

# BID DOCUMENTS

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## COUNTY OF GLENN

*Public and Behavioral Health Exterior Siding Replacement*

*240/242 N. Villa Ave. Willows, CA 95988*



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Owner: Glenn County Board of Supervisors

**Owner's Representative:**

Scott H. De Moss, County Administrative Officer

COUNTY OF GLENN

525 W. SYCAMORE ST., STE. B1

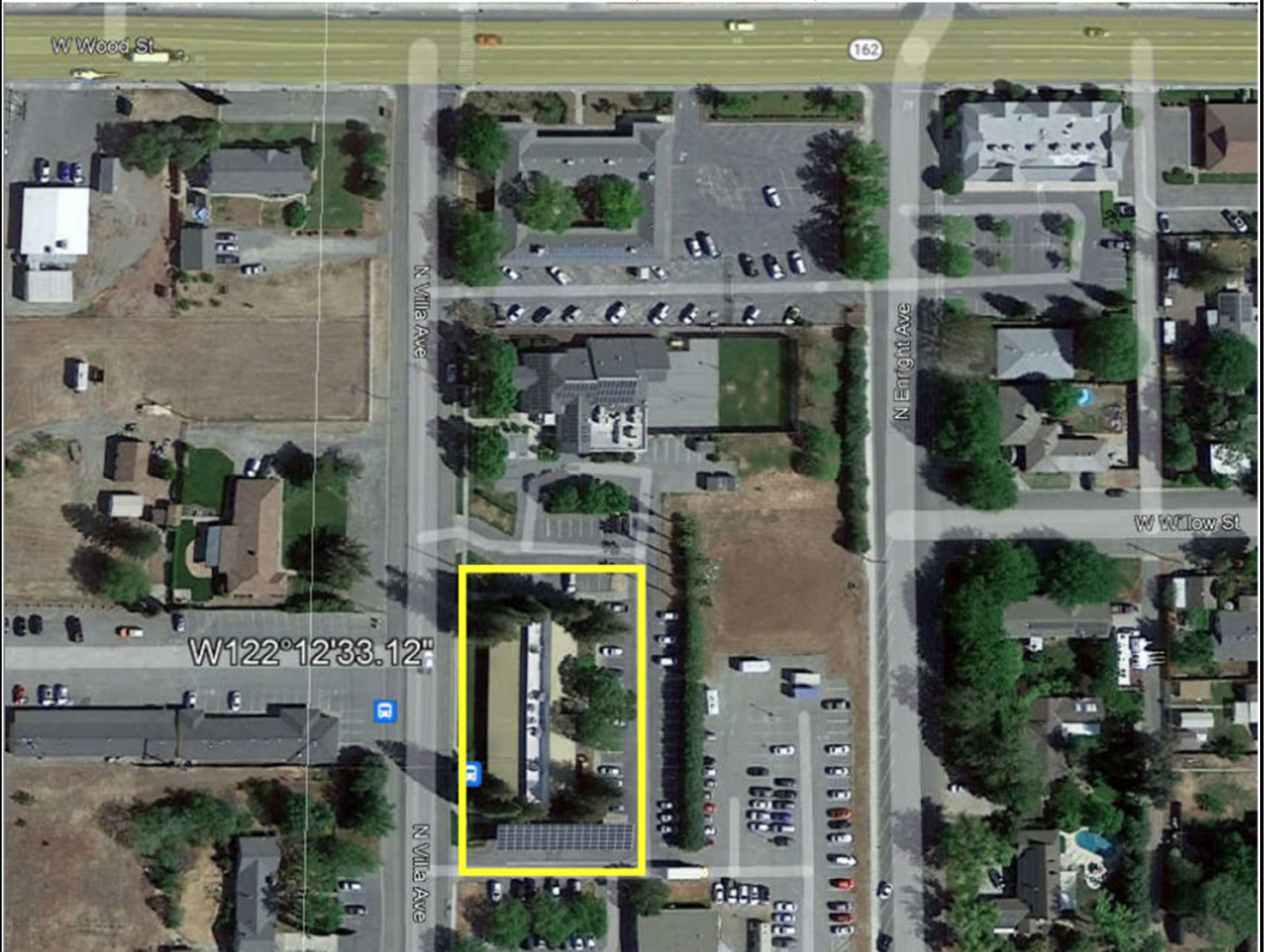
WILLOWS, CA 95988

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*Non-Mandatory Pre-Bid Conference  
is scheduled for Wednesday, April 12th, 2023  
beginning at 10:00 a.m. at 240 N. Villa Ave. Willows, CA 95988*

# PROJECT SITE LOCATION MAP

Public and Behavioral Health Exterior Siding Replacement  
240/242 N. Villa Ave., Willows, CA 95988



**APN: 001-141-003-000**

**PROJECT: Public and Behavioral Health Exterior Siding Replacement  
Issue for Bid – April 2023**

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**SECTION 00 01 30**  
**PROJECT DIRECTORY**

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**Owner:**

Glenn County Board of Supervisors  
525 W. Sycamore Street, Suite B1  
Willows, CA 95988  
Contact: Scott H. De Moss, County Administrative Officer  
Email: [gcboard@countyofglenn.net](mailto:gcboard@countyofglenn.net)  
Phone: (530) 934-6400

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**Owner Representative:**

Glenn County Administrative Office  
525 W. Sycamore Street, Suite B1  
Willows, CA 95988  
Contact: Scott H. De Moss, County Administrative Officer  
Email: [gcboard@countyofglenn.net](mailto:gcboard@countyofglenn.net)  
Phone: (530) 934-6400

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**Construction Manager:**

Glenn County General Services  
453 E. County Road 49 ½  
Willows, CA 95988  
Contact: Joe Bettencourt, Supervising Staff Services Analyst  
Contact: Ricardo Valdez, Facilities Operations Manager  
Email: [facilities2@countyofglenn.net](mailto:facilities2@countyofglenn.net)  
Phone: (530) 934-6545

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**INVITATION TO BID – NOTICE TO BIDDERS**  
**Glenn County**

**Public and Behavioral Health Exterior Siding Replacement**

**BID SUBMISSION.** Glenn County will receive sealed Bids no later than **10:00 a.m. on April 26, 2023 at 453 E. County Road 49 ½ Willows, CA 95988.** The Bid opening will occur at 10:01 a.m. on April 26, 2023 at 453 E. County Road 49 ½ Willows, CA 95988.

**DESCRIPTION OF WORK.** The project location is 240/242 N. Villa Ave. Willows, CA 95988. Glenn County intends to award a construction contract which includes the furnishing of all labor, materials, equipment, transportation and services necessary for the completion of the project. This is a prevailing wage project. A summary of the work is included below:

1. Removal and disposal of all panel shingle siding and moisture barrier. Installation of plywood backing, moisture barrier and primed fiber cement board horizontal lap siding shall occur where shingle siding was removed. All primed fiber cement board horizontal lap siding shall be painted after installation.
2. The alternate scope of work is removal and disposal of all panel shingle siding and moisture barrier. Installation of plywood backing, moisture barrier and primed composite horizontal lap siding shall occur where shingle siding was removed. All primed composite horizontal lap siding shall be painted after installation.

Specific details included in the bid package shall further define the description of work.

**CONTRACT TIME.** The successful bidder shall commence work within five (5) calendar days after the receipt of a written Notice to Proceed. The successful bidder shall complete said work within thirty (30) calendar days after receipt of the Notice to Proceed.

**BID DOCUMENTS.** Contract Documents may be attained at the Glenn County General Services Department, 453 E. County Road 49 ½ Willows, CA 95988, between the hours of 8:00 a.m. – 5:00 p.m., Monday through Friday. The project documents are also available free of charge on the County's website at: <https://www.countyofglenn.net/govt/bids>.

**CONTACT INFORMATION.**

Glenn County General Services

453 E. County Road 49 1/2

Willows, CA 95988

Contact: Joe Bettencourt, Supervising Staff Services Analyst

Contact: Ricardo Valdez, Facilities Operations Manager

Email: [facilities2@countyofglenn.net](mailto:facilities2@countyofglenn.net)

Phone: (530) 934-6545

**NON-MANDATORY PRE-BID SITE VISIT.** A non-mandatory project walk-through will be conducted on **April 12<sup>th</sup> 2023 at 10:00 a.m.** at Public and Behavioral Health 240/242 N. Villa Ave., Willows, CA 95988.

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**SECTION 00 21 00**  
**BID PACKAGE: PRIME CONTRACTOR**

**Owner:**

Glenn County Board of Supervisors  
525 W. Sycamore Street, Suite B1  
Willows, CA 95988  
Contact: Scott H. De Moss, County Administrative Officer  
Email: [gcboard@countyofglenn.net](mailto:gcboard@countyofglenn.net)  
Phone: (530) 934-6400

**Owner Representative:**

Glenn County Administrative Office  
525 W. Sycamore Street, Suite B1  
Willows, CA 95988  
Contact: Scott H. De Moss, County Administrative Officer  
Email: [gcboard@countyofglenn.net](mailto:gcboard@countyofglenn.net)  
Phone: (530) 934-6400

**Construction Manager:**

Glenn County General Services  
453 E. County Road 49 1/2  
Willows, CA 95988  
Contact: Joe Bettencourt, Supervising Staff Services Analyst  
Contact: Ricardo Valdez, Facilities Operations Manager  
Email: [facilities2@countyofglenn.net](mailto:facilities2@countyofglenn.net)  
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## **ARTICLE 1 DEFINITIONS**

§ 1.1 Bidding Documents include the Bidding Requirements and the proposed Contract Documents, The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, Bid Form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.

§ 1.2 Definitions set forth in the Contract Documents are applicable to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Construction Manager prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.

## **ARTICLE 2 BIDDER'S REPRESENTATIONS**

§ 2.1 The Bidder by making a Bid represents that:

§ 2.1.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.

§ 2.1.2 The Bid is made in compliance with the Bidding Documents.

§ 2.1.3 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.



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§ 2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.

### **ARTICLE 3 BIDDING DOCUMENTS**

#### **§ 3.1 COPIES**

§ 3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid in the number and for the deposit sum, if any, stated therein.

§ 3.1.2 Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the Advertisement or Invitation to Bid, or in supplementary instructions to bidders.

§ 3.1.3 Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Construction Manager assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

§ 3.1.4 The Owner and Construction Manager may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

#### **§ 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS**

§ 3.2.1 The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Construction Manager errors, inconsistencies or ambiguities discovered.

§ 3.2.2 Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Construction Manager by the date and time indicated in the Supplementary Instructions to bidders.

§ 3.2.3 Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

#### **§ 3.3 SUBSTITUTIONS**

§ 3.3.1 The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

§ 3.3.2 No substitution will be considered unless prior to receipt of Bids a written request for approval has been received by the Construction Manager for Owner review at least ten (10) days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work,



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including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Owner's decision of approval or disapproval of a proposed substitution shall be final.

§ 3.3.3 If the Owner approves a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

§ 3.3.4 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

### § 3.4 ADDENDA

§ 3.4.1 Addenda will be transmitted to all who are known by the issuing office to have received a complete set of Bidding Documents.

§ 3.4.2 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

§ 3.4.3 Addenda will be issued no later than four (4) days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

§ 3.4.4 Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

## ARTICLE 4 BIDDING PROCEDURES

### § 4.1 PREPARATION OF BIDS

§ 4.1.1 Bids shall be submitted on the forms included with the Bidding Documents.

§ 4.1.2 All blanks on the bid form shall be legibly executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

§ 4.1.4 Interlineations, alterations and erasures must be initialed by the signer of the Bid.

§ 4.1.5 All requested Alternates may be bid. If no change in the Base Bid is required, enter "No Change."

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the

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jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

#### **§ 4.2 BID SECURITY**

**§ 4.2.1** Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the bid security shall not be forfeited to the Owner in the event the Owner fails to comply with Section 6.2.

**§ 4.2.2** If a surety bond is required, it shall be as provided in the Bidding Documents.

**§ 4.2.3** The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

#### **§ 4.3 SUBMISSION OF BIDS**

**§ 4.3.1** All copies of the Bid, the bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name, the Bidder's Department of Industrial Relations number, and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

**§ 4.3.2** Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.

**§ 4.3.3** The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

**§ 4.3.4** Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

#### **§ 4.4 MODIFICATION OR WITHDRAWAL OF BID**

**§ 4.4.1** A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

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§ 4.4.2 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and time-stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.

§ 4.4.3 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

§ 4.4.4 Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

## **ARTICLE 5 CONSIDERATION OF BIDS**

### **§ 5.1 OPENING OF BIDS**

Bids will be unsealed and opened in a Public Bid Opening, held at the General Services Office, 453 E. County Road 49 1/2, Willows, CA 95988, on Wednesday April 26, 2023 at 10:01 a.m.

### **§ 5.2 REJECTION OF BIDS**

The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

### **§ 5.3 ACCEPTANCE OF BID (AWARD)**

§ 5.3.1 It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

§ 5.3.2 The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

## **ARTICLE 6 POST-BID INFORMATION**

### **§ 6.1 CONTRACTOR'S QUALIFICATION STATEMENT**

Bidders to whom award of a Contract is under consideration shall have completed and submitted all required information from the Bid Documents.

### **§ 6.2 OWNER'S FINANCIAL CAPABILITY**

The Owner shall, at the request of the Bidder to whom award of a Contract is under consideration and no later than seven days prior to the expiration of the time for withdrawal of Bids, furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Unless such reasonable evidence is furnished, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

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### **§ 6.3 SUBMITTALS**

**§ 6.3.1** The Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, after notification of selection for the award of a Contract, furnish to the Owner through the Construction Manager in writing:

1. A designation of the Work to be performed with the Bidder's own forces;
2. Names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work; and
3. Names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

**§ 6.3.2** The Bidder will be required to establish to the satisfaction of the Construction Manager and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

**§ 6.3.3** Prior to the execution of the Contract, the Construction Manager will notify the Bidder in writing if either the Owner or Construction Manager, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Construction Manager has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

**§ 6.3.4** Persons and entities proposed by the Bidder and to whom the Owner and Construction Manager have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Construction Manager.

## **ARTICLE 7 BID, PERFORMANCE BOND AND PAYMENT BOND**

### **§ 7.1 BOND REQUIREMENTS**

**§ 7.1.1** the Bidder shall furnish bonds covering the bid, faithful performance of the Contract, and payment of all obligations arising thereunder. Bonds may be secured through the Bidder's usual sources.

**§ 7.1.2** As the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be included in the Bid.

**§ 7.1.3** If the Owner requires that bonds be secured from other than the Bidder's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

### **§ 7.2 TIME OF DELIVERY AND FORM OF BONDS**

**§ 7.2.1** The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence

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satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

§ 7.2.2 Unless otherwise provided, the bonds shall be written on the Owner supplied Performance Bond and Payment Bond forms. Both bonds shall be written in the amount of the Contract Sum.

§ 7.2.3 The bonds shall be dated on or after the date of the Contract.

§ 7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

**ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

§ 8.1 The Agreement for the Work will be written on the sample agreement provided in the Bidding Documents.

END OF SECTION

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**SECTION 00 41 00**

**BID FORM**

FOR: *GLENN COUNTY  
PUBLIC AND BEHAVIORAL HEALTH EXTERIOR SIDING REPLACEMENT*

BID TO: Glenn County General Services  
453 E. County Road 49 ½  
Willows, CA 95988  
Glenn County, State of California

BID FROM:

Firm Name: \_\_\_\_\_ Telephone: (\_\_\_\_) \_\_\_\_\_

Address: \_\_\_\_\_

Contractor’s License Number: \_\_\_\_\_

License Classification: \_\_\_\_\_ License Expiration Date: \_\_\_\_\_

Contractor’s Federal Tax I.D. Number: \_\_\_\_\_

California Department of Industrial Relations Number: \_\_\_\_\_

Federal Unique Entity ID: \_\_\_\_\_

TYPE OF BUSINESS:

- CORPORATION: STATE OF INCORPORATION: \_\_\_\_\_
- PARTNERSHIP
- JOINT VENTURE
- PRIVATE INDIVIDUAL
- INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME

**I HEREBY SWEAR AND CERTIFY UNDER PENALTY OF PERJURY THAT THE ABOVE STATEMENTS ARE TRUE.**

Bid and certification submitted by:

Print Name: \_\_\_\_\_  
Authorized Representative

Signature: \_\_\_\_\_ Date \_\_\_\_\_  
Authorized Representative

Title: \_\_\_\_\_

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**1.0**                    **BIDDER’S REPRESENTATIONS**

Bidder, represents that:

- A) It has the appropriate active Contractor's license required by the State of California;
- B) It shall complete the attached Statement of Experience;
- C) It has carefully read and examined the Bidding Documents for the proposed Work on this Project;
- D) It has examined the site of the proposed Work and all Information Available to Bidders;
- E) It has become familiar with all the conditions related to the proposed Work, including the availability of labor, materials, and equipment.

Bidder hereby offers to furnish all labor, materials, equipment, tools, transportation, and services necessary to complete the proposed Work on this Project in accordance with the Contract Documents for the sums quoted. Bidder further agrees that it will not withdraw its Bid within **Forty-Five {45}** days after the Bid Deadline, and that, if it is selected as the apparent lowest responsive and responsible Bidder, that it will, within fourteen {14} days after receipt of notice of selection, sign and deliver to Glenn County the Agreement and furnish to Glenn County all items required by the Bidding Documents. If awarded the contract, Bidder agrees to schedule and execute the Work in accordance with the Construction Documents and agrees to fully complete the Work within the Contract Time.

**2.0**                    **ADDENDA**

Bidder acknowledges receipt of the following addenda and has included all work in its Lump Sum Bid amount.

| <u>Addendum #</u> | <u>Date</u> |
|-------------------|-------------|
| 1 _____           | _____       |
| 2 _____           | _____       |
| 3 _____           | _____       |
| 4 _____           | _____       |
| 5 _____           | _____       |
| 6 _____           | _____       |



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**3.0 BID ITEM LIST**

**SCOPE:**

Removal and disposal of all panel shingle siding and moisture barrier. Window trim, rain gutters, metal cap, conduit and other materials shall be removed as needed and reinstalled to their original state. Generator electrical box and Photovoltaic disconnect box are to be disconnected by County and removed/re-installed, with trim, by Contractor. Installation of plywood backing, moisture barrier, and primed fiber cement board horizontal lap siding and trim shall occur where shingle siding was removed, all primed fiber cement board horizontal lap siding and trim shall be painted after installation. Fiber cement board trim is to be installed at inside and outside corners and around all protrusions to the building that currently have no trim. The bid for the above-mentioned scope is provided below:

| Item | Description   | Quantity | Unit | Total bid item price, dollars |
|------|---|----------|------|-------------------------------|
| 1.   | MOBILIZATION  | 1        | LS   |                               |
| 2.   | DEMOLITION  | 1        | LS   |                               |
| 3.   | PLYWOOD BACKING                                       | 1        | LS   |                               |
| 4.   | MOISTURE BARRIER                                      | 1        | LS   |                               |
| 5.   | FIBER CEMENT BOARD SIDING AND TRIM                    | 1        | LS   |                               |
| 6.   | FIBER CEMENT BOARD SIDING AND TRIM INSTALLATION LABOR | 1        | LS   |                               |
| 7.   | PAINT MATERIALS                                       | 1        | LS   |                               |
| 8.   | PAINT LABOR   | 1        | LS   |                               |

**TOTAL BASE BID (in figures) Items 1 through 8:**

\$

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**SCOPE:**

The bid alternate is for removal and disposal of all panel shingle siding and moisture barrier. Window trim, rain gutters, metal cap, conduit and other materials shall be removed as needed and reinstalled to their original state. Generator electrical box and Photovoltaic disconnect box are to be disconnected by County and removed/re-installed, with trim, by Contractor. Installation of plywood backing, moisture barrier, and primed composite horizontal lap siding and trim shall occur where shingle siding was removed, all primed composite horizontal lap siding and trim shall be painted after installation. composite trim is to be installed at inside and outside corners and around all protrusions to the building that currently have no trim. The bid for the above-mentioned scope is provided below:

| Item | Description                                  | Quantity | Unit | Total bid item price, dollars |
|------|--|----------|------|-------------------------------|
| 1.   | MOBILIZATION                                 | 1        | LS   |                               |
| 2.   | DEMOLITION                                   | 1        | LS   |                               |
| 3.   | PLYWOOD BACKING                              | 1        | LS   |                               |
| 4.   | MOISTURE BARRIER                             | 1        | LS   |                               |
| 5.   | COMPOSITE SIDING AND TRIM                    | 1        | LS   |                               |
| 6.   | COMPOSITE SIDING AND TRIM INSTALLATION LABOR | 1        | LS   |                               |
| 7.   | PAINT MATERIALS                              | 1        | LS   |                               |
| 8.   | PAINT LABOR                                  | 1        | LS   |                               |

\$

**TOTAL BID ALTERNATE (in figures) Items 1 through 8:** \_\_\_\_\_

PROJECT: Glenn County Public and Behavioral Health Exterior Siding Replacement  
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**4.0 SELECTION OF APPARENT LOW BIDDER**

1. The County shall determine the lowest responsible, responsive bidder based on the lowest TOTAL BASE BID or TOTAL BID ALTERNATE, as funding allows.
2. If this proposal shall be accepted and the undersigned shall fail to enter into the contract and furnish the two bonds in the sums to be determined as aforesaid with surety satisfactory to the County of Glenn, within 10 days, not including Saturdays, Sundays, and legal holidays, after the bidder has received notice from the Construction Manager that the contract has been awarded, the County of Glenn may, at its option, determine that the bidder has abandoned the contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the County of Glenn.
3. In the event that the product of a unit price and an estimated quantity does not equal the extended amount stated, the unit price will govern and the correct product of the unit price and the estimated quantity shall be deemed to be the amount bid.
4. The County, if it chooses to award, shall award the contract to the lowest responsible, responsive bidder based on the criteria listed in note 1 above.

**5.0 BID GUARANTY**

Bid security must be a bidders bond, a certified check or cashiers check payable to the County of Glenn, or cash. Bids secured by personal checks or personal guarantees will be rejected.

**6.0 AFFIDAVIT OF NONCOLLUSION**

In accordance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder swears, deposes and says that he or she, as the party making the foregoing bid, declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note:

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The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution. Noncollusion Affidavit (Exhibit 12-E Attachment D, Title 23 United States Code Section 112 and Public Contract Code Section 7106)

**7.0**

**STATEMENT OF EXPERIENCE**

The bidder has been engaged in the contracting business, under the present business name for \_\_\_\_\_ years. Experience in work of a nature similar to that covered in the proposal extends over a period of \_\_\_\_\_ years.

The bidder, as a Contractor, has never failed to satisfactorily complete a Contract awarded to him, except as follows: \_\_\_\_\_

The following contracts have been satisfactorily completed in the last three (3) years for the persons, firm or authority indicated, and to whom reference is made:

| Year | Type of Work | Contract Amount | Owner/Agency for Whom Work was Performed |
|------|--------------|-----------------|--|
|      |              |                 |  |
|      |              |                 |  |
|      |              |                 |  |
|      |              |                 |  |
|      |              |                 |  |
|      |              |                 |  |

**8.0**                    **SUBCONTRACTOR LISTING**

In accordance with the California Public Contract Code, Division 2, Part 1, Chapter 4, Section 4100, and following, the subcontractors listed on the Bid Form attachment will perform the indicated work of improvement on the project.

The list shall specify the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the contractor in or about the construction of the work or improvement, or a subcontractor licensed by the state of California who, under subcontract to the contractor, specifically fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, (b) the portion of the

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work which will be done by each subcontractor. The contractor shall list only one subcontractor for each such portion as is defined by the contractor in its bid. Per 00 20 00 Instructions to Bidders.

The following are the names and locations of places of business of all subcontractors who will perform work or labor or render service to the bidder in or about the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent (0.5%) of the total bid or in the case of bids for the construction of streets and highways, including bridges, in an amount in excess of one-half of one percent (0.5%) of the total bid or ten thousand dollars (\$10,000) whichever is greater.

| <b>Portion of Work</b> | <b>Subcontractor Name / Contractor's License #</b> | <b>Place of Business</b> | <b>DIR Registration #</b> |
|------------------------|--|--------------------------|---------------------------|
|                        |  |                          |                           |
|                        |  |                          |                           |
|                        |  |                          |                           |
|                        |  |                          |                           |
|                        |  |                          |                           |

**INDEPENDENT CONTRACTOR AGREEMENT  
(FEDERALLY FUNDED)**

This Independent Contractor Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between Glenn County, a political subdivision of the State of California ("County"), and \_\_\_\_\_ ("Contractor").

**RECITALS:**

- A. County has determined that it is desirable to retain Contractor to provide \_\_\_\_\_; and
- B. Contractor represents that it possesses the qualifications, experience, and facilities necessary to perform the services contemplated herein and has proposed to provide those services; and
- C. Contractor represents and warrants that Contractor is an independently established business entity formed as a \_\_\_\_\_, that customarily provides services of the same nature as the services provided for County under this Agreement; and
- D. Contractor represents and warrants that Contractor advertises these services to and contracts with entities other than County; and
- E. Contractor represents and warrants that Contractor maintains a separate business location and has all required business licenses and tax registration, if any, in order to perform services under this Agreement; and
- F. The County desires to retain Contractor to perform the proposed services.

County and Contractor agrees as follows:

This Independent Contractor Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_, by and between Glenn County, a political subdivision of the State of California ("County"), and \_\_\_\_\_ ("Contractor").

**RECITALS:**

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D. Contractor represents and warrants that Contractor advertises these services to and contracts with entities other than County; and

E. Contractor represents and warrants that Contractor maintains a separate business location and has all required business licenses and tax registration, if any, in order to perform services under this Agreement; and

F. The County desires to retain Contractor to perform the proposed services.

County and Contractor agrees as follows:

### **AGREEMENT:**

1. Scope of Services. Pursuant to Government Code Section 31000, County retains Contractor to perform all of the non-exclusive professional services described in Exhibit "A" which is attached hereto and incorporated herein by this reference which shall include \_\_\_\_\_ ("Services").

2. Term. Services under this Agreement shall commence on \_\_\_\_\_, and shall continue until \_\_\_\_\_, or until the agreement is terminated by either party in accordance with the provisions of this Agreement.

3. Compensation.

A. The compensation to be paid by County to Contractor for the professional services described in Exhibit "A" shall be \_\_\_\_\_ set forth in Exhibit "B" which is attached hereto and incorporated herein by this reference. Notwithstanding the foregoing, it is mutually agreed that if, for the current fiscal year and/or any subsequent fiscal years covered by this Agreement, insufficient funds are appropriated to make the payments called for by this Agreement, this Agreement shall be of no further force and effect. In this event, the County shall have no liability to pay any further amounts whatsoever to Contractor or furnish any other consideration under this Agreement and Contractor shall not be obligated to perform any further services under this Agreement. If funding for any fiscal year is reduced or deleted for the purposes of this program, the County shall have the option to either cancel this Agreement with no further liability incurring to the County or offer an amendment to Contractor to reflect the reduced amount available to the program. The parties acknowledge and agree that the limitations set forth herein are required by Article XVI, section 18 of the California Constitution. Contractor acknowledges and agrees that Article XVI, section 18 of the California Constitution supersedes any conflicting law, rule, regulation or statute.

B. To the extent that Contractor is entitled to reimbursement for travel, meals, and lodging, such reimbursement shall be subject to the prior approval of the County Purchasing Agent or authorized assistant/deputy and shall be reimbursed in accordance with the County's Reimbursement for Expenses policy contained in Title 7 of the Glenn County Administrative Manual.

C. **The total compensation payable under this Agreement, inclusive of all expenses, shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_).** The County shall make no payment to Contractor in any greater amount for any extra,



further, or additional services, unless such services and payment therefore have been mutually agreed to and this Agreement has been formally amended in accordance with the provisions of this Agreement.

D. Contractor agrees to testify at County's request if litigation is brought against County in connection with Contractor's work. Unless the action is brought by Contractor or is based upon Contractor's negligence or intentional tortious conduct, County will compensate Contractor for the testimony at Contractor's hourly rate as provided in Exhibit "B".

4. Invoice and Payments. Contractor shall submit invoices for services rendered during the preceding month. Contractor shall attach to each invoice documentation for the hours charged (if applicable) and the documentation shall include an itemized narrative of work completed during the period billed. The County shall pay invoices that are undisputed within thirty (30) days of receipt and approval. The parties agree to exercise good faith and diligence in the resolution of any disputed invoice amounts.

5. County's Representative. County hereby designates: \_\_\_\_\_, or his or her designee, to act as its representative for the performance of this Agreement ("County's Representative"). County's Representative shall have the power to act on behalf of County for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than County's Representative or his or her designee.

6. Contractor's Representative. Contractor hereby designates: \_\_\_\_\_, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

7. Notice. Any invoices, notices, or other documents required to be given under this Agreement shall be delivered either personally, by first-class postage pre-paid U.S. Mail, or overnight courier to the following addresses or such other address provided by the parties in accordance with this section:

**If to the County:**

\_\_\_\_\_  
 \_\_\_\_\_  
 Telephone: \_\_\_\_\_

**If to Contractor:**

\_\_\_\_\_  
 \_\_\_\_\_  
 Telephone: \_\_\_\_\_

Notice shall be deemed to be effective two days after mailing.

## 8. Independent Contractor.

A. It is understood and agreed, and is the intention of the parties hereto, that Contractor is an independent contractor, and not the employee or agent of County for any purpose whatsoever. County shall have no right to and shall not control the manner or prescribe the method by which the professional services are performed by Contractor herein and Contractor shall have the right to provide the same or similar services to entities other than County without restriction. Contractor shall be entirely and solely responsible for its acts and the acts of its agents, employees, and subcontractors while engaged in the performance of services hereunder. Contractor shall have no claim under this Agreement or otherwise against County for vacation pay, sick leave, retirement benefits, Social Security, workers compensation, disability, or unemployment insurance benefits or other employee benefits of any kind. The parties acknowledge that County shall not withhold from Contractor's compensation any funds for income tax, FICA, disability insurance, unemployment insurance or similar withholding and Contractor is solely responsible for the timely payment of all such taxes and related payments to the state and federal governments, for itself and for its employees, agents, and subcontractors who might render services in connection with this Agreement. The Contractor shall inform all persons who perform any services pursuant to this Agreement of the provisions of this section.

B. In the event that the Contractor's activities under this Agreement, or any of them, are found by any state or federal agency to be those of an employee rather than an independent contractor, Contractor agrees to indemnify County and hold County harmless for any damages, costs, or taxes imposed upon it pursuant to the Internal Revenue Code or state or federal taxing laws, including but not limited to any penalties and interest which County may be assessed by such state or federal agency for failing to withhold from the compensation paid to Contractor under this Agreement any amount which may have been required to be withheld by law.

C. In the event that the Contractor's activities under this Agreement, or any of them, are found by the California Public Employee's Retirement System (CalPERS) to be those of an employee rather than an independent contractor, Contractor shall defend (with legal counsel reasonably acceptable to the County), indemnify and hold harmless the County, its officers, employees, and agents, from and against any and all claims, losses, costs, contributions, arrears, interest, damages, penalties, expenses and liabilities of every kind, nature and description (including incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the Services provided under this Agreement.

9. Authority of Contractor. It is understood that Contractor is to provide information, research, advice, recommendations, and consultation services to the County. Contractor shall possess no authority with respect to any County decision. The County is responsible for and shall make all governmental decisions related to work of Contractor.

## 10. Ownership of Materials, Confidentiality, Photographs and Recordings.

A. Documents & Data; Licensing of Intellectual Property. This Agreement creates an exclusive and perpetual license for County to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates,

materials, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer media, which are prepared or caused to be prepared by Contractor under this Agreement ("Documents & Data"). Contractor shall require all subcontractors to agree in writing that County is granted an exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to grant the exclusive and perpetual license for all such Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Contractor or provided to Contractor by County. County shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at County's sole risk.

B. Intellectual Property. In addition, County shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media ("Intellectual Property") prepared or developed by or on behalf of Contractor under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Contractor under this Agreement. County shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by County, whether or not developed in conjunction with Contractor, and whether or not developed by Contractor. Contractor will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of County. Contractor shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Contractor of any and all right to the above referenced Intellectual Property. Should Contractor, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of County. All materials and documents which were developed or prepared by the Contractor for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Contractor. However, unless otherwise identified and stated prior to execution of this Agreement, Contractor represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein. County further is granted by Contractor a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Contractor which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

C. Confidentiality. Except as otherwise required by law, all ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor. Such materials shall not, without the prior written consent of County, be used by Contractor for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Contractor which is otherwise known to Contractor or is generally known, or has become known, to the related industry shall be deemed confidential. Contractor shall not use County's name or insignia, photographs of the Services, or any publicity pertaining to the Services in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of County. Should Contractor receive a subpoena or court order related to this Agreement or Services, Contractor shall immediately provide written notice of the subpoena or court order to County in

order to allow County to pursue legal remedies designed to limit any confidential information required to be disclosed or to assure the confidential treatment of the information following disclosure. Contractor shall not respond to any such subpoena or court order until notice to the County is provided as required herein and shall cooperate with the County in responding to the subpoena or court order.

D. Infringement Indemnification. Contractor shall defend, indemnify and hold County, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use by County of the Documents & Data, including any method, process, product, or concept specified or depicted.

E. Photographs and Recordings. In performing the Services contemplated by this Agreement, Contractor may be given access to facilities, processes, events, and employees that are not otherwise accessible to the general public. In addition to the limitations set forth in paragraph C above, Contractor agrees not to photograph, videotape, or otherwise record any such facility, process, event, or employee without the express, written, consent of the County and shall ensure that Contractor's officers, employees, representatives, agents, and subcontractors comply with this provision. Contractor further agrees that it shall not publish, post, disseminate, or make public any photograph, videotape or recording of any facility, process, event, or employee taken in violation of this provision shall ensure that Contractor's officers, employees, representatives, agents, and subcontractors comply with this provision. Failure to comply with the restrictions contained in this paragraph shall constitute grounds for the immediate termination of this Agreement and shall entitle County to the recovery of any and all damages incurred as a result thereof including reasonable attorneys' fees. Contractor shall defend, indemnify and hold County, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any violation of this paragraph.

11. Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold County, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, and subcontractors arising out of or in connection with the performance of the Services under this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against County, its officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against County or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse County and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by County or its officials, officers, employees, agents or volunteers. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor. This section shall survive any expiration or termination of this Agreement.

12. Insurance. Without limiting Contractor's indemnification of the County, Contractor shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property that may arise from, or be in connection with, the performance of the work hereunder by Contractor, Contractor's agents, representatives, employees, and subcontractors.

A. Minimum Scope and Limit of Insurance.

1. Coverage shall be at least as broad as:

(i) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(ii) Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

(iii) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. *(Not required if Contractor certifies that it has no employees).*

Contractor certifies that it has no employees: \_\_\_\_\_  
Signature of Contractor

(iv) Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. This provision may be waived by the Glenn County Administrative Officer.

Waived: \_\_\_\_\_  
Signature of County Administrative Officer

(v) Cyber Liability Insurance with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This provision may be waived by the Glenn County Administrative Officer.

Waived: \_\_\_\_\_  
Signature of County Administrative Officer

2. If Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

The coverage types and limits required pursuant to this Agreement shall in no way limit the liability of Contractor.

B. Other Insurance Provisions.

1. The insurance policies are to contain, or be endorsed to contain, the following provisions:

(i) Additional Insured Status. The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

(ii) Primary Coverage. For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(iii) Notice of Cancellation. Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

(iv) Waiver of Subrogation. Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(v) Self-Insured Retentions. Self-insured retentions must be declared to and approved by the County. The County may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.

(vi) Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the State of California with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.

(vii) Claims Made Policies. If any of the required policies provide coverage on a claims-made basis:

(a) The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work;

(b) Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Services; and

(c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

2. Verification of Coverage. Contractor shall furnish the County with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to County before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

3. Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

4. Failure to Maintain Coverage. Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to County. County shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Agreement. In the event that Contractor's operations are suspended for failure to maintain required insurance coverage, Contractor shall not be entitled to an extension of time for completion of the work because of production lost during suspension.

5. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its work under this Agreement, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to:

(i) Adequate life protection and lifesaving equipment and procedures;

(ii) Instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and

(iii) Adequate facilities for the proper inspection and maintenance of all safety measures.



### 13. Professional Services.

A. All work performed under this Agreement shall be performed and completed in a professional manner. All services shall be performed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Contractor and any subcontractors are engaged.

B. Contractor represents and warrants that it is professionally qualified to perform the Services described herein; acknowledges that County is relying upon Contractor's qualifications to perform these Services in a professional manner; and agrees that County's full or partial acceptance of any work does not release Contractor from its obligation to perform the Services in accordance with this Agreement unless County expressly agrees otherwise in writing.

C. Contractor shall not be considered to be in default because of any nonperformance caused by occurrences beyond its reasonable control. The compensation specified in this Agreement may be reduced to account for such nonperformance.

### 14. Responsibility of Contractor.

A. Contractor shall be solely responsible for the quality and accuracy of its work and the work of its subcontractors performed in connection with this Agreement. Any review, approval, or concurrence therewith by the County shall not be deemed to constitute acceptance or waiver by the County of any error or omission as to such work.

B. Contractor shall coordinate the activities of all subcontractors and is responsible to ensure that all work product is consistent with one another to produce a unified, workable, and acceptable whole functional product. County shall promptly notify Contractor of any defect in Contractor's performance.

C. The Services shall be performed by Contractor or under its supervision. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

15. Audit. The following audit requirements apply from the effective date of this Agreement until three years after County's final payment:

A. Contractor shall allow County's authorized representatives reasonable access during normal business hours to inspect, audit, and copy Contractor's records as needed to evaluate and verify any invoices, payments, and claims that Contractor submits to County or that any payee of Contractor submits to Contractor in connection with this Agreement. 'Records' includes, but is not limited to, correspondence, accounting records, subcontractor files, change order files, and any other supporting evidence relevant to the invoices, payments, or claims.

B. County and Contractor shall be subject to the examination and audit of the State Auditor, at the request of County or as part of any audit of County. Such examinations and audits shall be confined to matters connected with the performance of this Agreement including but not limited to administration costs.

This section shall survive the expiration or termination of this Agreement.

16. Compliance with Law. Contractor shall comply with all applicable federal, state, and local statutes, ordinances, regulations, rules, and orders, including but not limited to those concerning equal opportunity and non-discrimination.

17. Prevailing Wages.

A. Contractor certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services hereunder are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with and to require its subcontractors to fully comply with such Prevailing Wage Laws, to the extent that such laws apply. If applicable, County will maintain the general prevailing rate of per diem wages and other information set forth in Labor Code section 1773 at its principal office and will make this information available to any interested party upon request. Contractor shall defend, indemnify and hold the County, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any failure or alleged failure of the Contractor or its subcontractors to comply with the Prevailing Wage Laws. Without limiting the generality of the foregoing, Contractor specifically acknowledges that County has not affirmatively represented to Contractor in writing, in the call for bids, or otherwise, that the work to be covered by the bid or contract was not a "public work." To the fullest extent permitted by law, Contractor hereby specifically waives and agrees not to assert, in any manner, any past, present, or future claim for indemnification under Labor Code section 1781.

B. Contractor acknowledges the requirements of Labor Code sections 1725.5 and 1771.1 which provide that no contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Codes section 1771.1(a)).

C. Contractor acknowledges that no contractor or subcontractor may be awarded a contract for public works on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

D. If the Services are being performed as part of the applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Contractor acknowledges that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

18. Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include,

but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of any minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

19. Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

20. Conflict with Laws or Regulations/Severability.

A. This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases, the remainder of the Agreement shall continue in full force and effect.

B. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to County, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold County, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

21. Termination. Either party shall have the right to terminate this Agreement at any time for any reason upon thirty (30) days advance written notice to the other party. Agreements exceeding the annual monetary limits delegated to the Purchasing Agent (currently \$50,000.00), or any authorized deputy, are not valid unless specifically authorized by the Board of Supervisors. If this Agreement was executed for the County by the Purchasing Agent under the general delegation set forth in section 4.004.030 of the Glenn County Code, this Agreement shall automatically terminate on the date that the provision of services or personal property or incurring of expenses, the cumulative total of which, exceeds fifty-thousand dollars (\$50,000). If this Agreement was executed by an authorized assistant or deputy Purchasing Agent under the general delegation set forth in section 4.004.030 of the Glenn County Code, this Agreement shall automatically terminate on the date that the provision of services or personal property or incurring of expenses, the cumulative total of which, exceeds the amount delegated to that assistant or deputy by the County Purchasing Agent.

22. Subcontracting and Assignment. Contractor shall not subcontract or assign any portion of the work to be performed under this Agreement without the prior written consent of County. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

23. No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

24. Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, County shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of County, during the term of his or her service with County, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

25. Employment Adverse to County. Contractor shall notify County, and shall obtain County's written consent, prior to accepting work to assist with or participate in a third-party lawsuit or other legal or administrative proceeding against County during the term of this Agreement.

26. Conflict of Employment. Employment by Contractor of personnel currently on the payroll of County shall not be permitted in the performance of this Agreement, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by Contractor of personnel who have been on County's payroll within one year prior to the date of execution of this Agreement, where this employment is caused by and or dependent upon Contractor securing this or related Agreements with County, is prohibited.

27. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

28. Amendments. Any amendments to this Agreement shall be in writing and executed by both parties.

29. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.

30. Jurisdiction. This Agreement shall be administered and interpreted under the laws of the State of California and any action brought hereunder shall be brought in the Superior Court in and for the County of Glenn.

31. Time of Essence. Time is of the essence for each and every provision of this Agreement.

32. Cooperation; Further Acts. The parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

33. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either party, the Agreement shall be amended to make

the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject which are in effect as of the date of this Agreement, and any later changes which do not materially and substantially alter the positions of the parties.

34. Entire Agreement. This Agreement constitutes the entire Agreement between the parties for the provision of services to County by Contractor and supersedes all prior oral and written agreements and communications.

35. Construction. This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply in interpreting this Agreement.

36. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, and the obligations related to receipt of subpoenas or court orders, shall survive any such expiration or termination.

37. Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Contractor warrants that the individual who has signed this Agreement has the legal power, right, and authority to make this Agreement and bind the Contractor.

38. Counterparts/Electronic, Facsimile, and PDF Signatures. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each Party of this agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this agreement. The Parties further agree that the electronic signatures of the Parties included in this agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among Parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the Parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code. Facsimile signatures or signatures transmitted via pdf document shall be treated as originals for all purposes.

40. Required Federal Provisions. To the extent that any of the provisions of this section conflict with any other provision in this Agreement, the provisions in this section shall control. Contractor agrees to the following:

A. Default by Contractor/Breach of Contract. The County reserves the right to cancel at any time, any or all items not delivered as directed and within the time specified. In case of default by Contractor, the County may procure the goods or services from any source available and may charge the difference between the price named in the contract or purchase order and the actual cost thereof to the Contractor.

B. Termination for Cause and Convenience.

(i) Termination for Convenience. The County reserves the right to terminate this Agreement WITHOUT CAUSE and without penalty immediately after ten (10) days written notice, unless otherwise specified.

(ii) Termination for Default. In addition to any other remedies or rights it may have by law, the County may by written notice terminate this Agreement immediately and without penalty for Contractor's default, in whole or in part, at any time, if Contractor refuses or fails to comply with the provisions of this Agreement, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the materials or supplies or perform the services within the time specified or any written extension thereof. In such event, the County may purchase or otherwise secure materials, supplies, or services and, except as otherwise provided therein, Contractor shall be liable to the County for any excess costs occasioned thereby.

#### C. Suspension and Debarment.

(i) 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 contractor is required to verify that none of the contractor's 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).

(ii) The Contractor 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.

(iii) This certification is a material representation of fact relied upon by the County. If it is later determined that the contractor 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.

(iv) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this Agreement. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### D. Procurement of Recovered Materials.

(i) In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price.

(ii) 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/comprehensiveprocurement-guideline-cpg-program>.

(iii) The Contractor also agrees to comply with all other applicable requirements of section 6002 of the Solid Waste Disposal Act.

E. Access to Records. The following access to records requirements apply to this Agreement:

(i) The Contractor agrees to provide the State of California, the County of Glenn, 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 Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(ii) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(iii) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

(iv) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

F. Changes in Contract. It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the County, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties, shall be binding. The County will not compensate Contractor for goods not authorized by written Change Order. The County shall have the right to revoke, amend, or modify this order at any time by issuance of a written Change Order. Contractor's failure to respond within ten (10) days to a written Change Order shall constitute Contractor's acceptance of the change without price or other adjustment.

G. DHS Seal, Logo, and Flags. The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall not use the County seal(s), logos, crests, or reproductions of badges or likenesses of County officials without specific County pre-approval.

H. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Agreement. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

I. 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.

J. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.



K. Byrd Anti-Lobbying Amendment. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) Contractors 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 awarding agency.

Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification:

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING  
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. 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.

2. 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.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. 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 section 1352, title 31, U.S. Code. 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 Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Contractor's Authorized Official

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Name and Title of Contractor's Authorized Official

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Date

L. Clean Air Act and the Federal Water Pollution Control Act (Projects over \$150,000).

Clean Air Act:

(i) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(ii) The Contractor 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, and the appropriate Environmental Protection Agency Regional Office.

(iii) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act:

(i) The Contractor 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. 1251 et seq.

(ii) The Contractor 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, and the appropriate Environmental Protection Agency Regional Office.

(iii) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

M. Equal Employment Opportunity (Construction Projects). During the performance of this contract, the contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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.

(ii) 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 to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(iv) 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' 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.

(v) 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.

(vi) 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 his/her 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.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement 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.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (i) through (viii) 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 Contractor 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 Contractor 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 Contractor 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 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 Contractor agrees that if it fails or refuses to comply with these undertakings, the County may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this Agreement; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.

N. Compliance with Davis-Bacon Act (Construction Projects).

(i) All transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R.pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

(ii) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

(iii) Additionally, contractors are required to pay wages not less than once a week.

O. Compliance with Copeland Anti-Kickback Act (Construction Projects over \$200,000)

(i) Contractor. The Contractor shall comply with 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.

(ii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(iii) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

P. Compliance with Contract Work Hours and Safety Standards Act 29 C.F.R. § 5.5(b) (Contracts Over \$100k+ Mechanics/Laborers).

(i) 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 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.

(ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (P)(i) of this section the contractor and any 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 such 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 clause set forth in paragraph (P)(i) of this section, in the sum of \$27 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 the clause set forth in paragraph (P)(i) of this section.

(iii) Withholding for unpaid wages and liquidated damages. The County 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 forth in paragraph (P)(ii) of this section.

(iv) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (P)(i) through (iv) 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 (P)(i) through (iv) of this section.

#### Q. Rights to Inventions Made Under A Contract or Agreement (Funding Agreement).

(i) Standard. If the FEMA award meets the definition of "funding agreement" under 37C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non-Federal entity must comply with the requirements of 37 C.F.R. 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 FEMA. See 2 C.F.R. Part 200, Appendix II(F).

(ii) Applicability. This requirement applies to "funding agreements," but it DOES NOT apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

(iii) Funding Agreements Definition. The regulation at 37 C.F.R. § 401.2(a) defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

COUNTY OF GLENN

CONTRACTOR

By: \_\_\_\_\_  
\_\_\_\_\_  
Deputy Glenn County Purchasing Agent

By: \_\_\_\_\_  
Authorized Representative  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
William J. Vanasek  
County Counsel, Glenn County

Exhibits:  
Exhibit A – Scope of Work  
Exhibit B – Fee Schedule

**EXHIBIT A**  
**SCOPE OF SERVICES**

**EXHIBIT B  
FEE SCHEDULE**



PROJECT: Public and Behavioral Health Exterior Siding Replacement  
Issue for Bid – April 2023

**SECTION 00 60 00**  
**BIDDER’S BOND**

KNOW ALL MEN BY THESE PRESENTS, THAT WE, THE UNDERSIGNED

\_\_\_\_\_ as principal; and \_\_\_\_\_ as Surety, are hereby held and bound unto the COUNTY OF GLENN, hereinafter called the “County”, in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) which sum is equal to at least ten (10) percent of the total amount of the bid for the work, payment of which sum, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

The condition of the above obligation is such that whereas the Principal has submitted to the County a certain Bid, attached hereto and hereby made a part hereof, to enter into a Contract in writing, for the construction of:

*Glenn County Public and Behavioral Health Exterior Siding Replacement*

NOW, THEREFORE,

- (a) If the Bid is rejected, or in the alternative,
- (b) If the Bid is accepted and the Principal shall sign and deliver a Contract, in the form of Contract attached hereto (all completed in accordance with said Bid and Contract), and shall in all other respects perform the agreement created by the acceptance of said Bid;

Then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all default of the Principal hereunder shall be the amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the County may accept sub bid, and said Surety does hereby waive notice of any such extension.

Should the County file an action in a court of law to enforce this bond, the prevailing party shall be entitled to recover any and all costs and fees associated with the litigation, including but not limited to attorneys’ fees and experts’ fees. The parties agree that proper venue and jurisdiction for such an action will be the Superior Court of California in Sacramento County; any party’s rights to other venue or jurisdiction under law (such as California Code of Civil Procedure sections 392 et seq.) are expressly waived.

**IN WITNESS THEREOF**, the above-bounden parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**IN PRESENCE OF:**

Principal Signature \_\_\_\_\_ (Seal)

Principal Name \_\_\_\_\_

Business Address \_\_\_\_\_

Surety Signature \_\_\_\_\_

Surety Principal Name \_\_\_\_\_

Surety Name \_\_\_\_\_ (Seal)

Business Address \_\_\_\_\_

The rate of premium on this bond is \_\_\_\_\_ per thousand.

Total amount of premium charged \$ \_\_\_\_\_.

**SUBMIT BOND OR OTHER CASH GUARANTEE AS PART OF YOUR BID**

**PERFORMANCE BOND** BOND NO: \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that

WHEREAS, the Governing Board of the COUNTY OF GLENN, a municipal corporation of the State of California, hereinafter designated as the "Obligee", has, on \_\_\_\_\_, awarded to \_\_\_\_\_, hereinafter designated as the "Principal", a contract for the construction of the \_\_\_\_\_ Project hereinafter designated as the "Contract"; and

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract.

NOW, THEREFORE, WE, the Principal, and \_\_\_\_\_, hereinafter designated as the "Surety," are held and firmly bound unto the Obligee, in the penal sum of \_\_\_\_\_ lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounden Principal, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements in the said contract and any alterations made as therein provided, on their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless, the Obligee, its officers and agents as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the said contract, the above obligation in said amount shall hold good for a period of one (1) year after the completion and acceptance of the said work, during which time if the above bounden Principal, its heirs, executors, administrators, successors or assigns shall fail to make full, complete, and satisfactory repair and replacements or totally protect the said Obligee from loss or damage made evident during said period of one (1) year from the date of acceptance of the work, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in the said sum shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligation of the Surety hereunder shall continue so long as any obligation of the Principal remains.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specification accompanying the same shall, in any way, affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work or to the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

Should the Obligee file an action in a court of law to enforce this bond, the prevailing party shall be entitled to recover any and all costs and fees associated with the litigation, including but not limited to attorneys' fees and experts' fees. The parties agree that proper venue and jurisdiction for such an action will be the Superior Court of California in Sacramento County; any party's rights to other venue or jurisdiction under law (such as California Code of Civil Procedure sections 392 et seq.) are expressly waived.

After default by Principal on its obligations under the Contract, Surety's obligation under this bond to completely perform the Principal's remaining obligations under the Contract is not contingent in any manner upon execution of an agreement between Surety and Obligee (such as a takeover agreement). Surety must commence performance of Principal's remaining obligations immediately upon notice of the Principal's default.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Signature for Principal

By \_\_\_\_\_  
Signature for Surety

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Title of Signatory / (SEAL)

(This bond must be submitted in sets of four, each bearing original signatures. The signature of the Attorney-In-Fact for the Surety must be acknowledged by a Notary Public. These bonds must be accompanied by a current power of attorney appointing such Attorney-In-Fact.) 1/05

**SUBMIT BOND WITHIN 10 DAYS OF AWARD OF CONTRACT**

**PAYMENT BOND** BOND NO: \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that

WHEREAS, the Governing Board of the COUNTY OF GLENN, a political subdivision of the State of California, hereinafter designated as the "Obligee", has on \_\_\_\_\_, awarded to \_\_\_\_\_, hereinafter designated as "Principal", a contract for the construction of \_\_\_\_\_ Project; and

WHEREAS, said Principal is required to furnish a bond in connection and with said contract, providing that if said Principal, or any of its subcontractors, shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same to the extent hereinafter set forth:

NOW, THEREFORE, WE, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the Obligee in the penal sum of \_\_\_\_\_ lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, or any of its subcontractors shall fail to pay any of the persons named in Section 3818 of the Civil Code of the State of California, or any amounts due under the Unemployment Insurance Code with respect to such work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department of the State of California, from the wages of employees of the Principal and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code of the State of California with respect to such work or labor, as required by the provisions of Section 3225 and following of the Civil Code of the State of California, then said Surety will pay the same in or to an amount not exceeding the amount herein above set forth.

This bond is issued pursuant to Civil Code Sections 3247 through 3252 of the State of California and shall insure to the benefit of any and all persons, companies, and corporations named in Section 3181 of said Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specification accompanying the same shall, in any way, affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work or to the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being affixed hereto and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Signature for Principal

By \_\_\_\_\_  
Signature for Surety

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Title of Signatory (SEAL)

(This bond must be submitted in sets of four, each bearing original signatures. The signature of the Attorney-In-Fact for the Surety must be acknowledged by a Notary Public. These bonds must be accompanied by a current power of attorney appointing such Attorney-In-Fact.) 1/05

**SUBMIT BOND WITHIN 10 DAYS OF AWARD OF CONTRACT**

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## COUNTY OF GLENN

Department of General Services- Facilities  
453 E. County Road 49 ½  
Willows, CA 95988  
Phone: 530-934-6545  
[Facilities2@countyofglenn.net](mailto:Facilities2@countyofglenn.net)  
[www.countyofglenn.net](http://www.countyofglenn.net)

**SCOTT H. DEMOSS**  
County Administrative Officer  
525 W. Sycamore St. Suite B1  
Willows, CA 95988  
Phone: 530-934-6400  
Fax: 530-934-6419  
[gcboard@countyofglenn.net](mailto:gcboard@countyofglenn.net)

### CHANGE ORDER No. XX

**Project: *Project Title***

**Date: *date***

**To: *Contractor Name***  
*address*  
*address*

**Attn: *Contractor Contact***

**Contractor:** You are hereby directed to make the herein described changes to the plans and specifications or do the following described work not included in the plans and specifications of this contract. All new work herein described shall be done in accordance with the applicable provisions of the plans and specifications, except as modified by this contract change order.

**Description of Change:**

**Method of Payment:**

Estimated or Total) Cost: \$ **XX.XX**

**Contract Time Adjustment:**

**Authorization to Proceed with Work:** This change order constitutes full and complete compensation for all labor, equipment, materials, overhead, profit, any and all indirect costs, and time adjustment to perform the described change. Other costs are non-compensable.

Recommended By:

Date:

Approved by:

Date:

\_\_\_\_\_  
Joe Bettencourt  
Supervising Staff Services Analyst

\_\_\_\_\_  
Scott H. De Moss  
County Administrative Officer

Contractor's Acceptance:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

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**SECTION 00 72 00**  
**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

**Project:**

Glenn County  
Willows Memorial Hall Westside Office Project  
525 W. Sycamore St.  
Willows, CA 95951

**Owner:**

Glenn County Board of Supervisors  
525 W. Sycamore Street, Suite B1  
Willows, CA 95988  
Contact: Scott H. De Moss, County Administrative Officer  
Email: [gcboard@countyofglenn.net](mailto:gcboard@countyofglenn.net)  
Phone: (530) 934-6400

**Owner Representative:**

Glenn County Administrative Office  
525 W. Sycamore Street, Suite B1  
Willows, CA 95988  
Contact: Scott H. De Moss, County Administrative Officer  
Email: [gcboard@countyofglenn.net](mailto:gcboard@countyofglenn.net)  
Phone: (530) 934-6400

**Construction Manager:**

Glenn County General Services  
453 E. County Road 49 ½  
Willows, CA 95988  
Contact: Joe Bettencourt, Supervising Staff Services Analyst  
Contact: Ricardo Valdez, Facilities Operations Manager  
Email: [facilities2@countyofglenn.net](mailto:facilities2@countyofglenn.net)  
Phone: (530) 934-6545

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## **ARTICLE 1 GENERAL PROVISIONS**

### **1.1 BASIC DEFINITIONS**

#### **1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Construction Manager. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### **1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between persons or entities other than the Owner and Contractor. The Construction Manager shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

#### **1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, tools and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### **1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

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### **1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Construction Manager and the Construction Manager's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

### **1.1.8 INITIAL DECISION MAKER**

Owner is the Initial Decision Maker that renders initial decisions on Claims in accordance with Section 15.2.

## **1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the case of conflict between terms of the Contract Documents, the following order of precedence shall apply:

1. Modifications
2. The Agreement
3. The Supplementary Conditions, if any
4. The General Conditions
5. The Specifications
6. The Drawings

**1.2.2** With respect to the Drawings, figured dimensions shall control over scaled measurements and specific details shall control over typical or standard details.

**1.2.3** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**1.2.4** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**1.2.5** Whenever the context so requires, 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 for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

## **1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined or (2) the titles of numbered articles.



#### **1.4 INTERPRETATION**

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

#### **1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENT OF SERVICE; BOOKS AND RECORDS**

**1.5.1** The Construction Manager and the Construction Manager’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Construction Manager’s or Construction Manager’s consultants’ reserved rights.

**1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Construction Manager and the Construction Manager’s consultants.

**1.5.3** The Contractor shall keep and maintain the following (the "Books and Records"):

- .1 copies of all documents of any kind prepared, issued, or received by Contractor in connection with the Work or the Project including all Contract Documents, bulletins, requests for information, bonds, subcontracts, purchase orders, correspondence, claims, anticipated cost reports, Shop Drawings, Change Orders, Change Order logs, project budgets (and all revisions thereof), estimates of the Contract Sum, handbooks, warranties, guarantees, operating manuals, rate manuals, technical standards and specifications, instructions, permits, licenses, certificates, test reports, notices of lien, documents served in legal proceedings, and insurance documentation;
- .2 samples received;
- .3 construction schedules (and all revisions thereof);
- .4 photographs and/or a video record of the Work, as required by the Contract Documents; and
- .5 one complete set of the Drawings and Specifications marked to record all changes during the construction and specifying the applicable Change Orders.

**1.5.4** All samples, Shop Drawings, other submittals, or other documents of any kind prepared by Contractor or any Subcontractor in connection with the work or the Project, and all rights in the foregoing (including rights of use, copyright, and trademark), shall be and remain the sole and

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confidential property of Owner (whether or not Owner undertakes, terminates, or completes the Work, or this Agreement is terminated for any reason whatsoever). Submission or description of any document described in the foregoing sentence to any person or entity for purposes of, or in connection with, the Work or the Project shall not be construed as publication in derogation of Owner's rights under this Agreement.

**1.5.5** As part of final completion, Contractor shall be responsible for collecting from its Subcontractors a complete set of their "as-built" (i.e., as actually constructed) Drawings and Specifications indicating differences and changes from the original (with copies of all Change Orders and Shop Drawings). Contractor shall prepare a coordinated set of such Subcontractor "as-builts" (with Change Orders and Shop Drawings) and deliver one complete copy to Owner and Construction Manager shall then be responsible for reviewing the same, for further coordination (if any), and for converting the same into a digital format if needed. As a part of and condition to final completion (or any earlier termination of this Agreement by either Owner or Contractor for any reason whatsoever), Contractor shall deliver to Owner a complete set of the Books and Records. Upon prior notice to Owner from time to time, Contractor shall have access for six (6) years to the Books and Records which are stored by the Owner after final completion. Subject to the requirements of this Article, Contractor shall be entitled to retain one complete set of the Books and Records for its permanent records.

**1.5.6** Contractor agrees that Owner has not made, and shall not be deemed to have made, any representations or warranties whatsoever with respect to the Drawings, Specifications, or any other Contract Documents, whether as to design or other adequacy or sufficiency thereof, or otherwise.

## **1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## **ARTICLE 2 OWNER**

### **2.1 GENERAL**

**2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Construction Manager do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**2.1.2** The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

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

**2.2.1** Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. While Owner makes no representations or warranties regarding the accuracy or completeness of such information, the Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**2.2.4** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. Owner's failure to be timely in furnishing information may be a Compensable Delay, but not a breach of contract.

**2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

**2.2.6** The Owner shall copy or involve the Construction Manager on all communications with Contractor.

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

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner or Construction Manager may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. Contractor shall not be entitled to any adjustment of Contract Time or Sum as a result of such order.

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services to maintain the Master Project Schedule, fails to start any activity by its start date as directed by the Construction Manager which will be no earlier than the early start date nor later than the late start date reflected in the Master Project Schedule, or fails to complete any activity by its completion date as directed by the Construction Manager which will be no earlier than the early completion date nor later than the late completion date as reflected in the Master Project Schedule, and then fails within a 10-day period after receipt of written notice from the Owner or Construction Manager to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies including supplying additional workers to the Contractor in such quantity and for such period as deemed necessary by the Construction Manager, all at the Contractor's expense. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **2.5 OWNER'S RIGHT TO ACCELERATE THE WORK**

**2.5.1** The Owner may direct the acceleration of the Work by the Contractor to meet schedule requirements when the Work has been delayed by a Permitted or Compensable Delay. The Owner will compensate the Contractor for the additional costs incurred by such acceleration to the extent that such costs are directly attributable to the acceleration and are incurred through no fault or negligence of the Contractor.

**2.5.2** Any acceleration directed by the Owner pursuant to the foregoing provision will be by a Change Order. The Owner will not be obligated, under any circumstances, to direct such acceleration and may elect, at its option, not to accelerate the Work of the Contractor.

**2.5.3** The Owner may accelerate the work of one or more Separate Contractors to meet schedule requirements when the Work of Contractor does not adhere to the Master Project Schedule and said failure to adhere causes, in whole or in part, a delay in the work of such Separate Contractors and if such delay would otherwise give rise to a time extension. The Owner may reduce the Contract Sum by the amounts incurred due to such acceleration to Separate Contractors.

**2.5.4** Owner may also require Contractor to accelerate the Work due to delays which are not Permitted or Compensable Delays - see Section 3.10.11 below.

## **ARTICLE 3 CONTRACTOR**

### **3.1 GENERAL**

**3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully

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licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

**3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner, Construction Manager in the administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

**3.1.4** The term "Separate Contractors" or the plural term "Contractors" refers to persons or entities who perform construction under General Conditions of the Contract that are administered by the Construction Manager, and that are identical or substantially similar to these General Conditions.

**3.1.5** The “Contractor” is also referred to as the “Prime Trade Contractor” or “General Contractor” in the Contract Documents.

**3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Construction Manager may require. It is recognized that the Contractor’s review is made in the Contractor’s capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**3.2.3** Should Contractor discover any conflicts, omissions, or errors in the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; or question that Work required is not sufficiently detailed or explained, then, before proceeding with the Work affected, Contractor shall notify the Construction Manager in writing and request interpretation, clarification, or furnishing of additional detailed instructions.

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**3.2.4** If Contractor performs any construction activity which it knows or should know involves an error, inconsistency, or omission referred to in this Section 3.2, without notifying and obtaining the written consent of Construction Manager, Contractor shall be responsible for the resultant losses, including, without limitation, the costs of correcting defective Work.

**3.2.5** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Construction Manager may require.

**3.2.6** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Construction Manager issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2, 3.2.3 or 3.2.5, the Contractor shall submit a Change Order Request as provided in Section 7.5 or shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2, 3.2.3 or 3.2.5, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Construction Manager for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**3.3.1** The Contractor shall supervise, coordinate and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, Construction Manager and shall not proceed with that portion of the Work without further written instructions from the Construction Manager. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

**3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

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**3.3.3** The Contractor shall be responsible for inspection of all portions of Work already performed including work by others to determine that such portions are in proper condition to receive subsequent Work.

**3.3.4** The Contractor shall inspect portions of the Project related to the Contractor's Work in order to determine that such portions are in proper condition to receive subsequent Work.

### **3.4 LABOR AND MATERIALS**

**3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**3.4.2** Except in the case of minor changes in the Work authorized by the Construction Manager in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Construction Manager in accordance with a Change Order or Construction Change Directive.

**3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **3.5 WARRANTY**

The Contractor warrants to the Owner, Construction Manager that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **3.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS**

**3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured by a contractor in Contractor's trade performing this kind of Project or that are specified as Contractor's responsibility in the Contract Documents.

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**3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall immediately provide notice to the Owner, the Construction Manager before conditions are disturbed and in no event later than 3 days after first observance of the conditions. The Construction Manager will promptly investigate such conditions and, if the Construction Manager determine that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will request Contractor to submit a Change Order Request within 7 days for an adjustment in the Contract Sum or Contract Time, or both, per Section 7.5. If the Construction Manager determine that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Construction Manager shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Construction Manager's determination or recommendation that party may proceed as provided in Article 15.

**3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents or other documents provided to Contractor, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain any governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Any critical path delays directly resulting from such remains or features will be Compensable Delays subject to the requirements of Article 15.

### **3.8 ALLOWANCES**

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



### **3.9 NOT USED**

### **3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**3.10.1** The Construction Manager has developed an overall "Preliminary Master Project Schedule" indicating major milestones and construction sequences for the Project, showing the general timing for the work of Contractor. This Preliminary Master Project Schedule is for bidder information and guidance only, and is not intended to serve as the Master Project Schedule that will be utilized for construction. However, the construction milestones and sequences shall be the basis for the Master Project Schedule, unless the Construction Manager modifies them to improve the overall progress and completion by utilizing revised logic and revised schedule. The "Project Time" is the allowed time to perform the construction of the entire Project.

**3.10.2** Using the schedules submitted by each of the Contractors, the Construction Manager will develop and issue the "Master Project Schedule" showing completion of the Project within the Project Time. The Construction Manager may require additional information from the Contractor during development of the Master Project Schedule.

**3.10.3** The Construction Manager may impose upon the Contractor, in the initial Master Project Schedule, whatever scheduling requirements are deemed appropriate, consistent with the Preliminary Master Project Schedule, and the Contractor shall comply with any such requirements, at no additional cost to Owner, and reflect same in a "Contractor's Schedule."

**3.10.4** The Contractor shall develop the Contractor's Schedule and submit updated schedule information to the Construction Manager within the time limits required by the Specifications and in form acceptable to the Construction Manager. The Construction Manager may, at any time, make reasonable adjustments, at no cost to the Owner, to the Master Project Schedule so that the Project may be completed within the Project Time, or if completion within the Project Time is impracticable, to mitigate damages to the Owner resulting from late completion of the Project.

**3.10.5** The Master Project Schedule shall represent a practical plan to complete the work of the entire Project so that the entire Project can be fully completed within the Project Time. Likewise, the Contractor's Schedule shall represent a practical plan to fully complete the Work within the Contract Time and Master Project Schedule.

**3.10.6** The Contractor shall prepare and keep current, to the satisfaction of the Construction Manager, a Submittal Schedule, in the form contained in the Exhibits, for each submittal, as required by the Specifications, and that are coordinated with the other activities in the Master Project Schedule.

**3.10.7** Contractor shall plan, develop, supervise, control, and coordinate the performance of the Work so that its progress and the sequence and timing of Work activities conform to the current Master Project Schedule. Contractor shall continuously obtain from Subcontractors updated information and data about the planning for and progress of the Work and the delivery of equipment, shall coordinate, and monitor the progress of the Work and the delivery of

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equipment. Contractor shall act as the expeditor to avoid or mitigate potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier. Contractor shall cooperate with the Construction Manager in the development of the Contractor's Schedule, the Master Project Schedule, and their updates.

Construction Manager's acceptance of, or its review comments about, the Contractor's Schedule or scheduling data provided by Contractor shall not relieve Contractor of its sole responsibility to plan for, perform, and fully complete its Work within the Contract Time. Acceptance of, or review comments about, the Contractor's Schedule shall not imply the Owner's agreement with (1) any assumption upon which the Contractor's Schedule is based, or (2) any matter underlying or contained in the Contractor's Schedule.

Failure of the Construction Manager to discover errors or omissions in the Contractor's Schedule, or to inform Contractor that Contractor is behind schedule, or to direct or enforce procedures for complying with the Master Project Schedule shall not relieve Contractor from its sole responsibility to perform and complete the Work and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

**3.10.8** The Work may require performance in several areas of the project simultaneously in order to fully complete the Project within the Project Time. As each area becomes available, Contractor shall begin work in those respective areas with additional crews if necessary to avoid a reduction of effort in other areas already under construction.

**3.10.9** Subject to Owner's rights under the Contract or at law, time is of the essence in the Contractor's performance of this Contract. Contractor agrees to promptly commence work when directed by the Construction Manager.

**3.10.10** In addition to any completion dates required under the Contract, the Contractor agrees to perform the work in accordance with the Construction Manager's Master Project Schedule, including all subsequent modifications to the Master Project Schedule by the Construction Manager. Contractor agrees to perform the work in a way that will not delay the Owner, the Construction Manager, or the progress of the Project, all at Contractor's cost and without additional cost or liability to Owner.

**3.10.11** If, at any time during Contractor's performance of the work, the actual progress of the Contractor's Work falls behind the Master Project Schedule, then Contractor agrees to immediately take any steps necessary per the Construction Manager's sole discretion to improve progress in the Work or the Project. All these steps will be taken at Contractor's cost and without additional cost or liability to the Owner. If for any reason the Contractor's progress is not in accord with the Construction Manager's current Master Project Schedule, including remedial schedules, or any dates or intervals required elsewhere by the Contract, the Construction Manager may require Contractor to increase its labor force, its supervision force, the number of work shifts, overtime, work on weekends and holidays, the equipment on the Project, revise or modify its construction procedures and sequences and any other measures which the Construction Manager considers necessary, all without additional cost or liability to Owner. Neither notice by the Construction Manager nor the failure to issue notice that Contractor's

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progress is inadequate shall relieve Contractor from its obligation to achieve the quality of work and rate of progress required by the Construction Manager.

If the Owner incurs expense or loss or it appears that Owner may sustain expense or loss due to Contractor's failure to comply with the above provisions, the Owner or the Construction Manager may either deduct that amount from any progress payment or retention payable to Contractor and/or delay payment of any sums otherwise owing to Contractor until the situation is remedied or adjusted to the Owner's or the Construction Manager's satisfaction.

**3.10.12** The Construction Manager will schedule and coordinate the activities of the Contractor in accordance with the latest approved Master Project Schedule. The Contractor shall cooperate with the Construction Manager in the reasonable determinations of scheduling and performing the Contractor's work to avoid conflict, delay in or interference with the Work or other Contractors, or Separate Contractors, regardless of their float shown on the Master Project Schedule.

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

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of reviewed Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Construction Manager and shall be delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Construction Manager is subject to the limitations of Section 4.2.8. Informational submittals upon which the Construction Manager is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager without action.

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**3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Construction Manager or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**3.12.6** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner, Construction Manager that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and accepted by the Construction Manager.

**3.12.8** The Work shall be in accordance with reviewed and accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Construction Manager's review of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager in writing of such deviation at the time of submittal and (1) the Construction Manager has given written acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Construction Manager's review thereof.

**3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Construction Manager on previous submittals. In the absence of such written notice, the Construction Manager's review of a resubmission shall not apply to such revisions.

**3.12.10** If Contractor discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, the Contractor shall notify the Owner's Representative and receive instruction before proceeding with the affected Work.

**3.12.11** The Contractor shall not be required to provide professional services that constitute the practice of engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner, Construction Manager and the will specify all performance and design criteria that such services must satisfy. The Contractor shall cause

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such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Construction Manager. The Owner and the Construction Manager shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner or Construction Manager have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.11, the Construction Manager will review, accept or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **3.13 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **3.14 CUTTING AND PATCHING**

**3.14.1** Contractor shall do all cutting, fitting, or patching of the Work required to make all parts of the Work come together properly and to allow the Work to receive or be received by work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a Separate Contractor except with written consent of the Owner and of such Separate Contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a Separate Contractor the Contractor's consent to cutting or otherwise altering the Work.

### **3.15 CLEANING UP**

**3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

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**3.15.3** Personnel of Contractor and its Subcontractors shall not occupy, live upon, or otherwise make use of the Project site during any time that Work is not being performed at the Project site, except as otherwise provided in the Contract Documents.

### **3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Construction Manager, their consultants and other persons authorized by the Owner access to the Work in preparation and progress wherever located. The Contractor shall provide safe and proper facilities for such access and for inspection.

### **3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Construction Manager harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Construction Manager. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Construction Manager.

### **3.18 INDEMNIFICATION**

**3.18.1** Subject to Section 3.18.7, Contractor agrees to comply with the Indemnity Requirements listed in the Construction Agreement. Additionally, the Contractor shall indemnify and hold harmless each and every Indemnitee (as defined below) from and against (and to pay) all Loss-And-Expense which any Indemnitee may suffer, incur or pay out, or which may be asserted against any Indemnitee in whole or in part, by reason of, or in connection with, the following:

1. Any bodily injury, sickness, disease or death of or to any person or persons occurring in connection with (or arising out of or resulting from) the Work (including any corrective or warranty Work), whether on the Site or elsewhere, to the extent caused by or resulting from the negligence or willful misconduct of Contractor or those for whom it is responsible;
2. Any damage to or destruction of any property, including any utilities or any property of Owner other than the Work (which is intended to be covered by builders' risk insurance pursuant to Article 11) or any other person or entity, occurring in connection with (or arising out of, or resulting from) the Work, whether on the Site or elsewhere, to the extent caused by or resulting from the negligence or willful misconduct of Contractor or those for whom it is responsible (except for Loss-and-Expense arising as a result of damage to or destruction of property which is covered by Owner's builder's risk insurance);
3. Any loss of benefits under any manufacturer's guarantee or service agreement resulting from the fault, inaccuracy, error, or omission of Contractor or any Subcontractor;

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4. Any materially untrue or incorrect statement or representation of Contractor in any Application for Payment, or in any other document submitted by Contractor with respect to the Work, the Project, or the Contract (or for purposes of securing the Contract);
5. Any failure of Contractor to pay Subcontractors or suppliers, provided that Owner is not in default of its payment obligations under the Contract;
6. Any failure of Contractor to comply with all applicable laws, rules or regulations of governmental entities; or
7. Any failure of Contractor to secure and maintain the insurance required by Article 11.

**3.18.2** Contractor shall defend any legal proceedings commenced against any Indemnitee concerning any matter covered by any indemnity or obligation under this Article 3. Contractor shall give Owner copies of documents served in any such legal proceeding and, whenever requested by Owner, shall advise promptly as to the status of such legal proceeding. If Contractor fails to defend diligently any such legal proceeding, Owner shall have the right (but no obligation) to defend the same at Contractor's expense. Contractor shall not settle any such legal proceeding without Owner's prior written consent (unless the effect of such settlement shall be to release every Indemnitee against whom liability has been asserted from all liability whatsoever with respect to such legal proceeding, without cost or contribution from any Indemnitee).

**3.18.3** Contractor shall notify Owner promptly of every legal proceeding or claim of which Contractor has actual knowledge which may be covered by any indemnity or obligation under this Article 3 and/or which may be covered by any insurance policy required under Article 11. Contractor shall also give timely notice of such legal proceedings and claims to each insurer which has issued an applicable policy.

**3.18.4** Contractor's indemnities and obligations under this Contract shall not be limited or defined in any fashion whatsoever by the amount of insurance required under the Contract Documents or by any limitations or restrictions on the amount or type of damages, compensation or benefits payable to, by or for Contractor under workers' compensation acts, disability benefit acts or any other laws relating to employee benefits (although actual recoveries of insurance proceeds by an Indemnitee, net of reasonable fees and costs—including attorney's fees—of collection, shall be applied to reduce Contractor's obligation to such Indemnitee with respect to the subject matter of such recovery). No Indemnitee's right to indemnity under this Contract shall be diminished, waived, or discharged by the exercise of any other remedy allowed under this Contract or by law.

**3.18.5** This Article 3 and the obligations of Contractor hereunder shall survive Substantial Completion, final completion, all payments (including final payment) to Contractor, and any termination of this Contract.

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**3.18.6** Contractor's obligations under this Article 3 shall be construed as protecting the Indemnitees to the fullest extent permitted by law, subject to Section 3.18.7.

**3.18.7** Notwithstanding anything to the contrary in this Article 3 (but subject to Section 3.18.2), Contractor shall not be required to indemnify against any claims, damages, losses or expenses: (a) as to Construction Manager, to the extent that such loss and expense is the result of Construction Manager's professional malpractice or professional negligence; or (b) as to any Indemnitee, to the extent that such Loss-and-Expense is the result of the negligence or willful misconduct of such Indemnitee. (This Section shall not excuse any insurer providing policies of insurance required by the Contract Documents from defending any such Indemnitee as required under Section 3.18.2.)

**3.18.8** "Indemnitee" means Owner, Owner's affiliates, Construction Manager, Construction Manager's consultants, Construction Manager, and the members, managers, and the directors, shareholders, agents, officers and employees of the foregoing. "Loss-And-Expense" means loss, liability, obligation, damage, delay, penalty, judgment, cost, fee, claim, charge, tax, or expense of every kind (including related reasonable fees and costs of attorneys or otherwise).

**3.18.9** The obligations of the Contractor under this Section 3.18 shall not extend to the liability of the Construction Manager, their consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Construction Manager, their consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

### **3.19 LIABILITY FOR AND REPAIR OF DAMAGED WORK**

**3.19.1** The Contractor shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to Owner's acceptance of the Project as fully completed except that the Contractor shall not be liable for:

1. Losses covered by the builder's risk property insurance provided by the Owner pursuant to Article 11 of the General Conditions, except that the Contractor shall be liable for any deductible(s) and any amounts exceeding policy limits.
2. Earthquake, tidal wave, or flood, provided that the loss was not caused in whole or in part by the negligent acts or omissions of Contractor, its officers, agents or employees (including all Subcontractors and suppliers of all tiers). As used herein, "flood" shall have the same meaning as in the builder's risk property insurance.

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

### **4.1 CONSTRUCTION MANAGER**

#### **4.1.1 NOT USED**

**4.1.2** If the employment of the Construction Manager is terminated, the Owner shall employ a successor Construction Manager whose status under the Contract Documents shall be that of the Construction Manager.



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**4.1.3** The Owner shall retain qualified and licensed professionals to prepare the construction documents and assist with the administration of their construction.

## **4.2 ADMINISTRATION OF THE CONTRACT**

**4.2.1** The Construction Manager will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representatives (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Section 12.2. The Construction Manager will advise and consult with the Owner and will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

**4.2.2** NOT USED

**4.2.3** NOT USED

**4.2.4** Construction Manager will have the right to visit the Project site at such intervals as deemed appropriate by the Construction Manager. However, no actions taken during such Project site visit by Construction Manager shall relieve Contractor of its obligations as described in the Contract Documents.

### **4.2.5 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Owner shall copy or involve Construction Manager on all communications with Contractor. The Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Owner.

**4.2.6** NOT USED

**4.2.7** The Construction Manager has authority to reject Work that does not conform to the Contract Documents, and to require additional inspection or testing, in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed, but will take such action only after notifying the Owner. Subject to review by the Owner, the Construction Manager will have the authority to reject Work which does not conform to the Contract Documents. Whenever the Construction Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, the Construction Manager has authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.13 through 4.2.15 inclusive.

**4.2.8** The Construction Manager will review and accept or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12.

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The Construction Manager's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager, of any construction means, methods, techniques, sequences or procedures. The Construction Manager's acceptance of a specific item shall not indicate acceptance of an assembly of which the item is a component.

**4.2.9** The Construction Manager will prepare Change Orders and Construction Change Directives, and the Construction Manager may authorize minor changes in the Work as provided in Section 7.4. The Construction Manager will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**4.2.10** NOT USED

**4.2.11** If the Owner and Construction Manager agree, the Construction Manager will provide one or more project representatives to assist in carrying out the Construction Manager's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**4.2.12** The Construction Manager will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner, Construction Manager or Contractor. The Construction Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**4.2.13** Interpretations and decisions of the Construction Manager will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

**4.2.14** NOT USED

**4.2.15** The Construction Manager will review and respond to requests for information about the Contract Documents. The Construction Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Construction Manager will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**4.2.16** The Construction Manager will determine in general that the Work is being performed in accordance with the requirements of the Contract Documents, will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

**4.2.17** The Construction Manager will provide for coordination of the activities of Separate Contractors and of the Owner's own forces with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with Separate Contractors and the Construction Manager and Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Contractor's Schedule deemed necessary after a joint review and mutual agreement.

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**4.2.18** The Construction Manager will schedule and coordinate the activities of the Contractors in accordance with the latest approved Master Project schedule.

**4.2.19** The Construction Manager will review and certify all Applications for Payment by the Contractor, including final payment. The Construction Manager will assemble each of the Contractor's Applications for Payment with similar Applications from other Contractors into a Project Application and Project Certificate for Payment.

### **4.3 CONSTRUCTION MANAGER**

**4.3.1** The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Construction Manager" means the Construction Manager identified on the cover page or the Construction Manager's authorized representative, or their successors when designated by written notice to Contractor.

**4.3.2** NOT USED.

**4.3.3** In case of termination of employment of the Construction Manager, the Owner shall appoint a new construction manager whose status under the Contract Documents shall be that of the former construction manager.

## **ARTICLE 5 SUBCONTRACTORS**

### **5.1 DEFINITIONS**

**5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or subcontractors of a Separate Contractor.

**5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. Unless otherwise noted or inapplicable in a particular context, the term Subcontractor includes Subcontractors at all tiers and the term Contractor includes all Subcontractors.

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

**5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Construction Manager the names of persons or entities for review by the Owner, Construction Manager (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Construction Manager has reasonable objection to any such proposed person or entity or (2) that the Owner or Construction Manager requires additional time for review. Failure of the

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Owner or Construction Manager to reply within the 14 day period shall constitute notice of no reasonable objection.

**5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Construction Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**5.2.3** If the Owner or Construction Manager has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Construction Manager has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**5.2.4** The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Construction Manager makes reasonable objection to such substitution.

### **5.3 SUBCONTRACTUAL RELATIONS**

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Construction Manager. Each subcontract agreement shall preserve and protect the rights of the Owner and Construction Manager 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 to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### **5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- 1.** Assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract from the date of assignment.

**5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be adjusted for the documented increases in cost resulting from the suspension.

**5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

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

### **6.1**

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

**6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager. The Owner further reserves the right to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation.

**6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**6.1.3** See Section 4.2.17.

**6.1.4** Not Used.

**6.1.5** The Project, of which the Work is a part, will involve other contracts for work to be performed and also work to be performed by the Owner on the same site. By entering into this Contract, Contractor acknowledges that Owner has the right to enter into such other contracts and to perform work, and that the work of said contracts or the Owner may (i) be in close proximity to and/or performed contemporaneously with the work of this Contract, and (ii) result in delays in or disruptions to Contractor's Work. The Contractor further agrees as follows:

1. The Owner shall cause Separate Contractors to afford the Contractor reasonable opportunity for the introduction and storage of its materials and the execution of its work. The Contractor shall properly connect and coordinate its construction and operations with the construction and operations of Separate Contractors and Owner forces, as required by the Contract Documents.

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2. The Contractor shall cooperate with Separate Contractors and the Owner on the project site and will do nothing to delay, hinder, disrupt, or interfere with the work of Separate Contractors, or the Owner. Contractor shall coordinate its work with the work of any Separate Contractor and agrees to attend any coordination meetings scheduled for this purpose by the Owner's Representative. Any dispute between the Contractor and any Separate Contractor over how the work of the various trades should be coordinated, shall be promptly submitted by Contractor to the Owner's Representative. The Contractor agrees to cooperate with the development of, and to be bound by, any reasonable coordination plan directed by Owner's Representative to address the dispute, even if Contractor does not agree with the coordination plan so developed. The Contractor agrees that if its work is delayed, hindered, disrupted or interfered with by a Separate Contractor to the extent such delays, hindrances, disruptions, and interferences result in Contractor working beyond the Contract Time, through no fault of the Contractor, the Contract shall be subject to a time extension, but no compensation from the Owner, provided the Contractor complies with the requirements of the Contract for seeking a time extension, including without limitation, the requirements set forth in Articles 4, 7 and 8 of the General Conditions.

## **6.2 MUTUAL RESPONSIBILITY**

**6.2.1** The Contractor shall afford the Owner, its forces, Construction Manager and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

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

**6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

**6.2.4** The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractors as provided in Section 10.2.5.

**6.2.5** Each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

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

If a dispute arises among the Contractor, Separate Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible as the Construction Manager.

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

### **7.1 GENERAL**

**7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**7.1.2** A Change Order shall be based upon agreement among the Owner and Contractor; a Construction Change Directive by the Owner may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Construction Manager alone.

**7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

**7.1.4** In the Contract Documents, "changes in the Work" means any Work in addition to the original Work under this Contract which adds scope or program to the original Work under this Contract. For the avoidance of doubt, "changes in the Work" does not include (a) development of details reasonably inferable from or implied by, but not explicit in, Drawings or Specifications; (b) the inclusion or exclusion of any item which should be included or excluded in accordance with good construction practice, whether or not shown or set forth in a drawing or specification; and (c) any matters resulting from, or attributable to, mistake, error, omission, delay, or negligence of Contractor or any Subcontractor.

### **7.2 CHANGE ORDERS**

**7.2.1** A Change Order is a written instrument signed by the Owner and Contractor stating their agreement upon all of the following:

1. The change in the Work;
2. The amount of the adjustment, if any, in the Contract Sum; and
3. The extent of the adjustment, if any, in the Contract Time.

### **7.3 CONSTRUCTION CHANGE DIRECTIVES**

**7.3.1** A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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**7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

1. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. Unit prices stated in the Contract Documents or subsequently agreed upon;
3. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
4. Costs as provided in Section 7.3.7 plus the Contractor Fee on such costs.

**7.3.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**7.3.5** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time within 7 calendar days after receipt of the Construction Change Directive.

**7.3.6** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, Contractor shall nonetheless proceed with the Work if so directed by Owner, and the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data of Contractor's costs for the changed or disputed work. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall mean actual costs incurred or to be incurred by Contractor and each Subcontractor regardless of tier, and shall be limited to the following categories:

1. Straight-time wages or salaries for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the applicable Work.
2. Fringe benefits and payroll taxes for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the applicable Work.



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3. Overtime wages or salaries for overtime Work specifically authorized in writing by Owner for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the applicable Work.
4. Fringe benefits and payroll taxes for overtime Work specifically authorized in writing by Owner for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the applicable Work.
5. Costs (including sales tax) of materials and consumable items which are furnished and incorporated into the applicable Work. Such costs shall be charged at the lowest price available to the Contractor but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to Owner and Contractor shall make provisions so that they may be obtained.
6. Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by Construction Manager, exclusive of hand tools, used directly in the performance of the applicable Work. Such rental charges shall not exceed the current U. S. Army Corp of Engineers scheduled charges for the area in which the work is performed. Contractor shall attach a schedule of rental charges to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the applicable Work.
7. Additional costs of royalties and permits due to the performance of the applicable Work.
8. Cost for additional premiums for insurance and bonds, which may not exceed in aggregate 1.5% of items .1 through .7 above.

**7.3.8** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager determines, in the Construction Manager's judgment, to be reasonably justified. Construction Manager's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**7.3.9** When the Owner and Contractor agree with a determination made by the Construction Manager concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

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**7.3.10** The term “Contractor Fee” shall mean the full amount of compensation, both direct and indirect (including without limitation all overhead and profit), to be paid to Contractor for its own Work and the Work of all Subcontractors pursuant to a Change Order or Construction Change Directive, for all costs and expenses not included in paragraphs 7.3.7.1, .2., 3, and .4 above. The Contractor Fee shall not be compounded. The Contractor Fee shall be computed as follows:

1. Fifteen percent (15%) for the cost of that portion of the Work to be performed by the Contractor with its own forces.
2. Fifteen percent (15%) of the cost of that portion of the Work to be performed by a Subcontractor, regardless of tier, with its own forces, plus five percent (5%) of such cost for the Contractor. Total combined Contractor and Subcontractor's mark-up shall not exceed twenty percent (20%).

**7.3.11** Cost of Work for purposes of this Section 7.3 shall not include any of the following:

1. Superintendent(s).
2. Assistant Superintendent(s.)
3. Project Engineer(s).
4. Project Manger(s).
5. Scheduler(s).
6. Estimator(s).
7. Drafting or Detailing
8. Small Tools (replacement value does not exceed \$300).
9. Office Expenses including staff, materials and supplies.
10. On-site or off-site trailer and storage rental and expenses.
11. Site fencing.
12. Data processing personnel and equipment.
13. Utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment.
14. Federal, state or local business income and franchise taxes.
15. Overhead and Profit.
16. Costs and expenses of any kind or item not specifically and expressly included in Article 7.3.7 above.

#### **7.4 MINOR CHANGES IN THE WORK**

The Construction Manager has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Construction Manager and delivered by the Construction Manager and shall be binding on the Contractor.

#### **7.5 CONTRACTOR CHANGE ORDER REQUEST**

**7.5.1** Contractor may request changes to the Contract Sum and/or Contract Time for those reasons specifically allowed under the Contract.

**7.5.2** Contractor entitlement to an adjustment of the Contract Sum and/or Contract Time is

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conditioned upon Contractor submitting a timely Change Order Request.

**7.5.3** A Change Order Request will be deemed timely submitted if, and only if, it is submitted within 7 days of the date the Contractor discovers, or reasonably should discover, the circumstances giving rise to the Change Order Request, unless additional time is allowed in writing by Owner for submission of the Change Order Request.

**7.5.4** A Change Order Request must state that it is a Change Order Request, state the reason for the request, cite contractual justification for the request, and specify the amount of any requested adjustment of the Contract Sum or Contract Time. If the Contractor requests an adjustment to the Contract Sum, the Contractor shall submit a cost proposal with the Change Order Request that includes a complete and itemized breakdown of all costs allowed in Section 7.3.7 and Contractor's Fee under Section 7.3.10 that substantiates the Contractor's cost proposal. Quantities, description of work items, unit costs for each work items, tabulations, mark-ups, etc. shall be clearly indicated and described in the cost proposal.

**7.5.5** Upon request of Construction Manager, Contractor shall submit such additional information as may be requested by Construction Manager for the purpose of evaluating the Change Order Request. Such additional information may include:

1. Actual cost records for any changed or extra costs (including without limitation, payroll records, material and rental invoices and the like), shall be submitted by the deadline established by the Construction Manager, who may require such actual cost records to be submitted and reviewed, on a daily basis, by the Construction Manager.
2. Daily time and material sheets which shall be signed by the Construction Manager.
3. Any other information requested by the Construction Manager or Owner for the purpose of evaluating the Change Order Request, which shall be submitted by the deadline established by the Construction Manager.

## **ARTICLE 8 TIME**

### **8.1 DEFINITIONS**

**8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**8.1.2** The date of commencement of the Work is the date established in the Agreement.

**8.1.3** The date of Substantial Completion is the date certified by the Construction Manager in accordance with Section 9.8.

**8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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## **8.2 PROGRESS AND COMPLETION**

**8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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

**8.2.3** The Contractor agrees that the Owner is purchasing the right to have the Contractor fully mobilized on the site from the earliest date for commencement of the Work shown on the Preliminary Master Project Schedule to the date shown for full completion of the Project as shown in the bidding documents.

**8.2.4** The Contractor agrees that the Owner is purchasing the right to have Contractor work on the Project site shared by the Contractor and Separate Contractors. The Contractor recognizes that as a result of working at a shared Project site there will be a loss of productivity and disruption commensurate with a project of the type, size and complexity of the Project. The Contractor agrees that the Contract Sum includes full compensation for such loss of productivity and disruption.

**8.2.5** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If Construction Manager determines and notifies the Contractor that Contractor's progress is such that the Contractor will not achieve full completion of the Work within the Contract Time, the Contractor shall immediately and at no additional cost to the Owner, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Contract Time. Upon receipt of such notice from Construction Manager, Contractor shall immediately notify Construction Manager of all measures to be taken to ensure full Completion of the Work within the Contract Time. The Contractor shall reimburse the Owner for any extra costs or expenses (including the reasonable value of any services provided by Owner's employees) incurred by Owner as the result of such measures.

## **8.3 DELAYS AND EXTENSIONS OF TIME**

**8.3.1** The Contract Time and Contractor's Schedule will be extended for Permitted Delays and Compensable Delays only in compliance with the applicable provisions of these General Conditions. If Contractor experiences a Permitted Delay, then Contractor will be entitled to request a Change Order pursuant to Section 7.5 and Article 15 for an extension of the Contract Time for the number of days the critical path to Substantial Completion was delayed. Notwithstanding the above, Contractor will not be entitled to any such extension of time unless Contractor (1) notifies Owner and Construction Manager in writing of the cause or causes of the delay in accordance with Article 15 and (2) demonstrates that it could not have anticipated or avoided the delay and has used all available means to minimize the consequences of the delay.

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**8.3.1.1** "Permitted Delay" means any critical path delay in Substantial Completion of the Work beyond the expiration of the Contract Time for Substantial Completion caused by conditions or events beyond the reasonable control of, and without the fault or neglect of, Contractor, its Subcontractors and those for whom they are responsible, and which delay was not and could not in the exercise of reasonable diligence have been avoided. Force Majeure Events (defined below) are Permitted Delays. However, the financial inability of Contractor, a Subcontractor or supplier or any default of any of them, without limitation, will not be deemed a Permitted Delay. Contractor's sole remedy for a Permitted Delay is an extension of the Contract Time, in accordance with the procedures of the Contract Documents. Permitted Delays will not entitle Contractor to any adjustment of the Contract Sum (unless such delay also qualifies as a Compensable Delay).

**8.3.1.2** "Force Majeure Events" are natural disasters, union labor strikes that cannot be resolved through use of a dual gate or other measures in Contractor's reasonable control, delays or disruptions in utility service and/or connections due to acts or omissions of Owner or Separate Contractors, civil disobedience, an act of terror or war, or unavoidable casualties or catastrophic events, beyond the control of Contractor and its Subcontractors, and not due to any act or omission of them, that necessarily extends the Contract Time.

**8.3.2** "Compensable Delay" means any Permitted Delay to the extent caused by (a) the wrongful or negligent acts or omissions of Owner, Construction Manager, or Separate Contractors; (b) changes in the scope of Work directed by Owner for reasons other than a mistake, error or problem resulting from the act or omission of Contractor or any of its Subcontractors; (c) events or conditions that provide for an adjustment of the Contract Sum pursuant to Sections 2.5.1, 3.7.4, 3.7.5, 3.19.1, 9.7 or 14.3; or (d) any other item that is specified as a Compensable Delay elsewhere in the Contract; provided that any such delay is unreasonable under the circumstances involved and not within the contemplation of Contractor on the effective date of this Contract. Contractor's sole remedy for a Compensable Delay is an extension of the Contract Time under Section 8.3.1 and an adjustment of the Contract Sum in accordance with Articles 7 and 15 to the extent that Contractor incurs additional cost allowed under Section 7.3.7 as a result of the Compensable Delay extending the completion of the Work beyond the Contract Time.

**8.3.3** Contractor expressly agrees that neither Contractor nor any Subcontractor shall have any right to claim or assert a right to an extension of the Contract Time, an adjustment of the Contract Sum or any other legal or equitable relief or damages for any Project delay that is not a Permitted Delay or a Compensable Delay (an "Inexcusable Delay").

**8.3.4** Any Claim for an extension of the Contract Time due to a Permitted Delay or a Compensable Delay is subject to the following:

- 1.** If more than one Permitted Delay occurs concurrently, or if a Permitted Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time is the number of days from the commencement of the first delay to the cessation of the delay which ends last, and Contractor will not be entitled to any adjustment in the Contract Sum;

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2. If an Inexcusable Delay occurs concurrently with either a Permitted Delay or a Compensable Delay, the maximum extension of the Contract Time is the number of days during which the delays are concurrent, and Contractor will not be entitled to any adjustment in the Contract Sum; and
3. Delays in the prosecution of parts or classes of the Work which do not prevent or delay Substantial Completion of the whole Work within the Contract Time are not Permitted or Compensable Delays.

**8.3.5** A "delay" means any and every kind of delay, obstruction, hindrance, interference, loss of productivity, or inefficiency of any kind.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### **9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Construction Manager, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager may require. This schedule, unless objected to by the Construction Manager shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **9.3 APPLICATIONS FOR PAYMENT**

**9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application, and supported by such data substantiating the Contractor's right to payment as the Owner or Construction Manager may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

**9.3.1.1** As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager, but not yet included in Change Orders.

**9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**9.3.1.3** Each Application for Payment shall also include the following: (a) Contractor's affidavit covering all payments by Owner pursuant to previous Applications for Payment; (b) statutory

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conditional waivers and releases of lien upon progress payment from Contractor and each Subcontractor submitting 20-day preliminary notices; (c) statutory unconditional waivers and releases for the previous progress payment from Contractor and each Subcontractor submitting 20-day preliminary notices; (d) Contractor's updated schedule of values; and (e) an updated Contractor's Schedule showing progress towards major milestones. Contractor acknowledges that failure to provide all the required documentation shall result in a delay in the next progress payment to Contractor.

**9.3.1.4** Contractor will notify Construction Manager of all 20-day preliminary notices received from Subcontractors or suppliers. Construction Manager will maintain a written record of all 20-day preliminary notices received by it including the manner of receipt, date of receipt, and name and address of person or entity serving the notice.

**9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

#### **9.4 CERTIFICATES FOR PAYMENT**

**9.4.1** In accordance with Section 4.2.19, the Construction Manager will, within seven days after receipt of the Contractor's Application for Payment, review and certificate of amount due. The Construction Manager will, within seven days after receipt of the Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Construction Manager determines is properly due, or notify the Contractor and Owner in writing of the Construction Manager's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**9.4.2** The issuance of a Certificate for Payment will constitute representations made separately by the Construction Manager to the Owner, based on the Construction Manager's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The

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foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**9.5.1** The Construction Manager may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Construction Manager is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor, Construction Manager cannot agree on a revised amount, the Construction Manager will promptly issue a Certificate for Payment for the amount for which the Construction Manager is able to make such representations to the Owner. The Construction Manager may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

1. Defective Work not remedied;
2. Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
3. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. Damage to the Owner or a Separate Contractor;
6. Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. Repeated failure to carry out the Work in accordance with the Contract Documents.



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**9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld with no interest due on withheld amounts.

**9.5.3** If the Construction Manager withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Construction Manager and Construction Manager will reflect such payment on the next Certificate for Payment.

## **9.6 PROGRESS PAYMENTS**

**9.6.1** After the Construction Manager have issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager.

**9.6.2** The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

**9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers' amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Construction Manager shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

**9.6.5** Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require

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money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**9.6.8** If any Subcontractor or any other person or entity claiming to have been employed (directly or indirectly) by or through Contractor or any Subcontractor files a lien affecting Owner or the Project (unless as a result of Owner's failure to pay an amount properly due under this Agreement), Contractor shall satisfy, remove or discharge such lien at Contractor's expense by bonding, payment or otherwise within 15 days after notice to Contractor of the filing thereof. If Contractor fails to do so, Owner may satisfy, remove or discharge such lien; and, at Owner's election:

1. Owner may deduct the cost thereof (including all applicable fees and costs) from Contractor's next succeeding Application for Payment (or may invalidate any previously-approved but unpaid applications for payment) until Owner recoups the total thereof; or
2. Contractor shall pay the same to Owner upon demand.

### **9.7 FAILURE OF PAYMENT**

If the Construction Manager does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within 15 business days after the date established in the Contract Documents the amount certified by the Construction Manager or awarded by binding dispute resolution, then the Contractor may, upon 10 additional business days' written notice to the Owner, Construction Manager, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

### **9.8 SUBSTANTIAL COMPLETION**

**9.8.1** "Substantial Completion" shall occur (and the Work shall be "substantially complete") when all of the following conditions have been completed to Owner's full satisfaction:

- (a) All Work, excepting minor punch list work and the Close-Out Requirements, has been completed in compliance with the Contract Documents, and the Work is in a condition ready for final inspection by all governmental entities having jurisdiction (although such inspection may not occur until the rest of the Project is ready for occupancy);
- (b) All equipment specified or required under the Contract Documents for Contractor to install are connected and functioning properly;
- (c) Completion of Contractor's punch list items and the Close-Out Requirements will cause minimal interference to the rest of the Project;

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- (d) Contractor and Construction Manager have agreed in writing upon the final punch list;
- (e) Contractor has delivered to Owner a claim statement setting forth in detail all Contractor's claims against Owner or any Indemnitee connected with, or arising out of, this Contract or the Work and arising out of or based on events prior to the date when Contractor gives such statement to Owner;
- (f) Contractor has agreed in writing that Contractor will achieve final completion on a specified date; and
- (g) Contractor has delivered to Owner all required manufacturer's (or Subcontractor's) warranties.

Alternatively, Substantial Completion shall occur on any date reasonably certified by Owner, who shall have discretion to reasonably waive any of the foregoing conditions.

**9.8.1.1** "Close-Out Requirements" means Contractor's obligations for closing out the Work and completing and furnishing to Owner documentation of the Work as required under the Contract Documents (including such matters as submittal of record drawings and operating and other manuals; clean-up and removal from the construction site; and all other matters which the Contract Documents require Contractor to do and perform as part of the completion of Contractor's obligations).

**9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor and Construction Manager shall jointly prepare and submit to the Construction Manager a comprehensive list of items to be completed or corrected prior to final payment ("punch list"). Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**9.8.3** Upon receipt of the punch list, the Construction Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Construction Manager's inspection discloses any item, whether or not included on the punch list, which is not sufficiently complete in accordance with the Contract Documents so that the Work as a whole is not substantially complete, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Construction Manager. In such case, the Contractor shall then submit a request for another inspection by the Construction Manager to determine Substantial Completion.

**9.8.4** When the Work or designated portion thereof is substantially complete, the Construction Manager will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of

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the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **9.9 PARTIAL OCCUPANCY OR USE**

**9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer, if required, and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Construction Manager and Contractor shall jointly prepare and submit a punch list as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

**9.9.2** Immediately prior to such partial occupancy or use, the Owner and Construction Manager, Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **9.10 FINAL COMPLETION AND FINAL PAYMENT**

**9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and receipt of a final Application for Payment, the Construction Manager will promptly make such inspection. When the Construction Manager finds the Work acceptable under the Contract Documents and the Contract fully performed and the Construction Manager will promptly issue a final Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's final Certificate for Payment will constitute a further representation that

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conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) statutory waiver and release upon final payment, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**9.10.4** Not used.

**9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

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

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

The Contractor is solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit one (1) copy of its written safety program to Construction Manager prior to starting work on site. The Contractor shall coordinate its safety program with the safety programs of

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Separate Contractors so as to provide for a safe project for all involved. The Contractor understands and agrees that Construction Manager is only responsible for the safety of Construction Manager's own employees, subcontractors and agents, and that Construction Manager has no other control nor responsibility for the safety of any other person at the Project site whatsoever.

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

**10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

1. Employees on the Work and other persons who may be affected thereby;
2. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
3. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
4. Construction or operations by the Owner or Separate Contractors.

**10.2.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

**10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner or Construction Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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**10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Construction Manager.

**10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**10.3 HAZARDOUS MATERIALS**

**10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner, Construction Manager in writing.

**10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Construction Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Construction Manager will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If the Contractor or Construction Manager has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Construction Manager have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

**10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the

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material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

**10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**10.3.5** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### **10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

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

#### **11.1 CONTRACTOR'S LIABILITY INSURANCE**

**11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. Claims for damages insured by usual personal injury liability coverage;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;



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6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. Claims for bodily injury or property damage arising out of completed operations; and
8. Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

**11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Supplementary Conditions or required by law, whichever coverage is greater. Commercial general liability and automobile liability insurance coverages must be written on the occurrence basis. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

**11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. The insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness and prior to the effectiveness of any reduced limits. Failure to so notify is a material breach of this Contract.

**11.1.4** The Contractor shall cause the commercial liability coverage and automobile liability coverage required by the Contract Documents to include (1) the Owner, the Owner's consultants, the Construction Manager, the Construction Manager's consultants and the employees, officers and affiliates of the foregoing as additional insureds for claims arising from the Contractor's operations; and (2) the Owner as an additional insured for claims arising from the Contractor's completed operations.

## **11.2 OWNER'S LIABILITY INSURANCE**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## **11.4 PERFORMANCE BOND AND PAYMENT BOND**

**11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

**11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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

### **12.1 UNCOVERING OF WORK**

**12.1.1** If a portion of the Work is covered contrary to the Construction Manager's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Construction Manager, be uncovered for the Construction Manager examination and be replaced at the Contractor's expense without change in the Contract Time.

**12.1.2** If a portion of the Work has been covered that the Construction Manager has not specifically requested to examine prior to its being covered, the Construction Manager may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a Separate Contractor in which event the Owner shall be responsible for payment of such costs.

### **12.2 CORRECTION OF WORK**

#### **12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Construction Manager or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's services and expenses made necessary thereby, shall be at the Contractor's expense. Contractor shall replace, repair, or restore to Owner'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.

#### **12.2.2 AFTER SUBSTANTIAL COMPLETION**

**12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time after receipt of notice from the Owner or Construction Manager, the Owner may correct it in accordance with Section 2.4.

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**12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or Separate Contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### **13.2 SUCCESSORS AND ASSIGNS**

**13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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**13.2.2** The Owner may, upon advance written notice to Contractor, assign this Agreement to an affiliated entity (as defined in California Corporations Code Section 150) or merger partners of Owner, and such assignment will not require Contractor's consent. Also, the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project. The Contractor shall execute all consents reasonably required to facilitate any such assignment.

### **13.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### **13.4 RIGHTS AND REMEDIES**

**3.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**13.4.2** No action or failure to act by the Owner, Construction Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### **13.5 TESTS AND INSPECTIONS**

**13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Construction Manager timely notice of when and where tests and inspections are to be made so that the Construction Manager may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

**13.5.2** If the Construction Manager, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Construction Manager will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager of when and where tests and inspections are to be made so that the Construction Manager may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

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**13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's services and expenses shall be at the Contractor's expense.

**13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager.

**13.5.5** If the Construction Manager is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager will do so promptly and, where practicable, at the normal place of testing.

**13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### **13.6 INTEREST**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### **13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

### **13.7 MEDICARE AUDIT**

Pursuant to Section 952 of P.L. 96-499, which governs access to books and records of contractors and subcontractors to Medicare providers where the cost or value of the Work under the contract exceeds \$10,000 over a 12-month period, each Contractor and its Subcontractors agree to permit representatives of the Secretary of the Department of Health and Human Services and the Comptroller General, in accordance with criteria and procedures contained in applicable Federal regulations, to have access to their books, documents and records as necessary to verify the nature and extent of the cost of the Work for a period of 4 years from Final Completion.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **14.1 TERMINATION BY THE CONTRACTOR**

**14.1.1** The Contractor may terminate the Contract upon 7 days prior notice to Owner if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of

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the following reasons. If underlying cause of the Work suspension is removed prior to the end of the 7 day notice period, then the Contract is not terminated.

1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
2. An act of government, such as a declaration of national emergency that requires all Work to be stopped;
3. Because the Construction Manager not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents, and Contractor has duly suspended the Work per the terms of Section 9.7; or
4. The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

**14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**14.1.3** If Contractor terminates the Contract under Sections 14.1.1 or 14.1.2, then the Contractor may recover from the Owner payment for Work executed and reasonable costs incurred due to termination, but no more than the Contract Sum in total.

**14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, Construction, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

## **14.2 TERMINATION BY THE OWNER FOR CAUSE**

**14.2.1** The Owner may terminate the Contract if the Contractor

1. Repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
3. Repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
4. Otherwise is guilty of substantial breach of a provision of the Contract Documents.

**14.2.2** When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any,

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seven days' written notice, terminate employment of the Contractor and may subject to any prior rights of the surety:

1. Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
2. Accept assignment of subcontracts pursuant to Section 5.4; and
3. Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall promptly pay the difference to the Owner upon demand. The obligations in this paragraph shall survive termination of the Contract.

**14.2.5** If a court of competent jurisdiction determines that termination of Contractor was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 14.4.

### **14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. Such suspension will be a Compensable Delay; however, Owner's suspension pursuant to another provision of the Contract is not a suspension under this Section 14.3.

**14.3.2** No adjustment of the Contract Sum or Contract Time for Owner's suspension under Section 14.3.1 shall be made to the extent

1. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. That an adjustment of the Contract Sum or Contract Time is made or denied under another provision of the Contract.

### **14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**14.4.1** The Owner may, at any time, upon written notice terminate the Contract for the Owner's convenience and without cause.

**14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

1. Cease operations as directed by the Owner in the notice;
2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

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3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all subcontracts and purchase orders that Owner is not taking by assignment, and enter into no further subcontracts and purchase orders.

**14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed and reasonable costs incurred due to termination, but no more than the Contract Sum in total.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **15.1 CLAIMS**

#### **15.1.1 DEFINITION**

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

#### **15.1.2 NOTICE OF CLAIMS**

Claims by either the Owner or Contractor must be initiated by written notice to the other party with a copy sent to the Construction Manager. Claims by either party must be initiated within 7 days after the later of the occurrence of the event giving rise to such Claim or when the claimant first recognizes (or reasonably should have recognized) the condition giving rise to the Claim. Any claim by Contractor for (a) an adjustment in the Contract Sum for changes in the Work or (b) for an increase in the Contract Time shall be waived if not provided to Construction Manager and Owner in writing within the time specified in this Section 15.1.2. Contractor acknowledges that Owner's receipt of any notices for Claims within the time period specified in this Section 15.1.2 is of the essence of this Contract.

#### **15.1.3 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

#### **15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **15.1.5 CLAIMS FOR ADDITIONAL TIME**

**15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.



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**15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, had an adverse effect on the scheduled construction and exceeded the number of weather delays built into the schedule and shown therein.

**15.1.5.3 CONTRACTOR CLAIM DOCUMENTATION REQUIREMENTS**

A Claim must include the following:

1. A detailed factual narrative of events fully describing the nature and circumstances giving rise to the Claim, including but not limited to, necessary dates, locations, and items of work affected.
2. A statement demonstrating that a Change Order Request was timely submitted as required by Section 7.5.3 of the General Conditions.
3. A detailed justification for any remedy or relief sought by the Claim including an explanation of the contractual provisions allowing the Claim, and a detailed cost breakdown of the amounts claimed, including the items specified in Section 7.3.7 of the General Conditions. The cost breakdown must be provided even if the costs claimed have not been incurred when the Claim is submitted.

**15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

1. Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. Damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except profit included in the Contract Sum on account of completed Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**15.2 INITIAL DECISION**

**15.2.1** Claims by the Contractor (for itself or on a pass-through basis) shall be referred to the Initial Decision Maker for initial decision. An initial decision shall be required as a condition precedent to litigation of any Claim by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered.

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**15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, or (4) suggest a compromise.

**15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision, at the Owner's expense.

**15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim or suggesting a compromise. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, and the Construction Manager of any change in the Contract Sum or Contract Time or both. The initial decision shall stand for the duration of the Project, but may be overturned by a legal proceeding after Final Completion or termination of this Agreement, in which the court need not give any deference to the Initial Decision Maker's decision.

**15.2.6** Not used.

**15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**15.2.8** Without limiting Section 9.6.8, if a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **15.3 LITIGATION**

**15.3.1** If the parties are unable to resolve a dispute under Section 15.2, then after Final Completion or termination of this Agreement either party may pursue any legal or equitable relief afforded them under the Contract.

**15.3.1** Both parties agree that any claim or enforcement of a judgment or alternative dispute award will be filed with the appropriate court in Glenn County.

## **ARTICLE 16 STATUTORY AND OTHER REQUIREMENTS**

### **16.1 Not Used**

### **16.2 NONDISCRIMINATION**

**16.2.1** For purposes of this Article 16.2, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

**16.2.2** Contractor shall comply and shall ensure that all Subcontractors comply with Section 12900 through 12996, of the State of California Government Code.

**16.2.3** Contractor agrees as follows during the performance of the Work:

- 1.** Contractor shall not willfully discriminate against any employee or applicant for employment because of race, color, religion, sex, age, ancestry, national origin, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or citizenship (within the limits imposed by law) because of habit, local custom, or otherwise. All applicants for employment and employees are to be treated without regard to their race, color, religion, sex, age, ancestry, national origin, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or citizenship (within the limits imposed by law). Such equal treatment shall apply, but not be limited to, 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.
- 2.** Contractor and all Subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by Owner or any appropriate agency of the State of California designated by Owner for the purposes of investigation to ascertain compliance with this Article 16.2. The outcome of the investigation may result in the following:
  - A.** A finding of willful violation of the provisions of this Contract or of the Fair Employment Practices Act may be regarded by Owner as (1) a basis for determining that Contractor is not a “responsible bidder” as to future contracts for which such Contractor may submit bids or (2) a basis for refusing to accept or consider the bids of Contractor for future contracts.
  - B.** Owner may deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has (1) investigated and determined that Contractor has violated the Fair Employment Practices Act and (2) issued an order under the State of California Government Code Section 12970 or obtained an injunction under Government Code Section 12973.

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- C. Upon receipt of such written notice from the Fair Employment Practices Commission, Owner may notify Contractor that, unless it demonstrates to the satisfaction of Owner within a stated period that the violation has been corrected, Contractor's bids on future projects will not be considered.
- D. Contractor agrees that, should Owner determine that Contractor has not complied with this Article 16.2, Contractor shall forfeit to Owner, as a penalty, for each day or portion thereof, for each person who was denied employment as a result of such non-compliance, the penalties provided in Article 16.3 below for violation of prevailing wage rates. Such penalty amounts may be recovered from Contractor; and Owner may deduct any such penalty amounts from the Contract Sum.
- E. Nothing contained in this Article 16.2 shall be construed in any manner so as to prevent Owner from pursuing any other remedies that may be available at law.
- F. Contractor shall meet the following standards for compliance and provide Owner with satisfactory evidence of such compliance upon Owner's request, which shall be evaluated in each case by Owner:
  - i) Contractor shall notify its Superintendent and other supervisory personnel of the nondiscrimination requirements of the Contract Documents and their responsibilities thereto.
  - ii) Contractor shall notify all sources of employee referrals (including unions, employment agencies, and the State of California Department of Employment) of the nondiscrimination requirements of the Contract Documents by sending to such sources and by posting the Notice of Equal Employment Opportunity (EEO).
  - iii) Contractor or its representative shall, through all unions with whom it may have agreements, develop agreements that (1) define responsibilities for nondiscrimination in hiring, referrals, upgrading, and training and (2) implement an affirmative nondiscrimination program, in terms of the unions' specific areas of skill and geography, such that qualified minority women, non-minority women, and minority men shall be available and given an equal opportunity for employment.
  - iv) Contractor shall notify Owner of opposition to the nondiscrimination requirements of the Contract Documents by individuals, firms, or organizations during the term of the Contract.
- G. Contractor shall include the provisions of the foregoing Articles 16.2.3.1 through 16.2.3.6 in all subcontracts with Subcontractors, so that such provisions will be binding upon each such Subcontractor.

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### **16.3 PREVAILING WAGE RATES**

**16.3.1** For purposes of this Article 16.3, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

**16.3.2** Contractor shall comply and shall ensure that all Subcontractors comply with Sections 1770, 1771, 1772, 1773, 1774, and 1775 of the State of California Labor Code. Compliance with these sections is required by this Contract.

**16.3.3** The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the Work is to be performed for each craft, classification, or type of worker required to perform the Work. A copy of the general prevailing per diem wage rates will be on file at Owner's principal facility office and will be made available to any interested party upon request. Contractor shall post a copy of the general prevailing per diem wage rates at the job site. By this reference, such schedule is made part of the Contract Documents. Contractor shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Contractor in the execution of the Work. Contractor shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Work. Contractor shall forfeit to Owner, as a penalty, not more than \$50 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Work done by Contractor or any Subcontractor. The amount of this penalty shall be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the Contract Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Contract Sum. Contractor shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Work, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment shall be made pursuant to section 17420 of the California Labor Code.

### **16.4 PAYROLL RECORDS**

**16.4.1** For purposes of this Article 16.4, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

**16.4.2** Contractor and all Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journey worker, apprentice, worker, or other employee employed in connection with the Work. All payroll records shall be certified as being true and correct by Contractor or Subcontractors keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

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1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.
2. A certified copy of all payroll records shall be made available for inspection upon request to Owner, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.
3. A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either Owner, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Contractor or Subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by Owner shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

**16.4.3** Contractor shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Contractor shall inform Owner of the location of such payroll records for the Project, including the street address, city, and county; and Contractor shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Article 16.4 or with the State of California Labor Code Section 1776, Contractor shall have 10 days in which to comply following receipt of notice specifying in what respects Contractor must comply. Should noncompliance still be evident after the 10 day period, Contractor shall forfeit to Owner, as a penalty, \$25 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Contract Sum.

## **16.5 APPRENTICES**

**16.5.1** For purposes of this Article 16.5, the term Subcontractor shall not include suppliers, manufacturers, and distributors.

**16.5.2** Only apprentices, as defined in the State of California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Contractor and Subcontractors as apprentices. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training.

**16.5.3** Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the Work in the craft or trade to which the apprentice is indentured.

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**16.5.4** When Contractor or Subcontractors employ workers in any apprenticeship craft or trade on the Work, Contractor or Subcontractors shall 1) send contract award information to the applicable joint apprenticeship committee that can supply apprentices to the site of the public work and 2) apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the area of the Project site, for a certificate approving Contractor or Subcontractors under the apprenticeship standards for the employment and training of apprentices in the area of the Project site. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeypersons who shall be employed in the craft or trade on the Work. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than 1 hour of apprentice work for every 5 hours of journeyperson work, except as permitted by law. Contractor or Subcontractors shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journeypersons fixed in the certificate issued by the joint apprenticeship committee or present an exemption certificate issued by the Division of Apprenticeship Standards.

**16.5.5** “Apprenticeship craft or trade,” as used in this Article 16.5, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

**16.5.6** If Contractor or Subcontractors employ journey-workers or apprentices in any apprenticeship craft or trade in the area of the Project site, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other Contractors in the area of the Project site are contributing, Contractor and Subcontractors shall contribute to the fund or funds in each craft or trade in which they employ journey-workers or apprentices on the Work in the same amount or upon the same basis and in the same manner done by the other contractors. Contractor may include the amount of such contributions in computing its bid for the Contract; but if Contractor fails to do so, it shall not be entitled to any additional compensation therefor from Owner.

**16.5.7** In the event Contractor willfully fails to comply with this Article 16.5, it will be considered in violation of the requirements of the Contract.

**16.5.8** Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Contractor or Subcontractors of journey-worker trainees who may receive on-the-job training to enable them to achieve journey-worker status in any craft or trade under standards other than those set forth for apprentices.

## **16.6 WORK DAY**

**16.6.1** Contractor shall not permit any worker to labor more than 8 hours during any 1 day or more than 40 hours during any 1 calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Contractor shall forfeit to Owner, as a penalty, \$25 for each worker employed in the execution of this Contract by Contractor, or any Subcontractor, for each day during which such worker is required or permitted to work more than 8 hours in any 1 day and 40 hours in any 1 calendar week in violation of the terms of this

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Article 16.6 or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the Contract Sum. Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each day and each calendar week by each worker employed on the Project, which record shall be kept open at all reasonable hours to the inspection of Owner, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

END OF SECTION



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**SECTION 00 73 00  
SUPPLEMENTARY CONDITIONS**

**1. MODIFICATION OF GENERAL CONDITIONS, ARTICLE 11 - INSURANCE AND BONDS**

**A. Contractor's Liability Insurance**

The Contractor shall procure, maintain, and keep in force at all times during the term of the Contract, at the Contractor's sole expense, the following insurance:

General Liability Insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability, and products and completed operations liability. Coverage shall be at least as broad as "Insurance Services Office Commercial General Liability Coverage Form CG 0001" (occurrence). The limits of liability shall be not less than:

|                   |                                   |
|-------------------|-----------------------------------|
| Each Occurrence   | One Million Dollars (\$1,000,000) |
| General Aggregate | Two Million Dollars (\$2,000,000) |

The policy shall cover contractual liability applicable to the Contractor's assumed liability under this Contract. The policy shall provide coverage for claims arising out of subsidence. The Products and Completed Operations coverage shall be maintained for at least two years after completion of the Contract.

Automobile Liability Insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and nonowned automobiles. Coverage shall be at least as broad as "Insurance Services Office Business Auto Coverage Form CA 0001," symbol 1 (any auto). The limits of liability shall not be less than:

|  |                                   |
|--|-----------------------------------|
| Bodily Injury and Property Damage<br>Combined Single Limit | One Million Dollars (\$1,000,000) |
|--|-----------------------------------|

The Workers' Compensation policy required hereunder shall be endorsed to state that the Workers' Compensation carrier waives its right of subrogation against the County, its officers, officials, employees, agents or volunteers.

In the event the Contractor is self-insured, the Contractor shall furnish a Certificate of Permission to Self-Insure by the Department of Industrial Relations Administration of Self-Insurance, Sacramento. No Workers' Compensation insurance is required for contractors that do not have employees.

Excess or Umbrella Liability Insurance. If the Special Provisions require limits of general liability insurance of more than one million dollars (\$1,000,000) per occurrence, the Contractor shall carry excess or umbrella liability insurance providing excess coverage at least as broad as the underlying coverage for general, automobile and employer's liability with a limit equal to the amount stated in the Special Provisions per occurrence and aggregate.

Contractor's Equipment Insurance. The Contractor, and each of its Subcontractors, shall separately insure its own equipment for loss and damage. The Contractor's Property and Inland Marine policies shall include, or be endorsed to include, a waiver of subrogation against the County, its officers, officials, employees, agents, and volunteers which might arise by reason of damage to the Contractor's property or equipment (owned, leased or borrowed) in connection with work performed under this Contract by the Contractor.

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Other Provisions

1. The Contractor's General Liability, Automobile Liability, and any Excess or Umbrella Liability, shall contain the following provisions:
  - a. The County, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds as respects liability arising out of the activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, premises owned, occupied, or used by the Contractor, or automobiles owned, leased, hired, or borrowed by the Contractor. The policy shall contain no special limitations on the scope of coverage afforded to the County, its officers, officials, employees, agents, or volunteers.
  - b. For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, agents, or volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents, or volunteers shall be not be excess of the Contractor's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting or other provisions of the policies on the part of the Contractor, including breaches of warranties, shall not affect coverage provided to the County, its officers, officials, employees, agents, or volunteers.
2. The Contractor's General Liability and any Excess or Umbrella Liability insurance policies shall contain an endorsement stating that any aggregate limits shall apply separately to the work.
3. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
4. Each insurance policy shall state that coverage shall not be suspended, voided, cancelled by the Contractor or the County, reduced in scope of coverage or in limits, non-renewed, or materially changed unless the insurer(s) provide thirty (30) days written notice by certified mail to the County prior to such change. Ten (10) days prior written notice by certified mail shall be given to the County in the event of cancellation due to nonpayment of premium.
5. All of the Contractor's insurance coverage, except as noted below, shall be placed with insurance companies with a current A.M. Best rating of at least A-:VII. Exceptions:
  - a. Underwriters at Lloyd's of London, which are not rated by A.M. Best.
  - b. Workers' Compensation which is provided through a State Compensation Insurance Fund or a qualified self-insurer for Workers' Compensation under California law.
  - c. For liability insurance required under Environmental Liability insurance, insurance requirements shall be placed with insurance companies with a current A.M. Best rating of at least B+:VII.
6. The Contractor shall sign and file with the County the following certification prior to commencing performance of the work of the Contract:

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“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker’s compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Contract.”

Said certification is included in the Contract and the signing and returning the Contract shall constitute signing and filing of the said certification.

7. The County, at its discretion, may require new types of insurance coverage or increase the limits of insurance coverage required hereunder at any time during the term of the Contract by giving thirty (30) days written notice to the Contractor. Contractor shall immediately procure such insurance or increase the limits of coverage and provide certificates of insurance, including copies of all required endorsements, to the County within thirty (30) days of receipt of the County’s request.
8. The required insurance coverage shall be subject to the approval of the County, but any acceptance of insurance certificates by the County shall in no way limit or relieve the Contractor of its duties and responsibilities in this Contract.
9. If the Contractor fails to procure or maintain insurance as required by this Chapter and any Special Provisions, or fails to furnish the County with proof of such insurance, the County, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the County shall be deducted and retained from any sums due the Contractor under the Contract. Failure of the County to obtain such insurance shall in no way relieve the Contractor from any of the Contractor’s responsibilities under the Contract. Any failure of the Contractor to maintain any item of the required insurance is sufficient cause for termination of the Contract.
10. The making of progress payments to the Contractor shall not be construed as relieving the Contractor of responsibility for loss or damage, or destruction occurring prior to final acceptance by the County.
11. The County is authorized to execute amendments and waivers, with or without conditions, to the insurance requirements of the Contract. The County will provide such amendments or waivers in writing to the Contractor.

The failure of the County to enforce in a timely manner any of the provisions of this Section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the Contract.

Notification of Accident or Occurrence

The Contractor shall report by telephone to the County within twenty-four (24) hours and also report in writing to the County within fifteen (15) days after the Contractor or any subcontractors or agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of ten thousand dollars (\$10,000) to the work, property of the County or others, arising out of any work done by or on behalf of the Contractor as part of the Contract. Such report shall contain:

1. The date and time of the occurrence.
2. The names and addresses of all persons involved, and a description of the accident or occurrence and the nature and extent of injury or damage.

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II. Small Construction Projects.

For projects less than \$125,000, the Director of Development Services or Risk Manager may, at their discretion, decrease the required limits of coverage for General Liability and/or Automobile Liability insurance appropriately with regard to the lesser risk involved. Unless stated otherwise Contractor's Equipment Insurance is not required

**B. Professional Liability Insurance**

If Contractor is providing design services beyond preparation of shop drawings for this Project, then Contractor shall carry professional liability insurance coverage with limits of [\$1,000,000] per claim and annual aggregate. The services provided for the Project will not be excluded from coverage under such policy and the retroactive date on such policy will be prior to the first date upon which Contractor provided services for this Project. If, prior to four years following Final Completion, the retroactive date changes in subsequent policy years or if the policy is replaced, CM/GC will furnish evidence that it has purchased the supplemental "Extended Reporting Period Endorsement" under the previous policy extending for at least three years the period during which a claim may first be made.

**C. Bid, Performance and Payment Bonds, Paragraph 11.4**

Contractor shall furnish bonds covering the well and truly to be made (Bid Bond), faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in Exhibits 1 and 2.

The Bid Bond shall be in the amount of ten (10) percent of the total amount of the bid.

The Payment Bond and Performance Bond shall each be in the amount of the Contract Sum.

The Payment Bond and Performance Bond shall be in effect on the date the Contract is signed by Owner.

Contractor shall promptly furnish such additional security as may be required by Owner to protect its interests and those interests of persons or firms supplying labor or materials to the Work. Contractor shall furnish supplemental Payment and Performance Bonds each in the amount of the current Contract Sum at the request of Owner.

Surety companies used by Contractor shall be, on the date the Contract is signed by Owner, an admitted surety insurer.

The premiums for the Payment Bond and Performance Bond shall be paid by Contractor.

**2. CODE OF CONDUCT**

- A.** Any deliveries to the project site by common carrier must be marked to the Contractor only with the official project title clearly identified. A representative of the contractor must be on-site and equipped to receive the delivery. Owner will not receive any shipment on behalf of the Contractor.
- B.** You are reminded to comply with CALOSHA requirements for job safety. Designate a site safety representative for the work place as required by OSHA and conduct a regular program of safety.

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- C. You will be responsible for your employees conduct while on the job site, i.e. whistling, profanity, garbage, dress code, etc. You are required to inform your employees working at the construction site that Owner is strongly opposed to sexual harassment and that such behavior is prohibited both by law. It is the intention of the Owner to take whatever action may be needed to prevent, correct, and, if necessary, discipline behavior which violates this policy.
  - D. For the health and safety of staff, visitors, volunteers, and inmates, smoking is not permitted inside any facility. Smoking is also not permitted within 20 feet of any entrance at any building entrance.
  - E. You are required to establish a policy of non-discriminatory practice in all personnel actions.
  - F. Identification badges are required inside and/or next to the existing jail.
  - G. Owner strives to maintain worksites free from the illegal use, possession, or distribution of alcohol or of controlled substances, as defined in schedules I through V of the Controlled Substances Act, 21 United States Code section 812, and by regulation at 21 Code of Federal Regulations section 1308. Unlawful manufacture, distribution, dispensing, possession, use, or sale of alcohol or of controlled substances on Owner property is prohibited.
  - H. Owner prohibits and has zero tolerance for workplace violence. Any disruptive behavior, act of intimidation, threat of violence or act of violence committed against any person and or property is prohibited.
- 3.
- A. Standard of Care. Contractor will perform its services using that skill and care used by other competent licensed design professionals skilled in designing scopes of Work similar in size, scope, and complexity in jail facilities in California.
  - B. Notwithstanding anything to the contrary in the Contract Documents, Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time due to errors, omissions or inconsistencies in the Contract Documents that are prepared by Contractor or are reviewed by Contractor in its capacity as a licensed design professional.
  - C. Ownership and Use of Documents
    - (i) *Definition.* Provided Owner is in compliance with all payment provisions under the Agreement (except as may be subject to a good-faith dispute), Owner shall own all title and copyright privileges to all drawings, plans, specifications, calculations, physical or electronic models, other electronic data, and other documents, materials or information prepared by Contractor or its subcontractors or suppliers in connection with the Project (and any portable electronic media upon which they were prepared or stored) (the "Project Documents"), subject only to the use provisions set forth below.
    - (ii) *Possession.* The originals of all Project Documents shall be held by Contractor or its

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subcontractors for the benefit of Owner. At Owner's request and without charge, copies of any or all Project Documents shall be immediately delivered to Owner in their original form, or in clear, reproducible form, regardless of whether the Project is completed, suspended or terminated.

- (iii) *Owner's Use.* Owner shall have the right, regardless of whether the Project is completed, suspended or terminated, in whole or in part, to use and reuse the Project Documents for any purpose and without royalty or charge. If Owner uses or reuses the Project Documents to have work performed on its behalf for which Contractor is not retained, Owner shall indemnify, defend, and hold Contractor free and harmless from any resulting liability to third parties for personal injury, death, or property damage.
- (iv) *Limited Use by Constructors.* Contractor and its subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Project Documents appropriate to, and for use in, the execution of their Work under the Contract Documents. The drawings, specifications and other Project Documents furnished to Contractor or any subcontractor or supplier are for use solely with respect to the Project.

END OF SECTION