completion and Final Completion shall be extended, either by Change Order or Unilateral Change Order, for the length of the proven, resulting Delay to Contractor's ability to so complete the Work. The Contract Time shall not be adjusted for Unexcused Delays.

.2 **Shortening.** Contractor shall within ten (10) Days after receiving notice of Deleted Work prepare and deliver to Authority a Time Impact Analysis of the impact of the Deleted Work upon the critical path to determine if the Contract Time should be shortened thereby and if so the duration of the shortening. If the Authority and Contractor are unable to agree upon the duration of the shortening, then Authority shall make a Good Faith Determination of the reasonable amount of time that the Contract Time shall be shortened on account of such Deleted Work.

### .3 Prescribed Calculations.

(1) **Work Day Lost Calculations.** Contractor may claim an Excusable Delay or a Compensable Delay for a full Day only if all Work on a critical path activity is stopped for more than six (6) hours of a normal eight (8) hour Work Day and for a half-Day only if all Work on a critical path activity is stopped for three (3) to six (6) hours of such a normal Work Day. No Excusable Delay or Compensable Delay may be claimed if all Work on a critical path activity is stopped for less than three (3) hours of such a normal work Day. Similarly, where Deleted Work results in the projected avoidance of the need to perform more than six (6), or between three (3) and six (6) hours of all Work on a critical path activity on such a normal work day, the Contract Time shall be contracted by a full Day or half Day, respectively.

(2) **Dry Out Time Calculations.** Contract Adjustments to the Contract Time that are based upon unusual precipitation that is an Act of God as defined in Paragraph 1.1.2, above, shall include, in addition to the number of Days of Excusable Delay to which Contractor is entitled due to a cessation of Work that occurs at the Site while the unusual precipitation is occurring, an additional extension for the Delay to the critical path of activities affecting Substantial Completion that is the result of Contractor being unable, after cessation of the unusual precipitation

at the Site, to proceed with performance of Work due to wet or muddy conditions at the Site (hereinafter referred to as "dry out" time); provided, however, that the amount of dry out time for which Contractor is entitled to an extension of time in any given calendar month shall not exceed the number of Days that is the product derived by multiplying (a) the number of Days of Excusable Delay to which Contractor is entitled due to a cessation of Work that occurs at the Site while such unusual precipitation is occurring, by (b) a fraction, the (i) numerator of which is the number of Days of Excusable Delay due to measurable unusual precipitation occurring at the Site during such calendar month that constitutes an Act of God as defined in Paragraph 1.1.2, above, and (ii) the denominator of which is the total number of Days of measurable precipitation occurring at the Site during said calendar month (including both the number of Days comprising the normal, 10-year monthly average of measurable precipitation recorded by NOAA and the excess, or unusual precipitation that constitutes an Act of God as defined in Paragraph 1.1.2, above).

#### 8.2.2 Notice of Delay.

**.1 Submission.** Contractor shall submit written Notice of Delay to Authority if any instruction, request, drawing, specification, action, condition, omission, default or other circumstance occurs that constitutes an Excusable Delay or Compensable Delay or other matter that may involve or require a Contract Adjustment extending the Contract Time. Such notice shall be provided prior to performance of the Work affected or involved and no later than seven (7) Days after the Discovery Date of such circumstance.

**.2 Form.** Notices of Delay shall be provided using forms furnished by Authority or, if requested by Authority, using forms furnished by Contractor that are approved by Authority. Failure by Authority to request or approve a particular form shall not relieve Contractor of its obligation to provide Notice of Delay in a written form that complies with the requirements of this Paragraph 8.2.2.

**.3 Content.** Each Notice of Delay in order to be considered complete shall include:

(1) a general statement of the circumstances giving rise to the Notice of Delay (including, without limitation, identification of any related Construction Change Directive);

(2) a Reasonable Order of Magnitude Estimate by Contractor of any related Contract Adjustments extending the Contract Time; and

(3) if such circumstances involve a right to a Contract Adjustment to the Contract Price for Compensable Change that has not been waived by Contractor, Contractor shall include, if not previously provided, a complete and timely Notice of Change.

#### **.4 WAIVER BY CONTRACTOR.**

**FAILURE BY CONTRACTOR TO PROVIDE A COMPLETE AND TIMELY NOTICE OF DELAY UNDER CIRCUMSTANCES WHERE A NOTICE OF DELAY INVOLVING A DELAY IS REQUIRED BY THIS PARAGRAPH 8.2.2 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH DELAY.**

**.5 No Authority Notice.** Failure by Contractor to submit a timely or proper Notice of Delay under circumstances in which a Notice of Delay is required shall in no way affect Authority's right to a Contract Adjustment shortening the Contract Time on account of such circumstances.

#### 8.2.3 Request for Extension.

**.1 Submission.** With respect to any matter that may involve or require an adjustment extending the Contract Time, Contractor shall, within fourteen (14) Days after receipt by Authority of a Notice of Delay pursuant to Paragraph 8.2.2, above, submit to Authority a written Request for Extension.

**.2 Form.** Requests for Extension shall be provided using forms furnished by Authority or, if requested by Authority, using forms furnished by Contractor that are approved by Authority. Failure by Authority to request or approve a particular form shall not relieve Contractor of its obligation to provide Requests for Extension in a written form that complies with the requirements of this Paragraph 8.2.3.

**.3 Content.** Each Request for Extension in order to be considered complete shall include:

(1) a detailed description of the circumstances giving rise to the request for Contract Adjustment to the Contract Time and a Time Impact Analysis (a Request for Extension that seeks an extension for more than one Delay shall be supported by a separate Time Impact Analysis for each separate Delay); and

(2) if such circumstances involve a right to a Contract Adjustment of the Contract Price on account of Compensable Change that has not been waived by Contractor, Contractor shall include, if not previously provided, a complete and timely Change Order Request.

**.4 WAIVER BY CONTRACTOR.**

**FAILURE BY CONTRACTOR TO PROVIDE A COMPLETE AND TIMELY REQUEST FOR EXTENSION UNDER CIRCUMSTANCES WHERE A REQUEST FOR EXTENSION INVOLVING A DELAY IS REQUIRED BY THIS PARAGRAPH 8.2.3 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH DELAY.**

**.5 Adjustments Shortening Time.** Failure by Contractor to submit a timely or proper Request for Extension under circumstances in which a Request for Extension is required shall in no way affect Authority's right to a Contract Adjustment shortening the Contract Time on account of such circumstances.

**8.2.4 Response by Authority.** After receipt of a timely and complete Request for Extension, Authority shall investigate the facts concerning the cause and extent of such Delay and, depending on whether the Request for Extension is justified, will notify Contractor of its approval or disapproval of all or a portion of Contractor's request. Extensions of time approved by Authority shall apply only to that portion of the Work affected by the Delay, and shall not apply to other portions of Work not so affected.

**8.2.5 Formal Notice of Essence.** Contractor recognizes and acknowledges that timely submission of a formal Notice of Delay and a formal Request for Extension, whether or not the circumstances of a Delay may be known to Authority or available to Authority through other means, are not mere formalities but are of crucial importance to the ability of Authority to promptly identify, prioritize, evaluate and mitigate the potential effects of Delay. Any forms of informal notice, whether verbal or written (including, without limitation, statements at regular job meetings or entries in monthly reports, daily logs, job meeting minutes, updated Construction Schedules or look-ahead schedules), that do not strictly comply with the formal requirements of Paragraph 8.2.2, above, and Paragraph 8.2.3, above, shall accordingly be deemed insufficient to satisfy the notice requirements of this Article 8.

**8.2.6 Compensation for Delay.**

**.1 Compensable Delay.** Contract Adjustments to the Contract Price for a Compensable Delay that involve an extension of the Contract Time shall be based, without duplication to any other Contract Adjustments to the Contract Price, on the terms of Section 3.3 of the Construction Contract. Contractor agrees to accept such right of Contract Adjustment in lieu of any other right that may exist under Applicable Laws for recovery of Losses due to Compensable Delay, whether incurred by Contractor or its Subcontractors, of any Tier.

**.2 Deleted Work.** The Contract Time and Contract Price shall be reduced by Contract Adjustment for Deleted Work (including, without limitation, Deleted Work associated with a termination by Authority of a portion of the Construction Contract or a deletion of portion of Work for the convenience of the Authority or due to an Event of Contractor Default) that results in a shortening of the Contract Time.

(1) **Contract Time.** The Contract Adjustment shortening the Contract Time for Substantial Completion shall be the number of Days that Contractor at the time of contracting would have reasonably expected to expend in performance of the Deleted Work and that, based on the Contractor's original Construction Schedule prepared on or about the time of contracting, were reasonably expected by Contractor to be critical to Substantial Completion of the Work within the Contract Time for Substantial Completion.

(2) **Contract Price.** The Contract Adjustment reducing the Contract Price shall be the product of (1) the number of Days that the Contract Time for Substantial Completion is shortened pursuant to preceding Clause (1) of this Subparagraph 8.2.6.2 multiplied times (2) the amount of liquidated damages set forth in Paragraph 3.3.2 of the Construction Contract, without any additional credit to Authority for Allowable Markups.

#### 8.2.7 **Acceleration of the Work.**

.1 **Due to Unexcused Delay.** If Authority makes a Good Faith Determination based on Authority's observations of progress in performance of the Work by Contractor that Contractor will not achieve Substantial Completion of the Work within the Contract Time as adjusted pursuant to Paragraph 8.2.1, above, then Contractor shall, following receipt of a written request by Authority to accelerate, immediately respond in writing setting forth a detailed plan for accelerating the Work. All measures necessary, including working overtime, additional shifts, Saturdays, Sundays and holidays, to accelerate performance to ensure that the Work is performed within the Contract Time shall be taken by Contractor and the cost thereof shall be paid for by Contractor at Contractor's Own Expense. Authority may also take all other necessary measures to ensure no further Delays affect achievement of Substantial Completion and Final Completion of the Work within the Contract Time and the Contractor shall reimburse Authority, or Authority may withhold from payment due to Contractor, for Losses incurred by Authority in taking such measures.

.2 **Due to Excusable Delay.** Contractor shall have the right, exercised in its sole discretion, to accelerate performance of the Work to overcome time lost due to Excusable Delay. Such acceleration, if performed other than at the written direction of Authority, shall be deemed a voluntary acceleration and the cost of such accelerated performance shall be paid for by Contractor at Contractor's Own Expense. If Authority directs in writing that the Work be accelerated to overcome an Excusable Delay that is not concurrent with an Unexcused Delay, then Contractor shall be entitled to a Contract Adjustment to the Contract Price for such acceleration on and subject to the same terms as provided for in Subparagraph 8.2.7.3, below, in the case of an acceleration to overcome a Compensable Delay.

.3 **Due to Compensable Delay.** Authority shall have the right, exercised in its sole and absolute discretion, in lieu of granting a Contract Adjustment to the Contract Time for Compensable Delay, to direct in writing the acceleration of the Work by Contractor in order to recapture time lost due to such Compensable Delay. Authority and Contractor shall endeavor prior to commencement of such acceleration to mutually agree upon the amount of compensation to be paid therefor. Authority shall have the right, in the absence of such an agreement, to direct in writing that Contractor accelerate. Contractor shall comply with such directive. Contractor's right to a Contract Adjustment to the Contract Price on account of such acceleration shall be limited to (1) the premium time portion of any overtime paid for labor provided by Contractor or any Subcontractor, plus (2) additional supervision costs for additional shifts of supervision provided at the Site by Contractor only (not by Subcontractors), plus (3) Allowable Markup thereon as provided in Paragraph 7.7.5, above. Except as directed by Authority in the manner stated in this Subparagraph 8.2.7.3, no statements, conduct or actions by Authority will be construed as creating an obligation on the part of Authority to agree to a Contract Adjustment to the Contract Price on account of any cost of overtime or other costs associated with an acceleration of the Work to recapture time lost due to Compensable Delay.

8.2.8 **Concurrent Delays.** For purposes of the calculations provided for in this Paragraph 8.2.8, the words "concurrent delay", "concurrently delay" or "occur concurrently" mean the portion of two or more Delays affecting the critical path to Substantial Completion that are overlapping or co-existent. Contractor's right to a Contract Adjustment of the Contract Time (pursuant to Subparagraphs 8.2.8.1, 8.2.8.2 and 8.2.8.3, below) and Contract Price (pursuant to Subparagraphs 8.2.8.4, 8.2.8.5 and 8.2.8.6, below) shall, in the case of concurrent delays, be calculated in accordance with the following:

.1 If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of Days from the commencement of the first Delay to the cessation of the Delay which ends last.

.2 If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which such Excusable Delay or Compensable Delay exceeds the number of Days of such Unexcused Delay.

.3 If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which such Excusable Delay and Compensable Delay, as determined pursuant to Subparagraph 8.2.8.1, above, exceeds the number of Days of such Unexcused Delay.

.4 If an Unexcused Delay occurs concurrently with a Compensable Delay, the maximum period of time for which Contractor shall be entitled to a Contract Adjustment to the Contract Price in accordance with Section 3.3 of the Construction Contract shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Unexcused Delay.

.5 If a Compensable Delay occurs concurrently with an Excusable Delay, the maximum period of time for which Contractor shall be entitled to a Contract Adjustment to the Contract Price in accordance with Section 3.3 of the Construction Contract shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Excusable Delay.

.6 If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum period of time for which Contractor shall be entitled to a Contract Adjustment to the Contract Price in accordance with Section 3.3 of the Construction Contract shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Unexcused Delay.

**8.2.9 Delay Claims.** Claims by Contractor relating to disputed Contract Adjustments due to Delay shall be made in accordance with applicable provisions of Section 4.3, above.

**8.2.10 Exercise of Authority Rights.** Notwithstanding any other provision of the Contract Documents to the contrary, Authority's exercise in accordance with the Contract Documents of any of its rights or remedies permitted by Applicable Laws or the Contract Documents in response to a failure by Contractor or any Subcontractor to comply with the Contract Documents shall not, under any circumstances, entitle Contractor to a Contract Adjustment.

## ARTICLE 9 PAYMENTS AND COMPLETION

### 9.1 PAYMENT BY AUTHORITY

**9.1.1 Time for Payment.** Authority shall make payment of undisputed sums due to the Contractor upon Applications for Payment requesting Progress Payment not later than thirty (30) Days after receipt of an Application for Payment requesting Progress Payment that has been properly and timely prepared and submitted by Contractor, and approved by Authority, in accordance with the requirements of the Contract Documents.

**9.1.2 Not Acceptance.** No approval, inspection or use of, or payment for, the Work by Authority or by any person or entity acting on Authority's behalf shall constitute acceptance of Work that is not in accordance with the Contract Documents or a waiver of any of Authority's rights under the Contract Documents.

**9.1.3 Interest.** If Authority fails to make payment of an undisputed sum due as a Progress Payment to the Contractor as required by this Article 9, Authority shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of California Code of Civil Procedure §685.010. The number of Days available to the Authority to make payment without incurring such interest shall be reduced by the number of Days by which the Authority exceeds the seven (7) Day response time applicable to the Authority set forth in Section 9.5, below. The foregoing is the Authority's sole obligation with respect to payment of interest earned or accrued on an amount claimed due prior to the commencement by Contractor of legal proceedings for recovery of such amount.

**9.1.4 Disputed Payments.** Subject to Contractor's rights under Section 9.8, below, no good faith dispute or disagreement between Authority and Contractor with respect to the amount of any payment claimed due by



Contractor shall relieve or excuse Contractor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work.

## 9.2 APPLICATIONS FOR PAYMENTS

9.2.1 **Submission by Contractor.** Applications for Payment requesting Progress Payment shall be properly prepared and submitted by Contractor to Authority once a month on the twenty-fifth (25<sup>th</sup>) Day of the month. If the twenty-fifth (25<sup>th</sup>) Day of the month is a weekend or Holiday, the Application for Payment shall be submitted on the next working day.

9.2.2 **Period of Application.** The period covered by each such Application for Payment requesting Progress Payment shall be not more than thirty (30) Days ending on the twenty-fifth (25<sup>th</sup>) Day of the month in which such Application for Payment is submitted.

9.2.3 **Schedule of Values.** Each Application for Payment shall be accompanied by a Schedule of Values prepared and submitted in accordance with the requirements of the Contract Documents, including, without limitation, the provisions of Section 9.3, below.

9.2.4 **Changes in Work.** Applications for Payment may include requests for payment on account of Compensable Changes in the Work which have been properly authorized by Change Order or Unilateral Change Order.

9.2.5 **Progress Payments.** Applications for Payment requesting Progress Payments shall be based on amounts calculated in accordance with the provisions of Section 9.4, below.

9.2.6 **Percentage Completion.** Applications for Payment requesting Progress Payments shall indicate the Contractor's estimate of the percentage of completion of each line item listed in the Schedule of Values as of the end of the period covered by the Application for Payment.

9.2.7 **Projected Work.** Unless approved by Authority in writing in advance of an Application for Payment being submitted, which approval may be granted or denied in the sole and absolute discretion of Authority, Applications for Payment shall only include amounts for Work performed to the twenty-fifth (25<sup>th</sup>) Day of the month in which the Application for Payment was submitted and shall not include request for payment of amounts for Work projected to be performed, stored or delivered beyond that date.

9.2.8 **Disagreements.** In the event of a disagreement between Authority and Contractor over the accuracy or reasonableness of the Contractor's statement of percentage of progress achieved that is contained in the Application for Payment, the Authority shall make a Good Faith Determination of the percentage, which percentage shall then be inserted by Contractor in the Application for Payment and the Application for Payment submitted, or resubmitted, incorporating such revision.

9.2.9 **Substantial Completion.** For the sole purpose of the percentage calculation set forth in Paragraph 9.2.6, above, and for no other purpose, the Work shall be deemed one hundred percent complete upon Substantial Completion and the amount released to Contractor shall, subject to Authority's right to withhold pursuant to Section 9.6, below, be a sum sufficient to increase the total of Progress Payments to Contractor to ninety-five percent (95%) of the Contract Price.

9.2.10 **Certification by Contractor.** Each Application for Payment that is submitted by Contractor shall be signed by Contractor with a certification by Contractor to Authority that: (1) the data comprising the Application for Payment is accurate and the Work has progressed to the point indicated; (2) to the best of Contractor's knowledge, information and belief, the Work is in accordance with the Contract Documents; (3) Contractor is entitled to payment in the amount certified; and (4) all sums previously applied for by Contractor on account of the Work performed by the Subcontractors and that have been paid by Authority have been paid to the Subcontractors performing such Work, without any retention, withholding or back charge by Contractor.

9.2.11 **Stored Materials.** Authority may, in the exercise of its sole and absolute discretion, approve or disapprove for inclusion in Contractor's Application for Payment the cost of materials to be incorporated, but not yet incorporated, in the Work and delivered and suitably stored either at the Site or at some other appropriate location

acceptable to the Authority. As part of any request for such approval, Contractor shall furnish evidence satisfactory to Authority: (1) of the cost of such materials; (2) that such materials are under the exclusive control of Contractor, or if not, that title to the materials is in the Authority, free of any lien or encumbrance; and (3) with respect to materials stored off-Site, that the materials are safely and suitably stored in a bonded warehouse with appropriate insurance coverage satisfactory to Authority. No payment or approval by Authority pursuant to this Paragraph 9.2.11 shall (a) be construed as an inspection or acceptance of the materials; (b) relieve Contractor of its continuing and sole responsibility for the care and protection of, and sole responsibility for any Loss to, such materials, from any cause whatsoever; or (c) operate as a waiver of rights by Authority.

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

### 9.3 SCHEDULE OF VALUES

9.3.1 **Initial Submission.** Within twenty-one (21) Days after issuance by Authority of the Notice of Intent to Award, Contractor shall submit to Authority a Schedule of Values, prepared in a form and incorporating a level of detail satisfactory to Authority, that allocates the Contract Price to various portions of the Work, including, without limitation, each portion of the Work to be performed by a Subcontractor, self-performed Work, discrete categories of direct (i.e., on-Site) overhead costs (sometimes referred to as "general conditions costs"), Contractor home office and indirect overhead and profit and amounts reserved for contingencies.

9.3.2 **Balanced Allocation.** The Schedule of Values shall be balanced, reflecting in each line item Contractor's estimated or actual cost commitments for the category of Work included in the line item and a proportionate share of Contractor's overhead and profit. Techniques, such as "front-end loading", designed to create an imbalanced cash flow are strictly prohibited.

9.3.3 **Line Estimates.** Line item values stated in the Schedule of Values that are based on Contractor's estimates, rather than actual subcontract prices, shall be identified as such and replaced with actual subcontract prices when they become available as the subcontracting process progresses.

9.3.4 **Updating.** The Schedule of Values shall be updated by Contractor each month as necessary to reflect the Contractor's actual progress in subcontracting the Work. An updated Schedule of Values shall be attached to each Application for Payment.

9.3.5 **Substantiation.** Contractor shall provide such data as Authority may reasonably require to substantiate that the Schedule of Values has been prepared in conformance with the requirements of the Contract Documents. Failure to provide such substantiation shall result in the Schedule of Values being deemed incomplete and unapproved by Authority for use by Contractor in submitting its Applications for Payment.

9.3.6 **Corrections.** If corrections are required in order to make the Schedule of Values comply with the requirements of the Contract Documents, such corrections shall be made as a condition of the Contractor's Application for Payment being considered properly prepared, submitted and complete.

9.3.7 **Changes to Work.** Costs involved in the performance of Work covered by Change Orders, Unilateral Change Orders or Construction Change Directives shall be, at the option of Authority, either separately scheduled or incorporated as adjustments to the respective trade lines of Work to which they apply. Except as otherwise expressly required by Article 7, above, the Schedule of Values shall not be utilized by Contractor as a basis for calculating Contract Adjustments.

9.3.8 **Applications for Payment.** The Schedule of Values prepared by Contractor in accordance with the requirements of the Contract Documents shall be used as a basis for Authority's review and approval or disapproval of Applications for Payment.

## 9.4 PROGRESS PAYMENT CONDITIONS

9.4.1 **Progress Payment Amount.** Subject to the other provisions of the Contract Documents, the amount of each Progress Payment requested in an Application for Payment shall be computed as follows:

.1 take that portion of the Contract Price properly allocable to Work (other than materials, products or equipment furnished by Authority) permanently incorporated at the Site as part of the Work, based on the product derived by multiplying (1) the percentage completion of each such portion of the Work times (2) the portion of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less a retention of five percent (5%) thereof;

.2 add that portion of the Contract Price that is allocable to materials and equipment (other than materials, products or equipment furnished by Authority) approved by Authority pursuant to Paragraph 9.2.11, above, and suitably stored at the Site or at a location off-Site, less a retention of five percent (5%) thereof;

.3 subtract the aggregate of previous payments made by the Authority; and

.4 subtract amounts, if any, that Authority has determined will be withheld pursuant to an exercise of the Authority's right to withhold pursuant to Section 9.6, below.

9.4.2 **Other Conditions and Documentation.** Contractor shall submit its Applications for Payment requesting Progress Payments to Authority using such forms as required by Authority. Without limitation to any other conditions to payment set forth elsewhere in the Contract Documents, the following shall be conditions precedent to a proper submission, and to Authority's approval, of each Application for Payment:

.1 submission of a Schedule of Values that complies with Section 9.3, above;

.2 submission of Contractor's certification required by Paragraph 9.2.10, above;

.3 submission of: (1) forms of conditional releases of stop payment notice and bond rights upon progress payment, complying with California Civil Code §8132, for all Work performed during the time period covered by the current Application for Payment, signed by Contractor and the Subcontractors, of every Tier; and (2) forms of unconditional releases of stop payment notice and bond rights upon progress payment, complying with California Civil Code §8134, for all Work performed during the time period covered by the previous Application for Payment, signed by Contractor and the Subcontractors, of every Tier;

.4 compliance by Contractor with its obligation for daily maintenance of Record Drawings and Specifications as required by Paragraph 3.10.1, above;

.5 compliance by Contractor with its obligation for submission of daily reports as required by Paragraph 3.10.2, above;

.6 compliance by Contractor with its obligations for submission of scheduling information and updating of the Construction Schedule as required by Section 3.9, above, and other provisions of the Contract Documents pertaining to preparation or updating of schedules and scheduling information;

.7 proper payment of prevailing wages as defined in California Labor Code §1720, et seq.;

.8 timely submission of adequate and complete certified payroll records for any time period that Work was performed and for which payment is being requested;

.9 submission of certifications by Contractor and the Subcontractors as required by Applicable Laws certifying that all employee benefit contributions due and owing have been paid in full;

.10 submission of sales tax information as required by Paragraph 3.6.3, above; and

.11 compliance by Contractor with all of its other obligations for submission of documentation or performance of conditions which, by the terms of the Contract Documents, constitute conditions to Contractor's right to receive payment for Work performed.

## 9.5 AUTHORITY APPROVAL/REJECTION OF APPLICATIONS FOR PAYMENT

9.5.1 **Review by Authority.** Subject to Authority's rights under Paragraph 9.5.4, below, Authority shall promptly review Applications for Payment submitted by Contractor and provide its approval or disapproval, in whole or part, within (1) seven (7) Days after receipt of an Application for Payment requesting Progress Payment, and (2) within fourteen (14) Days after receipt of an Application for Payment requesting Final Payment.

9.5.2 **Disapproval by Authority.** Disapproval by Authority disapproving of an Application for Payment shall be accompanied by an explanation of the reasons for such disapproval. Failure by Authority to specify in its disapproval a particular grounds for disapproval of an Application for Payment shall not waive the Authority's right to assert such grounds as a basis for any future disapproval, or nullification of its prior approval, of that or any other Application for Payment.

9.5.3 **Re-submittal by Contractor.** An Application for Payment that is disapproved by Authority shall be corrected and re-submitted by Contractor after receipt by Contractor of the notice of disapproval. A re-submitted Application for Payment shall be reviewed and responded to by Authority in the same manner as provided in Paragraphs 9.5.1 and 9.5.2, above. If re-submitted, the re-submitted Application for Payment shall be reviewed and responded to by Authority in the same manner as provided in Paragraph 9.5.1 and Paragraph 9.5.2, above. If not re-submitted, only the amount, if any, that is approved for payment shall be paid until such time as a proper Application for Payment that includes the disapproved amount has been submitted in another Application for Payment and, upon such re-submittal, approved for payment.

9.5.4 **Approval Nullification.** Authority reserves the right to nullify any prior approval of an Application for Payment that is later found to not be in compliance with the requirements of the Contract Documents, whether or not such noncompliance was previously actually observed or apparent on the face of the Application for Payment, and based on such nullification Authority may take either of the following actions, as applicable: (1) if the Application for Payment has not yet been paid by Authority, disapprove of that portion of the Application for Payment that is not in compliance and withhold payment of that sum until the noncompliance is fully rectified; or (2) if the Application for Payment has been paid by Authority, nullify the Authority's prior approval and withhold payment of such disputed amounts in response to future Applications for Payment; provided, however, that in either case the amount of the Authority's nullification shall be limited to that portion of the amount requested in the Application for Payment that is in dispute and the amount of its withholding from the current or any future Application for Payment shall be limited to the amount nullified plus any additional withholding permitted under Section 9.6, below.

9.5.5 **No Waiver by Authority.** Neither approval by Authority or Architect of, failure by Authority to exercise its right of nullification with respect to, nor payment by Authority upon, an Application for Payment or any portion thereof shall be interpreted as or constitute a waiver or release of any of Authority's rights to require Contractor's full compliance with the Contract Documents.

9.5.6 **No Representation.** Neither approval by Authority or Architect of, failure by Authority to exercise its right of nullification with respect to, nor payment by Authority upon, an Application for Payment or any portion thereof shall be interpreted as a representation that Authority or Architect has: (1) made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work, (2) reviewed Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from the Subcontractors and other data requested by Authority or Architect to substantiate Contractor's right to payment, or (4) made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Price.

## 9.6 WITHHOLDING OF PAYMENT

9.6.1 **Grounds for Withholding.** Authority may decline to approve an Application for Payment and withhold payment requested under any unpaid Application for Payment, in whole or in part, to such extent that Authority makes a Good Faith Determination that withholding is necessary, in the sole discretion of Authority, because of any of the following circumstances:

**.1 Third-Party Claims.** Third-party claims or stop payment notices filed or reasonable evidence (including, without limitation, failure by Contractor to submit conditional releases of stop payment notice and bond rights required by the Contract Documents) indicating the possible filing of such claims or stop payment notices.

**.2 Defective Work.** Defective Work not remedied.

**.3 Nonpayment.** Failure of Contractor to make proper payments to a Subcontractor for services, labor, materials or equipment or other Work.

**.4 Inability to Complete.** Reasonable doubt that the Work can be completed for the then unpaid balance of the Contract Price or within the Contract Time.

**.5 Violation of Applicable Laws.** Failure of Contractor or a Subcontractor to comply with Applicable Laws.

**.6 Penalty.** Any penalty asserted against Authority by virtue of Contractor's failure to comply with Applicable Laws.

**.7 Lack of Progress.** Failure by Contractor to maintain progress in accordance with the Construction Schedule.

**.8 Setoff.** Any reason specified elsewhere in the Contract Documents as grounds for a withholding, offset or setoff or that would legally entitle Authority to a setoff or recoupment.

**.9 Consultant Services.** Additional professional, consultant or inspection services required due to Contractor's failure to comply with the Contract Documents.

**.10 Liquidated Damages.** Liquidated damages payable to Authority pursuant to Section 3.2 of the Construction Contract or that there is a reasonable basis to believe will be payable to Authority based upon the Contractor's project date for Substantial Completion based on its update Construction Schedule or based upon other evidence available to Authority of the probable date that the Work will be Substantially Completed.

**.11 Damage.** Loss caused to Authority, a Separate Contractor or any other person or entity under contract to Authority, by Contractor or a Subcontractor.

**.12 Cleanup.** Cleanup performed by Authority and chargeable to Contractor pursuant to the terms of the Contract Documents.

**.13 Employee Benefits.** Failure of Contractor to pay contributions due and owing to employee benefits funds pursuant to any applicable collective bargaining agreement or trust agreement.

**.14 Required Documents.** Failure of Contractor to submit on a timely basis, proper and complete documentation required by the Contract Documents, including, without limitation, schedule updates, 'look ahead' schedules, pricing information, certifications and other required reports or documentation.

**.15 Labor Compliance.** Failure of Contractor or any Subcontractor to properly pay prevailing wages as defined in California Labor Code §§1720 et seq.

**.16 Nullification.** Nullification by Authority pursuant to Paragraph 9.5.4, above, of its prior approval of an Application for Payment.

**.17 Releases.** Failure by Contractor to submit any conditional release of stop payment notice and bond rights that is required pursuant to Subparagraph 9.4.2.3, above or Subparagraph 9.10.4.4, below.

**.18 Other Breach.** A breach by Contractor of any obligation or provision of the Contract Documents.

**9.6.2 Application of Withholding.** Sums properly withheld pursuant to Paragraph 9.6.1, above, may be used by Authority without a prior judicial determination of Authority's actual rights with respect to the grounds on which such withholding is based. Contractor agrees and hereby designates Authority as its agent for such purposes, and agrees that such payments shall be considered as payments made under the Construction Contract by Authority to Contractor. Authority shall submit to Contractor an accounting of such funds disbursed on behalf of Contractor. As an alternative to such payment, Authority may, in its sole and absolute discretion, elect to exercise its right to adjust the Contract Price as provided in Section 13.4, below.

**9.6.3 Final Payment.** In accordance with California Public Contract Code §7107, the amount to be withheld from Contractor's Final Payment pursuant to a withholding asserted pursuant to Paragraph 9.6.1, above, shall be limited to one hundred fifty percent (150%) of the disputed amount.

**9.6.4 Release of Withholding.** When the reasons for withholding of payment as set forth in Paragraph 9.6.1, above, are removed, approval by Authority will be promptly issued to Contractor for amounts previously withheld and payment of amounts withheld will be made by Authority within thirty (30) Days thereafter.

**9.6.5 Additional Rights.** The Authority's right of withholding set forth in this Section 9.6 is in addition to, and not a limitation upon, any other rights of withhold that Authority may have under the Contract Documents or Applicable Laws.

## **9.7 PAYMENTS BY CONTRACTOR**

**9.7.1 Payments to Subcontractors.** Contractor shall not include in its Applications for Payment sums on account of any Subcontractor's portion of the Work that it does not intend to pay to such Subcontractor. Upon receipt of payment from Authority, Contractor shall pay the Subcontractors performing the Work, out of the amount paid to Contractor on account of such Subcontractors' portions of the Work, the amount to which said Subcontractors are entitled in accordance with the terms of their contracts with Contractor and Applicable Laws, including, without limitation, California Public Contract Code §7107. Contractor shall remain responsible, notwithstanding a withholding by Authority pursuant to the terms of these General Conditions, to promptly satisfy from its own funds sums due to all the Subcontractors who have performed the Work that is included in Contractor's Application for Payment. Contractor shall, by appropriate agreement, require each Subcontractor to make payments to its sub-subcontractors and suppliers in similar manner. Authority shall have no obligation to pay or be responsible in any way for payment to the Subcontractors, of any Tier.

**9.7.2 Payments in Trust.** Any funds that Contractor receives in payment for services or Work performed by a Subcontractor shall constitute assets of a trust, which trust funds shall be used for the exclusive benefit of the Subcontractor for the purpose of discharging Contractor's financial obligations on account of labor, services, materials or equipment furnished to the Project by the Subcontractor, provided that such labor, services, materials or equipment were performed in accordance with the Contract Documents, were included in an Application for Payment to Authority, and were paid by the Authority to Contractor. Contractor shall be the trustee of the trust and shall be required to deal with the trust assets for the benefit of the Subcontractor. Contractor shall not be a beneficiary of the trust. Nothing herein shall be construed as an intent to require that Contractor maintain trust funds in separate bank accounts, specifically designate any third party as a beneficiary of the trust created herein, or otherwise give rise to any cause of action against the Authority by any third party beneficiary of the trust created herein.

**9.7.3 Payment Information.** Authority will, on request, furnish to any of the Subcontractors, if practicable, information for such Subcontractor's review regarding percentages of completion or amounts applied for by Contractor and action taken thereon by Authority on account of portions of the Work done by such Subcontractor.

**9.7.4 Joint Payment.** Authority shall have the right, if deemed necessary in its sole discretion, to issue joint checks made payable to Contractor and any of the Subcontractors, of any Tier. The joint check payees shall be solely responsible for the allocation and disbursement of funds included as part of any such joint payment. Endorsement on such check by a payee shall be conclusively presumed to constitute receipt of payment by such payee. In no event shall any joint check payment be construed to create: (1) any contract between Authority and any of the Subcontractors, of any Tier; (2) any obligation from Authority to any of the Subcontractors; or (3) any third-party rights against Authority or Architect.

**9.7.5 Direct Negotiation of Stop Payment Notices.** Authority shall have the right to directly discuss, negotiate, settle or pay, without notice to or participation by Contractor, any stop payment notice claims asserted by the Subcontractors, of any Tier, and to deduct such sums paid from sums due to Contractor.

**9.7.6 Release of Stop Payment Notices.** With the exception of that portion, and only that portion, of a stop payment notice or other claim that arises as a result of a failure by the Authority to make payment to Contractor under circumstances constituting a breach of the Construction Contract by Authority, if any stop payment notice or other claim, whether invalid or valid, is filed with, served upon or made or asserted against the Authority or the Site by any Subcontractor, of any Tier, or their agent or employee, for money claimed due, then Contractor shall within five (5) Days after written notice by the Authority procure, furnish and record appropriate releases or other instruments which under Applicable Laws will fully release, extinguish and remove such stop payment notice or claim, as well as any notices of pending action or other notices recorded against the Site in connection with the enforcement thereof. All costs of such actions by Contractor shall be paid for by Contractor at Contractor's Own Expense. Unless and until fully released as aforesaid, the Authority shall have the right to retain from any payment then due, or thereafter to become due, to Contractor an amount equal to one hundred and fifty percent (150%) of the amount necessary to satisfy, discharge and defend against any such stop payment notice or claim and any action or proceeding thereon, including, without limitation, an amount for anticipated attorney's fees and costs. If the amount to be paid, or the amount retained, is insufficient to satisfy, discharge and defend against any such stop payment notice or claim and any action or proceeding thereon, then Contractor shall be liable for the difference and upon demand shall immediately deposit the same with the Authority. The provisions of this Paragraph 9.7.6 are in addition to such other rights as the Authority may have against Contractor under the Contract Documents or Applicable Laws.

**9.7.7 No Authority Obligation.** Neither Authority nor Architect shall have any obligation to pay or to see to the payment of money to any of the Subcontractors except as may otherwise be required by Applicable Laws.

## **9.8 FAILURE OF PAYMENT**

If, through no fault of Contractor or failure by Contractor to comply with its obligations under the Contract Documents either: (1) approval or disapproval by Authority of an Application for Payment properly prepared and submitted by Contractor and requesting payment that is otherwise undisputed by Authority is not issued within the time period required therefor by the terms of this Article 9; or (2) the Authority does not (a) upon an Application for Payment properly prepared and submitted by Contractor pay to Contractor, within the time period required for payment by Authority, an undisputed amount approved by Authority as earned, which approval has not been, and is not thereafter, nullified by Authority, or (b) pay to Contractor an amount that has been awarded by arbitration or judgment of a court of competent jurisdiction, then Contractor may, following delivery to Authority of a written "10-day stop work order", stop the Work until, as applicable, an approval or disapproval by Authority, or payment by Authority, is received by Contractor. Promptly upon receipt of such approval or disapproval, or payment, as applicable, Contractor shall resume the Work. Any resulting Delay associated with the shut down and start up of the Work as a result of Contractor's proper exercise of its right to stop work under this Section 9.8 shall constitute a Compensable Delay.

## **9.9 SUBSTITUTION OF SECURITIES FOR RETENTION**

**9.9.1 Public Contract Code.** Pursuant to the requirements of California Public Contract Code §22300, upon the Contractor's request, the Authority will make payment to the Contractor of any funds withheld from payments to ensure performance under the Contract Documents if the Contractor deposits with the Authority, or in escrow with a California or federally chartered bank in California acceptable to the Authority ("Escrow Agent"), securities eligible for the investment of State Funds under Government Code §16430, or 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 Authority, upon the following conditions:

**.1** The Contractor shall be the beneficial owner of any securities substituted for monies withheld for the purpose of receiving any interest on such securities.

**.2** All expenses relating to the substitution of securities under said §22300 and under this Section 9.9, including, but not limited to the Authority's overhead and administrative expenses and expenses of Escrow Agent, shall be the responsibility of the Contractor.

.3 Securities or certificates of deposit substituted for monies withheld shall be of a value of at least equivalent to the amounts of the retention to be paid to the Contractor pursuant to the Contract Documents.

.4 If the Contractor shall choose to deposit securities in lieu of monies withheld with an Escrow Agent, the Contractor, the Authority and Escrow Agent shall, as a prerequisite to such deposit, enter into an escrow agreement. Such escrow agreement shall be substantially in the form "Escrow Agreement for Security Deposits in Lieu of Retention" set forth in California Public Contract Code §22300(f).

.5 The Contractor shall obtain the written consent of Surety to such agreement.

.6 Securities, if any, shall be returned to the Contractor only upon satisfactory Final Completion of the Work.

9.9.2 **Substitute Security.** To minimize the expense caused by such substitution of securities, the Contractor shall, prior to or at the time the Contractor requests to substitute security, deposit sufficient security to cover the entire amount to be withheld. Should the current market value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which the Authority withholds pursuant to the Contract Documents, the Contractor shall immediately and at the Contractor's Own Expense deposit additional security qualifying under said §22300 until the current market value of the total security deposited is no less than the amount subject to withholding under the Contract Documents. Securities shall be valued as often as conditions of the securities market warrant, but in no case less frequently than once per month.

9.9.3 **Deposit of Retentions.** Alternatively, subject to the conditions set forth in Paragraph 9.9.1, above, upon request of the Contractor, the Authority shall make payment of retentions directly to Escrow Agent at the expense of the Contractor, provided that the Contractor, the Authority and Escrow Agent shall, as a prerequisite to such payment, enter into an escrow agreement in the same form as prescribed in Subparagraph 9.9.1.4, above. At the Contractor's Own Expense, the Contractor may direct the investment of the payments into securities and interest bearing accounts and the Contractor shall receive the interest earned on the investments. Escrow Agent shall hold such direct payments by the Authority under the same terms provided herein for securities deposited by the Contractor. Upon satisfactory Final Completion of the Work, the Contractor shall receive from Escrow Agent all securities, interest and payments received by Escrow Agent from the Authority, less escrow fees and charges of the Escrow Account, according to the terms of said §22300 and the Contract Documents.

## 9.10 FINAL PAYMENT

9.10.1 **Payment by Authority.** Subject to the Authority's right of withholding as set forth in Section 9.6, above, or elsewhere in the Contract Documents, Final Payment shall be made by Authority not more than sixty (60) Days after completion of the Work as defined in Clauses (1), (2), (3) or (4) of California Public Contract Code § 7107(c), whichever definition is earliest satisfied.

9.10.2 **Application for Final Payment.** Upon issuance by Authority of the Notice of Final Completion pursuant to Paragraph 9.13.5, below, Contractor shall submit to Authority its Application for Payment requesting Final Payment.

9.10.3 **Review by Authority.** Authority will review and approve or disapprove of the Application for Payment requesting Final Payment as provided in Section 9.5, above.

9.10.4 **Conditions to Final Payment.** Without limitation to any other conditions to payment set forth elsewhere in the Contract Documents, the following shall be conditions to a proper submission, and to Authority's approval, of Contractor's Application for Payment requesting Final Payment:

- .1 submission of Contractor certification as required by Paragraph 9.2.10, above;
- .2 submission of consent of Surety, if any, to Final Payment;



.3 submission of a certificate evidencing that the insurance required by the Contract Documents is in force;

.4 submission of conditional releases and waivers of stop payment notice and bond rights upon final payment in the form required by California Civil Code §8136 executed by Contractor and by all the Subcontractors, of every Tier;

.5 submission of all Close-Out Documents (including, without limitation, complete, accurate Record Drawings and Specifications certified by Contractor as required by Paragraph 3.10.1, above);

.6 timely submission of adequate and complete certified payroll records for any time period that Work was performed, which have not been submitted by Contractor in connection with its previous Applications for Payment;

.7 proper payment of prevailing wages as defined in California Labor Code §§1720, et seq.;

.8 submission of certifications by Contractor and each Subcontractor, as required by any applicable collective bargaining agreement or trust agreement or Applicable Laws, certifying that all employee benefit contributions due and owing have been paid in full; and

.9 submission of any other documents or information required by the Contract Documents as a condition of Final Payment or Final Completion.

**9.10.5 Disputed Amounts.** Pursuant to California Public Contract Code § 7107, Authority may deduct and withhold from Final Payment an amount of up to one hundred fifty percent (150%) of any disputed amounts, including, without limitation, amounts to protect Authority against any Loss caused or threatened as a result of Contractor's failing to fully satisfy the conditions of Final Completion and Final Payment.

**9.10.6 No Waiver by Authority.** The making of Final Payment by Authority shall not constitute a waiver by Authority of any rights or claims, including, without limitation, any right or claim for reimbursement of Allowable Costs or Allowable Markup paid to Contractor that is determined by Authority, either before or after Final Payment, to have been not due to Contractor.

#### **9.10.7 WAIVER BY CONTRACTOR.**

**ACCEPTANCE OF FINAL PAYMENT BY CONTRACTOR OR A SUBCONTRACTOR SHALL CONSTITUTE A WAIVER OF ALL RIGHTS BY THAT PAYEE AGAINST AUTHORITY FOR RECOVERY OF ANY LOSS, EXCEPTING ONLY THOSE CLAIMS THAT HAVE BEEN SUBMITTED BY CONTRACTOR IN THE MANNER REQUIRED BY SECTION 4.3, ABOVE, PRIOR TO, OR AT THE TIME OF CONTRACTOR'S SUBMISSION TO AUTHORITY OF, ITS APPLICATION FOR PAYMENT REQUESTING FINAL PAYMENT.**

#### **9.11 SUBSTANTIAL COMPLETION**

**9.11.1 Contract Time.** Contractor shall achieve Substantial Completion of the Work, or such portion of the Work as may be designated at any time by Authority for separate delivery, in accordance with the requirements of the Contract Time and other provisions of the Contract Documents.

**9.11.2 Request for Inspection.** Contractor shall notify the Authority when Contractor believes that the Work, or portion thereof designated by the Authority in the Contract Documents or otherwise for separate delivery, is Substantially Complete.

**9.11.3 Substantial Completion Inspection.** When Contractor gives notice to Authority that it has achieved Substantial Completion of the Work, or a Authority designated portion thereof, unless the Authority determines that the Work or Authority designated portion thereof is not sufficiently complete to warrant an inspection to determine Substantial Completion, Authority, Inspector of Record, Architect and such others as may be designated by Authority will inspect the Work, or such Authority designated portion thereof.

**9.11.4 Substantial Completion Punch List.** At the conclusion of such inspection, Authority shall prepare and give to Contractor (or, Owner may request that Contractor prepare and provide to Authority) a Substantial Completion Punch List of items, if any, to be completed or corrected for Substantial Completion. If Contractor disputes any of the items included, it shall so note its objection on the Substantial Completion Punch List. Contractor shall proceed within forty-eight (48) hours after preparation of the Substantial Completion Punch List to commence correction or completion of the items on the Substantial Completion Punch List, including, without limitation, any disputed items, and all such items of Work shall be completed promptly by Contractor before the Work will be considered as Substantially Complete. Failure by Authority, Architect, Inspector of Record or Contractor to include an item on the Substantial Completion Punch List does not alter the responsibility of Contractor to perform the Work in accordance with the Contract Documents. Items of Work necessary for Substantial Completion that, for any reason, have been omitted from the Substantial Completion Punch List shall be added to the Substantial Completion Punch List and Contractor shall, at the request of Authority, Architect or Inspector of Record made at any time prior to Final Payment commence correction or completion of such items within forty-eight (48) hours and all such items of Work shall be completed by Contractor promptly and before the Work will be considered as Substantially Complete.

**9.11.5 Re-Inspection.** Contractor shall notify Authority when the items of Work shown on the Substantial Completion Punch List are completed. Authority, Inspector of Record, Architect and such others as Authority deems necessary or appropriate will then make a further inspection to determine whether such Work is Substantially Complete. If such inspection, or any subsequent re-inspection required pursuant hereto, discloses any item, whether or not included on the Substantial Completion Punch List, which must be completed or corrected before Substantial Completion, Contractor shall, as a condition of Substantial Completion, complete or correct such item, which shall then be re-inspected to confirm that such Work is Substantially Complete. Contractor shall reimburse Authority, or Authority may at its option withhold from Contractor's payments, amounts incurred by Authority to the Inspector of Record, Architect, Authority Consultants or others whose services, for reasons within the control or responsibility of Contractor or the Subcontractors, are necessary for more than two (2) such re-inspections to determine Substantial Completion.

**9.11.6 Notice of Substantial Completion.** When Authority determines that the Work, or such designated portion thereof, is Substantially Complete, Authority will prepare a Notice of Substantial Completion on the Authority's form, which shall state the date of Substantial Completion. If the Notice of Substantial Completion is for the entire Work, then the Authority will attach it to the Final Completion Punch List prepared in accordance with [Paragraph 9.13](#) below. Regardless of the date the Notice of Substantial Completion is issued, Substantial Completion shall be deemed to have occurred on the date stated in the Notice of Substantial Completion.

## **9.12 PARTIAL OCCUPANCY OR USE**

Authority reserves the right to beneficially occupy all or any portion of the Work at any time before Substantial Completion of the entire Work. Beneficial occupancy means that Authority has assumed physical occupancy and use of all or such portion of the Work. Commencement of improvements or other work by Separate Contractors in order to ready the Work for use or occupancy by Authority shall be unconditionally permitted in all cases prior to Substantial Completion and shall not constitute a taking of beneficial occupancy by Authority. Exercise by Authority in accordance with the provisions of this [Section 9.12](#) of its right to take beneficial occupancy shall not constitute grounds for a Contract Adjustment. The Authority's right of beneficial occupancy of all or a portion of the Work prior to Substantial Completion shall be subject to the following conditions:

**9.12.1** Authority and such others as Authority deems necessary will make an inspection of the portion of the Work to be beneficially occupied and prepare a list of items to be completed or corrected in the same manner as required by and subject to the same conditions as set forth in [Section 9.11](#), above.

**9.12.2** Beneficial occupancy by Authority shall not be construed as Acceptance of that portion of the Work which is to be occupied.

**9.12.3** Except as otherwise provided in this [Section 9.12](#), beneficial occupancy by Authority shall not constitute a waiver of rights of the Authority against Contractor. Notwithstanding anything stated in this [Section 9.12](#) or elsewhere in the Contract Documents to the contrary, beneficial occupancy by Authority shall not constitute a waiver of rights of Authority relating to Defective Work in the area beneficially occupied or in any other portion of the Work.

9.12.4 Prior to the Authority's taking beneficial occupancy, Contractor shall submit to Authority an itemized list of each piece of equipment located in or serving the area to be occupied stating the date operation of such piece of equipment commenced, together with operating instructions, manuals and other information required by the Contract Documents. Contractor shall provide, in the areas beneficially occupied, on a continual basis, utility services, elevator service, and heating and cooling systems in operable condition commencing at the time of beneficial occupancy and until Final Completion of the entire Work. Authority shall be responsible, from and after taking occupancy, for utility consumption, regular operation and regular maintenance of such systems or equipment.

9.12.5 Authority shall pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.

9.12.6 Authority shall pay all utility costs that arise out of its beneficial occupancy.

9.12.7 Contractor shall not be responsible for providing security in areas beneficially occupied.

9.12.8 Authority shall use its best efforts to prevent its beneficial occupancy from interfering with the conduct of Contractor's remaining Work.

9.12.9 Contractor shall not be required to repair damage caused solely by Authority's beneficial occupancy.

9.12.10 Contractor shall continue to maintain all insurance required by the Contract Documents in full force and effect.

### 9.13 FINAL COMPLETION

9.13.1 **Contract Time.** Contractor shall expeditiously and diligently perform the Work after Substantial Completion, including, without limitation, all items of Work on the Final Completion Punch List that accompanies the Notice of Substantial Completion, so as to achieve Final Completion within the requirements of the Contract Time for Final Completion.

9.13.2 **Final Completion Punch List.** Contractor shall prepare and submit to Authority at the time that Contractor requests inspection for Substantial Completion of the entire Work pursuant to Paragraph 9.11.2, above, a draft proposed Final Completion Punch List of items of Work that will be required to be completed or corrected for Final Completion. Items identified in the course of any inspection for Substantial Completion that are required to Finally Complete the Work following Substantial Completion shall be added to the proposed Final Completion Punch List and the revised Final Completion Punch List attached to the Notice of Substantial Completion. If Contractor disputes any of the items included, it shall so note its objection on the Final Completion Punch List. When Contractor considers the Final Completion Punch List to be complete, it shall promptly sign and deliver the Final Completion Punch List to the Authority. Failure by Authority, Architect, Inspector of Record or Contractor to include an item on the Final Completion Punch List does not alter the responsibility of Contractor to perform the Work in accordance with the Contract Documents. Items of Work necessary for Final Completion that, for any reason, have been omitted from the Final Completion Punch List shall be added to the Final Completion Punch List upon request by the Authority made at any time prior to Final Payment and completion of such items shall be made promptly and before the Work will be considered Finally Complete.

9.13.3 **Performance of Punch List.** Contractor shall proceed promptly and in accordance with the Contract Time to correct and complete the items on the Final Completion Punch List, including, without limitation, any disputed items, and all such items of Work shall be completed by Contractor before the Work will be considered as Finally Complete.

9.13.4 **Request for Final Inspection.** Contractor shall notify Authority when Contractor believes that the Work is Finally Complete. Authority, Inspector of Record, Architect and such others as Authority deems necessary or appropriate will then make a further inspection to determine whether such Work is Finally Complete. If such inspection, or any subsequent re-inspection required pursuant hereto, discloses any item, whether or not included on the Final Completion Punch List, which must be completed or corrected before Final Completion, Contractor shall, as a condition of Final Completion, complete or correct such item, which shall then be re-inspected to confirm that such Work is Finally Completed. Contractor shall reimburse Authority, or Authority may at its option withhold from Contractor's payments,

amounts incurred by Authority to the Inspector of Record, Architect, Authority Consultants or others whose services, for reasons within the control or responsibility of Contractor or the Subcontractors, are necessary for more than two (2) inspections to determine Final Completion.

**9.13.5 Notice of Final Completion.** When Authority determines that the Work is Finally Complete, Authority will prepare a Notice of Final Completion on the Authority's form, which shall state the date of Final Completion. Regardless of the date the Notice of Final Completion is issued, Final Completion shall be deemed to have occurred on the date stated in the Notice of Final Completion.

**9.13.6 Acceptance by Authority.** Acceptance may be exercised by Authority, in its sole and absolute discretion, either after Final Completion or, without waiving or releasing Contractor from any of its obligations under the Contract Documents, at any time after Substantial Completion and prior to Final Completion.

**9.13.7 Notice of Completion.** In addition to issuance of the Notice of Substantial Completion and Notice of Final Completion, Authority shall have the right, exercised in its sole and absolute discretion, to record a Notice of Completion pursuant to California Civil Code §9204.

**9.13.8 No Waiver by Authority.** No inspections conducted pursuant to this Article 9 nor any approvals or certificates issued by Authority, Architect or Inspector of Record shall be deemed to be a waiver or limitation on Authority's right to insist on Final Completion and full performance of all other conditions to Final Payment under the Contract Documents prior to issuance of Final Payment to Contractor.

## **ARTICLE 10 INSPECTIONS, SAFETY AND HAZARDOUS SUBSTANCES**

### **10.1 INSPECTIONS**

**10.1.1 General.** One or more Inspectors of Record, including special inspectors as required, may be employed by Authority and assigned to the Work. The fees of Inspectors of Record shall be directly paid for by Authority. IF INSPECTORS OR RECORD ARE ASSIGNED TO THE WORK, THEN NO WORK SHALL BE CARRIED ON EXCEPT UNDER THE INSPECTION, AND WITH THE KNOWLEDGE, OF THE APPROPRIATE INSPECTOR(S) OF RECORD, and Contractor shall be responsible, at Contractor's Own Expense, to remove and replace any Work performed without such inspection by the appropriate Inspector of Record.

**10.1.2 Coordination.** Contractor shall schedule, arrange, and coordinate its activities with the activities of the Authority, Inspectors of Record, Architect, Authority Consultants and others designated by Authority to inspect or observe the Work. When, in order to comply with the intent of the Contract Documents, inspection or observation must be made at the plant or mill of the manufacturer or fabricator of material or equipment, Contractor shall notify the Authority, as well as any other persons identified by Authority as assigned by it to inspect or observe the Work, a sufficient length of time in advance to allow for arrangements to be made for such inspection or observation.

**10.1.3 Uncovering of Work.** Authority or an Inspector of Record shall have the right to request that any portion of the Work be uncovered by Contractor for inspection. Except as otherwise provided in Paragraph 10.1.1, above, if such Work is found to be in accordance with the Contract Documents, then all of the additional costs incurred in uncovering, replacing and re-covering the Work shall constitute grounds for Contractor, upon proper notice and request pursuant to Article 7, above, to receive a Contract Adjustment for Compensable Change and if such uncovering, replacing and re-covering of the Work causes a Delay, such Delay shall constitute grounds for Contractor, upon proper and timely notice and request pursuant to Article 8, above, to receive a Contract Adjustment for Compensable Delay. If such Work is not in accordance with the Contract Documents, then such costs of uncovering, replacing and re-covering shall be paid for by Contractor at Contractor's Own Expense and any resulting Delay shall be consider an Unexcused Delay.

**10.1.4 Off-Hours Inspections.** Contractor shall request approval by Authority before arranging any inspections either: (1) before 7:00 am or after 3:00 pm on Monday through Friday, or (2) on any Saturday, Sunday, holiday or any other time when Work is not usually in progress. Such request shall be delivered to Authority at least two (2) working days in advance of the inspection being performed. Approval or disapproval of such request is in the sole and absolute discretion of Authority. Except where such off-hours inspections are due to a breach by Authority of an

obligation under the Contract Documents, the additional cost (over and above that which would be required for inspections during regular business hours) to Authority of the inspection shall be paid for by Contractor at Contractor's Own Expense.

**10.1.5 Access to the Work.** Contractor shall make available for use by Authority, Inspectors of Record, Architect, Authority Consultants and others assigned to inspect or observe the Work, any equipment (wheelbarrow, shovel, ladder, man-lift, etc.) that is available or in use on Site, and is required to assist in such inspections or observations.

**10.1.6 Right to Stop Work.** Authority shall have the right, but not the obligation, to order Contractor to stop performance of Work. Inspectors of Record shall, only if and to the extent permitted by Applicable Laws or if they are given written authority to do so by Authority, have the authority, but not the obligation, to stop the Work whenever provisions of Contract Documents are not being complied with, or the conduct of the Work poses a probable risk of harm to persons or property.

**10.1.7 No Authority Duty.** No authority of the Authority, Inspectors of Record, Architect, Authority Consultants or others designated by Authority to inspect the Work that is conferred by the Contract Documents nor any decision made by any of them in good faith either to exercise or not exercise such authority, nor any recommendation by any of them, shall give rise to a duty or responsibility on the part of any of them to Contractor or to the Subcontractors, of any Tier.

**10.1.8 Contractor Responsibility.** Inspections or observations by the Authority, Inspectors of Record, Authority Consultants or others shall not in any way relieve Contractor from its sole responsibility for full compliance with all of the terms and conditions of the Contract Documents, nor be construed to lessen, to any degree, Contractor's responsibility for providing efficient and capable superintendence as required herein or for incorporating into the Work only those items of the Work that conform to the Contract Documents.

**10.1.9 Reimbursement to Authority.** Without limitation to any other provisions of the Contract Documents, Contractor shall reimburse the Authority at Contractor's Own Expense, or Authority shall have the right, at its option, to withhold from payments due to Contractor, cost of inspections, observations or testing and other Losses that are incurred for any of the following reasons: (1) Contractor has failed to execute the Work in accordance with the Contract Documents; (2) materials or equipment have been substituted by Contractor, without prior approval by the Authority and Architect; (3) Defective Work; or (4) to conduct load testing of certain portions of the structure that have not fully met the requirements of the Contract Documents.

## 10.2 SAFETY PRECAUTIONS AND PROGRAMS

**10.2.1 General Safety Obligation.** Contractor shall, notwithstanding the activities of others (such as, but not limited to, the Authority, Architect, Inspectors of Record, Authority Consultants or others designated by Authority to prepare safety recommendations or inspect or observe the Work), be solely responsible, on a twenty-four (24) hours a Day, seven (7) Days a week basis, for initiating, maintaining and supervising all safety precautions and programs on the Site in connection with the preparation, performance, observation or inspection of the Work, including all necessary precautions to protect and safeguard all persons and property from loss, injury, death or damage resulting, directly or indirectly, from the activities of Contractor or the Subcontractors, including, without limitation, all of the following:

- .1 persons in and around the Site, as well as their personal property and vehicles;
- .2 the Work, materials and equipment to be incorporated therein under care, custody or control of Contractor or the Subcontractors, of any Tier, whether in storage on or off the Site, including, without limitation, the provision of temperature control, covering and enclosures necessary to prevent Loss due to adverse weather conditions;
- .3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, curbs, roadways, structures (including, without limitation, protection from settlement or loss of lateral support) and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 construction and operations by the Authority, Architect and Inspectors of Record.

**10.2.2 Contractor's Safety Program.** Prior to starting the Work, Contractor shall prepare and submit to Authority a Safety Program, which shall comply with the requirements of the Contract Documents and shall include, at a minimum, guidelines, requirements and procedures for the following: safety management policy; emergency response plan; illness and injury prevention procedures; safety meetings; accident investigation; basic accident causes; safety inspection checklist; fire prevention and control; report forms; and employee safety manual and procedures for achieving compliance with safety requirements of insurers. A copy of the Safety Program shall be maintained on Site at all times and provided to the Authority upon request. Contractor is solely responsible for monitoring activities at the Site for compliance with the Safety Program and for the enforcement thereof.

**10.2.3 Safety Orders.** Contractor shall comply with all Applicable Laws, including, without limitation, all safety laws, standards, orders, rules, regulations and building codes, to prevent accidents or injury to persons on, about or adjacent to the Site and to provide a safe and healthful place of employment. Contractor shall, at Contractor's Own Expense, correct any violations of Applicable Laws occurring or threatened by conditions on the Site.

**10.2.4 Safety Representative.** Contractor shall designate a responsible member of its organization on the Site, who meets the qualification and competency requirements of Applicable Laws and whose sole duty shall be giving safety instructions, prevention of accidents and overall job site safety (including, without limitation, posting of information and other notices regarding safety that are required under occupational safety and health laws and compliance with reporting and other occupational safety requirements pertaining to the protection of the life, safety and health of the workers). The name of the person so designated shall be reported to the Authority by Contractor prior to the commencement of any Work on the Site.

**10.2.5 Protection.** Contractor shall take reasonable precautions to protect the Work and all building materials, equipment, temporary field offices, storage sheds, and other public and private real and personal property that might be affected, directly or indirectly, by Contractor's activities associated with performance of the Work, and shall make good, at Contractor's Own Expense, all Loss due to failure to provide such reasonable precautions.

**10.2.6 Safeguards, Disabled Access.** Contractor shall erect and maintain, as required by existing conditions and performance of the Work, all necessary safeguards for safety and protection, including, without limitation, safety devices, belts, nets, barriers, safety rails, canopies, danger signs, fire protection, no smoking prohibitions, warnings against hazards, safety regulations postings and notifications to owners and users of adjacent sites and utilities, and shall, as required by Applicable Laws, make provision for access for, and provide assistive devices to, persons with disabilities, including, without limitation, providing safe pathways of travel around areas where construction is being performed so that occupants, visitors, the public and others on the Site with disabilities are afforded reasonably direct and barrier-free access to areas of the Site and Existing Improvements.

**10.2.7 Fire, Explosives, Hazardous Substances.** Contractor shall take all necessary precautions to guard against and eliminate possible fire hazards. Explosives may be used or stored only when authorized in writing by the Authority. Explosives shall be handled, used and stored in accordance with Applicable Laws. When use or storage of explosives or other Hazardous Substances or methods of construction involving use of dangerous materials or equipment are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**10.2.8 First Aid.** Contractor shall maintain emergency first aid treatment for all workers and other persons on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A. §§651 et seq.) and all other Applicable Laws.

**10.2.9 Unsafe Conditions.** Contractor shall immediately correct any condition that exists on the Site, or that Authority, in its reasonable judgment, determines to exist on the Site, that is unsafe or potentially unsafe to persons or property.

**10.2.10 Responsibility for Loss.** Contractor shall promptly remedy Loss to any property or person caused in whole or in part by the failure of Contractor, the Subcontractors, of any Tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable to fully comply with the requirements of this Article 10, except Loss attributable solely to the negligent acts or omissions of the Authority, Inspectors of Record, Architect, Authority Consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable, in whole or in part, to the negligence, willful misconduct or violation of Applicable

Laws by Contractor or a Subcontractor, of any Tier, or the failure by Contractor to comply with the Contract Documents. The foregoing obligations of Contractor are in addition to and not a limitation upon Contractor's indemnity obligations under Section 3.18, above.

**10.2.11 Loading, Storage.** Contractor shall be responsible for coordinating the storage and staging of materials and equipment on-Site and off-Site and shall not load or store or permit any part of the Work or the Site to be loaded or stored so as to endanger the safety of persons or risk loss or damage to property.

**10.2.12 Emergency.**

**.1 Contractor Responsibility.** In an emergency involving safety or protection of persons or property, Contractor shall act immediately, either at Authority's direction or as otherwise necessary under the circumstances, to prevent any Loss. In such cases, Contractor shall immediately notify Authority, which notice may be oral, followed within twenty-four (24) hours after occurrence of the incident by written confirmation of the occurrence of such emergency and Contractor's action in response thereto.

**.2 Authority Action.** If, in the sole discretion of Authority, the condition is immediately threatening life or property, Authority may, with or without notice to Contractor, take whatever immediate action is necessary to correct the life-threatening condition, and the costs thereof, including, without limitation, any fees or costs of Architect, Inspectors of Record, Authority Consultants or others to whom Authority may be liable, shall be borne by Contractor at the Contractor's Own Expense.

**10.2.13 No Authority Responsibility.** Nothing set forth in this Section 10.2 or elsewhere in the Contract Documents shall be interpreted as an assumption of any responsibility on the part of Authority or other persons or entities other than the Contractor and the Subcontractors, to report such conditions to Contractor nor as relieving Contractor of any of its responsibilities under the Contract Documents.

**10.2.14 Separate Contractors.** With respect to work of a Separate Contractor being performed within an area of the Site that is under the responsibility or control of the Contractor, Contractor shall: (1) provide copies of the Safety Program to the Separate Contractors and advise the Separate Contractors of the areas of Site to which the Safety Program applies and where compliance with the Safety Program is expected; (2) protect the Separate Contractors' work and workers from Loss due to the actions or inactions of Contractor and the Subcontractors; and (3) notify the Separate Contractor and Authority of any observed violation by the Separate Contractor of the Safety Program or of any violations by the Separate Contractor of Applicable Laws governing safety on the Site. Nothing herein shall be interpreted as relieving the Separate Contractors from their obligations to comply with the Contractor's Safety Program, as excusing any failure by a Separate Contractor from performing its obligations under its contracts with Authority or Applicable Laws or as obligating Contractor to directly supervise or enforce the obligations of the Separate Contractors to comply with the requirements of the Safety Program or Applicable Laws relating to safety.

**10.3 HAZARDOUS SUBSTANCES, MOLD**

**10.3.1 Hazardous Substances.**

**.1 On Site Conditions.**

**(1) Existing Conditions.** In the event Contractor or its Subcontractors encounter materials existing or otherwise present at the Site that are reasonably believed to be Hazardous Substances that have not been rendered harmless, Contractor and Subcontractors shall, except in cases where the removal, encapsulation or abatement of such Hazardous Substances is indicated by the Contract Documents to be part of the Work to be performed by Contractor, immediately stop Work in the area affected and report the condition to Authority in writing. Contractor and Subcontractors shall continue Work in unaffected areas reasonably believed safe. Authority shall then promptly arrange for the sampling, testing and profiling of such suspected Hazardous Substances to confirm the nature, quantity or concentration thereof. In the event that such suspected Hazardous Substances are determined not to be Hazardous Substances or to be Hazardous Substances but not of sufficient nature, quantity or concentration to trigger handling and manifesting of the same as a hazardous waste upon disturbance and removal, then Contractor and its Subcontractors shall, without any Contract Adjustment, be obligated to resume the portion of the Work that was suspended and shall proceed to handle and dispose of such materials pursuant to the Contract Documents, taking all

reasonable precautions that are applicable under the circumstances. If, alternatively, the suspected Hazardous Substances are determined to be Hazardous Substances of sufficient nature, quantity or concentration to trigger handling and manifesting of the same as hazardous waste upon disturbance and removal, the parties shall determine what, if any, action to take with respect to such Hazardous Substances, whether to resume Work with respect to such Hazardous Substances, taking all reasonable precautions that are applicable under the circumstances, and what, if any, Contract Adjustment is appropriate and mutually agreed in order to account for any increased cost of, or Delay in connection with, handling or disposal of Hazardous Substances not already contemplated and provided for in the Contract Documents.

**(2) Contractor Release.** Contractor and its Subcontractors shall not cause the discharge, release, emission, spill, storage, treatment or disposal of any Hazardous Substance on or adjacent to the Site, except as required and permitted by the Contract Documents and Applicable Laws in connection with Contractor's performance of an obligation to remove Hazardous Substances as part of the Work agreed to be performed under the Contract Documents or as otherwise required under the provisions of this Subparagraph 10.3.1.1. Should Contractor or its Subcontractors discharge, release, emit, spill, treat, store or dispose of any Hazardous Substance on the Site in violation of the foregoing obligation or otherwise in violation of Applicable Laws, Contractor shall at Contractor's Own Expense and without limitation to Authority's other rights or remedies for default immediately (a) inform Authority in writing of such event, (b) advise Authority with respect to any release reporting or notification requirement that may apply as a result of such event, (c) assist Authority in complying with any such reporting or notification requirement as determined by Authority, and (d) perform any investigation, remediation, removal or other response that is necessary or desirable in order to abate or clean up the condition resulting from such event to the full satisfaction of Authority and any applicable Governmental Authority. Such Hazardous Substances shall be removed and properly disposed of as soon as they can be accepted at an appropriate disposal facility, and in no event later than sixty (60) Days after such waste is generated, unless a longer time is approved by Authority.

## **.2 Remediation by Contractor.**

**(1) Application.** The provisions of this Paragraph 10.3.1.2 shall apply only if the Work to be performed by Contractor includes within its scope the removal, abatement, moving, handling, containment, disposal or transport of Hazardous Substances

**(2) Advance Submissions to Authority.** Before Contractor or any of its Subcontractors moves, removes, or transports Hazardous Substances to a facility for the receipt, treatment, storage or disposal of the Hazardous Substances ("Hazardous Substances Facility"), Contractor shall cause the person or entity who will be moving, removing or transporting the Hazardous Substances to provide to Authority the following: (a) verification of the Hazardous Substance Facility's or other transporter's licensed status to haul such materials; (b) verification of the Hazardous Substance Facility's licensed status, including a current permit to receive the specific materials to be transported there; (c) certification that the Hazardous Substance Facility is not under enforcement action by the U.S. Environmental Protection Agency ("EPA") or applicable State Governmental Authority or listed on any applicable EPA or applicable State Government Authority list of violating facilities; (d) verification of the Hazardous Substances Facility's EPA Identification Number (if applicable); and (e) original executed letter(s) of indemnity from the Hazardous Substances Facility bearing the Hazardous Substance Facility's letterhead. Contractor further warrants that the selected Hazardous Substance Facility is appropriately licensed and permitted to store, treat and dispose of Hazardous Substances waste in connection with the Work.

**(3) Contractor Responsibility.** Contractor warrants that it is aware of and understands the hazards which are presented to persons, property and the environment in performance of the transportation, storage and disposal of the Hazardous Substances described in the Contract Documents. Contractor and its Subcontractors and agents shall be responsible for the following: (a) processing the application for, and receiving on behalf of the Authority or appropriate entity, an EPA or state-equivalent generator identification number (if required); (b) preparing manifests and other shipping documents; (c) making all necessary arrangements (after consultation with Authority) for any off-Site transportation, treatment, storage and disposal of such Hazardous Substances in accordance with Applicable Laws; (d) ensuring the proper and lawful transportation and disposal of such Hazardous Substances, even if such services are performed by other entities under contract with Contractor or its Subcontractors; and (e) taking any necessary actions to ensure such proper transport and disposal in the event of any contingency, such as the rejection of the Hazardous Substances as nonconforming by any waste disposal facility. Contractor shall promptly provide to Authority copies of all manifests and other shipping documents confirming the receipt and proper disposal of all



Hazardous Substances at the Hazardous Substances Facility, even if such services are performed by other entities under contract with Contractor or its Subcontractors.

**(4) Reporting Requirements.** Contractor shall comply with any Hazardous Substances release reporting requirements to Governmental Authorities directly applicable to Contractor. Notice of such reporting must be provided in advance to Authority or concurrently in the event of an emergency.

**(5) Samples.** Contractor and its Subcontractors shall retain all media samples for the longer of (a) the longest holding period specified in any federal, state or local laboratory analytical procedures or guidance for the analyses performed; or (b) three months for soil samples and thirty (30) Days for water samples. Further storage or transfer of samples will be made at Authority's expense upon Authority's written request of Contractor. Contractor shall require by contract that each and every Subcontractor and agent of Contractor or a Subcontractor who performs testing of samples in connection with the Work properly disposes of such samples in accordance with Applicable Laws after completion of testing and notice to Authority. Regarding any such samples which may remain on-Site, provided Authority has approved of such on-Site storage in advance, Authority agrees to pay all costs associated with the storage, transport, and disposal of such samples.

**(6) Verification.** Upon Final Completion of the Work, Contractor shall confirm to Authority in writing that: (a) all Hazardous Substances specified for removal in the Contract Documents have been removed; and (b) all Hazardous Substances wastes removed from the Site as part of the Work have been disposed of in accordance with this Subparagraph 10.3.1.2 and Applicable Laws in a Hazardous Substances Facility.

**10.3.2 Mold.** Contractor is responsible to immediately notify Authority in writing if any conditions in the construction materials incorporated or to be incorporated into the Work or present in Existing Improvements are encountered at the Site that Contractor or any Subcontractor knows or, in the exercise of due care of a Contractor and not that of a consultant with special or technical expertise in the subject of Mold, should know indicate the presence of Mold or if untreated are likely to result in the growth of Mold. Contractor shall thereafter take such precautions as are reasonably required to prevent the exposure of persons to such conditions until they have been evaluated. Except as otherwise authorized by the Contract Documents or as are usual and customary according to prevailing standards of the construction industry in the vicinity of the Project, Contractor shall not allow water or moisture to come into contact with materials in Existing Improvements or with materials located at the Site that are incorporated or to be incorporated into the Work and if such contact occurs, the areas affected shall be inspected by Contractor, using appropriate consultants experienced in testing and evaluating Mold, for the presence of Mold and evaluated for the potential of future growth of Mold. All portions thereof that are found to indicate the presence of Mold, or that are found to be in a condition that has the potential for becoming a source of Mold, shall be removed and replaced. Costs incurred by Contractor due to its failure to perform its obligation under this Paragraph 10.3.2 shall be borne by Contractor at Contractor's Own Expense.

**10.3.3 Release of Authority.** Contractor assumes the risk that its employees or the employees of its Subcontractors, and other persons that they cause or permit to be present on the Site, may be exposed to known or unknown Hazardous Substances or Mold. Under no circumstances shall Authority be liable for, and Contractor hereby fully and unconditionally releases Authority and the other Indemnitees from, and agrees to defend and indemnify Authority and the other Indemnitees on the terms set forth in Section 3.18, above, against, any and all known and unknown Losses resulting from or relating to the exposure of any employee of Contractor or its Subcontractors, or other person that they cause or permit to be present on the Site, to: (1) Hazardous Substances or Mold encountered in connection with or as a result of the performance of the Work, or (2) Hazardous Substances or Mold not necessarily encountered in connection with the performance of the Work, but to which any of them may nevertheless be exposed as a result of their being present on the Site.

**10.3.4 Communications with Governmental Authorities.** Contractor shall provide to Authority copies of all written communications with Governmental Authorities or others relating to Hazardous Substances or Mold (other than privileged communications); provided, however, that non-disclosure of privileged communications shall not limit Contractor's obligation to otherwise comply with the terms of the Contract Documents, including, without limitation, this Section 10.3.

**10.3.5 Subcontractors.** Contractor shall include provisions in all contracts it enters into with Subcontractors for the Work requiring them to assume toward Contractor and Authority the same obligations that Contractor assumes

toward Authority under this Section 10.3. Contractor shall require the Subcontractors to ensure that such provisions are included in all contracts they enter into with all lower-Tier Subcontractors.

## ARTICLE 11 INSURANCE

### 11.1 INSURANCE

11.1.1 **Contractor's Insurance Requirements.** Without limiting or diminishing any of the Contractor's obligations to defend, indemnify or hold the Authority harmless as set forth elsewhere in the Contract Documents, Contractor shall procure and maintain or cause to be maintained throughout the performance of the Work and for the duration of any guarantee or warranty provided under the Contract Documents, at Contractor's Own Expense, the following insurance coverages:

**.1 Workers' Compensation.** If the Contractor has "employees", as defined by the State of California, the Contractor shall provide a policy of statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Such policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Such policy shall be endorsed to waive subrogation in favor of the Authority and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement. Pursuant to §3700 of the California Labor Code, Contractor shall file with the Authority before commencing the Work the following signed certification:

*"I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I shall comply with such provisions before commencing the performance of the Work of this Construction Contract."*

**.2 Commercial General Liability.** Contractor shall provide a policy of Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Contractor's performance of its obligations hereunder. Such policy shall name the Authority, its agencies, districts, special districts and departments, and their respective directors, officers, elected or appointed officials, agents, employees and representatives, including, without limitation, the members of the Board of Supervisors, and all other Indemnitees, as "additional insureds" and contain a waiver of subrogation in favor of the Authority and all other such additional insureds. Such policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such policy contains a general aggregate limit, it shall apply separately to the Construction Contract or be no less than two (2) times the occurrence limit.

**.3 Vehicle Liability.** If vehicles or mobile equipment are used in the performance of the Work or other obligations under the Contract Documents, then Contractor shall provide a policy of liability insurance coverage for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such policy contains a general aggregate limit, it shall apply separately to the Construction Contract or be no less than two (2) times the occurrence limit. Such policy shall name the Authority, its agencies, districts, special districts and departments, and their respective directors, officers, elected or appointed officials, agents, employees and representatives, including, without limitation, the members of the Board of Supervisors, and all other Indemnitees, as "additional insureds" and contain a waiver of subrogation in favor of the Authority and all other such additional insureds.

**.4 Property (Physical Damage).** Contractor shall provide a policy of all-risk property insurance coverage for the full replacement value of all Contractor's equipment, improvements/alterations, temporary structures, and systems, including without limitation, items owned by others in the Contractor's care, custody or control, used on the Site or other Authority-owned property, or used in any way connected with the performance of the Work.

**.5 Builder's All Risk (Course of Construction) Insurance.** The Bid Form utilized by Contractor to prepare its Bid states whether the Contractor shall include Builder's All Risk (Course of Construction) Insurance for the Project. If the Bid Form states that such insurance shall be included by the Bidder in its Bid, then Contractor shall provide a policy of Builder's All Risk (Course of Construction) insurance coverage including (if the Work is located in an

earthquake or flood zone or if required on financed or bond financing arrangements) coverage for earthquake and flood, covering the Authority, Contractor and every Subcontractor, of every Tier, for the entire Project, including property to be used in the construction of the Work while such property is at off-Site storage locations or while in transit or temporary off-Site storage. Such policy shall include, but not be limited to, coverage for fire, collapse, faulty workmanship, debris removal, expediting expense, fire department service charges, valuable papers and records, trees, grass, shrubbery and plants. If scaffolding, falsework and temporary buildings are insured separately by the Contractor or others, evidence of such separate coverage shall be provided to Authority prior to the start of the Work. Such policy shall be written on a completed value form. Such policy shall also provide coverage for temporary structures (on-Site offices, etc.), fixtures, machinery and equipment being installed as part of the Work. Contractor shall be responsible for any and all deductibles under such policy. Upon request by Authority, Contractor shall declare all terms, conditions, coverages and limits of such policy. NOTWITHSTANDING THE FOREGOING, AUTHORITY RETAINS THE RIGHT EXERCISED AT ANY TIME PRIOR TO AWARD TO ELECT TO USE ITS OWN BUILDER'S ALL RISK (COURSE OF CONSTRUCTION) INSURANCE and in the event Authority so elects to deduct the price for such insurance that is stated in Contractor's Bid, or if not so stated the amount included by Contractor for such insurance in the preparation of the Contractor's Bid, from the Contract Price by means of a Contract Adjustment pursuant to Change Order or Unilateral Change Order. If the Authority so provides the All Risk (Course of Construction) insurance for the Project, then Contractor shall assume the cost of any and all applicable policy deductibles (currently, \$50,000 per occurrence) and shall insure its own machinery, equipment, tools, etc. from any loss of any nature whatsoever.

**11.1.2 Other Mandatory Insurance Requirements.** The Contractor shall comply with the following requirements, which shall be deemed applicable to all carriers and insurance policies provided pursuant to Paragraph 11.1.1, above:

**.1 Insurer Rating.** Any and all insurance carrier(s) providing insurance coverage under any and all policy(ies) of insurance provided by Contractor pursuant to Paragraph 11.1.1, above, shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) (unless such requirements are waived in writing by the Authority Risk Manager, and if the Authority's Risk Manager waives such requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term);

**.2 Self Insured Retentions.** Contractor shall advise Authority in writing the dollar amount of any "self insured retention" maintained by the Contractor that exceeds \$500,000 per occurrence. Each such self insured retention must have the prior written consent of the Authority Risk Manager before the commencement of any Work or operations or activities relating to the Work. If Contractor is notified that a self insured retention is unacceptable to the Authority, then at the election of the Authority, exercised in the Authority's sole and absolute discretion, by means of the written approval of the Authority's Risk Manager, the insurance carriers affected shall either: (1) reduce or eliminate such self-insured retention as respects the Construction Contract; or (2) procure a bond, satisfactory to Authority and approved by Authority in writing, which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

**.3 Evidence of Insurance.** Contractor shall cause Contractor's insurance carrier(s) to furnish to the Authority either: (1) properly executed original certificate(s) of insurance and certified original copy(ies) of endorsement(s) effecting the coverage(s) required by this Section 11.1, or (2) if requested to do so orally or in writing by the Authority Risk Manager, provide original, certified copy(ies) of policy(ies) including all endorsement(s) and all attachment(s) thereto, showing such insurance is in full force and effect. Such certificate(s) and all policies of insurance provided by Contractor pursuant to this Section 11.1 shall contain the covenant of the insurance carrier(s) that thirty (30) Days' written notice shall be given to the Authority prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. Each certificate of insurance and endorsement shall be signed by an individual expressly authorized by the insurance carrier to do so on the carrier's behalf. Contractor shall, if requested, provide written proof of such authorization. ***Contractor shall not commence any Work or any activities or operations related to the performance of the Work unless and until Contractor has complied with all of the requirements of this Section 11.1.***

**.4 Modification, Cancellation, Changes in Limits.** A material modification, cancellation, expiration, or reduction in coverage, shall constitute an Event of Contractor Default for which Authority shall have right, without limitation to its other rights or remedies provided for in the Contract Documents or under Applicable Laws, to terminate this Construction Contract. Such Event of Contractor Default may only be deemed cured if the Authority receives, prior to the effective date of such material modification, cancellation, expiration or reduction in coverage,

properly executed original certificate(s) of insurance and original, certified copy(ies) of policy(ies) and endorsement(s), including all attachment(s) thereto, evidencing that the coverage(s) required by this Section 11.1 is(are) and will continue, without any gap in coverage, in full force and effect in accordance with all of the requirements of this Section 11.1

**.5 Primary Coverage.** It is understood and agreed to by Authority and Contractor that the Contractor's insurance coverage(s) provided under this Section 11.1 shall be construed as primary insurance, and the Authority's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

**.6 Additional Coverages.** Authority reserves the right to modify, adjust, add to and/or increase the types, amounts and terms of any insurance required under this Section 11.1 if the Authority Risk Manager determines, in the exercise of his/her sole and absolute discretion, that the type, amount or terms of the insurance required by this Section 11.1 has(have) become inadequate or that additional risk or exposure exists (such as, without limitation, the use of aircraft, watercraft, cranes, etc.) due to: (1) a Change in the Work; (2) the period of time of Contractor's actual performance of the Work continuing for longer than five (5) years from the Date of Commencement, whether due to Contract Adjustment or for any for any other reason; or (3) other circumstances not reasonably foreseeable to Authority.

**.7 Subcontractors.** Contractor shall include provisions in its subcontracts requiring each Subcontractor to assume an obligation toward Contractor to furnish insurance that complies with all of the requirements of this Section 11.1 as apply to Contractor's insurance provided to Owner and requiring such Subcontractors to furthermore include provisions in their contracts with lower-Tier Subcontractors likewise requiring such lower Tier Subcontractors assume the same obligations for providing such insurance and for passing through all such obligations to all lower Tier Subcontractors.

**.8 Self-Insurance.** If approved by Authority, in the exercise of its sole and absolute discretion, the insurance requirements contained in this Section 11.1 may be met with a program(s) of self-insurance provided that such program has been submitted to Authority and approved in writing by Authority prior to commencement of the Work or of any activity or operation related to the performance of the Work.

**.9 Notice of Claim.** Contractor agrees to notify Authority of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of the Work.

## **ARTICLE 12 BONDS**

### **12.1 PERFORMANCE BOND AND PAYMENT BOND**

**12.1.1 Performance and Payment Bonds.** Within ten (10) Days after the issuance of the Notice of Intent to Award and prior to commencing Work, Contractor shall deliver to Authority a good and sufficient labor and materials payment bond ("Payment Bond") and a good and sufficient performance bond ("Performance Bond"), each in the amount of one hundred percent (100%) of the Contract Price.

**12.1.2 Changes.** The penal amounts of the Performance Bond and Payment Bond shall be increased on account of Change Orders and Unilateral Change Orders increasing the Contract Price. If requested by Authority, Contractor shall deliver to Authority evidence of such increases.

**12.1.3 Replacement.** Should any bond required hereunder or any Surety on such bond become or be determined by Authority to be insufficient, it shall be replaced within ten (10) Days by a bond that fully complies with the requirements of this Section 12.1.

**12.1.4 Duration.** The Payment Bond shall remain in effect until Acceptance of the Work and all Claims of Contractor and the Subcontractors, of any Tier, have been fully and finally resolved. The Performance Bond shall remain in effect and assure faithful performance of all Contractor's obligations under the Contract Documents, including, without limitation, all warranty obligations.

12.1.5 **Condition of Payment.** No payments to Contractor for Work performed shall be made or due until there has been full compliance with the requirements of this Section 12.1.

12.1.6 **Surety Rating.** Any Surety company issuing the Payment Bond or Performance Bond shall be, at all times while such bond is in effect, an Admitted Surety. The Surety company issuing the Performance Bond shall additionally have at all such times a current A.M. Best rating of A VIII (A:8) or better.

12.1.7 **Premiums.** The premiums for the Performance Bond and Payment Bond are included in the Contract Price and shall be paid by Contractor at Contractor's Own Expense.

12.1.8 **Obligee.** The Performance Bond shall name Authority as obligee. All performance bonds, if any, purchased by Subcontractors shall name Authority as a dual obligee with Contractor.

12.1.9 **No Exoneration.** The Performance Bond and Payment Bond shall contain provisions to the effect that Changes, Change Orders, Unilateral Change Orders, Construction Change Directives, Modifications, Changes and Contract Adjustments shall in no way release or exonerate Contractor or its Surety from their obligations and that notice thereof is waived by the Surety.

12.1.10 **Communications.** Authority shall have the right to communicate with Surety with respect to matters that are related to performance of the Work. Contractor shall be provided with a copy of all such communications that are in writing. Such communications shall not create or be interpreted as creating any contractual obligation of Authority to Surety.

12.1.11 **No Limitation.** The requirements of this Section 12.1 pertaining to the Performance Bond and the Payment Bond shall be without limitation to any other obligations Contractor may have under Applicable Laws to provide bonding for the benefit of, and to assure payment to the Subcontractors performing the Work for, the Project.

12.1.12 **Subcontractor Bonds.** Each performance bond, if any, furnished by a first-Tier Subcontractor shall include a provision whereby the Surety consents to the contingent assignment of Contractor's rights under such bond to Authority as provided in Section 5.3, above.

12.1.13 **Claims.** By incorporation of the Construction Contract into the Performance Bond issued by Surety, Surety shall be deemed, subject to the other terms of the Performance Bond, to be bound by all of the obligations assumed by Contractor under the Contract Documents, including, without limitation, bound by any determination, resolution, award or judgment entered or made upon any Claim by or against Contractor.

## **ARTICLE 13 UNCOVERING AND CORRECTION OF THE WORK**

### **13.1 UNCOVERING OF THE WORK**

If a portion of the Work is covered contrary to the request or direction of Authority, Inspector of Record or Architect, or contrary to the requirements of the Contract Documents, it must, if required by the any of them, be uncovered for observation and be re-covered by Contractor at Contractor's Own Expense.

### **13.2 CORRECTION OF THE WORK**

Contractor shall promptly correct Defective Work, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. All such Defective Work shall be either: (1) replaced and all the Work disturbed thereby made good by Contractor at Contractor's Own Expense; or (2) Authority may exercise its option pursuant to Section 13.4, below, to accept such Work and adjust the Contract Price.

### 13.3 GUARANTEE TO REPAIR PERIOD

**13.3.1 Guarantee To Repair Period.** Besides guarantees and warranties required elsewhere in the Contract Documents, Contractor guarantees the Work as provided hereinbelow. The period of this guarantee, termed the "Guarantee To Repair Period," is for one (1) year commencing as follows:

.1 for any portion of the Work that, upon Substantial Completion of the overall Work, is fully and finally complete and usable in all respects independent of other portions of the Work that are not fully and finally complete, on the date of Substantial Completion of such portion of the Work;

.2 for space beneficially occupied or for separate systems fully utilized prior to Substantial Completion, from the first date of such beneficial occupancy or full utilization, as established by an appropriate written notice by Authority of intent to take beneficial occupancy; or

.3 for all Work other than that described in Subparagraph 13.3.1.1, above or Subparagraph 13.3.1.2, above, from the date of Final Completion of the Work.

**13.3.2 Repair by Contractor.** Subject to the provisions of Paragraph 13.3.3, below, Contractor shall do the following: (1) correct, repair, replace, remove and restore, to the Authority's satisfaction, any Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period; (2) correct, repair, replace, remove and restore, to the Authority's satisfaction, any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work; and (3) remove from the Site all the Work identified by the Authority as Defective Work, whether incorporated or not and whether discovered before or after Substantial or Final Completion. Ordinary wear and tear, abuse, or neglect by Authority or by Authority employees, its staff, visitors, public or others (except for those under the control or responsibility of Contractor or its Subcontractors) who are authorized or admitted by Authority to enter, use or occupy the Work, or who enter, use or occupy the Work after Final Completion, are excepted from the foregoing guarantee. All Losses resulting from Defective Work, including, without limitation, all costs of such correction, repair, replacement, removal and restoration, additional testing, inspection and additional service fees and costs of the Inspector of Record, Architect, Authority Consultants or others whose services may be made necessary thereby as well as any Loss to any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction, repair, replacement, removal or restoration of Defective Work, shall be paid for by Contractor at Contractor's Own Expense. Contractor shall correct, repair, replace, remove and restore Defective Work at such times as are acceptable to the Authority and in such a manner as to avoid, to the greatest extent practicable, disruption to the activities of the Authority, its staff, visitors, the public or others. Contractor shall notify the Authority in writing upon the completion of such correction, repair, replacement, removal and restoration.

**13.3.3 Notice by Authority.** Except as otherwise provided in this Paragraph 13.3.3 where immediate corrections are needed due to dangerous conditions or risk of imminent Loss or interruption of Authority operations, the Authority will give notice to Contractor of Defective Work observed prior to Final Completion in accordance with the provision of Section 15.1, below, governing the occurrence of an Event of Contractor Default and the Contractor shall proceed to cure such Event of Contractor Default in accordance with the requirements of Section 15.1, below, and Paragraph 13.3.2, above. With respect to Defective Work observed after Final Completion, the Authority will give notice to Contractor with reasonable promptness and Contractor shall commence the correction, repair, replacement, removal and restoration as required by Paragraph 13.3.2, above, no later than ten (10) Days after mailing of such notice to Contractor and Contractor shall thereupon diligently and continuously prosecute such correction, replacement, repair, or restoration to completion. Notwithstanding the foregoing, if in the Authority's opinion the presence of Defective Work, whether observed prior to Final Completion or after Final Completion and during the Guarantee To Repair Period, poses a risk or threat: (1) to life, safety or the protection of property; (2) of imminent Loss to the Authority or to any other person or entity; or (3) of causing an interruption in the operations of the Authority, then Authority will have the right, in the exercise of its sole and absolute discretion, to proceed with correction or replacement of the Defective Work without prior notice to Contractor, but in such cases will attempt to notify Contractor as soon as possible of the conditions encountered and the action taken by Authority. Such action by Authority without prior notice to Contractor shall not relieve Contractor of its responsibility for the costs of such Authority action or for any Loss occasioned by the Defective Work or necessitated by the Authority's action, whether such Loss occurs before or after such Authority action is implemented or completed.

**13.3.4 Correction by Authority.** If Contractor fails to perform any of its obligations under Paragraph 13.3.2, above, to correct, repair, replace, remove or restore then Authority, or Separate Contractors under the Authority's direction, may, notwithstanding any other provisions of this Article 13, proceed to do so and all costs associated therewith (including, without limitation, the cost to store any materials removed) shall be the responsibility of and paid by Contractor at Contractor's Own Expense. Such action by Authority will not relieve Contractor of the guarantees provided in this Article 13 or elsewhere in the Contract Documents. In addition to Contractor's other obligations under Paragraph 13.3.2, above, Contractor shall correct, repair, replace, remove and restore, to the Authority's satisfaction and at Contractor's Own Expense any other parts of the Work and any other real or personal property that are damaged or destroyed as a result of such actions by Authority or the Separate Contractors.

**13.3.5 Sale.** If Contractor does not pay the costs of, or any of the Losses associated with, the correction, repair, replacement, removal or restoration required by the provisions of Paragraph 13.3.2 through Paragraph 13.3.4, above, then within five (5) Days after notice by the Authority, Authority may sell any materials or other items of Work removed at auction or at private sale or otherwise dispose of such materials or items and shall account for the net proceeds thereof, after deducting all such costs and Losses, and all costs of sale. If such net proceeds of sale do not cover the Losses for which Contractor is liable to the Authority, the Authority may at its option reduce the Contract Price or any payments due to Contractor by such deficiency or recover such deficiency from Contractor.

**13.3.6 No Limitation.** Contractor's obligations under this Article 13 are in addition to, and not in limitation of, its warranty obligations under Section 3.5, above, and any other obligation, guaranty or warranty of Contractor or any other third party under the Contract Documents. Nothing contained in this Article 13 shall be construed to shorten any periods of limitation with respect to other obligations of Contractor under the Contract Documents that are for longer specified periods. Establishment of the Guarantee To Repair Period in no way limits either Contractor's liability for Defective Work or the time within which proceedings may be commenced to enforce Contractor's obligations under the Contract Documents.

#### **13.4 ACCEPTANCE OF NONCONFORMING WORK**

Notwithstanding any other provisions of the Contract Documents to the contrary, the Authority shall have the option, exercised in its sole and absolute discretion after notice to Contractor, in lieu of requiring that Defective Work be remedied or corrected, to reduce the Contract Price to reflect the reduced value of the performance received by Authority. Such option shall be exercised solely by written notice to Contractor and shall not be implied from any act or omission by Authority. If there are no remaining payments of the Contract Price to be made to Contractor, or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Contract Price, Contractor shall promptly pay to Authority the amount of any such deficiency.

### **ARTICLE 14 MISCELLANEOUS PROVISIONS**

#### **14.1 GOVERNING LAW**

The interpretation and enforcement of the Construction Contract and other Contract Documents and of the performance by the parties thereunder shall, notwithstanding application of the principles of conflicts of laws, be governed by the laws of the State of California. The Superior Court for the Authority of Riverside shall have exclusive jurisdiction and venue over any legal proceedings arising out of or involving the interpretation or enforcement of, or other matters relating to, the Construction Contract, the other Contract Documents or the performance of the parties thereunder.

#### **14.2 TIME OF ESSENCE**

All time limits stated in the Contract Documents relative to Contractor's performance of its obligations under the Contract Documents are of the essence.

#### **14.3 SUCCESSORS AND ASSIGNS**

The Construction Contract and other Contract Documents shall be binding on successors, assigns and legal representatives of Authority and Contractor, respectively. Contractor shall not assign, sublet or transfer an interest in or claim under this Construction Contract without advance written approval of Authority, which approval may be granted

or withheld by Authority in its sole and absolute discretion, and any assignment, subletting or transfer without written approval by Authority shall be deemed void from its inception. Any assignment, subletting or transfer, whether or not approved by Authority, will not release Contractor from any of its obligations under the Contract Documents to Authority. Authority shall have the right to assign, sublet or transfer its interest in or any claim under the Construction Contract upon written notice to Contractor.

#### 14.4 WRITTEN NOTICE

Any notice from one party to the other or otherwise under the Contract Documents shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall be deemed to have been duly served if served in the following manner, and in accordance with Civil Code §8100 et seq.:

**14.4.1 Notice to Authority.** If notice is given to Authority: (1) by personal delivery thereof to Authority; or (2) by depositing same in United States mail, enclosed in a sealed envelope addressed to Authority at Facilities Management, 3133 Mission Inn Avenue, Riverside CA 92507, and to such other address as set forth in the Bidding Documents as the location for submission of Bids and sent by registered or certified mail with postage prepaid, or express mail or overnight delivery by an express mail carrier; or (3) by leaving the notice and mailing a copy in the manner provided in Code of Civil Procedure §415.20.

**14.4.2 Notice to Contractor.** If notice is given to Contractor: (1) by personal delivery thereof to Contractor; or (2) by depositing same in United States mails, enclosed in a sealed envelope addressed to Contractor at its address stated in the Construction Contract, or if none is so stated at the address on the records of the Contractor's State License Board and sent by registered or certified mail with postage prepaid or express mail or overnight delivery by an express mail carrier; or (3) by leaving the notice and mailing a copy in the manner provided in Code of Civil Procedure §415.20.

**14.4.3 Notice to Claimant.** If notice is given to a claimant as defined in Civil Code §8004: (1) by personal delivery thereof to claimant; or (2) by depositing same in United States mail, enclosed in a sealed envelope addressed to claimant at its address stated in a preliminary notice, stop payment notice, or claim against a payment bond; or (3) by leaving the notice and mailing a copy in the manner provided in code of Civil Procedure §415.20.

**14.4.4 Notice to Surety.** If notice is given to the Surety: (1) by personal delivery to the Surety; or (2) by depositing same in United States mail, enclosed in a sealed envelope, addressed to the Surety at the address of the Surety shown in the applicable Performance Bond or Payment Bond, or if none is shown, the address on the records of the Department of Insurance, and sent by registered or certified mail with postage prepaid or express mail or overnight delivery by an express mail carrier; or (3) by leaving the notice and mailing a copy in the manner provided in Code of Civil Procedure §415.20.

#### 14.5 RIGHTS AND REMEDIES

**14.5.1 Authority Rights.** Rights and remedies available to the Authority under the Contract Documents are in addition to and not a limitation of Authority's rights and remedies otherwise available under other provisions of the Contract Documents or Applicable Laws.

**14.5.2 Writing Required.** Provisions of the Contract Documents may be waived by Authority only in writing signed by the Director stating expressly that it is intended as a waiver of specified provisions of the Contract Documents.

**14.5.3 Subsequent Breach.** A waiver by either party of any breach of any term, covenant, or condition contained in the Contract Documents shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained therein whether of the same or a different character.



#### **14.6 NO NUISANCE**

Contractor shall not maintain, commit or permit the maintenance or commission of any nuisance in connection with the performance of Work.

#### **14.7 EXTENT OF AGREEMENT**

The Contract Documents represent the full and complete understanding of every kind or nature between the parties and all preliminary negotiations and prior representations, proposals and contracts, of whatever kind or nature, are merged herein and superseded hereby. No verbal agreement or implied covenant shall be held to vary the provisions of the Contract Documents. Any modification of this Construction Contract or the other Contract Documents will be effective only by written instrument signed by both Authority and Contractor and shall, if required by Applicable Laws, be formally approved or ratified by the Board of Supervisors.

#### **14.8 NO THIRD-PARTY RIGHTS**

Nothing contained in the Construction Contract or the other Contract Documents is intended to make any person or entity who is not a signatory to this Construction Contract a third-party beneficiary of any right of Contractor (including, without limitation, any right of Contractor to a benefit derived from, or to the enforcement of, an obligation assumed by Authority) that is expressly or impliedly created by the terms of the Contract Documents or by operation of Applicable Laws.

#### **14.9 SEVERABILITY**

Should any part, term, portion or provision of the Construction Contract or the other Contract Documents, or the application thereof to any party or circumstance, be held to be illegal, invalid or in conflict with Applicable Laws, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to any other party or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by Applicable Laws.

#### **14.10 PROVISIONS REQUIRED BY APPLICABLE LAWS**

Each and every provision of law and clause required by Applicable Laws to be inserted in the Construction Contract or other Contract Documents shall be deemed to be inserted in the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or if inserted and requires correction, then upon request of either party these General Conditions shall forthwith be amended by the parties to the Construction Contract to make such insertion or correction.

#### **14.11 SURVIVAL**

All provisions of the Contract Documents that either expressly, or by their nature, require performance or assumption by Contractor of an obligation that extends beyond termination of the Construction Contract or Final Completion of the Work, including, without limitation, Contractor's obligations of, or relating to, indemnification, insurance, ownership of documents, retention and audit of books and records, warranties and guaranties and resolution of Claims shall be deemed to survive either termination of the Construction Contract or Final Completion of the Work.

#### **14.12 FEDERAL GRANTS**

In the event of a federal grant or other federal financing participation in the funding of the Project, Contractor shall, as required in connection with, or as a condition to, such federal grant or other federal financing participation, permit access to and grant the right to examine its books covering its services performed and expenses incurred under the Construction Contract or other Contract Documents by the federal agency and comply with all applicable federal agency requirements including, without limitation, those pertaining to work hours, overtime compensation, non-discrimination, and contingent fees.

#### 14.13 PROHIBITED INTERESTS

Contractor agrees not to accept any employment or representation which will, or is likely to, make Contractor "financially interested" (as provided in California Government Code §§1090 and 87100, hereinafter "financially interested") in any decision made by Authority on any matter in connection with which Contractor has been retained in connection with the Project. Without limitation to the foregoing, transactions and interests prohibited by this Section 14.13 include the following: (1) no official or employee of Authority who is authorized in such capacity and on behalf of Authority to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall become directly or indirectly financially interested in the performance of the Construction Contract or in any part thereof; (2) no officer, employee, architect, attorney, engineer or inspector of or for Authority who is authorized in such capacity and on behalf of Authority to exercise any executive, supervisory or other similar functions in connection with Construction Contract or in any part thereof; and (3) Contractor shall receive no compensation hereunder, and shall repay Authority for any compensation received by Contractor hereunder, should Contractor or any of the Subcontractors aid, abet or knowingly participate in violation of this Section 14.13.

#### 14.14 ASSIGNMENT OF ANTI-TRUST ACTIONS

California Public Contract Code §7103.5(b), which is hereby incorporated by this reference, provides:

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, contractor or the subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, 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 Contractor, without further acknowledgement by the parties."

Contractor for itself and all the Subcontractors agrees to assign to Authority all rights, title and interest in and to all such causes of action Contractor and all the Subcontractors may have in connection with purchases related to or under the Contract Documents. This assignment shall become effective at the time Authority tenders Final Payment to Contractor, and Contractor shall require assignments from all the Subcontractors to comply herewith.

#### 14.15 NO WAIVER

Authority's approval, acceptance, use or payment for any or part of Contractor's performance of the Work shall not in any way alter Contractor's obligations, or waive any of Authority's rights, under Contract Documents.

#### 14.16 CONSENT TO PHOTOGRAPHING

Contractor is advised that Authority intends, from time to time, to take photographs, videotapes and/or motion pictures of the Work, and workers located on the Site and proximate settings. Contractor consents to the use of Contractor's name and likeness in instructional or training uses, news releases, advertising and/or publicity throughout the world in perpetuity, in all media now known or hereafter invented. Contractor shall include in its contracts with its Subcontractors a consent by the Subcontractor to the use of Subcontractor's name and the likenesses of its employees on the same terms as provided for herein applicable to such consent by Contractor.

### ARTICLE 15 DEFAULT, TERMINATION AND SUSPENSION

#### 15.1 AUTHORITY REMEDIES FOR DEFAULT

15.1.1 **Event of Default.** Each and any of the following shall be considered an Event of Contractor Default:

bankrupt;

.1 Contractor files a petition, or has filed against it a petition, for bankruptcy or is adjudged

.2 Contractor makes a general assignment for the benefit of its creditors;

.3 a receiver is appointed on account of Contractor's insolvency;

.4 Contractor defaults, by failing or refusing to perform any obligation set forth in the Construction Contract, General Conditions or elsewhere in the Contract Documents (including, without limitation, the performance or installation of Defective Work) and thereafter: (1) fails to commence to cure such default within two (2) working days after receipt of written notice of default; (2) if the default can be cured within three (3) Days, Contractor fails or refuses after commencing to cure in accordance with Clause (1) hereof to fully cure such default within three (3) Days after receipt of written notice of default; or (3) if the default cannot be fully cured within three (3) Days, Contractor fails after commencing to cure in accordance with Clause (1) hereof to diligently and continuously prosecute and fully cure such default within ten (10) Days after receipt of such written notice;

.5 Contractor fails or refuses to perform an obligation set forth in the Construction Contract, General Conditions or other Contract Documents that either (1) cannot be cured, or (2) cannot be cured within the 10-Day cure period set forth in Subparagraph 15.1.1.4, above;

.6 a breach of any other agreement between Authority and Contractor as provided in Paragraph 15.1.9, below; or

.7 if Contractor was previously prequalified as a condition for its bidding the Project pursuant to a Prequalification conducted by Authority, Contractor's prequalification status has been revoked or cancelled due to any of the following: (1) receipt by Authority of new information indicating that a statement made in Contractor's Prequalification Submittal (as defined in the Prequalification Documents) was false or misleading; (2) ownership of 50% or more of the stock or assets Contractor has changed; (3) if Contractor is a Project Joint Venture, its Principal Managing Partner (as these terms are defined in the Prequalification Documents) has ceased to function, or fully function, in the capacity of a Principal Managing Partner; or (4) Contractor has failed to comply with the requirements of the Prequalification Documents pertaining to minimum safety Prequalification requirements for Subcontractors.

**15.1.2 Authority's Remedies.** Without limitation to the Authority's other rights or remedies under the Contract Documents or Applicable Laws, if there is an Event of Contractor Default, Authority shall have the right to exercise any one or more of the following remedies:

.1 **Take Over Work.** Authority may, without terminating the Construction Contract and without incurring any additional liability or responsibility to Contractor (including, without limitation, any obligation to agree to a Contract Adjustment for any portion of the taken-over or non-taken-over Work), take over and perform, or engage others to perform, all or a portion of the Work.

.2 **Suspend Work.** Authority may, without terminating the Construction Contract and without incurring any additional liability or responsibility to Contractor (including, without limitation, any obligation to agree to a Contract Adjustment for any portion of the suspended or non-suspended Work), suspend Contractor's performance of all or a portion of the Work for as long a period of time as the Authority determines, in its sole discretion, is appropriate.

.3 **Termination.** Authority may, without incurring any additional liability or responsibility to Contractor, terminate the Construction Contract, the Work or any portion thereof.

.4 **Surety.** If there is an Event of Contractor Default pursuant to any of Subparagraphs 15.1.1.1 through 15.1.1.5, above, Authority may, with or without terminating the Construction Contract and without incurring any additional liability or responsibility to Contractor or Surety (including, without limitation, any obligation to agree to a Contract Adjustment), exercise its rights under the Performance Bond furnished by Contractor by giving Surety ten (10) Days' written notice of demand to perform; provided, however, that if the Surety fails, within seven (7) Days after receipt by Surety of written demand, to deliver to the Authority written notice of its unconditional intention to perform or does not commence performance of the Work within ten (10) Days from receipt of such notice of demand, the Authority may, at Contractor's Own Expense and/or the expense of the Surety, and with or without terminating the Construction

Contract, proceed to complete the Work by any other means Authority deems expedient. By executing its Performance Bond incorporating the terms of the Construction Contract, Surety shall be deemed to have agreed, without limitation, to the provisions of this [Paragraph 15.1.2](#) as constituting a binding obligation of Surety under its Performance Bond that shall control over any conflicting provisions set forth in the Performance Bond. Neither delivery by Surety of such written notice of unconditional intention to perform nor its timely performance of the Work in accordance with the terms of the Contract Documents and Performance Bond shall constitute waiver by Surety of any rights it may have under the Performance Bond and Applicable Laws to limit its liability to the penal amount of the Performance Bond.

**15.1.3 Contractor Tools, Equipment.** Upon Authority's exercise of one or more of its remedies following an Event of Contractor Default, Authority shall have the right, but not the obligation, to perform or complete all or any portion of the Work using any means that Authority may deem expedient, including, without limitation, taking possession and utilization of any or all of the materials, equipment, appliances, tools, plant and other property not owned by Contractor that are on the Site for Authority's use in performing the Work.

**15.1.4 Contractor Obligations.** Upon exercise by Authority of its remedies following an Event of Contractor Default, Contractor shall, unless Authority directs in writing otherwise, do the following:

- .1 immediately discontinue performance of the Work to the extent specified in writing by Authority;
- .2 remove no materials, equipment or tools (other than those owned by Contractor and not necessary for performance of a portion of the Work not terminated or discontinued) from the Site unless directed to do so by Authority and take all actions necessary or appropriate, or that the Authority may direct in writing, for the protection and preservation of the Work, any materials, equipment or tools at the Site and any materials or equipment in transit to the Site;
- .3 place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for Contractor to continue performance of such portion, if any, of the Work that is not discontinued or terminated by Authority in its written notice;
- .4 provide to the Authority, in writing, no later than two (2) Days after request by Authority, a statement listing or providing: (1) all subcontract agreements, purchase orders and contracts that are outstanding, as well as any change orders, amendments and modifications thereto; (2) the status of invoicing, payments and balance owing under each such subcontract agreement, purchase order and contract; (3) the status of performance and any claims asserted under each such subcontract agreement, purchase order and contract; and (4) providing such other information as the Authority may determine to be necessary in order to decide whether to accept assignment of any such subcontract agreement, purchase order or contract;
- .5 promptly following and in accordance with Authority's written direction: (1) assign to the Authority or its designee those subcontract agreements, purchase orders or contracts, or portions thereof, that the Authority elects in writing to accept by assignment; (2) cancel, on the most favorable terms reasonably possible, any subcontract agreement, purchase order or contract, or portion thereof, that the Authority does not elect to accept by assignment; and (3) if requested by Authority, settle, with the prior written approval of Authority of the terms of settlement, outstanding liabilities to Subcontractors with respect to the Work terminated or discontinued;
6. not terminate any insurance required by the Contract Documents;
7. thereafter continue only such performance as may be directed by Authority;
8. deliver to the Authority the documents required to be delivered pursuant to [Paragraph 1.3.6](#), above; and
9. at the written request and option of Authority, exercised in its sole discretion, deliver to the Authority, and transfer title to the Authority of, any completed items, materials, products, equipment or other unincorporated parts of the Work that have not been previously delivered to the Site.

#### **15.1.5 Accounting and Payment**

**.1 Full Termination or Discontinuance.**

(1) **Further Payment.** In the event an exercise by Authority of any of its remedies following an Event of Contractor Default results in a termination or discontinuance of the entire Work, then no further payment shall be due to Contractor for the Work until an accounting has been conducted in accordance with this Paragraph 15.1.5.

(2) **Time for Accounting.** Within forty-five (45) Days after Final Completion of the Work by Contractor, Surety, Authority or others at request of Authority, an accounting shall be made pursuant to this Paragraph 15.1.5 of the amount due to Contractor or Authority.

(3) **Payment Amount.** If, based on the accounting conducted pursuant to this Paragraph 15.1.5, the Contractor Amount exceeds the Authority Amount, then the difference shall be paid by Authority to Contractor within fifteen (15) Days after demand by Contractor following completion of such accounting. If the Authority Amount exceeds the Contractor Amount, then the difference shall be paid by Contractor to Authority within fifteen (15) Days after demand by Authority following completion of such accounting. Payment by Contractor of the amount due to Authority pursuant to such accounting shall not be construed as a release of Contractor's obligation to Authority for, or Authority's right to recover from Contractor, any Losses, of any kind whatsoever, not part of the calculation of the Authority Amount (including, without limitation, additional Losses related to circumstances that formed the basis for calculation of the Authority Amount) that may be then or thereafter owing to or recoverable by Authority under Applicable Laws or the Contract Documents.

(4) **Contractor Amount.** The Contractor Amount used as the basis for payment pursuant to the accounting under this Paragraph 15.1.5 shall be calculated as follows:

(a) take a portion of the Contract Price determined by multiplying (i) the Contract Price, by (ii) the Authority's Good Faith Determination of the percentage of the Work properly performed by Contractor and (A) in permanent place, (B) previously fabricated and delivered to the Site or (C) fabricated and en route for delivery to the Site and delivered to the Site within a reasonable time after Contractor's receipt of such written notice; and

(b) subtract therefrom all amounts previously paid by Authority to Contractor or to Subcontractors.

(5) **Authority Amount.** The Authority Amount used as the basis for payment pursuant to the accounting under this Paragraph 15.1.5 shall be calculated based on the sum of all past, present and future Losses to Authority resulting or reasonably certain to result, directly or indirectly, from any or all of the following: (a) any negligence, willful misconduct, or Defective Work on the part of Contractor or any Subcontractor; (b) any Event of Contractor Default, whether or not constituting the basis of the Authority's termination or discontinuance; (c) the Authority's exercise of its rights and remedies under and in accordance with the Contract Documents or Applicable Laws following the occurrence of an Event of Contractor Default; and (d) the payment by Authority of amounts to Contractor or any Subcontractor that were not owing to Contractor or that were in excess of the amount to which Contractor was entitled under the Contract Documents.

**.2 Partial Termination or Discontinuance.** In the event an exercise by Authority of its remedies for an Event of Contractor Default results in a discontinuance or termination of only a portion of the Work, then the Contract Price and Contract Time shall be adjusted under the provisions of Article 7 and Article 8, above, applicable to Deleted Work. Contractor shall thereafter continue to be paid for its performance of the other portions of the Work in accordance with the terms of the Contract Documents, less any amounts that Authority is entitled to withhold under the terms of the Contract Documents.

**.3 Exclusive Compensation.** Contractor agrees to accept such amounts, if any, as allowed under this Paragraph 15.1.5 as its sole and exclusive compensation in the event of an exercise by Authority of its remedies permitted by the Contract Documents or Applicable Laws following an Event of Contractor Default.

**15.1.6 Surety.** Without limitation to any of the Authority's other rights or remedies under a Performance Bond furnished by Contractor, Contract Documents or Applicable Laws, the Authority has the right to suspend, take

over or terminate the performance of the Work by Surety in the event of any of the following: (1) failure of Surety or its contractors to begin the Work within a reasonable time in such manner as to ensure full compliance with the Contract Documents within the Contract Time; (2) abandonment of the Work by Surety or its contractors; (3) if at any time the Authority makes a Good Faith Determination that the Work is unnecessarily or unreasonably delayed by Surety or its contractors; (4) violation by Surety or its contractors of any terms of the Contract Documents, Performance Bond or Applicable Laws; or (5) failure by Surety or its contractors to follow instructions of the Authority for performance of the Work or for performance of the Work within the Contract Time. By executing its Performance Bond incorporating the terms of the Construction Contract, Surety shall be deemed to have agreed, without limitation, to the provisions of this Paragraph 15.1.6 as constituting a binding obligation of Surety under its Performance Bond that shall control over any conflicting provisions set forth in the Performance Bond.

**15.1.7 Conversion.** In the event a termination for cause by the Authority is adjudged by a court or by binding arbitration conducted in accordance with the Contract Documents to have been wrongful, such termination shall be deemed converted to a termination for convenience pursuant to Section 15.3, below, in which case Contractor agrees to accept such amount, if any, as permitted by Paragraph 15.3.3, below, as its sole and exclusive compensation and agrees to waive any right to recovery of any other compensation or Loss, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity or other consequential, direct, indirect or incidental damages, of any kind.

**15.1.8 Substantial Performance Waived.** The legal doctrine that a contractor may recover for substantial performance of a building contract is to have no application to the Construction Contract. Any Event of Contractor Default, whether occurring before or after the Work is Substantially Completed, shall be deemed material and shall give rise to the right of Authority to exercise its remedies permitted under the Contract Documents or Applicable Laws.

**15.1.9 Cross Default.** Contractor agrees that a breach of any other agreement between Contractor and Authority, whether related or unrelated to the Project, that is not cured in accordance with the terms of such other agreement constitutes an Event of Contractor Default under the Construction Contract, thereby entitling Authority to assert all its rights and remedies hereunder including, but not limited to, a specific right of off set by Authority against any amounts otherwise payable to Contractor under the Construction Contract or any other agreement between Contractor and Authority.

**15.1.10 Rights Cumulative.** All of Authority's rights and remedies under the Contract Documents are cumulative, and shall be in addition to and not a limitation upon those rights and remedies available under Applicable Laws.

**15.1.11 Materiality.** Designation in the Contract Documents of certain defaults as "material" shall not be construed as implying that other defaults not so designated are not material nor as limiting Authority's right to terminate or exercise its other rights or remedies for default to only material defaults.

**15.1.12 Authority Action.** No termination or action taken by Authority after termination shall prejudice any rights or remedies of Authority provided by Applicable Laws or by the Contract Documents, including, without limitation, the right of Authority to proceed against Contractor to recover all Losses suffered by reason of Contractor's default.

## **15.2 SUSPENSION BY AUTHORITY FOR CONVENIENCE**

**15.2.1 Suspension Order.** Without limitation to the Authority's rights under Section 15.1, above, Authority may, at any time, for its convenience and without the occurrence of any Event of Contractor Default, order Contractor, in writing, to suspend, delay or interrupt performance of the Work, in whole or in part. Upon receipt of such an order, Contractor shall comply with its terms and take all reasonable steps to minimize additional costs that are incurred applicable to the portion of the Work suspended, delayed or interrupted by Authority.

**15.2.2 Resumption.** If an order issued by the Authority pursuant to this Section 15.2 is canceled or expires, Contractor shall resume and continue with the previously affected portion of the Work. In such event, Contractor shall be entitled to a Contract Adjustment for additional Allowable Costs necessarily caused by such order and compensation allowed under Section 3.3 of the Construction Contract for Compensable Delay; provided, however, that no such Contract Adjustment shall be made: (1) to the extent that performance either is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor or any of the Subcontractors is responsible or for which Contractor would not be entitled to a Contract Adjustment; (2) to the extent that a Contract Adjustment on account

thereof is made or denied under another provision of the Contract Documents; or (3) for any general or specific escalation in prices of the Work.

15.2.3 **Limitation.** The provisions of this Section 15.2 shall not apply unless a written order is issued by Authority pursuant to this Section 15.2.

### 15.3 **TERMINATION BY AUTHORITY FOR CONVENIENCE**

15.3.1 **Right to Terminate for Convenience.** Without limitation upon any of Authority's other rights or remedies under the Contract Documents or Applicable Laws, Authority shall have the option, at its sole discretion and without the occurrence of any Event of Contractor Default or any other cause, to terminate the Construction Contract or Work, in whole or in part, for its convenience by giving five (5) Days written notice to Contractor.

15.3.2 **Contractor Obligations.** Upon receipt of notice of termination for convenience pursuant to this Section 15.3, Contractor shall, unless such notice directs otherwise, comply with all of the provisions of Paragraph 15.1.4, above.

15.3.3 **Contractor Compensation.** Following a termination for convenience pursuant to this Section 15.3 and within sixty (60) Days after receipt of a complete and timely Application for Payment from Contractor, an accounting shall be conducted in accordance with the process set forth in Paragraph 15.1.5, above. In such event, the amount due to Contractor shall be the Contractor Amount as calculated in the same manner provided for in Paragraph 15.1.5, above, except that there shall be added to the calculation of the Contractor Amount an amount for: (1) the reasonable, actual and direct Allowable Costs incurred and paid by Contractor (and not by Subcontractors) for (a) demobilizing Contractor's facilities from the Site, and (b) Contractor's administering the close out of its participation in the Project for a period of no longer than fifteen (15) Days; plus (2) a markup to Contractor on the Contractor's Allowable Costs incurred under Clause (1) of this Paragraph 15.3.4 that is based on the percentage for Allowable Markup that Contractor is permitted to charge pursuant to Article 7, above, for Compensable Changes involving Extra Work that is Self-Performed Work.

15.3.4 **Exclusive Compensation.** Contractor agrees to accept the compensation allowed under Paragraph 15.3.3, above, as its sole and exclusive compensation in the event of a termination by Authority for convenience and waives any claim for Loss related to Authority's termination for convenience, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect, or incidental damages, of any kind.

15.3.5 **Subcontractors.** Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts with the Subcontractors permitting termination for convenience by Contractor on terms that are consistent with, and that afford no greater rights of recovery against Contractor for termination than are afforded to Contractor under, this Section 15.3.

### 15.4 **TERMINATION BY CONTRACTOR**

15.4.1 **Contractor's Remedies.** Subject to the provisions of Paragraph 15.4.2, below and Paragraph 15.4.3, below, Contractor's sole right to terminate the Construction Contract shall be its right to terminate, for cause only, upon the occurrence of either of the following:

.1 the entire Work is stopped for one hundred sixty (160) consecutive Days, through no act or fault of Contractor or any of the Subcontractors, of any Tier, or any employee or agent of any of them, due to issuance of an order of a court or other Governmental Authority or due to a declaration of a national emergency making material unavailable; or

.2 the entire Work is suspended by Contractor, in accordance with a proper exercise by Contractor of its rights under Section 9.8, above, for a continuous period of thirty (30) Days.

15.4.2 **Notice of Intention to Terminate.** If one of the reasons to terminate as described in Paragraph 15.4.1, above, exists, Contractor may, upon thirty (30) Days written notice to Authority, terminate the Construction Contract and recover from Authority as its sole and exclusive compensation such sums as are permitted under Paragraph 15.3.3, above.

15.4.3 **Continuous Performance.** Provided that Contractor is paid undisputed sums due in accordance with the requirements of the Construction Contract, Contractor shall not stop, delay or interrupt continuous performance of the Work by reason of any dispute or disagreement with Authority, including, without limitation, any disputes or disagreements over payments of money claimed due under the Contract Documents.

## 15.5 WARRANTIES

All obligations of Contractor and the Subcontractors under the Contract Documents with respect to warranties and guarantees of the Work will continue in force and shall apply, notwithstanding a termination or other discontinuance of the Work by Authority or Contractor pursuant to an exercise of rights by either under this Article 15, to any portion of the Work that at the time of such termination or discontinuance has been completed or partially completed by Contractor to the point that it is substantially ready (exclusive of any incidental work that may be needed to connect such portion to other Work to other Work or Existing Improvements or to energize such portion of the Work for operation) for use or occupancy by Authority.

## ARTICLE 16 NON-DISCRIMINATION

### 16.1 NON-DISCRIMINATION IN SERVICES

**16.1.1** Contractor must, in accordance with Applicable Laws, not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability. For the purpose of this Section 16.1, discrimination in the provision of services may include, but is not limited to the following:

- .1 denying any person any service or benefit or the availability of a facility;
- .2 providing any service or benefit to any person which is not equivalent to, or is in a non-equivalent manner or at a non-equivalent time from, that provided to others;
- .3 subjecting any person to segregation or separate treatment in any manner related to the receipt of any service;
- .4 restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; or
- .5 treating any person differently from others in determining admission, enrollment, eligibility, membership, or any other requirement or condition which persons must meet in order to be provided any service or benefit.

**16.1.2** Contractor shall ensure that services are provided without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability.

**16.1.3** Contractor shall establish and maintain written procedures under which any person applying for, performing or receiving services hereunder, may seek resolution from Contractor of a complaint with respect to any alleged discrimination. Such persons shall be advised by Contractor of these procedures. A copy of such procedures shall be posted by Contractor in a conspicuous place, available and open to the public, in each of Contractor's facilities where services are provided hereunder.

### 16.2 NON-DISCRIMINATION IN EMPLOYMENT

Contractor must, in accordance with Applicable Laws, not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability. Without limitation to any other provisions of this Section 16.2, in the performance of the obligations under the Contract Documents, Contractor and the Subcontractors shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code §§12940-48) and the applicable equal employment



employment provisions of the Civil Rights Act of 1964 (42 U.S.C. §§200e - 217), whichever is more restrictive. Contractor and the Subcontractors shall ensure that qualified applicants are employed and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws. Such shall include, but not be limited to, the following:

- .1 employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; or
- .2 selection for training, including apprenticeship.

**16.2.1** Contractor agrees to post in conspicuous places in each of Contractor's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this Section 16.2.

**16.2.2** Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws.

**16.2.3** Contractor shall send to each labor union, or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or the workers' representative of Contractor's commitments under this Section 16.2.

**16.2.4** Contractor certifies and agrees that it will deal with the Subcontractors, bidders and vendors without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with the requirements of Applicable Laws.

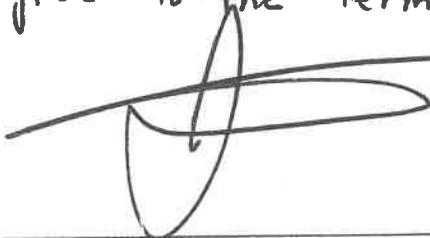
**16.2.5** In accordance with Applicable Laws, Contractor shall allow duly authorized representatives of the Authority, State, and Federal government access to its employment records during regular business hours in order to verify compliance with the provisions of this Section 16.2. Contractor shall provide such other information and records as such representatives may require in order to verify compliance with the provisions of this Section 16.2.

**16.2.6** If Authority finds that any of the provisions of this Section 16.2 have been violated by Contractor or any of the Subcontractors, such violation shall constitute a material breach of the Construction Contract for which Authority may cancel, terminate or suspend the Construction Contract. While Authority reserves the right to determine independently that the anti-discrimination provisions of the Construction Contract have been violated, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Contractor or the Subcontractor has violated State or Federal anti-discrimination laws shall constitute a finding by Authority that Contractor or the Subcontractor has violated the provisions of this Section 16.2.

**16.2.7** Contractor hereby agrees that it will comply with §504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794) and similar Applicable Laws relating to employment of or access to persons with disabilities, all requirements imposed by applicable Federal Regulations, and all guidelines and interpretations issued pursuant thereto, to the end that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of Contractor receiving Federal Financial Assistance.

**END OF GENERAL CONDITIONS**

I agree to the terms and conditions.



11/22/2024

provisions of the Civil Rights Act of 1964 (42 U.S.C. §§200e - 217), whichever is more restrictive. Contractor and the Subcontractors shall ensure that qualified applicants are employed and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws. Such shall include, but not be limited to, the following:

.1 employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; or

.2 selection for training, including apprenticeship.

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**16.2.6** If Authority finds that any of the provisions of this Section 16.2 have been violated by Contractor or any of the Subcontractors, such violation shall constitute a material breach of the Construction Contract for which Authority may cancel, terminate or suspend the Construction Contract. While Authority reserves the right to determine independently that the anti-discrimination provisions of the Construction Contract have been violated, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Contractor or the Subcontractor has violated State or Federal anti-discrimination laws shall constitute a finding by Authority that Contractor or the Subcontractor has violated the provisions of this Section 16.2.

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**END OF GENERAL CONDITIONS**

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**EXHIBIT B**  
**PERFORMANCE< PAYMENT AND LABOR AND MATERIALS BONDS**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/26/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> John Ford, Agent 79440 Corporate Center Dr Ste 104 La Quinta CA 92253	<b>CONTACT NAME:</b> Diana Ramirez <b>PHONE:</b> 760-564-0011 <b>FAX:</b> 760-564-0221 <b>E-MAIL ADDRESS:</b> diana.y.ramirez.jp4@statefarm.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Jorge Murillo, Honor Landscape 51845 Avenida Rubio La Quinta CA 92253	<b>INSURER A:</b> State Farm Mutual Automobile Insurance Company	<b>NAIC #</b> 25178
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD INSD	SUB WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			644 9967-C13-55  644 9966-C13-55	09/13/2024  09/13/2024	03/13/2025  03/13/2025	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ 1,000,000 BODILY INJURY (Per accident) \$ 1,000,000 PROPERTY DAMAGE (Per accident) \$ 1,000,000 \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER**                      **CANCELLATION**

Housing Authority of the County of Riverside 5555 Arlington Ave Riverside CA 92504	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/29/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER <b>Palm Valley Insurance</b> <b>47040 Washington St Ste 3202</b> <b>La Quinta, CA 92253</b> <b>License #: 0F95113</b>	CONTACT NAME: <b>Aide Nunez</b>	
	PHONE (A/C, No, Ext): <b>(760)775-7256</b> FAX (A/C, No): <b>(760)564-0800</b>	
	E-MAIL ADDRESS: <b>aide@palmvalleyinsurance.com</b>	
INSURED <b>Honor Landscape</b> <b>Po Box 7154</b> <b>La Quinta, CA 92248</b>	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : <b>Nautilus Insurance Company</b>	<b>17370</b>
	INSURER B : <b>Clear Spring Property and Casualty</b>	<b>15563</b>
	INSURER C :	
	INSURER D :	
	INSURER E :	

**COVERAGES** CERTIFICATE NUMBER: **00093601-185348** REVISION NUMBER: **17**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>A</b>	<b>X</b> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	<b>Y</b>	<b>NN1676777</b>	<b>03/29/2024</b>	<b>03/29/2025</b>	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>100,000</b> MED EXP (Any one person) \$ <b>5,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b> \$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
<b>B</b>	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<b>Y/N</b> <input type="checkbox"/> <b>N/A</b>	<b>CWC02946500</b>	<b>03/08/2024</b>	<b>03/08/2025</b>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ <b>1,000,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>1,000,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>1,000,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**Jack E. Marlowe- Ripley Family Park Renovation Project**  
**24699 School Road, Ripley CA 92225**

## CERTIFICATE HOLDER

**Housing Authority of the County of Riverside**  
**5555 Arlington Avenue**  
**Riverside, CA 92504**

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Whit M. [Signature]*

(ANN)

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**EXHIBIT C**  
**CONTRACTOR PROPOSAL PACKET**

**REQUEST FOR PROPOSALS (RFP) NO. 2024-006  
JACK E. MARLOWE PARK RENOVATION PROJECT**

**ATTACHMENT A**

**“Proposal Submittal Checklist”**

(This Form must be fully completed and placed under Tab No. 1 of the “hard copy” tabbed proposal submittal.)

**Instructions:** Unless otherwise specifically required, the items listed below must be completed and included in the proposal submittal. Please complete this form by marking an “X,” where provided, to verify that the referenced completed form or information has been included within the “hard copy” proposal submittal submitted by the proposer. Also, complete the Section 3 Statement and the Proposer’s Statement as noted below:

X=ITEM INCLUDED	SUBMITTAL ITEMS <i>(3 copies of each proposal. 1 w/original signatures)</i>
_____	Tab 1 Proposal Submittal Checklist (Attachment A)
_____	Tab 2 Proposed Fees (Attachment B)
_____	Tab 3 Profile of Proposer’s Firm (Attachment C)
_____	Tab 4 Bid Bond (Attachment D)
_____	Tab 5 Qualifications and Experience
_____	Tab 6 Itemized Cost Analysis
_____	Tab 7 References
_____	Tab 8 EEO Cert - HUD 92010 (Attachment E)
_____	Tab 9 HUD 5369-C (Attachment F)
_____	Tab 10 Section 3 (Attachment G - Optional)

**PROPOSER’S STATEMENT**

The undersigned proposer hereby states that by completing and submitting this Form and all other documents within this proposal submittal, he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and that if the HACR discovers that any information entered herein to be false, such shall entitle the HACR to not consider or make award or to cancel any award with the undersigned party.

Further, by completing and submitting the proposal submittal, the undersigned proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by the HACR, including an agreement to execute the HACR Sample Contract, attached to this RFP as Attachment E.

Pursuant to all RFP documents, this Form of Proposal, and all attachments, and pursuant to all completed documents submitted, including these forms and all attachments, the undersigned proposes to supply the HACR with the services described herein for the fee(s) entered herein.


09/26/2024
Juan Murillo
Honor Landscape  
**Signature**
**Date**
**Printed Name**
**Company**



**Juan Murillo – CEO**

**Contact person: Gabriela Lara – Secretary**

**(760) 851-3298**

**[info@honorlandscape.com](mailto:info@honorlandscape.com)**

**Po Box 7154 La Quinta, CA 92248**





# Estimate

<i>Date</i>	<i>Estimate #</i>
5/2/2024	1554

<i>Name / Address</i>
Housing and Work Force Solutions Attn: Rodrigo Beltran 24699 School Road Ripley, CA 92225

<i>Ship To</i>

<i>Description</i>	<i>Qty</i>	<i>Rate</i>	<i>Total</i>
work to be preformed throughout the park.		0.00	0.00
Perform the initial mobilization by trimming all of the large trees. Remove and apply weed herbicide as needed and dispose of the debris. Remove all of the weeds at the soccer field, grade all of the areas within the scope of work in order to ensure that the field is flat and safe from any uneven surfaces, which may cause future injuries. price includes, crane service, chipper unit and all of the necessary equipment that is to be needed	1	24,000.00	24,000.00
Plant 250 lbs. of Bermuda seed on the Soccer field.	1	4,000.00	4,000.00
Install new Goal nets to be 24' x 8'.	2	80.00	160.00
Install 2 custom made fabric shades at the play ground. Price include Crane, labor and material.	2	9,000.00	18,000.00
Paint over all of the gravity off, of every structure throughout the park.	1	3,000.00	3,000.00
Repair and replace any broken concrete slabs, and Concrete Car Stop Parking Bumpers.	1	3,975.00	3,975.00
Perform a thorough inspection of the existing Irrigation system. Replace Commercial valves, PVC pipes, Sprinkler bodies and Nozzles as needed in order to achieve optimal performance, of the irrigation system.	1	15,000.00	15,000.00
		<b>Total</b>	
<i>Signature</i>		<i>Date</i> _____	

P.O. Box 7154, La Quinta, CA 92248

C27 #1048872

Phone # (760)851-3298  
Page 1

E-mail info@honorlandscape.com



# Estimate

<i>Date</i>	<i>Estimate #</i>
5/2/2024	1554

<i>Name / Address</i>
Housing and Work Force Solutions Attn: Rodrigo Beltran 24699 School Road Ripley, CA 92225

<i>Ship To</i>

<i>Description</i>	<i>Qty</i>	<i>Rate</i>	<i>Total</i>
Landscape Maintenance for 2 years - \$3,175.00 monthly (\$76,200.00 total amount for 2 years)			
		<b>Total</b>	\$68,135.00
<i>Signature</i> _____		<i>Date</i> _____	

**REQUEST FOR PROPOSALS (RFP) NO. 2024-006  
JACK E. MARLOWE PARK RENOVATION PROJECT**

**ATTACHMENT B**

**PROPOSED FEES**

(This Form must be fully completed and placed under Tab No. 2 of the "hard copy" tabbed proposal submittal.)

- A. Form:** Each proposer shall submit their proposed fees on this form only, which shall be completed, signed, and returned to HACR with the completed Proposal.
- B. Entry of Proposed Fees:** Each proposer must enter the proposed fees for each of the following Pricing Items where provided. Such fees shall be all-inclusive of all related costs that the Proposer will incur to provide the listed services, including, but not limited to (unless otherwise stated herein): sales tax, employee wages and benefits; clerical support; overhead; profit; licensing; insurance; materials; supplies; tools; equipment; long distance telephone calls; document copying; etc. You must enter a proposed fee for all Pricing Items, although a "No Charge" is allowed.
- C. Pricing Items:** See attachment for monthly maintenance contract

**Landscape Quote:** 68,135.00

**Hardscape Quote:** \_\_\_\_\_

**Travel Fee (if any):** \_\_\_\_\_

**TOTAL OF ALL FEES:** 68,135.00

- D. Quantities:** All quantities entered by HACR herein and within the corresponding Pricing Items are for calculating purposes only. As may be further detailed herein, HACR does not guarantee any minimum or maximum amount of work as a result of any award ensuing from this RFP, as the ensuing contract will be a Requirements Contract, in that HACR shall retain one proposer only and shall retain the right to order from that proposer (successful proposer), any amount of services HACR requires.

**Date:** 09/26/2024      **Company:** Honor Landscape

**Print Name:** Juan Murillo

**Signature:** \_\_\_\_\_

(760)851-3298  
**Office Phone**

\_\_\_\_\_  
**Mobile Phone**

info@honorlandscape.com  
**Email Address**

**Business Address:** PO Box 7154 La Quinta, CA 92248

**REQUEST FOR PROPOSALS (RFP) NO. 2024-006  
JACK E. MARLOWE PARK RENOVATION PROJECT**

**ATTACHMENT C**

**“PROFILE OF PROPOSER’S FIRM”**

(This Form must be fully completed and placed under Tab No.3 of the “hard copy” tabbed proposal submittal.)

(1) Name of Firm: Honor Landscape Telephone: (760)851-3298 Fax: \_\_\_\_\_

E-Mail: Info@honorlandscape.com

(2) Street Address, City, State, Zip: PO Box 7154 La Quinta, CA 92248

(3) Please attach a brief biography/resume of the company, including the following information:  
(a) Year Firm Established; (b) Former Name and Year Established (if applicable); (c) Name of Parent Company and Date Acquired (if applicable).

(4) Identify Principals/Partners in Firm (submit under Tab No. 5 a brief professional resume for each):

NAME	TITLE	% OF OWNERSHIP
Juan Murillo	President	48%
Maria Leon	Secretary	52%

(5) Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project; please submit under Tab No. 5 a brief resume for each. (Do not duplicate any resumes required above):

NAME	TITLE
Juan Murillo	President
Jorge Murillo	Super Intendant

(6) Proposer Diversity Statement: You must circle all of the following that apply to the ownership of this firm and enter where provided the correct percentage (%) of ownership of each:

Caucasian American (Male) 48 %     
  Public-Held Corporation 0 %     
  Government Agency 0 %     
  Non-Profit Organization 0 %

Resident- (RBE), Minority- (MBE), or Woman-Owned (WBE) Business Enterprise (Qualifies by virtue of 51% or more ownership and active management by one or more of the following:

Resident-Owned\* \_\_\_\_\_ %     
  African American \_\_\_\_\_ %     
  \*\*Native American \_\_\_\_\_ %     
  Hispanic American \_\_\_\_\_ %     
  Asian/Pacific American \_\_\_\_\_ %     
  Hasidic Jew \_\_\_\_\_ %     
  Asian/Indian American \_\_\_\_\_ %

Woman-Owned (MBE) \_\_\_\_\_ %     
  Woman-Owned (Caucasian) 52 %     
  Disabled Veteran \_\_\_\_\_ %     
  Other (Specify): \_\_\_\_\_ %

WMBE Certification Number: \_\_\_\_\_

Certified by: (Agency): \_\_\_\_\_  
(Note: a certification/number not required to propose – enter if available)

[Signature]      09/26/2024      Juan Murillo      Honor Landscape  
 Signature      Date      Printed Name      Company

**REQUEST FOR PROPOSALS (RFP) NO. 2024-006  
JACK E. MARLOWE PARK RENOVATION PROJECT**

(7) Federal Tax ID No.: 83-2120725

(8) County of Riverside Business License No.: \_\_\_\_\_

(9) State of California Business Entity Number (Secretary of State): 1048872

(10) Worker's Compensation Insurance Carrier: Clear Spring Property and Casualty  
Policy No.: CWC02946500 Expiration Date: 03/08/2025

(11) General Liability Insurance Carrier: Nautilus Insurance  
Policy No. NN1676777 Expiration Date: 03/29/2025

(12) Professional Liability Insurance Carrier: \_\_\_\_\_  
Policy No. \_\_\_\_\_ Expiration Date: \_\_\_\_\_

(13) Has your firm or any member of your firm been a part to litigation with a public entity?  
Yes  No  Initials JM  
If yes, when, with who and state the circumstances and any resolution.

(14) Is your firm currently involved in local, County, State, Federal mortgage foreclosure proceedings or currently 90 days in arrears on a local public or private loan?  
Yes  No  Initials JM  
If yes, when, with who and state the circumstances and any resolution.

(15) Is your firm currently in rem foreclosure or substantial tax arrears with a City/County or local jurisdiction?  
Yes  No  Initials JM  
If yes, when, with who and state the circumstances and any resolution.

(16) Has, or is this firm or any member of your firm currently in default on any contract obligation or agreement of any kind entered into with a City/County or local public agency?  
Yes  No  Initials JM  
If yes, when, with who and state the circumstances and any resolution.

(17) In the past 10 years, has your firm or any member of your firm failed to qualify as a responsible bidder, or refused to enter into a contract after an award has been made, privately or with any government agency?  
Yes  No  Initials JM  
If yes, when, with who and state the circumstances and any resolution.

(18) In the last 7 years, has your firm filed a bankruptcy petition or been the subject of involuntary bankruptcy proceedings?  
Yes  No  Initials JM  
If yes, when, with who and state the circumstances and any resolution.

(19) In the last 10 years, failed to file any required tax returns, or failed to pay any applicable Federal, State of California, or County of Riverside or other fees?  
Yes  No  Initials JM  
If yes, when, with who and state the circumstances and any resolution.

(20) Does your firm or any member of your firm have a record of substantial Building Code Violations or litigation against properties owned by the firm or by any entity or individual that comprises the Proposer?  
Yes  No  Initials JM  
If yes, when, with who and state the circumstances and any resolution.

(21) Has your firm or any member of your firm been convicted for fraud, bribery, or grand larceny?  
Yes  No  Initials JM  
If yes, when, with who and state the circumstances and any resolution.

(22) Has your firm or any member of your firm ever sued or been sued by the Housing Authority of the County of Riverside or its affiliated entities?  
Yes  No  Initials JM  
If yes, when and state the circumstances and any resolution of the lawsuit.

**REQUEST FOR PROPOSALS (RFP) NO. 2024-006  
JACK E. MARLOWE PARK RENOVATION PROJECT**

(23) Has your firm or any member of your firm ever had a claim brought against because of breach of contract or nonperformance? Yes  No  Initials JM

If yes, when and state the circumstances and any resolution of the matter.

(24) Debarred Statement: Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of California, or any local government agency within or without the State of California? Has this firm been de-designated as a developer of any government sponsored or publicly assisted project? Yes  No  Initials JM

If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

(25) Disclosure Statement: Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the HACR? Yes  No  Initials JM

If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

(26) Non-Collusive Affidavit: The undersigned party submitting this bid hereby certifies that such bid is genuine and not collusive and that said bidder entity has not colluded, conspired, connived or agreed, directly or indirectly, with any proposer or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price of affiant or of any other proposer, to fix overhead, profit or cost element of said proposal price, or that of any other bidder or to secure any advantage against HACR or any person interested in the proposed contract; and that all statements in said bid are true.

Initials JM

(27) Verification Statement: The undersigned bidder hereby states that by completing and submitting this bid he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and agrees that if the HACR discovers that any information entered herein is false, that shall entitle the HACR to not consider nor make award or to cancel any award with the undersigned party.

Initials JM

 09/26/2024 Juan Murillo Honor Landscape  
Signature Date Printed Name Company

## EXHIBIT D

### Scope of Work

1. The work under this Contract shall be performed at the Jack E. Marlowe Park located in the unincorporated area known as Ripley, County of Riverside, State of California (Property) and shall include furnishing all labor, material, equipment, tools, supplies, and services and incidentals, and performing all work necessary for the Renovation/Construction of the Jack E. Marlowe Park and associated improvements in strict conformance with all the Contract documents.
2. Renovation Overview: This Renovation Project will include, but are not limited to, any portion of the following:
  - a. Initial planning and site review: verify existing conditions at the site and all work needed to complete the project.
  - b. Prepare a detailed work plan indicating required and recommended milestones, deliverables and submittals, review timeframes, and critical actions or decisions required of HACR. Make modifications and updates to the work plans as requested by HACR staff. Contractor shall complete the construction/renovation of the Project agreed timeframe.
  - c. Coordinate construction activities with HACR Development staff.
  - d. Provide construction phase services including, but not limited to the following:
    - i. Trim all large trees
    - ii. Remove and dispose of all debris
    - iii. Apply weed herbicide as needed
    - iv. Remove all weeds at the soccer field, grade the field flat and leve31
    - v. Plant 250Lbs of Bermuda seed on the soccer field
    - vi. Install new Goal Nets that are 24 feet by 8 feet
    - vii. Install 2 fabric shades over the playground
    - viii. Paint over all graffiti on every structure throughout the Park
    - ix. Repair and replace any broken concrete slabs and concrete care stop parking bumpers
    - x. Perform though inspection of existing irrigation system and replace commercial valves, PVC pipes, sprinkler bodies and nozzles as needed in order to achieve optimal perform of the irrigation system
  - e. The renovation of the Project shall meet all relevant requirements of the applicable jurisdictions, codes, and regulations, such as those of the Division of the State Architect (“DSA”), State Fire Marshall, local Fire Departments, State of California Building Codes, Americans with Disabilities Act (ADA), Title 24, and any other applicable laws.
  - f. Contractor will furnish all labor, materials, equipment, and supervision, for the successful completion of the Renovation of Jack E. Marlowe Park within the 45

days. The Property must be left in a good and workmanlike manner, using new materials and products throughout, subject to the following included and excluded items:

- i. Contractor shall furnish sufficient personnel with the technical knowledge and experience necessary to complete the Work.
- ii. All Work shall be performed in accordance with local safety standards and recognized safe practices
- iii. Contractor to ensure proper removal of all debris and all other components from the Property and shall provide a cleared worksite free of all debris, Contractor's equipment, etc. HACR refuse containers shall not be used for disposal of Contractor's waste.
- iv. Contractor is responsible to field verify existing conditions and promptly notify HACR if discrepancies in and omissions from the plans, specifications or other Contract Documents are found in the field, including unforeseen conditions that may affect the successful completion of the Project and/or the Work.
- v. Contractor will perform a final walk-through inspection with a HACR representative before the Project will be considered mechanically complete and finished.
- vi. All equipment in Approved Equipment & Finishes shall be new and not used or refurbished. NOTE: Any "equivalent" new equipment or other new product or brand that clearly or demonstrably meets the standards and specifications as outlined per specifications is acceptable.
- vii. All tools, materials, and equipment shall be provided by the Contractor and must meet all local applicable safety requirements. A parking space will be made available for Contractor's container if needed for materials and equipment. HACR assumes no responsibility for the loss or damage to the Contractor's equipment, tools or materials stored at the job site.



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**EXHIBIT E**  
**BID BOND**

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**EXHIBIT F**  
**FORM HUD-92010 EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

**Equal Employment  
Opportunity Certification**  
Excerpt From 41 CFR §60-1.4(b)

U.S. Department of Housing  
and Urban Development  
Office of Housing  
Federal Housing Commissioner

Department of Veterans Affairs  
OMB Control No. 2502-0029  
(exp. 7/31/2009)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

**Provided,** That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

Firm Name and Address

Honor Landscape  
PO Box 7154  
La Quinta, CA 92248

By

Juan Murillo

Title

President

upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **Excerpt from HUD Regulations**

##### **200.410 Definition of term "applicant".**

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

##### **200.420 Equal Opportunity Clause to be included in contracts and subcontracts.**

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

- (2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard race, creed, color, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

- (5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

- (7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by referenced to the equal opportunity clause.

##### **200.425 Modification in and exemptions from the regulations in this subpart.**

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

- (1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

- (2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

- (3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

- (4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

- (5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.

# Certifications and Representations of Offerors Non-Construction Contract

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

## 1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

- (1)  has,  has not employed or retained any person or company to solicit or obtain this contract; and
- (2)  has,  has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

## 2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/offer that it:

- (a)  is,  is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b)  is,  is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c)  is,  is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- |  |   |
|--|---|
| <input type="checkbox"/> Black Americans               | <input type="checkbox"/> Asian Pacific Americans  |
| <input checked="" type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans   |
| <input type="checkbox"/> Native Americans              | <input type="checkbox"/> Hasidic Jewish Americans |

## 3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);  
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

- (iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

**4. Organizational Conflicts of Interest Certification**

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:
  - (i) Award of the contract may result in an unfair competitive advantage;
  - (ii) The Contractor's objectivity in performing the contract work may be impaired; or
  - (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.
- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.
- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

**5. Authorized Negotiators (RFPs only)**

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

**6. Conflict of Interest**

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

**7. Offeror's Signature**

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.



09/26/2024

Signature & Date:

Juan Munillo  
Typed or Printed Name:

President  
Title:

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**EXHIBIT G**  
**FORM HUD-5370 GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS – PUBLIC HOUSING PROGRAMS,**

# General Conditions for Non-Construction Contracts

## Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/31/2017)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

**Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:**

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

### Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

#### 1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
- (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
  - (2) The classification is utilized in the area by the industry; and
  - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

#### 2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

#### 3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
- (i) Name, address and Social Security Number;
  - (ii) Correct work classification or classifications;
  - (iii) Hourly rate or rates of monetary wages paid;
  - (iv) Rate or rates of any fringe benefits provided;
  - (v) Number of daily and weekly hours worked;
  - (vi) Gross wages earned;
  - (vii) Any deductions made; and
  - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

#### 4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
- (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of



Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
  - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

#### 5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
- (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (ii) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

#### 6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

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subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

- (c) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

#### **7. Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

#### **8. Non-Federal Prevailing Wage Rates**

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

**ATTACHMENT D**

**HOUSING AUTHORITY OF THE COUNTY OF  
RIVERSIDE**

**SECTION 3**

**24 CFR PART 135**

**ECONOMIC OPPORTUNITIES FOR  
LOW-AND VERY LOW-INCOME PERSONS**

**CONTRACT REQUIREMENTS**

**HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE  
 CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3 BUSINESS PREFERENCE  
 IN CONTRACTING AND DEMONSTRATION OF CAPABILITY**

NAME OF BUSINESS: Honor Landscape

ADDRESS OF BUSINESS: Po Box 7154 La Quinta, CA 92248

TYPE OF BUSINESS:  Corporation     Partnership     Sole Proprietorship     Joint Venture

Attached is the following documentation as evidence of status:

**For business claiming status as a Section 3 resident-owned Enterprise:**

- Copy of resident lease     Other evidence     Copy of evidence of participation in a public assistance program

**For the business entity as applicable:**

- |  |   |
|--|---|
| <input type="checkbox"/> Copy of Articles of Incorporation                                       | <input type="checkbox"/> Certificate of Good Standing |
| <input type="checkbox"/> Assumed Business Name Certificate                                       | <input type="checkbox"/> Partnership Agreement        |
| <input type="checkbox"/> List of owners/stockholder and % of each                                | <input type="checkbox"/> Corporation Annual Report    |
| <input type="checkbox"/> Latest Board minutes appointing officers                                | <input type="checkbox"/> Additional documentation     |
| <input type="checkbox"/> Organization chart with names and titles and brief functional statement |   |

**For business claiming Section 3 status by subcontracting 25% of the dollar awarded to qualified Section 3 business:**

- List of subcontracted Section 3 business and subcontract amount

**For business claiming Section 3 status, claiming at least 30% of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:**

- |  |   |
|--|---|
| <input type="checkbox"/> List of all current full time employees                           | <input type="checkbox"/> List of all employees claiming Section 3 status                                |
| <input type="checkbox"/> PHA Residential lease (less than 3 years from date of employment) | <input type="checkbox"/> Other evidence of Section 3 status (less than 3 years from date of employment) |

**Evidence of ability to perform successfully under the terms and conditions of the proposed contract:**

- |   |  |
|---|--|
| <input type="checkbox"/> Current financial statement    | <input type="checkbox"/> List of owned equipment                                       |
| <input type="checkbox"/> Statement of ability to comply | <input type="checkbox"/> List of all contracts for the past 2 years with public policy |

Effective 07/01/2014  
 Persons in Household

1	2	3	4	5	6	7	8
\$34,000	\$38,850	\$43,700	\$48,550	\$52,450	\$56,350	\$60,250	\$64,100

A new hire is qualified as a Section 3 resident if he/she resides in Riverside or San Bernardino County and his/her total family income is less than the family income shown above for his/her household size.

**Corporate Seal**

\_\_\_\_\_  
 Authorizing Name and Signature

\_\_\_\_\_  
 Notary

My term expires: \_\_\_\_\_

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Printed Name

## SECTION 3 BUSINESS PREFERENCE

### HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE

#### I. Section 135.1 Purpose

The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

#### Section 135.30 Numerical Goals for Meeting the Greatest Extent Feasible Requirement

##### A. GENERAL

- (1) Recipients and covered contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth in this Section for providing training, employment, and contracting opportunities to Section 3 residents and Section 3 Business Concerns.
- (2) The goals established in this section apply to the entire amount of the Section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY) commencing with the first FY following the effective date of this rule - (October 1, 1994).
- (3) For Recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to Section 3 residents and Section 3 Business Concerns.
- (4) The numerical goals established in this Section represent minimum numerical goals.

##### B. TRAINING AND EMPLOYMENT

The numerical goals set forth in this Section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ Section 3 residents, to the greatest extent feasible, should be made at all levels.

Recipients of Section 3 covered community development assistance, and their contractors and subcontractors may demonstrate compliance with the requirements of this part by committing to employ Section 3 residents as:

- (i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995 (October 1, 1994 to September 30, 1995),
- (ii) 20 percent of the aggregate number of the new hires for the one year period beginning in FY 1996 (October 1, 1995 to September 1996); and
- (iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter (October 1, 1996 and thereafter).

##### C. CONTRACTS

Numerical goals set forth in this Section apply to contracts awarded in connection with all Section 3 covered project and Section 3 covered activities. Each recipient and contractor and subcontractor may demonstrate compliance with the requirements of this part by committing to award to Section 3 Business Concerns:

- (1) At least 10 percent to of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and
- (2) At least three (3) percent of the total dollar amount of all other Section 3 covered contracts.

**D. SAFE HARBOR AND COMPLIANCE DETERMINATIONS**

- (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the Section 3 preference requirements.
- (2) In evaluating compliance, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in Sec. 135.40, which were provided in its efforts to comply with Section 3 and the requirement of this part.

**III. SECTION 135.34 Preference for Section 3 Residents in Training and Employment Opportunities.**

**A. Order of providing preference.** Recipients, contractors, and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in this section.

- (1) Housing and community development programs. In housing and community development programs, priority consideration shall be given, where feasible, to:
  - (i) Section 3 residents residing in the Riverside or San Bernardino County (collectively, referred to as category 1 residents); and
  - (ii) Participants in HUD Youth build programs (category 2 residents).
  - (iii) Where the Section 3 project is assisted under the Stewart B. McKinney NSP3less Assistance Act (42 U.S.C. 11301 et seq.), NSP3less persons residing in the Riverside or San Bernardino County shall be given the highest priority;

**B. Eligibility for Preference:** A Section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a Section 3 resident, as defined in Sec. 135.5 (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

**C. Eligibility for employment:** Nothing in this part shall be construed to require the employment of a Section 3 resident who does not meet the qualifications of the position to be filled.

**IV SECTION 135.36 Preference for Section 3 Business Concerns in Contracting Opportunities.**

- A. Order of Providing Preference: Recipients, contractors and subcontractors shall direct their efforts to award Section 3 covered contract, to the greatest extent feasible, to Section 3 Business Concerns in the order of priority provided in this section.
- (1) Housing and community development programs. In housing and community development programs, priority consideration shall be given, where feasible, to:
- (i) Section 3 business concerns that provide economic opportunities for Section 3 residents in the Riverside or San Bernardino County (category 1 businesses); and
  - (ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);
  - (iii) Other Section 3 business concerns.
- B. Eligibility for Preference: A Business Concern seeking to qualify for a Section 3 contracting preference shall certify or submit evidence, if requested, that the Business Concern is a Section 3 Business Concern as defined in Section 135.5.
- C. Ability to Complete Contract: A Section 3 Business Concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract. (The ability to perform successfully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (see 24 CFR 85.36 (b) (8)). This regulation requires consideration of, among other factors, the potential contractor's record in complying with public policy requirements. Section 3 compliance is a matter properly considered as part of this determination.

**SECTION 135.38 Section 3 Clause.**

*All Section 3 covered contracts shall include the following clause (referred to as the Section 3 clause):*

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance of HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.*
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and*

*will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.*

- D.** *The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate actions, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.*
- E.** *The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 35 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135. Furthermore, the contractor shall, to the maximum extent feasible, fill any vacant and/or training positions with persons who reside in the vicinity, defined as the Target Area the HACR is contracted for, or contract and/or subcontract with small businesses that are owned and operated by persons residing in the vicinity of such Target Area.*
- F.** *Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*
- G.** *With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprise. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).*

## **VI. SECTION 135.40 Providing Other Economic Opportunities**

- A.** **General.** In accordance with the findings of the Congress, as stated in Section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with Section 3 covered assistance.
- B.** **Other training and employment related opportunities.** Other economic opportunities to train and employ Section 3 residents include, but need not be limited to, use of "upward mobility", "bridge" and trainee positions to fill vacancies; hiring Section 3



residents in management and maintenance positions within other housing developments; and hiring Section 3 residents in part-time positions.

C. Other business related economic opportunities:

- (1) A recipient or contractor may provide economic opportunities to establish stabilize or expand Section 3 Business Concerns, including micro-enterprises. Such opportunities include, but are not limited to the formation of Section 3 Joint Ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, purchase of materials and supplies from Public Housing Agency resident-owned businesses. A recipient or contractor may employ these methods directly or may provide incentives to non-Section 3 businesses to utilize such methods to provide other economics opportunities to low-income persons.
- (2) A Section 3 Joint Venture means an association of Business Concerns, one of which qualifies as a Section 3 Business Concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the Business Concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the Section 3 Business Concern:
  - (i) Is responsible for clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
  - (ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

**VII. SECTION 135.5 Definitions.**

As used in this part:

**Applicant** means any entity which makes an application for Section 3 covered assistance and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, owner, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

**Assistant Secretary** means the Assistant Secretary for Fair Housing and Equal Opportunity.

**Business Concern** means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

**Contract.** See the definition of "Section 3 covered contract" in this section.

**Contractor** means any entity which contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

**Department or HUD** means the Department of Housing and Urban Development, including its Field Offices to which authority has been delegated to perform functions under this part.

**Employment opportunities generated by Section 3 covered assistance** means (with respect to Section 3 covered housing and community development assistance), this term means all employment opportunities arising in connection with Section 3 covered projects (as described in

Section 135.3(a) (2)), including management and administrative jobs connected with the Section 3 covered project. Management and administrative jobs, include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

**Housing and community development assistance** means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under Section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

**Housing development** means low-income housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD's public and Indian housing program regulations codified in 24 CFR Chapter IX.

**HUD Youth build Programs** means programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for NSP3less individuals and members of low and very low-income families.

**Local Hiring Requirement** means pursuant to the NSP 3 regulations, and to the maximum extent feasible, provide for the hiring of employees who reside in the vicinity, defined as the Target Area the HACR is contracted for, or contract with small businesses that are owned and operated by persons residing in the vicinity of such Target Area. County has adopted the Section 3 applicability of thresholds for community development assistance at 24 CFR 135.3(a)(3)(ii). HACR shall establish a Local Hiring Schedule that establishes the hiring process, workforce needs, and approximate timetable to be followed by the HACR and subcontractors for construction hiring to achieve the overall requirements of the local hiring requirement. The Local Hiring Schedule shall include an estimate of: number of workers including hourly pay rate or work hours required per month, per day, per trade, and total for the project. Prior to commencing work, a Letter of Assent must be signed by HACR. The Letter of Assent shall state that all parties doing construction work on Project have read, understand, and accept the terms of the Local Hiring Requirement, and are aware that they are bound to fulfilling the requirements. HACR shall provide to the County of all efforts made to adhere to this requirement. HACR shall provide a Local Hiring Plan to address elements of the Local Hiring Schedule and explain how the HACR has performed outreach and met this requirement to the maximum extent feasible. The Local Hiring Plan shall include numerical goals committed to local hiring which shall be consistent with Section 3 applicability of thresholds for community development assistance at 24 CFR 135.3(a)(3)(ii).

**Low income person.** See the definition of "Section 3 Resident" in this section.

**New hires** mean full-time employees for permanent, temporary, or seasonal employment opportunities.

**Public Housing resident** has the meaning given this term in 24 CFR Part 963.

**Recipient** means any entity which receives Section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit or local government, PHA, Indian Housing Authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, owner, PARTICIPANT, developer, limited dividend sponsor, builder, property manager, community development organization, resident

management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee, or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

**Secretary** means the Secretary of Housing and Urban Development.

**Section 3** means Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u)

**Section 3 Business Concern** means a business concern, as defined in this Section:

- (1) That is 51 percent or more owned by Section 3 residents; or
- (2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
- (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in Sections (1) or (2) in this definition of "Section 3 Business Concern"

**Section 3 Clause** means the contract provisions set forth in Sec. 135.38.

**Section 3 covered activity** means any activity which is funded by Section 3 covered assistance public and Indian housing assistance.

**Section 3 covered assistance** means:

- (1) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:
  - (i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement):
  - (ii) Housing construction; or
  - (iii) Other public construction project (which includes other buildings or improvements regardless of ownership).

**Section 3 covered contract** means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. "Section 3 covered contracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). "Section 3 covered contracts" also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a Section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by Section 3.

**Section 3 covered project** means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

**Section 3 resident** means:

- (1) A public housing resident; or
- (2) An individual who resides in the San Bernardino or Riverside County, and who is:

- (i) A low income person, is defined as families whose incomes do not exceed 80 percent of the median income for the Riverside and San Bernardino Counties, as determined by the Secretary, with adjustments for smaller and larger families.
- (ii) A very low income person, is defined as families whose incomes do not exceed 50 percent of the median income for the Riverside and San Bernardino Counties, as determined by the Secretary, with adjustments for smaller and larger families.
- (iii) A person seeking the training and employment preference provided by Section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

**Subcontractor** means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

**Very low income person.** See the definition of "Section 3 resident" in this section.

## **PREFERENCE FOR SECTION 3 BUSINESS CONCERNS IN CONTRACTING OPPORTUNITIES**

The HACR has established the following priority for preference when providing contracting opportunities to Section 3 Businesses:

### **Priority I**

#### **Category 1a Business**

Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the Section 3-covered assistance is expended.

### **Priority II**

#### **Category 1b Business**

Business concerns whose workforce includes 30 percent of residents of the housing development for which the Section 3-covered assistance is expended, or within three (3) years of the date of first employment with the business concern, were residents of the Section 3-covered housing development.

**Priority III**

**Category 2a Business**

Business concerns that are 51 percent or more owned by residents of any other housing development or developments.

**Priority IV**

**Category 2b Business**

Business concerns whose workforce includes 30 percent of residents of any other public housing development or developments, or within three (3) years of the date of first employment with the business concern, were "Section 3" residents of any other public housing development.

**Priority V**

**Category 3 Business**

Business concerns participating in HUD Youth-build programs being carried out in the metropolitan area in which the Section 3-covered assistance is expended.

**Priority VI**

**Category 4a Business**

Business concerns that are 51 percent or more owned by Section 3 residents in the metropolitan area, or whose permanent, full-time workforce includes no less than 30 percent of Section 3 residents in the metropolitan area, or within three (3) years of the date of employment with the business concern, were Section 3 residents in the metropolitan area.

**Priority VII**

**Category 4b Business**

Business concerns that subcontract in excess of 25 percent of the total amount of subcontracts to Section 3 business concerns.

**Eligibility for Preference**

A business concern seeking to qualify for a Section 3 contracting preference shall certify or submit evidence that the business concern is a Section business concern.

HUD directs within 24 CFR 135 that the HA may make award to qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid is:

- (a) within the maximum total contract price established by the HA; or
- (b) not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

<b>"X" = LESSOR OF:</b>	
<b>When the lowest responsive bid is less than \$100,000</b>	<b>10% of that bid, or \$9,000.00</b>
<b>When the lowest responsive bid is at least:</b>	
<b>\$100,000.00, but less than \$200,000.00</b>	<b>9% of that bid, or \$16,000.00</b>
<b>\$200,000.00, but less than \$300,000.00</b>	<b>8% of that bid, or \$21,000.00</b>
<b>\$300,000.00, but less than \$400,000.00</b>	<b>7% of that bid, or \$24,000.00</b>
<b>\$400,000.00, but less than \$500,000.00</b>	<b>6% of that bid, or \$25,000.00</b>
<b>\$500,000.00, but less than \$1,000,000.00</b>	<b>5% of that bid, or \$40,000.00</b>
<b>\$1,000,000.00, but less than \$2,000,000.00</b>	<b>4% of that bid, or \$60,000.00</b>
<b>\$2,000,000.00, but less than \$4,000,000.00</b>	<b>3% of that bid, or \$80,000.00</b>
<b>\$4,000,000.00, but less than \$7,000,000.00</b>	<b>2% of that bid, or \$105,000.00</b>
<b>\$7,000,000.00, or more</b>	<b>1.5% of the lowest responsive and responsible bid with no dollar limit</b>

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4 **EXHIBIT H**  
5 **FEDERAL PREVAILING WAGE DECISION NUMBER CA20230017 MOD 13 7/13/2023**

6 **Federal Prevailing Wage (Davis-Bacon Act)**  
7

8 **General Decision Number:** CA20240017 MOD 7 5/23/2024

9 **State:** California

10 **Construction Type:** Residential

11 **Counties:** Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara,  
12 and Ventura Counties in California.

13  
14 **RESIDENTIAL CONSTRUCTION PROJECTS** (consisting of single-family homes and apartments up to  
15 and including 4 stories)

16  
17 Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable  
18 minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that  
19 these Executive Orders apply to covered contracts entered into by the federal government that are subject  
20 to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts,  
21 including those set forth at 29 CFR 5.1(a)(2)-(60).  
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**EXHIBIT I: AMERICAN RESCUE PLAN ACT FEDERAL PROVISIONS**



## FEDERAL PROVISIONS

Should funding be allocated through American Rescue Plan Act (ARPA; (Title VI of the Social Security Act Section 602 et seq.), the COUNTY will administer and distribute those funds in accordance with ARPA. ARPA requires that payments from the Coronavirus Fiscal Recovery Fund be used to respond to the public health emergency or its negative economic impacts, to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay, provide government services to the extent the reduction of revenue due to COVID-19 public health emergency, and to make necessary investments in water, sewer or broadband infrastructure. It is effective beginning May 17, 2021 and ends on December 31, 2026.

Subrecipient acknowledges and agrees that this Agreement is subject to the federal requirements, including the federal provisions provided below:

1. **NON-DISCRIMINATION.** Subrecipient shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

2. **EQUAL EMPLOYMENT OPPORTUNITY/ FAIR EMPLOYMENT PRACTICES/ FEDERAL PROVISIONS.** During the performance of this Agreement, the Subrecipient shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. Subrecipient shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

- A. Subrecipient shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Executive Order 11246 of Sept. 23, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor, the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.8), and of the rules, regulations or standards adopted by the County to implement such article.
- B. The Subrecipient shall comply with the provisions of the Copeland "Anti-Kickback" Act, 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.

3. **CLEAN AIR ACT.** The Subrecipient agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. The Subrecipient agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The Subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

4. **FEDERAL WATER POLLUTION CONTROL ACT**

The Subrecipient agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.

## FEDERAL PROVISIONS

The Subrecipient agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### 5. DEBARMENT AND SUSPENSION CLAUSE

This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Subrecipient is required to verify that none of the Subrecipient, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Subrecipient must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Subrecipient did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### 6. BYRD ANTI- LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

Subrecipients who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the County.

### APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

The undersigned [Subrecipient] certifies, to the best of his or her knowledge, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

FEDERAL PROVISIONS


This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Subrecipient certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Subrecipient understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

SUBRECIPIENT

By

Date

  
11/22/2024

7. PROCUREMENT OF RECOVERED MATERIALS

In the performance of this Agreement, the Subrecipient shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired

- A. Competitively within a timeframe providing for compliance with the contract performance schedule;
- B. Meeting contract performance requirements; or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

The Subrecipient also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

8. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- A. The Subrecipient agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Subrecipient which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Subrecipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Subrecipient agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- D. In compliance with the Disaster Recovery Act of 2018, the County and the Subrecipient acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9. DEPARTMENT OF HOMELAND SECURITY SEAL, LOGO, FLAGS

The Subrecipient shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

10. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

## FEDERAL PROVISIONS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Subrecipient will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

### 11. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

### 12. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Subrecipient acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Subrecipient's actions pertaining to this Agreement.

### 13. FEDERAL PREVAILING WAGE

DAVIS-BACON ACT COMPLIANCE (applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

To the extent required by any Federal grant programs applicable to expected funding or reimbursement expenses incurred in connection with the services provided under this Agreement, Subrecipient agrees to comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth below.

A. The Subrecipient shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>. Additionally, wages are required to be paid not less than once a week.

B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at [www.wdol.gov](http://www.wdol.gov). Under the Davis Bacon heading, click on "Selecting DBA WDs." In the drop down menu for State, select, "California." In the drop down menu for County, select "Riverside." In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

The Federal minimum wage rates for this project are predetermined by the United States Secretary of Labor. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California DIR for similar classifications of labor, the Subrecipient and subcontractors shall pay not less than the higher wage rate. The County will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Subrecipient and subcontractors, the Subrecipient and subcontractors shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

### 14. CONTRACT WORK HOURS AND SAFETY STANDARDS (applicable to all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or

## FEDERAL PROVISIONS

materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

A. Compliance: Subrecipient agrees that it shall comply with Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701–3708) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

B. Overtime: No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

C. Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the provisions of paragraph B of this section, the Subrecipient and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Subrecipient and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph B.

D. Withholding for unpaid wages and liquidated damages: Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.

E. Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

15. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT— Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by HUD.

16. RIGHTS TO DATA AND COPYRIGHTS – Subrecipients and consultants agree to comply with all applicable provisions pertaining to the use of data and copyrights pursuant to 48 CFR Part 27.4, Federal Acquisition Regulations (FAR).

### 17. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

A. Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services As used in this clause—

B. Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after

## FEDERAL PROVISIONS

Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

### C. Exceptions.

(1) This clause does not prohibit contractors from providing—

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

- i. Are not used as a substantial or essential component of any system; and
- ii. Are not used as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

### D. Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Subrecipient shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. Page 10

## FEDERAL PROVISIONS

E. Subcontracts. The Subrecipient shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

### 18. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE

#### A. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

#### B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five-year period; and

c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

(3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

(4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

#### C. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

#### D. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

#### E. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings,

## FEDERAL PROVISIONS

Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes -

- (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match;  
and
- (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.



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