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*Document 00 72 00*

# General Conditions of the Contract for Construction

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## DOCUMENT 00 72 00 - GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

### ARTICLE 1 - GENERAL PROVISIONS

1.1 **DEFINITIONS:** When the following terms appear in the Contract, they shall have the following meaning:

1.1.1 **Acceptance of the Work:** Written acceptance of the Work by the Director of the Department of General Services, State of California, or the Director's designee.

1.1.2 **Act of God:** An Act of God shall include only the following occurrences or conditions and effects:

- .1 Earthquakes in excess of a magnitude of 3.5 on the Richter Scale; or
- .2 Tidal waves.

1.1.3 **Addendum (Addenda):** A document issued by the State during the bidding period which modifies, supersedes or supplements the Contract Documents.

1.1.4 **Alternative:** Refer to Approved Equal and Substitution.

1.1.5 **Applicable Codes:** Include, but are not limited to, applicable laws, statutes, regulations, rules, building and other codes, ordinances, rulings, and lawful orders of all public authorities having jurisdiction over the State, the Contractor, Subcontractors, the Project, the Work, or the execution of the Work.

1.1.6 **Approved Equal:** Material, equipment, or method approved by the State for use in the Work, as being acceptable as an equivalent in essential attributes to the material, equipment, or method specified in the Contract Documents.

1.1.7 **Agreement:** The written and executed document known as Document 00 52 00, Agreement.

1.1.8 **Architect or Engineer:** The State, or the State's consultant listed in the Contract Documents as the designer of record responsible for the preparation and coordination of the Drawings and technical sections of the Project Manual.

1.1.9 **Beneficial Occupancy:** Occupancy and use by the State of all, or part, or parts, of the Work as selected by the State, prior to Completion.

1.1.10 **Bidder:** Any individual, partnership, corporation, association, joint venture, or any combination thereof, submitting a Bid Form for the Work.

1.1.11 **Change Order:** A written order issued by the State used to determine adjustments in the Contract based on:

- .1 a change in the Work,
- .2 the amount of the adjustment in the Contract Sum, and
- .3 the extent of the adjustment in the Contract Time.

1.1.12 **Claim:** An unresolved Dispute arising under or relating to the performance of the Contract which can only be filed after Acceptance of the Work and the final statement to the Contractor.

1.1.13 **Completion:** When the entire Work has been performed in accordance with the Contract requirements as delineated in the Contract Documents and Project Manual. Completion of the Work occurs when the State's final inspection has been made and all construction, services and deliverables have been fully executed as determined by the State's Representative, including but not limited to completion of all punch-list items and delivery of as-built drawings, operation & maintenance manuals, guaranties, warranties, spare parts, reports and certifications as noted in the Project Manual, Section 01 77 00.

1.1.14 **Contract:** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified by a Change Order. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the State and the Contractor.

1.1.15 Contract Documents: The Contract Documents consist of the Agreement between the State and Contractor, Payment and Performance Bonds; the Conditions of the Contract, including General, Supplementary and other Conditions; Drawings, Specifications, Addenda and Change Orders.

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

1.1.17 Contract Time: The Contract Time is the period of time, from the Start Date to the date of Completion of the Work, including authorized adjustments, allotted in the Contract.

1.1.18 Contractor: The individual, partnership, corporation, association, joint venture, or any combination thereof, who has entered into a contract with the State, identified as such in the Agreement, and referred to throughout the Contract as if singular in number. The term "Contractor" means the Contractor or the Contractor's representative.

1.1.19 Day: Calendar day, unless otherwise specifically defined.

1.1.20 Department: The Department of General Services, State of California.

1.1.21 Director: The Director of the Department of General Services, State of California, or the Director's designee.

1.1.22 Dispute: A demand during performance of the Work seeking adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. A Dispute is not a Claim.

1.1.23 Drawings: The graphic and pictorial portions of the Contract Documents, illustrating the design, location and dimensions of the Work, generally including but not limited to, plans, elevations, sections, details, schedules and diagrams.

1.1.24 Emergency: A sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

1.1.25 General Notes: The written instructions, provisions, conditions or other requirements appearing on the Drawings, and so identified thereon, which pertain to the performance of the Work.

1.1.26 Guarantee: The Contractor's assurance that the Project complies with the requirements of the Contract Documents.

1.1.27 Official Progress Schedule: The Contractor's baseline schedule and updates accepted by the State.

1.1.28 Or Equal: Refer to Approved Equal.

1.1.29 Owner: The State of California.

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

1.1.31 Project: The total construction of which the Work performed under the Contract may be the whole or a part.

1.1.32 Project Manual: The volume(s) assembled for the Work which includes the Introductory Information, Bidding Requirements, Contracting Requirements, Specifications, and other information as may be listed in the Project Manual Table of Contents.

1.1.33 Request for Information (RFI): A written request by the Contractor submitted in a State provided format for information regarding Project specific issues.

1.1.34 Retention: A percentage of the Contract Sum held back upon completion of the Work, or any portion of the Work, to cover outstanding liabilities, contingencies, and the like, as specified in the Contract Documents.

1.1.35 Samples: Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

- 1.1.36 **Schedule of Values:** A document furnished by the Contractor to the State reflecting the portions of the Contract sum allotted for the various parts of the Work, and used as the basis for reviewing the Contractor's applications for payment request.
- 1.1.37 **Shop Drawings:** Drawings, diagrams, schedules, and other data specially issued for the Work by the Contractor or a Subcontractor, Sub-subcontractor, and material suppliers to illustrate some portion of the Work.
- 1.1.38 **Specifications:** That portion of the Contract Documents consisting of the written requirements for materials, standards, equipment, construction systems, and standards of workmanship for the Work, and performance of related services.
- 1.1.39 **State:** The State of California acting through the Department of General Services.
- 1.1.40 **State Construction Supervisor/Inspector:** The person(s) authorized by the State to provide inspection services, field coordination and quality control during construction.
- 1.1.41 **State Contract Act:** The act which is set forth in the California Public Contract Code, Section 10100, et seq.
- 1.1.42 **State's Representative:** Person(s) authorized by the State to act on behalf of the State for the Project.
- 1.1.43 **Subcontractor:** An individual, partnership, corporation, association, joint venture, or any combination thereof, who has a direct contract with the Contractor to perform work or labor or render service in or about the Work. The term "Subcontractor" is referred to as if singular in number and means a Subcontractor or a representative of the Subcontractor. The term "Subcontractor" shall not include those who supply materials only or a separate contractor or subcontractors of a separate contractor.
- 1.1.44 **Sub-subcontractor:** A person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the work. The term "Sub-subcontractor" is referred to as if singular in number and means a Sub-subcontractor or a representative of the Sub-subcontractor.
- 1.1.45 **Not Used**
- 1.1.46 **Substitution:** A material and/or process offered by the Contractor in lieu of the specified material and/or process, and accepted by the State in writing as being equivalent (equal) to the specified material and/or process.
- 1.1.47 **Warranty:** A Contractor's, manufacturer's or material supplier's assurance that products and services provided meet the requirements of the Contract Documents.
- 1.1.48 **Work:** Construction, services and deliverables required by the Contract Documents and Project Manual, including labor, materials, equipment, services, and documents provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract, including but not limited to requirements such as; completion of punch-list items, as-built drawings, operation & maintenance manuals, guaranties, warranties, spare parts, reports, and certifications.

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

- 1.2.1 The Contract will not be binding on the State until appropriately endorsed by the State's legal Representative, in accordance with Public Contract Code, Section 10220.
- 1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor is familiar with the methodology under which the work is to be performed and has correlated personal observations with requirements of the Contract Documents.
- 1.2.3 The intent of the Contract Documents is to include items necessary for completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.
- 1.2.4 Organization of the Specifications into Groups, Divisions, subgroups, Sections and Articles, and arrangement of Drawings shall not be the basis that Contractor utilizes in dividing the Work among Subcontractors, nor in establishing the extent of work to be performed by any trade.

1.2.5 When standards of the Federal Government, trade societies, or trade associations are referred to in the Contract Documents by specific date of issue, these shall be considered as part of the Contract Documents. When such references do not bear date of issue, current published edition at the date of the first Invitation to Bid shall be considered as part of the Contract Documents.

1.2.6 Unless otherwise stated in the Contract Documents, words and terms which have well-known or commonly accepted technical or construction industry meanings shall be used in the Contract Documents in accordance with such recognized meanings.

1.2.7 Every part of the Work shall be accomplished in workmanship-like manner by workers, laborers, or mechanics specially skilled in the class of work required. Any person the State may deem incompetent or disorderly shall be promptly removed from the Project by the Contractor upon written notice from the State, and shall not be re-employed on this Project.

1.3 **USE OF THE STATE'S DRAWINGS, PROJECT MANUAL AND OTHER DOCUMENTS:** The Drawings, Project Manual and other documents issued by the State, and copies furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects, nor for additions to this Project outside the scope of the Work without the specific written consent of the State. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Project Manual and other documents issued by the State appropriate to, and for use in, the execution of their work under the requirements of the Contract Documents.

#### 1.4 CAPITALIZATION

1.4.1 Terms capitalized in the General Conditions of the Contract for Construction include those which are:

- .1 Specifically defined; or
- .2 Titles of numbered Articles; or
- .3 References to Paragraphs, Subparagraphs and Clauses; or
- .4 Titles of other documents.

#### 1.5 CONFLICTS IN THE CONTRACT DOCUMENTS

1.5.1 In the event of conflict in the Contract Documents, the following priorities shall govern:

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

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

- .1 "Minor Detail" shall include the concept of substantially identical components, where price of each such component is small even though aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial. Quality and quantity of parts or material so supplied shall conform to trade standards and be compatible with type, composition, strength, size and profile of parts or materials otherwise set forth in the Contract Documents.

## 1.6 REQUESTS FOR INFORMATION, CLARIFICATION OR ADDITIONAL INSTRUCTIONS

1.6.1 Requests for Information (RFI): Should the Contractor discover conflicts, omissions, or errors in the Contract Documents, or have any questions concerning interpretation or clarification of Contract Documents, the Contractor shall immediately submit to the State in writing an RFI that complies with the following requirements:

- .1 All RFIs, whether by the Contractor, a Subcontractor or supplier at any tier, shall be submitted by the Contractor to the State.
- .2 RFIs shall be numbered sequentially and be presented in the format provided by the State.
- .3 The Contractor shall clearly and concisely set forth the single issue for which interpretation or clarification is sought, indicate Specification Section number, article and subarticle numbers, and Contract Drawing number, and detail, or other item involved, and state why a response is required from the State.
- .4 The Contractor shall set forth its own interpretation or understanding of the requirements, along with reasons why it has reached such an understanding in each RFI.
- .5 RFIs shall be submitted in a timely manner in order that they may be adequately researched and answered before the response affects any critical activity of the Work.
- .6 The State will review all RFIs to determine whether they are truly RFIs within the meaning of the term as defined in Paragraphs 1.1.33 and 1.6.1. RFI's which are determined to be not within the meaning of the term and/or RFIs where answers can readily be found in the Drawings and Project Manuals shall be deemed to be superfluous and the cost for reviewing these RFIs will be back-charged to the Contractor.
- .7 Responses to RFIs will be made within 14 days unless the State notifies the Contractor in writing that a response will take longer. The 14 days will begin when the RFI is received and dated by the State. Should the State respond sooner, the Contractor shall not assume that a new timeline has been established. Delays in the progress of the Work due to late submittal of RFIs by the Contractor are solely the responsibility of the Contractor.
- .8 Responses from the State will not change any requirement of the Contract unless so noted by the State in the response to the RFI.
- .9 Should the Contractor believe that a response to an RFI causes a change to the requirements of the Contract, the Contractor shall, before proceeding, give written notice to the State, indicating that the Contractor considers the State's response to the RFI to be a Change Order. An RFI will not be considered to be automatically a notice for a Change Order. The Contractor shall give separate written notice within 7 days of receipt of the State's response to the RFI. If the Contractor fails to give notice within 7 days or prior to commencement of the change, the Contractor shall forfeit the right to seek additional time or cost under Article 6.

1.6.2 Additional Detailed Instructions: The State may furnish additional detailed written and/or graphic instructions to further explain the work, and such instructions shall be a part of the Contract requirements. Should additional detailed instructions, in the opinion of the Contractor, constitute work in excess of the scope of the Work, the Contractor shall submit written notice to the State within 14 days following receipt of such instructions, and in any event prior to commencement of the work thereon. The State will then consider the notice; and, if in the State's judgment it is justified, the State's instructions will be revised or the extra work authorized in accordance with the provisions of Article 6.

## ARTICLE 2 - ADMINISTRATION OF THE CONTRACT

### 2.1 INFORMATION AND/OR SERVICES REQUIRED OF THE STATE

2.1.1 Information and/or services under the State's control shall be furnished by the State within a mutually agreed upon response time so as to avoid delay in the orderly progress of the Work.

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

### 2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The State will provide administration of the Contract as described in the Contract Documents during construction, until final payment is due and during the correction period described in Paragraph 12.2 and throughout the guarantee period.

2.2.2 The State will visit the Project site appropriate to the stage of construction to become familiar with the progress and quality of the completed work and to determine if the Work is in accordance with the Contract Documents.

2.2.3 Unless so specified in the Contract Documents, the State will not have control over construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work. The State will not be responsible for the Contractor's failure to carry out the Work in accordance with the requirements of the Contract Documents. The State will not be responsible for acts, errors, or omissions of the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or of any other persons performing portions of the Work.

2.2.4 Communications Facilitating Contract Administration: Communications by and with the State's consultants shall be through the State. Communications by and with Subcontractors, Sub-subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the State.

2.2.5 If the State observes work that appears to not comply with the requirements of the Contract Documents, the State will have the authority to reject the Work. Whenever the State considers it necessary or advisable for implementation of the intent of the Contract Documents, the State will require additional inspection or testing of the Work, in accordance with Subparagraphs 3.13.2 and 3.13.3, whether or not such work is fabricated, installed or completed.

2.2.6 The State will review and take action upon the Contractor's submitted Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, nor for substantiating instructions for installation or performance of equipment or systems, which remain the responsibility of the Contractor.

2.2.7 Substitutions and Approved Equals: Alternative material(s), article(s), or equipment that are of equal quality and of required characteristics for the purpose intended may be proposed by the Contractor. The State will examine proposed alternatives for compliance with the Contract Documents. The proposed material(s), article(s), or equipment, will be reviewed for comparative quality, suitability, and performance against the product(s) specified in the Contract Documents. Refer to Subparagraph 3.12.10, for Substitution procedures. If Contractor's substitution is accepted, the Contractor shall be responsible for the costs of any changes resulting from the substitution, including, but not limited to redesign costs of the Project.

2.2.8 The State will conduct inspections to determine the Contractor's compliance with the Contract Documents and the date of Completion; will receive, for review and record, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and will issue a final Payment Authorization upon compliance with the requirements of the Contract Documents and Acceptance of the Work.

### 2.3 BREACHES, DEFAULTS AND TERMINATION FOR CAUSE

2.3.1 If the Director deems that the Contractor has failed to supply an adequate working force, or material of proper quality, or has failed to comply with Public Contract Code Section 10262, or has failed in any other respect to prosecute the Work with the diligence and force specified by the Contract, the Director may:

- .1 after written notice of at least 5 days to the Contractor, specifying the defaults to be remedied, provide any such labor or materials and deduct the cost from any money due or to become due to the Contractor under the Contract; or
- .2 if the Director considers that the failure is sufficient ground for such action, the Director may give written notice of at least 5 days to the Contractor and the Contractor's sureties, that if the defaults are not remedied, the Contractor's control over the Work will be terminated.

2.3.2 Should the State exercise its rights to terminate as noted in Subparagraph 2.3.1, the State may, without prejudice to any other rights or remedies of the State and subject to any prior rights of the Surety:

- .1 terminate employment of the Contractor;
- .2 take possession of the Project site, materials, equipment, tools, appliances, and construction equipment and machinery owned by the Contractor;
- .3 accept assignment of Subcontractor Agreements pursuant to Paragraph 4.4; and/or
- .4 finish the Work by whatever method(s) the State may deem expeditious and appropriate.

2.3.3 When the State terminates the Contract for reasons provided in Subparagraph 2.3.1, the Contractor shall not be entitled to receive any further payment until Completion of the Work. If the costs incurred by the State because of termination under Subparagraph 2.3.1 exceed the unpaid balance, the Contractor shall pay the difference to the State.

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

2.4.1 The State reserves the right to terminate this Contract or any part thereof, due to an Act of God or for its sole convenience. In the event of such termination, the Contractor shall immediately stop hereunder and shall immediately cause its Subcontractors, Sub-subcontractors and material suppliers at any tier, to immediately stop work, leaving the site in a safe and secured condition. The Contractor shall not be paid for any work performed or costs incurred after the termination date that could have been avoided.

2.4.2 The Contractor shall be paid in accordance with the provisions of Article 8; except that the amount due the Contractor shall be based upon the State's final estimate of the Work completed, or acceptable materials furnished but not used, to the date of suspension of the Work, less any amounts required to be withheld pursuant to Article 8, and less any prior payment(s) made to, or on the account of the Contractor.

## **2.5 SUSPENSION BY THE STATE FOR CONVENIENCE**

2.5.1 The State may, by written notice, order the Contractor to suspend, delay or interrupt the Work, in whole or in part, for such period of time as the State may determine.

2.5.2 An adjustment may be claimed by the Contractor in accordance with Article 6 and Article 7 for changes in the Work, caused by a suspension, delay or interruption. No adjustment will be made to the extent:

- .1 that Contractor's performance of the Work, is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

## **ARTICLE 3 - CONTRACTOR**

### **3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE CONTRACTOR**

3.1.1 The Contractor shall carefully study and compare the Contract Documents with each other and shall report to the State, in writing, any errors, inconsistencies or omissions discovered. If the Contractor performs any work knowing it involves a recognized error, inconsistency or omission in the Contract Documents, without such notice to the State the Contractor shall assume responsibility for such performance and shall bear the cost for correction.

3.1.2 The Contractor shall take field measurements and verify field conditions and shall compare such field measurements, conditions and other related information known to the Contractor with the Contract Documents before proceeding.

3.1.3 The Contractor shall promptly, and before such conditions are disturbed, notify the State in writing of:

- .1 subsurface or latent physical conditions at the site differing materially from those indicated, or
- .2 unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
- .3 Hazardous materials.

3.1.4 The State will promptly investigate the conditions, and if the State finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work, whether or not changed as a result of such conditions, a Change Order will be issued in accordance with Article 6.

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

3.2.1 The Contractor shall supervise and direct the Work. The Contractor shall be responsible for, and have control over, construction means, methods, techniques, sequences, procedures, safety precautions and programs in connection with the Work, and for coordinating the Work under the Contract; unless otherwise noted or specified in the Contract Documents.

3.2.2 The Contractor shall be responsible to the State for acts and omissions of the Contractor's employees, Subcontractors, Sub-subcontractors or material suppliers and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

- .1 Subcontractor Responsibility: The Contractor shall be responsible for the actions or inaction of Subcontractors, Sub-subcontractors or material suppliers, at all tiers, regardless of whether they are a Disabled Veterans Business Enterprise (DVBE) firm or are stipulated suppliers or sole sourced. No claim, request for equitable adjustment or Change Order request shall be submitted to the State for any action of any Subcontractor, Sub-subcontractor or material supplier, at any tier, unless the Contractor can demonstrate that the State is the proximate cause of the change or delay alleged in such request. The State will not accept any responsibility or liability for any action or inaction of any Subcontractor, Sub-subcontractor or material supplier, at any tier, except to the extent that the State is the proximate cause of the change or delay.

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

3.2.4 The Contractor shall be responsible for inspections of portions of the Work already completed under the Contract to determine that such portions are in proper condition to receive subsequent work. If the Contractor determines that some work performed on the Project does not comply with the requirements of the Contract Documents, the Contractor shall repair or replace such defective work at the Contractor's sole expense.

3.2.5 Until Acceptance of the Work, the Contractor shall have the charge and care thereof, and shall bear risk of injury or damage to any part of the Work by action of the elements (except for an Act of God, or natural disaster as proclaimed by the State or Federal Government), or from any other reason except for such damages as are directly caused by acts of the Federal or State Government and the public enemy, except as provided in Paragraph 8.5.

### 3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Materials, articles and equipment furnished by the Contractor for incorporation into the Work shall be new unless otherwise specified in the Contract Documents.

3.3.2 Hours of Labor: Workers are limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week except that pursuant to Labor Code Section 1815, any work performed in excess of 8 hours per day and 40 hours during any one week, shall be permitted upon compensation for hours worked in excess of 8 hours per day at not less than 1-1/2 times the basic rate of pay. The Contractor shall pay the State \$25 as a penalty for each worker for each calendar day worked in violation of the above limitations and restrictions.

3.3.3 Prevailing Wage: The Contractor shall comply with Labor Code, Section 1774 and 1775. Pursuant to Section 1774, the Contractor and any subcontractors, regardless of tier, shall pay not less than the specified prevailing wage rates to all workers employed in the execution of the Contract. In accordance with Section 1775, the Contractor and any subcontractor under the Contractor shall forfeit to the State not more than \$50 for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for the work or craft, in which the worker is employed for any work executed under the Contract by the Contractor or by any subcontractor in violation of the provisions of the Labor Code; and, in particular, Labor Code, Sections 1770 to 1780, inclusive. In addition to such forfeiture, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each day, or portion thereof, shall be paid to each underpaid worker by the Contractor or subcontractor. This provision shall not apply to properly registered apprentices.

- .1 Pursuant to Labor Code, Section 1770, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and a general prevailing rate for legal holiday and overtime work for each craft required for execution of the Contract. The Contractor shall obtain copies of the prevailing rate of per diem wages from the Department of Industrial Relations, Division of Labor Statistics & Research, PO Box 420603, San Francisco, CA 94142-0603, (415) 703-4780; or wage rates may be accessed on the internet at [http://www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html). The Contractor is responsible to read, understand and comply with all the guidelines, including the fine print in the prevailing wage determinations; and shall post a copy of the prevailing wage rates, specific to the Project, at the Project site.

- .2 Wage rates set forth are the minimum that may be paid by the Contractor. Nothing herein shall be construed as preventing the Contractor from paying more than the minimum rates set. No extra compensation will be allowed by the State due to the inability of the Contractor to hire labor at minimum rates, nor for necessity for payment by the Contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing the Bid Form.
- .3 If it becomes necessary to employ crafts other than those listed in the General Prevailing Wage Rate booklet, the Contractor shall contact the Division of Labor Statistics and Research as noted above. The rates thus determined shall be applicable as minimum for the contract and incorporated in the bid. When the wage determination shows an expiration date (noted by a double asterisk\*\*), to expire during the term of the contract, the Contractor must call or write the DIR to obtain the new rates and incorporate them in the bid to be applicable for the term of the contract.
- .4 The Contractor and each subcontractor, regardless of tier, shall keep an accurate payroll record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or subcontractor in connection with the Work. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms. The Contractor's and subcontractor's certified payroll records for each employee shall be submitted with each payment request, covering the period of the payment request.

3.3.4 Travel and Subsistence Payments: The Contractor shall pay travel and subsistence payments to persons required to execute the Work as such travel and subsistence payments are defined in applicable collective bargaining agreements filed with the Department of Industrial Relations, pursuant to Labor Code, Sections 1773.1 and 1773.9.

3.3.5 Apprentices: Properly registered apprentices may be employed in the execution of the Work. Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The Contractor and each Subcontractor shall comply with the requirements of Labor Code, Section 1777.5, and any related regulations regarding the employment of registered apprentices.

#### 3.4 NONDISCRIMINATION CLAUSE

3.4.1 Definitions: As they pertain to the Standard California Nondiscrimination Construction Contract Specifications:

- .1 Administrator: The Administrator, Office of Compliance Programs (OCP), California Department of Fair Employment and Housing (DFEH), or any person to whom the Administrator delegates authority.
- .2 Minority includes:
  - 1) Black (all persons having primary origins in any of the Black racial groups of Africa, but not of Hispanic origin); or
  - 2) Hispanic (all persons of primary culture or origin in Mexico, Puerto Rico, Cuba, Central or South America, or other Spanish derived culture or origin regardless of race); or
  - 3) Asian/Pacific Islander (all persons having primary origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); or
  - 4) American Indian/Alaskan Native (all persons having primary origins in any of the original peoples of North America and who maintain culture identification through tribal affiliation or community recognition).

3.4.2 Whenever the Contractor or any Subcontractor subcontracts a portion of the Work, it shall physically include in each subcontract of \$5,000 or more, the Nondiscrimination Clause in the Contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.

3.4.3 The Contractor shall implement the specific nondiscrimination standards provided in Clauses 3.4.6.1 through 3.4.6.5.

3.4.4 Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities and/or women shall excuse the Contractor's obligations under these specifications, Government Code, Section 12990, or the regulations promulgated pursuant thereto.

3.4.5 In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees shall be employed by the Contractor during the training period, and the Contractor shall have made a commitment to employ the apprentices and trainees upon the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.

3.4.6 The Contractor shall take specific actions to implement the Contractor's nondiscrimination program. The evaluation of the Contractor's compliance with these specifications shall be based upon the Contractor's effort to achieve maximum results from the Contractor's actions. The Contractor shall be able to demonstrate fully the Contractor's efforts under Steps .1 through .5 below:

- .1 Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and at all facilities at which the Contractor's employees are assigned to work. The Contractor, whenever possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all leadpersons, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligations to maintain such a working environment, with specific attention to minority and/or female individuals working at such sites or in such facilities.
- .2 Provide written notification within 7 days to the Director of DFEH when the union(s) with which the Contractor has a collective bargaining agreement(s) has not referred to the Contractor a minority person and/or woman sent by the Contractor, or when the Contractor has other information that the union(s) referral process has impeded the Contractor's efforts to meet the Contractor's obligations.
- .3 Disseminate the Contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the Contractor to meet the Contractor's obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.
- .4 Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general leadpersons, on-site leadpersons, etc., are aware of the Contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.
- .5 Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the Contractor's obligations under these specifications are being carried out.

3.4.7 Contractors are encouraged to participate in voluntary associations which assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of the Contractor's obligations under these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work-force participation, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. It is the Contractor's obligation to comply.

3.4.8 The Contractor is required to provide equal employment opportunity for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) if a particular group is employed in a substantially disparate manner.

3.4.9 Establishment and implementation of a bona fide affirmative action plan pursuant to Section 8104(b) of Title 2, California Code of Regulations (CCR), shall create a rebuttable presumption that the Contractor is in compliance with the requirements of Government Code, Section 12990, and its implementing regulations.

3.4.10 The Contractor shall not use the nondiscrimination standards to discriminate, harass or allow harassment against any person because of race, color, religion, sex, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), marital status, or age over 40, denial of family and denial of family care leave.

3.4.11 The Contractor shall not enter into any subcontract with any person or firm decertified from State contracts pursuant to Government Code, Section 12990.

3.4.12 The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Nondiscrimination Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code, Section 12990 and its implementing regulations by the awarding agency. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code, Section 12990.

3.4.13 The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company's equal employment opportunity policy is being carried out, to submit reports relating to the provisions herein as may be required by OCP, and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice

trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work is performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, the Contractor shall not be required to maintain separate records.

### 3.5 **GUARANTEE**

3.5.1 The Contractor unconditionally guarantees the Work will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of 1 year from the date of Completion of the Work of the Project, unless a longer guarantee period is specifically called for in the Contract Documents. The Contractor shall repair or replace work, or adjacent work, or both, that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to the State; ordinary wear and tear and abuse excepted.

3.5.2 The Contractor further agrees, within 14 days after being notified in writing by the State, of work not in accordance with the requirements of the Contract Documents or defects in the Work, that the Contractor shall commence and execute, with due diligence, work necessary to fulfill the terms of the guarantee. If the State finds that the Contractor fails to perform the work under the guarantee, the State will proceed to have the work completed at the Contractor's expense and the Contractor will pay costs of the work upon demand. The State will be entitled to all costs, including attorney's fees necessarily incurred upon the Contractor's refusal to pay the above costs.

3.5.3 Notwithstanding the foregoing Subparagraph, in the event of an emergency constituting an immediate hazard to health or safety of State employees, property, or licensees, the State may undertake, at the Contractor's expense and without prior notice, work necessary to correct such hazardous condition(s) when it is caused by work of the Contractor not being in accordance with the requirements of the Contract Documents.

3.6 **TAXES:** The Contractor shall pay all applicable taxes for the Work, or portions thereof provided by the Contractor, which were legally enacted as of the bid date, whether or not yet effective or merely scheduled to go into effect.

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

3.7.1 The Contractor shall secure and pay for required permits, governmental fees, licenses and inspections necessary to complete the Work, unless otherwise provided in the Contract Documents.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the performance of the Work.

3.7.3 If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, the Contractor shall promptly notify the State in writing. If the Contractor performs work known to be contrary, or should have known to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without prior notice to the State, the Contractor shall assume full responsibility for the Work and shall bear the attributable costs.

3.7.4 The Contractor is not subject to municipal, county, or district laws, rules, or regulations pertaining to building permits or regulating the design or construction of buildings upon State property, except as specified in the Contract Documents.

3.7.5 The Contractor may be subject to federal, state, municipal, county, local or district laws, rules, or regulations pertaining to off-site work, such as utility connections, fire protection systems and encroachment upon federal, state, private, city or county property, including, but not limited to storm water pollution prevention plans.

3.7.6 All construction work shall comply with the California Code of Regulations, Title 24, California Building Standards Code (CBSC), and other Applicable Codes, current edition, as of the bid date or as specified in the Specifications.

3.8 **ALLOWANCES:** The Contractor shall include in the Contract Sum, Allowances in accordance with the requirements of the Specifications, Division 01.

### 3.9 **SUPERINTENDENT**

3.9.1 The Contractor shall employ a competent Superintendent and assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent, or the Contractor's duly appointed representative, shall be the person in charge of

the construction of the Work and shall represent the Contractor. Communications given to the Superintendent shall be as binding as if given directly to the Contractor. All communications shall be confirmed in writing by the Contractor. Should the State deem the Superintendent to be incompetent, the State has the authority to request the Contractor to replace this person.

3.9.2 Should the Contractor decide to replace the Superintendent, the Contractor shall notify the State in writing, no fewer than 14 calendar days prior to the replacement. The Contractor shall submit the name and resume of the new Superintendent with the letter.

3.9.3 At any other time when the Superintendent is absent from the Project site because no Work is being performed, the Superintendent shall nevertheless keep the State advised of the Superintendent's whereabouts so that the Superintendent may readily be reached and available for consultation at the Project site at any time.

### **3.10 CONTRACTOR'S PROGRESS SCHEDULE**

3.10.1 Within the time frame specified in the specifications and prior to the first payment request, the Contractor shall submit to the State a Progress Schedule, including submittal schedules, prepared in accordance with the Specifications, Division 01. The Progress Schedule shall show the order in which the Contractor proposes to execute the Work, dates on which the Contractor will start each major subdivision of the Work, and projected dates of completion of each such subdivision in accordance with the requirements of the Contract Documents. The Contractor shall submit adjusted Progress Schedules, including submittal schedules, to reflect changed conditions in accordance with the requirements of the Contract Documents with each payment request.

3.10.2 The Contractor shall, unless otherwise specified in the Contract Documents, or directed by the State in writing, show in the schedule that physical construction of the Work will start within 10 calendar days of the start date stipulated in the Notice to Proceed, and show execution to Completion, in accordance with the specified schedule, subject to adjustment in accordance with the requirements of the Contract Documents.

3.10.3 The Contractor shall provide an adequate work force, materials of proper quality, and equipment to properly execute the Work and to ensure completion of each part in accordance with the Progress Schedule and within the Contract Time specified.

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

3.10.5 The State's review and acceptance of the Progress Schedule is for compliance with the requirements of the Contract Documents only. Review and acceptance by the State of the Progress Schedule does not mean approval and does not relieve the Contractor of any of the Contractor's responsibility for the accuracy or feasibility of the Progress Schedule, or of the Contractor's ability to meet the interim Project milestone dates and the date of Completion. The State's review and acceptance does not expressly or impliedly warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of the Progress Schedule.

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

3.11.1 The Contractor shall maintain at the Project site one record copy of the Drawings, Project Manual, Addenda, Change Orders and other modifications, in good order and marked currently to record changes and selections made during construction; and in addition, Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the State and shall be delivered to the State upon completion of the Work.

3.11.2 Daily Records Clause: The Contractor shall prepare and maintain daily inspection records to document the progress of the Work on a daily basis. Daily Records shall include a daily accounting of labor and equipment on the site for the Contractor and Subcontractors, at any tier. Daily Records shall make a clear distinction between work being performed under Change Order, base scope work, and/or disputed work. Daily Records shall be copied and provided to the State at the end of every week, unless otherwise agreed to in writing.

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

3.12.1 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate those portions of the work for which submittals are required and the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the State is subject to the limitations of Subparagraph 2.2.6.

3.12.2 The Contractor shall review, approve and submit to the State Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents within the number of days set forth in the Specifications, Division 01; except finishes which shall be submitted in a sequence so as to cause no delay in the progress of the Work or in the activities of the State or separate

contractors. Submittals that are not required by the Contract Documents may be returned to the Contractor without action.

3.12.3 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed by the State. Such work shall be in accordance with reviewed submittals.

3.12.4 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and related field construction criteria, and has checked and coordinated the information contained within the submittal(s) with the requirements of the Contract Documents.

3.12.5 The Contractor shall not be relieved of the responsibility for any deviation from the requirements of the Contract Documents by the State's review of submittals unless the Contractor has specifically informed the State, in writing, or as directed by the State, of such deviation at the time of submittal, and the State has given written consent to the specific deviation. The State's review shall not relieve the Contractor of responsibility for errors or omissions in submittals. Any resulting cost increase due to such a deviation shall be the sole responsibility of the Contractor.

3.12.6 The Contractor shall respond per requirements of the Contract Documents, in writing or on resubmitted submittals, to revisions other than those requested by the State on previous submittals. After the second resubmittal of a specific item, that is still not accepted, the Contractor will be charged all costs of submittal review. The charges will be deducted from the Contract Sum.

3.12.7 Informational submittals on which the State is not expected to take action, may be identified in the Contract Documents.

3.12.8 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the State will be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.12.9 When descriptive catalog designations, including manufacturer's name, product brand name, or model number(s) are referred to in the Contract Documents, such designations shall be considered as being those found in industry publications of current issue at date of first Invitation to Bid.

3.12.10 Substitutions and Approved Equals: Alternative material(s), article(s), or equipment that are of equal quality and of required characteristics for the purpose intended may be proposed by the Contractor for use in the Work, provided the Contractor complies with the Specifications, Division 01, and the following requirements:

- .1 The Contractor shall submit a proposal for the alternative material(s), article(s), or equipment, in writing, within 35 days after Contract start date stated in the Notice to Proceed. In exceptional cases where the best interests of the State so require, the State may give written consent to a submittal or resubmittal received after expiration of the time limit designated.
- .2 The proposal will not be considered unless the submittal is accompanied by complete information and descriptive data necessary to determine equality of offered material(s), article(s), or equipment. Samples shall be provided when requested by the State. Burden of proof as to comparative quality, suitability, and performance of offered material(s), article(s), or equipment shall be upon the Contractor. The State will be the sole judge as to such matters. In the event the State rejects the use of such alternative(s) submitted, then one of the particular products originally specified in the Contract Documents shall be furnished.
- .3 If mechanical, electrical, structural, or other changes are required for installation, fit of alternative materials, articles, or equipment, or because of deviations from Contract Drawings and Specifications, such changes shall not be made without consent of the State, and shall be made without additional cost to the State.

### 3.13 TESTS AND INSPECTIONS

3.13.1 The Contractor shall at all times permit the State, its agents, officers, and employees to visit the Project site and inspect the Work, including shops where work is in preparation. This obligation shall include maintaining proper facilities and safe access for such inspection. Including, but not limited to providing lifts, ladders, scaffolds, platforms and paths of travel. When the Contract Documents require a portion of the Work to be tested, such portion of work shall not be covered up until inspected and approved by the State. The Contractor shall be solely responsible for notifying the State where and when the work is ready for inspection and testing. Should any work be covered without the required testing and approval, such work shall be uncovered and recovered at the Contractor's expense. Whenever the Contractor intends to perform work on Saturday, Sunday, or a legal holiday, the Contractor shall give written notice to the State of such intention at least 48 hours prior to performing the Work, so that the State may make necessary arrangements.

3.13.2 If the State determines that portions of the Work require additional testing, inspection or approval not included in the Contract Documents, the State will instruct the Contractor, in writing, to make arrangements for additional testing, inspection or

approval by an entity acceptable to the State, and the Contractor shall give 48 hours written notice to the State of where and when tests and inspections will be conducted so that the State may observe the procedures. The State will bear the costs except as provided in Subparagraph 3.13.3.

3.13.3 If procedures for testing, inspection or approval under Subparagraphs 3.13.1 and 3.13.2 reveal failure of a portion(s) of the Work to comply with the Contract Documents, the Contractor shall bear all costs made necessary by such failure(s) including those of repeated procedures and compensation for the State's services and expenses.

3.13.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and delivered to the State within 14 days after each test.

### 3.14 **USE OF PROJECT SITE**

3.14.1 The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Contract Documents.

3.14.2 The Contractor shall perform no operations of any nature on or beyond the limits of Work or premises, except as such operations are authorized in the Contract Documents, or authorized by the State.

3.14.3 The Contractor shall ensure the limits of Work to be free of graffiti or other similar defacements during the time of the Contract; if such defacement occurs, then the Contractor shall properly remove, repair, or correct the affected area(s), or as otherwise directed by the State. The Contractor shall protect exposed surfaces within the limits of Work, with anti-graffiti coatings, and maintain such protection continuously effective during the time of the Contract.

3.14.4 Prohibitions: Pursuant to Subparagraph 3.2.2., the use of alcohol and tobacco products, and the use or possession of weapons, or illegal controlled substances by the Contractor, or others under the Contractor's control, on State property is not allowed. Residing on site in temporary facilities by the Contractor, or others under the Contractor's control, is not allowed unless otherwise specified in the Specifications, Division 01.

### 3.15 **CUTTING AND PATCHING**

3.15.1 The Contractor shall be responsible for cutting, fitting or patching as required to complete the Work.

3.15.2 The Contractor shall not damage nor endanger the Work by cutting, patching or otherwise altering the construction, and shall not cut nor otherwise alter the construction without prior written consent of the State.

### 3.16 **CLEANING UP**

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

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

3.17 **ACCESS TO WORK:** The Contractor shall provide the State continuous and safe access to the Work. Including, but not limited to providing lifts, ladders, scaffolds, platforms and paths of travel.

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

### 3.19 **INDEMNIFICATION**

3.19.1 **Duty To Defend:** To the fullest extent permitted by law, the Contractor shall defend the State and any officer or employee of the State from and against suits filed against the State alleging claims, (including costs of attorneys fees) by reason of liability imposed by law and claims, including but not limited to, claims of personal injury, death, damage to property and loss of use thereof, or any claims arising out of the Contractor's performance of the Contract, or damages of other relief based on allegations of the failure of the Contractor, or the Contractor's Subcontractors to properly perform their obligations under the Contract, of the Contractor's violations of any legal duties, even if the allegations of any suit are groundless, false or fraudulent, and the Contractor

may make such investigation and settlement of any suit as the Contractor deems expedient. This duty to defend is separate and independent from the Contractor's duty to indemnify and hold harmless the State from such claims. Any failure to fulfill this obligation shall be a default of the Contractor's performance obligations under the Contract.

3.19.2 **Duty to Indemnify:** To the fullest extent permitted by the law, the Contractor shall hold harmless and indemnify the State and any officer or employee of the State from and against claims, losses and expenses (including costs of attorneys fees) by reason of liability imposed by law for claims, including but not limited to, claims of personal injury, death, damage to property and loss of use thereof, or any claims arising out of the Contractor's performance of the Contract, or damages or other relief based on allegations of the failure of the Contractor, or the Contractor's Subcontractors to properly perform their obligations under the Contract, or the Contractor's violations of any legal duties. Any failure to fulfill this obligation shall be a default of the Contractor's performance obligations under the Contract.

3.20 **AIR POLLUTION:** The Contractor and Subcontractors shall comply with State and/or local air pollution control rules, regulations, ordinances, and statutes that apply to work performed under the Contract. If there is a conflict between the State and local air pollution control rules, regulations, ordinances and statutes, the most stringent shall govern.

3.21 **CERTIFICATION BY CONTRACTOR OF RECYCLED CONTENT:** The Contractor shall certify in writing, under penalty of perjury, to the State, the minimum, if not exact, percentage of recycled content, both postconsumer material and secondary material, as defined in Public Contract Code Sections 12153 and 12200 and 12209, in materials, goods, or supplies offered or products used in the performance of the Contract, regardless of whether the product meets the required recycled percentage as defined in Sections 12153 and 12200 and 12209. The Contractor may certify that the product contains zero recycled content.

3.22 **UNFAIR BUSINESS PRACTICES:** The Contractor agrees and will require the Subcontractors and suppliers to agree to assign to the State all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), or under the Cartwright Act (commencing with Section 16700 of the Business and Professions Code), arising from the purchase of goods, services or materials, pursuant to the Contract Documents or subcontract thereunder. An assignment made by the Contractor, and additional assignments made by Subcontractors and suppliers, shall be deemed to have been made and will become effective at the time the State tenders final payment to the Contractor, without further acknowledgment of the parties.

3.23 **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, the Contractor acknowledges in accordance with Public Contract Code Section 7110, that: (a) the Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and (b) the Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

3.24 **NOT USED**

3.25 **CONTRACTOR REQUIRED NOTIFICATION OF CHANGES:** The Contractor shall notify the State's Representative in writing of any change to Contractor's name, status, or information including but not limited to:

1. Name
  - a. An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of Contractor's notification and legal documentation of the name change, the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
  - b. The State shall not be liable for penalties or interest on payments which are delayed due to Contractor's change of name and subsequent amendment processing.
2. Address/Location
3. Federal Employer Identification Number (FEIN)
4. Type of Organization or Legal Status – including:
  - a. Corporate
  - b. Partnership
  - c. Individual/Sole-Ownership
  - d. Joint Venture
  - e. Limited Liability Company
  - f. DBA
5. Ownership
6. Officers or Key Personnel
7. License
8. Other (Bankruptcy, Etc.)

Contractor shall immediately provide an updated Standard Form 204 (IRS/FTB form) to the Contracts Management & Procurement Services Section within five (5) calendar days of any such relevant change.

The State shall not be liable for penalties or interest on payments which are delayed do to Contractor's lack of proper or timely notice and documentation of a relevant change in status which impacts the State's ability to pay.

Contractor shall submit the firm's status change in writing including the Contract Number, Project Title and all necessary backup and legal documentation to support the status change to:

The State Department of General Services  
Real Estate Services Division  
Contracts Management & Procurement Services Section  
707 Third Street, Suite 2-350  
West Sacramento, CA 95605

## **ARTICLE 4 - SUBCONTRACTORS**

### **4.1 SUBLETTING AND SUBCONTRACTING**

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

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

4.1.3 The State may not permit a contractor or subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Sections 1777.1 or 1777.7 of the Labor Code to bid on, be awarded, or perform work as a subcontractor on a public works project.

- .1 Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the awarding body. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

### **4.2 SUBCONTRACTUAL RELATIONS**

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

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

4.2.2 Subcontractor Payments: The Contractor shall pay the Contractor's Subcontractors for work performed no later than 10 days after receipt of each progress payment. If there is a good faith dispute over all or any portion of the amount due a Subcontractor on a progress payment, the Contractor may withhold no more than 150 percent of the disputed amount. This provision shall apply to Sub-subcontractors also. A violation of these requirements invokes the payment and penalty provisions of Public Contract Code, Section 10262 and Section 10262.5.

4.3 **DISABLED VETERAN BUSINESS ENTERPRISE PROGRAM:** Pursuant to Public Contract Code (PCC) Section 10115 et. seq., the Contractor shall use, employ and utilize Disabled Veteran Business Enterprise (DVBE) subcontractors, sub-subcontractors or material suppliers who were listed in their bid documents for DVBE Program participation, to the full extent of the amount of money and/or percentage of commitment manifested in the bid documents. If the Contractor wishes to substitute any listed DVBE subcontractors, sub-subcontractors or material suppliers for just and legal cause, the Contractor shall follow the dictates of PCC Sections 4107 and 10115.12b, as well as Military and Veterans Code (M&VC) Section 999.5(e) and California Code of Regulations, Title 2, Section 1896.64. The DVBE may only be replaced by another DVBE and shall obtain the written authorization of the State prior to any such substitutions. The Contractor shall not unilaterally substitute a listed DVBE subcontractor, sub-subcontractor or material supplier. Failure of Contractor to seek substitution and adhere to the DVBE participation requirement identified in the bid may be cause for contract termination, recovery of damages under rights and remedies due to the State, and penalties as outlined in M&VC Section 999.9; PCC Sections 4110 and PCC Section 10115.10.

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

## **ARTICLE 5 - CONSTRUCTION BY THE STATE OR BY SEPARATE CONTRACTORS**

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

5.1.1 The State reserves the right to perform work or operations related to the Project with the State's own work force, and to award separate contracts in connection with other portions of the Project, and other construction or operations on the Project site or adjacent to the Project. The Contractor shall at all times conduct the Work so as to impose no hardship on the State or others engaged in work on the Project, nor to cause any unreasonable delay or hindrance to the Project.

5.1.2 When separate contracts are awarded for different portions of the Project, "the Contractor" in the Contract Documents in each case shall mean the contractor who executes each separate contract. Each contractor is the intended third part beneficiary of other contracts for the Project.

5.1.3 The Contractor shall not cause unnecessary hindrance or delay to another contractor working on or near the Project. If the performance of any contract for the Project is likely to be interfered with by the simultaneous execution of some other separate contract or contracts, the State will decide which contractor may proceed.

5.1.4 Costs caused by defective or ill-timed work shall be borne solely by the responsible contractor.

### **5.2 MUTUAL RESPONSIBILITY**

5.2.1 The Contractor shall cooperate fully with the State and separate contractors with regard to the execution of their work as follows:

- .1 The Contractor shall cooperate fully with the State and all separate contractors with regard to introduction and storage of their materials and equipment.
- .2 The Contractor shall coordinate with the State and separate contractors with regard to construction scheduling and sequence of operations, subject to approval of the State.
- .3 Each contractor shall monitor the schedule and progress of each other contractor whose work affects its work, and shall provide timely notice to the State of potential problems of interface so that the State can mitigate the problem.
- .4 The Contractor shall properly connect the Work to the work of the State or the separate contractors.
- .5 The Contractor shall inspect the work of the State or other contractors affecting the Work and promptly report to the State in writing irregularities or defects in the separate work, which renders it unsuitable for reception or connection of the Work.
- .6 Failure of the Contractor to inspect and report shall constitute acceptance of the other work as fit and proper to receive the Work, except as to defects which may develop in the other work after execution of the Contractor's Work.

## 5.2.2 Claims Between Separate Contractors:

- .1 Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon due notice, settle with such other contractor by agreement, mediation or arbitration, if they will so settle.
- .2 If such separate contractor sues the State or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, the State will notify the Contractor who shall defend such proceedings at the Contractor's sole expense.
- .3 The Contractor shall pay or satisfy any judgement or award against the State, arising therefrom. In addition, the Contractor shall pay the State for attorney's fees, court, arbitration or mediation costs and additional administrative, professional, consultant, inspection, testing and other service costs which the State has incurred.

5.2.3 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to any completed or partially completed construction or to any property of the State or separate contractors as provided in Subparagraph 10.1.6.

5.2.4 Cutting and Patching Under Separate Contracts: The Contractor shall be responsible for any cutting, fitting and patching that may be required to complete the Work, except as otherwise specifically provided for in the Contract Documents. The Contractor shall not endanger any work of the State or of any other contractor by cutting, excavating, or otherwise altering any work, except with the written consent of the State.

5.3 **STATE'S RIGHT TO CLEAN UP:** If a dispute arises among the Contractor, separate contractors and/or the State as to the responsibility under their respective contracts for maintaining the Project site and surrounding areas free from waste materials and rubbish as described in Paragraph 3.16, the State may clean up and allocate the costs among those responsible.

## ARTICLE 6 - CHANGES IN THE WORK

### 6.1 GENERAL

6.1.1 The State may order changes, including but not limited to, revisions to the Contract Documents, performance of extra work, and the elimination of work, without invalidating the Contract. Orders for such changes will be in writing. Changes shall not affect the obligations of the sureties on the contract bonds nor require their consent. Contract Time and Contract Sum will be adjusted, by written Change Order for changes which materially increase or decrease the time or cost or performance.

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

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

- .1 Contractor may make payment requests for such work.

6.1.3 The Contractor will forfeit compensation for cost and /or time for proceeding with changes to the Work without written authorization from the State. The Contractor shall notify the State, in writing, and request an evaluation whenever it appears a change is necessary. This written notice shall be made within 24 hours of such discovery. If the State concurs with the Contractor's request for a change to the Work, the State will follow the procedures under Article 6. Delays as a result of these requests will be the

responsibility of the Contractor.

## 6.2 CHANGE ORDER

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

- .1 By mutual acceptance of a lump sum increase or decrease in costs. Upon the State's written request, the Contractor shall furnish a detailed estimate of increase or decrease in costs, together with cost breakdowns and other support data within the time specified in such request. The Contractor shall be responsible for any additional costs caused by the Contractor's failure to provide the estimate within the time specified.
- .2 By the State, on the basis of the State's estimate of increase or decrease in the costs.
- .3 By the State, whether or not negotiations are initiated as provided in Clause 6.2.1.1, by actual and necessary costs, as determined by the State, on the basis of records. Beginning with the first day and at the end of each day, the Contractor shall furnish to the State detailed hourly records for labor, construction equipment, and services; and itemized records of materials and equipment used that day in performance of the changes. Such records shall be on a form acceptable to the State. Such records shall be signed by the Contractor and, when agreed to by the State, will become the basis for compensation for the changed work. Such agreement shall not preclude subsequent adjustment based upon later audit by the State.
- .4 By unit prices stated in the Contract Documents, or subsequently agreed upon.
- .5 By a manner agreed upon by the State and the Contractor.

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

- .1 Labor: Compensation for labor shall include the applicable payroll cost for labor, including first level supervision providing physical construction labor directly engaged in performance of the changes. Others, who may be involved in the preparation of the change order, including, but not limited to supervisors, superintendent, engineers, or estimators, shall be considered as overhead costs under Clause 6.2.2.4. Payroll cost for labor shall be the General Prevailing Wage Rates applicable for this project and in the locality for performance of the changes. In addition to the published rates, only social security, worker compensation, state and federal taxes shall be included in the total payroll cost. Other costs shall be considered as mark-ups under Clause 6.2.2.4. Use of a classification which would increase labor costs will not be permitted.
- .2 Materials and Equipment: Compensation for materials and equipment shall include the necessary costs for materials and equipment directly required for performance of the changes. Cost of materials and equipment may include costs of transportation and delivery. If discounts by suppliers are available to the Contractor, they shall be credited to the State. If materials and equipment are obtained from a supply or source owned by, or in part, by the Contractor, payment therefore will not exceed current wholesale prices for such materials and equipment. If, in the opinion of the State, the cost of materials and equipment is excessive, or if the Contractor fails to furnish satisfactory evidence of costs from supplier, the cost of materials and equipment shall be the lowest current wholesale price at which similar materials and equipment are available in quantities required. The State reserves the right to furnish materials and equipment required for performance of the changes, and the Contractor shall have no claim for costs or mark-ups on such materials and equipment.
- .3 Construction Equipment:
  - .1 Compensation for construction equipment shall include the necessary costs for use of construction equipment directly required for performance of the changes. Any use for less than 30 minutes shall be considered one-half hour. No costs will be allowed for time while construction equipment is inoperative, idle, or on stand-by, for any reason, unless such times have been approved in advance by the State. Rental time for construction equipment moved by its own power shall include the time required to move construction equipment to the Work site from the nearest available source for rental of such equipment, and time required to return such equipment to the source. If construction equipment is not moved by its own power, loading and transportation costs will be paid in lieu of such rental time. Neither moving time nor loading and transportation costs will be allowed if the construction equipment is used for any work other than the changes. No allowance will be made for individual pieces of construction equipment and tools having a replacement value of \$500 or less. No construction equipment costs will be recognized in excess of rental rates established by distributors or equipment rental agencies in the locality for performance of the changes.
  - .2 Unless otherwise approved by the State, the allowable rate for use of construction equipment shall constitute full compensation to the Contractor for cost of fuel, power, oil, lubrication, supplies, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor except for construction equipment operators and any and all costs to the Contractor incidental to the use

of such construction equipment.

- .4 Mark-Ups for Added Work:
- .1 General: The following allowance for mark-ups for performance of the changes shall constitute full compensation for additional field and home office overhead, profit, insurance, taxes (excluding sales taxes for materials incorporated into the project), and bonds, and other costs not covered under Clauses 6.2.2.1 through 6.2.2.3.
  - .2 Contractor: When work is added, the Contractor may claim mark-up in addition to authorized allowable costs, a reasonable sum as compensation for the items identified in 6.2.2.4.1 above, subject to proof of entitlement based on actual job costs, actual job experience, the Contractor's bidding data, and industry custom and practice. Under no circumstance can this sum exceed the following percentages:
    - .1 Contractor Labor : 21 percent, includes bond cost.
    - .2 Contractor Materials and Equipment : 16 percent, includes bond cost.
    - .3 Subcontractor Work : 6 percent of Subcontractor's costs, includes bond cost.
    - .1 Calculations of the Contractor's allowable 6 percent mark-up of the Subcontractor's Work shall not include the Subcontractor's allowable mark-up. Compounding of mark-up is not allowed.
  - .3 Subcontractors: When work is added, the Subcontractor may claim mark-up in addition to authorized allowable costs, a reasonable sum as compensation for the items identified in 6.2.2.4.1 above, subject to proof of entitlement based on actual job costs, actual job experience, the Subcontractor's bidding data, and industry custom and practice. Under no circumstance can this sum exceed the following percentages:
    - .1 Subcontractor Labor : 20 percent
    - .2 Subcontractor Materials and Equipment : 15 percent
    - .3 The aggregate mark-ups for all Subcontract tiers shall not exceed 20 percent for labor and 15 percent for materials and equipment. Compounding of mark-up is not allowed.
- .5 For Deleted Work: When the State is entitled to a credit for deleted work, the credit shall include direct labor, materials, and supervision plus overhead of the Contractor or Subcontractor, as applicable for the deleted work. Deleted overhead shall be computed as no less than 5 percent of the direct labor, materials, and supervision, and should reflect the actual savings to the Contractor resulting from the deletion based upon actual job prices for the work at issue, actual job experience, the Contractor's bidding data for the project and industry custom and practice. For example, if a \$10,000 item of work is deleted, the credit to the State would be no less than \$10,500.
- .6 For Combination of Added and Deleted Work: For Change Orders that involve both added and deleted work, the Contract Sum will be adjusted based on the following computation: Cost before mark-ups of added and deleted work shall each be separately estimated. If a difference between costs results in an increase to the Contract Sum, a mark-up for added work shall be applied to the difference. If a difference in costs results in a decrease, then the 5 percent credit to the State for deleted overhead set forth above shall be applied to the difference.
- .7 General Limitations: Costs to the Contractor for changes which exceed market values prevailing at the time of the change will not be allowed unless the Contractor establishes that all reasonable means for performance of the changes at prevailing market values have been investigated and the excess cost could not be avoided. Notwithstanding actual charges to the Contractor on work performed or furnished by others, no mark-ups will be allowed in excess of those specified in Clause 6.2.2.4 above.

6.2.3 Cost Disallowance: Costs which will not be allowed or paid in Change Orders or Claim settlements under this Contract include, but are not limited to, interest cost of any type other than those mandated by statute; Claim preparation or filing costs; legal expenses; the costs of preparing or reviewing proposed Change Orders or Change Order proposals concerning Change Orders which are not issued by the State; lost revenues; lost profits; lost income or earnings; rescheduling costs; costs of idled equipment when such equipment is not yet at the site or has not yet been employed on the Work; lost earnings or interest on unpaid retainage; claims consulting costs; the costs of corporate officers or staff visiting the site or participating in meetings with the State; any compensation due to the fluctuation of foreign currency conversions or exchange rates; or loss of other business.

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

6.4 **EFFECT ON SURETIES:** Alterations, extensions of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing consent of Surety(s) on Contract Bonds.

## ARTICLE 7 - TIME

### 7.1 NOTICE TO PROCEED

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

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

7.2 **CONTRACT TIME:** The Contract Time is the period set forth in Document 00 73 00, Supplementary Conditions. The start and completion dates will be stated in a Notice to Proceed. It is essential that the Project be completed within the time fixed for Completion in Document 00 73 00 or liquidated damages will be assessed for delay. All portions of the Work shall be completed and shall be ready for full use by the State on, or prior to, the date of Completion.

7.2.1 Time is of the essence in this Contract.

7.3 **LIQUIDATED DAMAGES:** For every day that the Work remains unfinished after the time fixed for Completion in the Contract Documents, as modified by any approved extension of time, damage will be sustained by the State. Because of the difficulty in computing actual material loss and disadvantages to the State, it is determined in advance that the Contractor will pay the State the amount of damages set forth in the Agreement, as representing a reasonable forecast of actual damages which the State will suffer by failure of Contractor to complete the Work within the time fixed for Completion in the Contract. Execution of the Agreement shall constitute acknowledgment by the Contractor that the Contractor agrees that the State will actually suffer damages in the amount fixed for every Day during which Completion of the Work is avoidably delayed beyond the time fixed for Completion in the Contract.

### 7.4 TIME EXTENSIONS

7.4.1 Request for Time Extension: In the event the Contractor requests an extension of Contract Time for unavoidable delay, the Contractor shall furnish such justification and supporting evidence as the State may deem necessary for the determination as to whether the Contractor is entitled to an extension of Contract Time. The Contractor shall submit justification in writing no later than 7 days after the initial occurrence of any delay. The justification shall be based on the Official Progress Schedule as updated at the time of occurrence of the delay or execution of work related to any changes to the scope of the Work. The justification shall include, but is not limited to the following information:

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

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

7.4.3 Time Extensions: For delays that the State agrees are unavoidable, and are Justified in accordance with Subparagraph 7.5.2, the Contractor shall, pursuant to the Contractor's application, be allowed an extension of time beyond the Contract Time. During such extension of time, neither extra compensation for engineering and inspection nor liquidated damages will be charged to the Contractor. Time extensions shall be granted only for delays or changes that extend the Completion date, based on the latest accepted updated version of the Official Progress Schedule. Time extensions for delays and changes shall not exceed one day for each day that the Contract Completion date of the Official Progress Schedule is extended by this change or delay.

### 7.5 DELAYS IN COMPLETION OF THE WORK

7.5.1 Notice of Delays: Whenever the Contractor foresees delay in the continuance and Completion of the Work, or immediately upon the occurrence of any delay which the Contractor regards as unavoidable, the Contractor shall notify the State in writing, in a separate notice of the delay. The Contractor's notice shall include the probability of the occurrences of such delay and its cause in

order that the State may take immediate steps to prevent the occurrence or continuance of the delay. If the delay cannot be prevented, the State will determine whether the delay is unavoidable and to what extent continuance and Completion of the Work is anticipated to be delayed.

- .1 The Contractor shall make no claim for delay not called to the attention of the State in writing, at the time of its occurrence.
- .2 Delay in the continuance of parts of the Work that does not prevent or delay the continuance of other parts of the Work or the Completion of the whole Work within the Contract Time shall be deemed to constitute neither avoidable delays nor unavoidable delays, within the meaning of the Contract. Such delay will be considered Unjustified and no extension to the Contract Time and/or additional compensation will be granted.

7.5.2 **Justified Delay:** Justified Delay in the continuance or Completion of the Work shall include delays which result from causes beyond the control of the Contractor and which could not have been avoided by the exercise of due care and diligence on the part of the Contractor or the Contractor's Subcontractors. Delay in Completion of the Work due to Contract modifications ordered by the State and unforeseeable delays in continuance or completion of the work of other contractors employed by the State may be considered Justified Delays insofar as they interfere with the Contractor's Completion of the Work within the Contract Time. Delays due to normal weather conditions which prevent the Contractor from proceeding with the controlling item on the Official Progress Schedule will not be regarded as a Justified Delay.

- .1 Justified Delay will result in an extension beyond the Contract Time in accordance with Paragraph 7.4.
- .2 Justified Delay that includes Contract modifications ordered by the State may entitle the Contractor to extra compensation in accordance with the provisions of Article 6.
- .3 Delay that results from causes beyond the control of the State and is determined by the State to be the Contractor's responsibility shall be considered Unjustified and will result in no extension in the Contract Time or extra compensation. The State's decision shall be final and conclusive.
- .4 The State will determine the net difference between overlapping or concurrent Justified Delays and Unjustified Delays and whether the Contractor is entitled to any extension in the Contract Time and/or extra compensation. The State's decision shall be final and conclusive.

7.5.3 **Weather Delays:** If weather conditions are the basis for delays in the continuance or completion of the Work, such delay shall be documented by 5 year climatological data obtained by the Contractor, from the nearest nationally recognized reporting station to the Work site, substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. The State will not be responsible for additional costs of the Contractor caused by weather delays, including, but not limited to, costs of extended overhead.

## 7.6 ACCELERATION

7.6.1 The State reserves the right to accelerate the Work of the Contract. In the event that the State directs acceleration, such directive will be only in written form. The Contractor shall keep cost and other Project records related to the acceleration directive separately from normal Project costs and records, and shall provide a written record of acceleration cost to the State on a daily basis.

7.6.2 In the event that the Contractor believes that some action or inaction on the part of the State constitutes an acceleration directive, the Contractor shall immediately notify the State in writing that the Contractor considers the actions an acceleration directive. This written notification shall detail the circumstances of the acceleration directive. The Contractor shall not accelerate work efforts until the State responds to the written notification. If acceleration is then directed or required by the State, cost records referred to above shall be maintained by the Contractor and provided to the State on a daily basis.

7.6.3 In order to recover additional costs due to acceleration, the Contractor shall document that additional expenses were incurred and paid by the Contractor. Labor costs recoverable will be only overtime or shift premium costs or the cost of additional laborers brought to the site to accomplish the accelerated work effort. Equipment costs recoverable will be only the cost of added equipment mobilized to the site to accomplish the accelerated work effort.

## ARTICLE 8 - PAYMENTS AND COMPLETION

8.1 **SCHEDULE OF VALUES:** Before the first payment request, the Contractor shall submit to the State a Schedule of Values allocated to portions of the Work, included with the Contractor's Progress Schedule, and supported by such data to substantiate the accuracy as the State may require. This Schedule of Values, unless objected to by the State, shall be used as a basis for progress payments.

## 8.2 TIMELINESS OF PAYMENTS

8.2.1 Upon receipt of a payment request by the designated State's Representative with updated Progress Schedule from the Contractor, the State will review same to determine if it is a proper payment request based on the approved Schedule of Values. Any payment request determined by the State not to be suitable for payment shall be modified and processed in accordance with the State's assessment or returned to the Contractor for resubmittal. The reason(s) the payment request was deemed unsuitable shall be stated in writing.

8.2.2 Actual payment request submittal date shall be established by the State. Thereafter, the payment request submittal date will be monthly on the same date.

8.2.3 The State will make progress payments pursuant to Public Contract Code, Section 10261.5.

## 8.3 RETENTIONS

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

- .1 The Contractor's payment request shall include the total amount of Work completed to date, including materials as verified by the State, furnished and delivered on the Project site, not used, or in a secure off-site facility, pursuant to Public Contract Code, Section 10261. All materials included in the Contractor's payment requests furnished and delivered on the Project site, not used, and /or in a secure off-site facility shall be used exclusively for the Project. It shall be the sole responsibility of the Contractor to maintain, protect and secure such materials.
- .2 The State shall retain not less than 5 percent of the estimated value of Work completed.

8.3.2 Securities in Lieu of Retention: At the request and expense of the Contractor, and in accordance with Public Contract Code, Section 10263, the Contractor may provide securities in lieu of retention.

8.4 **ASSIGNMENT OF CONTRACT FUNDS:** The Contractor may assign moneys due or to become due under the Contract, through an amendment to the Contract. Any assignment of moneys earned by the Contractor shall be subject to proper retention in favor of the State and to deductions provided for in the Contract. Moneys withheld, whether assigned or not, are subject to being used by the State to the extent permitted by law, for the Completion of the Work in the event that the Contractor is in default of the Contract.

## 8.5 OCCUPANCY BY THE STATE PRIOR TO COMPLETION OF THE WORK

8.5.1 The State reserves the right to occupy all or any part of the Project prior to Completion of the Work, upon written notice. Such occupancy or use is herein referred to as Beneficial Occupancy. In this event, the Contractor shall be relieved of responsibility to the State for liability arising out of such occupancy by the State. Nevertheless, the Builder's Risk Coverage must remain in effect, with either a "consent to occupy" endorsement or a waiver of occupancy endorsement, with no right of recovery against the State.

8.5.2 The State's Beneficial Occupancy does not constitute Completion of the Work or Acceptance of the Work by the State, or any portion of the Work, nor will it relieve the Contractor of responsibility for correcting defective Work or materials found at any time before Acceptance of the Work, as set forth in Article 12 or during the Guarantee period as set forth in Paragraph 3.5, or after the State's acceptance, as set forth in Subparagraph 8.6.1. However, when the Project includes separate buildings, and one or more of the buildings is entirely occupied by the State, then upon written request by the Contractor and by written consent from the State, the Guarantee period will commence to run from the date of the State's occupancy of such building or buildings.

## 8.6 ACCEPTANCE OF THE WORK AND FINAL PAYMENT

8.6.1 When the Contractor considers the Work complete, the Contractor shall request a final inspection in writing to be conducted by the State.

- .1 The Contractor shall request this final inspection only when all Work, including deficient items identified on previous inspections, have been completed and deliverables delivered as noted in the Project Manual, Section 01 77 00.
- .2 The State Representative shall conduct a final inspection within 14 days of receipt of a written request from the Contractor for final inspection.
- .3 If, after the inspection, the State Representative determines that the Work is complete, the State Representative will establish a date for Completion of the Work. The State Representative will then recommend to the Director of the Department of General Services, or the Director's designee, to accept the Work within 60 days from the

date of Completion of the Work.

- .4 Upon Acceptance of the Work by the Director:
  - a) The Retention held by the State will be released, and
  - b) The Contractor will be relieved of the duty of maintaining and protecting the Work.
- .5 If the State determines that the Work is not complete, the Contractor will be notified in writing of deficiencies. After correcting all deficiencies the Contractor shall again initiate the procedures for final inspection as set forth above. If the process of re-inspection and correction of deficiencies goes beyond the Contract Time, the Contractor shall be assessed liquidated damages.
- .6 Determination by the State that the Work is complete or Acceptance of the Work will not bar any Claim against the Contractor pursuant to Paragraph 3.5.

8.6.2 Upon Acceptance of the Work, the State will submit a final statement to the Contractor:

- .1 The final statement shall take into account the Contract Sum as adjusted by any Change Orders, amounts already paid to the Contractor, sums to be withheld for incomplete Work, liquidated damages, stop notices, and for any other cause under the Contract.
- .2 A warrant in the amount of the sum due the Contractor, if any, will be issued.
- .3 If the Contractor owes any amount to the State, the final statement shall serve as an invoice to the Contractor.

8.6.3 The Contractor is required to pay Subcontractors from which a Retention has been withheld within 7 days of receipt from the State of Retention proceeds.

8.6.4 The Contractor has 30 days after receipt of the final statement to file a Claim with the State.

- .1 All Claims shall comply with the requirements of Subparagraph 9.1.2.
- .2 Failure to file a Claim within the 30 day period constitutes a failure to diligently pursue and exhaust the required administrative procedures set forth in the Contract. Such failure shall constitute waiver of additional rights to compensation under the Contract or the right to request Equitable Adjustment.
- .3 If the Contractor does not file a Claim within the 30 day period, the final warrant made by the State will become a complete and final settlement between the State and the Contractor.

8.7 **INTEREST:** Payments due and unpaid under the Contract shall earn interest pursuant to Public Contract Code, Sections 7107 and 10261.5.

## **ARTICLE 9 - DISPUTES AND CLAIMS**

### **9.1 DISPUTE AND CLAIM PROCEDURES**

9.1.1 Dispute as to Contract Requirements: When the Contractor and the State fail to agree whether or not any work is within the scope of Contract requirements, the Contractor shall immediately perform such work upon receipt of a written notice to do so by the State. Within 14 days after receipt of such notice to perform disputed work, the Contractor may submit a written protest to the State, specifying in detail the Contract requirements that were exceeded, and approximate change in cost resulting so that the State will have notice of a potential Claim. Failure to submit a protest within the specified period shall constitute a waiver of any and all rights to an adjustment in Contract Sum and Contract Time due to such work, and the Contractor thereafter shall not be entitled to adjustment of Contract Sum or Contract Time. For any such work that is found to exceed Contract requirements, there shall be an adjustment in Contract Sum and Contract Time on same basis as any other change in the Work.

- .1 The Contractor shall provide supporting data and shall provide and maintain records of costs attributable to Disputes in similar manner as for Change Orders in Article 6.
- .2 The State's Representative and the Contractor's Superintendent will make every reasonable effort to resolve the Dispute prior to proceeding to the next step.
- .3 Either the State or the Contractor may call a special meeting for the purpose of resolving the Dispute. Such a meeting will be held within 7 days of written request thereof.
- .4 If the Dispute as to the Contract Documents has not been resolved, the Contractor shall, within 14 days after the special meeting, take one or more of the following actions:
  - .1 submit additional supporting data requested by the State;
  - .2 modify the initial Dispute; or
  - .3 notify the State that the initial Dispute stands as is.
- .5 If the Dispute has not been resolved within 7 days after the Contractor's action in response to Clause 9.1.1.4, another meeting may be scheduled, at the State's option, with senior management personnel of the State and the Contractor. The purpose of this meeting is to resolve the Dispute prior to proceeding to the action under

Subparagraph 9.1.2.

9.1.2 Claim Submission and Documentation: If a Dispute has not been resolved at the time of the State's final statement, the Contractor shall submit within 30 days a Claim along with detailed documentation required by Subparagraph 9.1.1 for the State's consideration.

- .1 The Contractor shall furnish 3 certified copies of the required Claim documentation. The Claim documentation shall be complete when furnished. The evaluation of the Contractor's Claim will be based upon State records and the Claim documents furnished by the Contractor.
- .2 Claim documentation shall conform to generally accepted accounting principles and shall be in the following format:
  - .1 General Introduction
  - .2 General Background Discussion
  - .3 Issues
    - .1 Index of Issues (listed numerically)
    - .2 For each issue
      - .1 Background
      - .2 Chronology
      - .3 Contractor's position (reason for State's potential liability)
      - .4 Supporting documentation of merit or entitlement
      - .5 Supporting documentation of damages
      - .6 Begin each issue on a new page
  - .4 All critical path method (CPM) schedules, both as-planned, monthly updates, schedule revisions, and as-built along with the computer disks of all schedules related to the Claim.
  - .5 Productivity exhibits (if appropriate)
  - .6 Summary of Issues and Damages
- .3 Supporting documentation of merit for each issue shall be cited by reference, photocopies, or explanation. Supporting documentation may include, but shall not be limited to, General Conditions; General Requirements; technical Specifications; Drawings; correspondence; conference notes; Shop Drawings and submittals; Shop Drawing logs; survey books; inspection reports; delivery schedules; test reports; daily reports; subcontracts; fragmentary critical path method (CPM) schedules or time impact analyses; photographs; technical reports; requests for information; field instructions; and all other related records necessary to support the Contractor's Claim.
- .4 Supporting documentation of damages for each issue shall be cited, photocopied, or explained. Supporting documentation may include, but shall not be limited to, documents related to the preparation and submission of the bid; certified, detailed labor records, including labor distribution reports; material and equipment procurement records; construction equipment ownership costs records or rental records; Subcontractor or vendor files and cost records; service cost records; purchase orders; invoices; Project as-planned and as-built cost records; general ledger records; variance reports; accounting adjustment records; and any other accounting materials necessary to support the Contractor's Claim.
- .5 Each copy of the Claim documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents.
- .6 Should the Contractor be unable to support any part of the Claim, and it is determined that such inability is attributable to falsity of such certification or misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the State as provided for under California Government Code, Section 12650 et seq., known as the False Claims Act.
- .7 The State will render a written decision to the Contractor relative to the Claim. The State's written decision shall be final and binding on the party(ies) but subject to arbitration. The State may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. If there is a Surety and there appears to be a possibility of a Contractor's default, the State may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy.
- .8 All issue items to be included in the Complaint in Arbitration shall be a part of the Claim submitted with the required documentation under this Subparagraph 9.1.2. Issues not included in the Claim under Subparagraph 9.1.2 shall not be considered.

9.1.3 Arbitration: Any Claim filed in compliance with Subparagraph 9.1.2 not resolved by the above procedures shall be resolved by arbitration in accordance with the provisions of Public Contract Code Section 10240 et seq., and Title 1, California Code of Regulations, Section 1300 et seq., unless the State and the Contractor agree in writing to waive arbitration and proceed to litigation. Either party may initiate arbitration by filing a Complaint in Arbitration with the Office of Administrative Hearings in

Sacramento, California, in compliance with the requirements of Public Contract Code Section 10240, et seq., and Title 1, California Code of Regulations, Section 1300 et seq. Arbitration shall be conducted in Sacramento, California.

## 9.2 AUDIT AND ACCESS TO RECORDS

9.2.1 The Contractor shall maintain books, records, documents, and other evidence directly pertinent to the performance of the Work under this Contract, in accordance with generally accepted accounting principles and practices consistently applied. The Contractor shall also maintain all financial information and data used by the Contractor in the preparation or support of any cost submission, including the Contractor's original bid required for this Contract, or any Change Order, Claim, or other request for equitable adjustment, and a copy of the cost summary or information submitted to the State. The State's Representative shall have access upon 24 hours advance written notice, at all times during normal business hours, to such books, records, documents, financial information, and all other evidence for the purpose of inspection, audit, and copying. The Contractor shall, at no cost to the State, provide proper facilities for such access, inspection and copying purposes.

9.2.2 The Contractor agrees to make the provisions of Paragraph 9.2 applicable to this Contract, and Change Orders, Claims, or other requests for Equitable Adjustment affecting the Contract Time or Contract Sum. The Contractor agrees to include the provisions of Paragraph 9.2 in subcontracts and sub-subcontracts or purchase orders, at any tier, and make Paragraph 9.2 applicable to subcontracts, at any tier, in excess of \$10,000, and to make the provisions of Paragraph 9.2 applicable to Change Orders, Claims, and other requests for Equitable Adjustment related to Project performance.

9.2.3 Audits conducted under Paragraph 9.2 shall be in accordance with general accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.

9.2.4 The Contractor agrees to the disclosure of all information and reports resulting from access to records under the provisions of Paragraph 9.2, to the State, and other affected agencies.

9.2.5 Records under the provisions of Paragraph 9.2 shall be maintained and made available during the performance of the Work under this Contract until 3 years past final payment, and until final settlement of all Disputes, Claims, or litigation, whichever occurs later. In addition, those records which relate to any portion of this Contract, to any Change Order, to any Dispute, to any litigation, to the settlement of any Claim arising out of such performance, or to the cost or items to which an audit exception has been taken, shall be maintained and made available until final payment or final resolution of such Dispute, litigation, Claim, or exception, whichever occurs later.

9.2.6 The right of access provisions of Paragraph 9.2 applies to financial records pertaining to this Contract and Change Orders and Claims. In addition, this right of access applies to records pertaining to all contracts, Change Orders, and Contract Amendments:

- .1 To the extent the records pertain directly to Contract performance;
- .2 If there is any indication that fraud, gross abuse, or corrupt practices may be involved;
- .3 If the Contract is terminated for default or convenience.

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

9.2.8 Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement, in regards to the Disabled Veterans Business Enterprise (DVBE) Program.

## ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

### 10.1 SAFETY OF PERSONS AND PROPERTY

10.1.1 The Contractor shall initiate, maintain and supervise -safety precautions and programs in connection with the performance of the Work.

10.1.2 The Contractor shall take precautions for safety and provide protection to prevent damage, injury or loss to:

- .1 Employees working under the Contract and other persons who may be affected thereby;
- .2 The Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 Other property at the Project site, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities, except as otherwise noted or specified.

10.1.3 The Contractor shall comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property, or their protection from damage, injury or loss.

10.1.4 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the State, other Owners (other than the State) and users of adjacent sites and utilities.

10.1.5 The Contractor shall comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities regarding the storage and/or use of explosives or other hazardous materials or equipment necessary for execution of Work. The Contractor shall employ properly qualified personnel for supervision of same.

10.1.6 The Contractor shall remedy damage and loss to property referred to in Clauses 10.1.2.2 and 10.1.2.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.1.2.2 and 10.1.2.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.19.

10.1.7 The Contractor shall not permit any part of the Work or Project site to be loaded so as to endanger its safety.

10.1.8 When conditions of the Work, in the judgment of the State, present risk of injury or death to persons or property damage, the State, may direct the Contractor, at the Contractor's sole expense, to close down the Work and not commence work again until dangerous conditions are eliminated.

10.1.9 The Contractor, at the Contractor's own cost, shall rebuild, repair, restore and make good -damages to any portion of the Work affected by such causes before Acceptance of the Work.

10.2 **EMERGENCIES:** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's sole discretion, to prevent any threatened damage, injury or loss. Additional compensation or extension of Contract Time claimed by the Contractor because of an emergency will be reviewed as provided in Article 6.

### 10.3 **DRUG-FREE WORKPLACE**

10.3.1 By signing the Agreement, the Contractor certifies, under penalty of perjury under the laws of the State of California, that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.), and will provide a drug-free workplace by taking the following actions:

- .1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- .2 Establish a Drug-Free Awareness Program to inform employees about:
  - .1 The dangers of drug abuse in the workplace;
  - .2 The person's or company's policy of maintaining a drug-free workplace;
  - .3 Any available counseling, rehabilitation, and employee assistance programs; and,
  - .4 penalties that may be imposed upon employees for drug abuse violations.
- .3 Provide, as required by Government Code, Section 8355(c), that every employee who works under the Contract will:
  - .1 receive a copy of the company's drug-free workplace policy statement; and
  - .2 agree to abide by the terms of the company's statement as a condition of employment.

## ARTICLE 11 - INSURANCE AND BONDS

### 11.1 CONTRACTOR'S INSURANCE

#### 11.1.1 General Insurance Requirements:

- .1 Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees or subcontractors.
  - .1 Contractor shall furnish the State with original certificates and endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the State before work commences.
  - .2 The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
- .2 Insurance Companies shall be acceptable to Department of General Services (DGS) and Office of Risk and Insurance Management (ORIM). Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI. Exception may be made for the State Compensation Insurance Fund. If self-insured, review of financial information may be required.
- .3 Except as otherwise provided for Builders Risk/Installation Floater under Clause 11.1.2.4, all coverage shall be in force until the Acceptance of the Work by the Director of DGS. If the insurance expires, the Contractor shall immediately provide a new current certificate or be declared in breach of Contract. The State reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of the State. Renewal insurance certificates must be tendered to the State prior to or exactly at the expiration of the previous insurance certificate. There shall be no gap in insurance coverage. This renewed insurance shall be in accordance with the terms of the Contract.
- .4 Insurance policies shall contain a provision that coverage will not be cancelled without 30 days prior written notice to the State.
- .5 The Contractor shall be responsible for any deductible or self-insured retention contained within the insurance.
- .6 In the event the Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to the remedies noted in Article 11.1.1.3 above and any other remedies it may have, remove the Contractor from the work site and/or may terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract. In the event, the State elects to remove the Contractor from the work site, the Contractor will not be entitled to additional days or compensation.
- .7 Any insurance required to be carried shall be primary.
- .8 Minimum Scope of Insurance - Coverage shall be at least as broad as:
  - .1 Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001). The insurance Certificate shall show the GL form number.
  - .2 Insurance Services Office Form Number CA 0001 covering Automobile Liability, "any auto", or "scheduled, hired and nonowned".
- .9 The State reserves the right to require the Contractor to provide the subcontractors' insurance certificates and policies, when so directed by the State.

#### 11.1.2 Insurance Requirements: The Contractor shall furnish to the State evidence of the required insurance as follows:

- .1 Commercial General Liability: The Contractor shall maintain commercial general liability with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage liability combined. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If the aggregate applies "per project or location", it shall so state on the certificate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy shall include the Department of General Services and the State of California, its officers, agents, and employees, as additional insureds, but only insofar as the operations under the Contract are concerned.
  - .1 Additional Insured coverage shall be provided in the form of an insured endorsement (CG 20 10 11 85 r equivalent) to the contractor's insurance policy. The endorsement must be attached to the certificate.

- .2 Deductibles and Self-Insured Retentions (for Commercial General Liability): Any deductibles or self-insured retentions must be declared to and approved by the State. At the option of the State, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State of California and the Department of General Services, its officers, agents, employees and servants or the Contractor shall provide a financial guarantee satisfactory to the State guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- .2 Automobile Liability: The Contractor shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident for bodily injury and property damage. The State is to be covered as additional insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor.
- .3 Workers' Compensation: The Contractor shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract, including special coverage extensions where applicable as required by the State of California. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the State for all work performed by the contractor, its employees, agents and subcontractors. Except for State Fund, all subrogation waiver endorsements shall be on a separate form attached to the certificate. The Contractor shall maintain Employer's Liability coverage of \$1,000,000 per accident for bodily injury or disease.
- .4 Builders Risk/Installation Floater: The Contractor shall maintain in force, at its own expense, Builders Risk/Installation Floater covering the Contractor's labor, materials, and equipment to be used for completion of the Work performed under this Contract against all risks of direct physical loss, excluding earthquake and flood, for an amount equal to the full amount of the Contract Sum.
  - .1 The Contractor agrees as a provision of the contract to waive all rights of recovery against the State.
  - .2 The State of California, Department of General Services shall be a named insured or additional insured under the policy.
  - .3 The policy shall have a loss payable clause in favor of the State of California, Department of General Services.
  - .4 The requirement for maintaining the Builders Risk/Installation Floater shall be in full force at all times during the entire duration of the Contract Time without any gaps, delays or breaks in coverage. This includes Beneficial Occupancy and authorized adjustment for time extensions. Coverage shall be maintained until Completion of the Work, except for delivery of as-built drawings, operation and maintenance manuals, guarantees, warranties, spare parts, reports and certifications as noted in the Closeout Procedures section of the Project Manual and as determined by the State's Representative in writing.

11.1.3 Neither the State, nor any officer or employee of the State, shall be liable for any loss or damage that may happen to the Work, or any part thereof; nor to any of the materials or other items used or employed in performing the Work; nor for injury to any person or persons, either workers or the public, for damage to property from any cause which might have been prevented by the Contractor, or the Contractor's employees or agents, against all of which injuries or damages the Contractor shall properly guard. The Contractor shall indemnify and hold harmless the State, and all officers and employees of the State, from all suits, actions or claims brought for, or on account of injuries or damages received or sustained by any person or persons, by or from the Contractor, the Contractor's employees or agents, in construction of the Work, or by or in consequence of the Contractor's failure to properly guard the same, or by or as a result of any act or omission of the Contractor, the Contractor's employees or agents. In addition to any remedy authorized by law, moneys due the Contractor under the Contract, as considered necessary by the State, may be retained until disposition has been made of such suits, actions, or claims for damages; however, this provision shall not be construed as precluding the State from enforcing any right of offset the State may have to any such moneys.

11.2 **NO PERSONAL LIABILITY:** Neither the State, nor any other officer or employee of the State will be personally responsible for liabilities arising under the Contract.

### 11.3 **PERFORMANCE BOND AND PAYMENT BOND**

11.3.1 The Contractor shall furnish bonds, each in the amount of 100 percent of the Contract Sum, covering faithful performance of the Contract and payment of obligations arising thereunder, as stipulated in the bidding requirements or as specifically required in the Contract Documents.

11.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bond(s) or permit a copy to be made.

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

### **12.1 UNCOVERING AND CORRECTION OF WORK**

12.1.1 If a portion of the Work is covered prior to the State's review, it shall, if requested in writing by the State, be uncovered for the State's observation and replaced at the Contractor's expense without change in the Contract Time.

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

### **12.2 CORRECTION OF WORK**

12.2.1 The Contractor shall promptly correct work rejected by the State or Work failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. The Contractor shall bear the costs of correcting such rejected work, including additional testing and inspections required and compensation for the State's services and expenses made necessary thereby.

12.2.2 Notwithstanding Paragraph 3.5, in the event of an emergency constituting an immediate hazard to the health or safety of any persons or property, the State may undertake, at the Contractor's expense and without prior notice, work necessary to correct such hazardous condition(s) arising from work performed by the Contractor that is not in conformance with the requirements of the Contract Documents.

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

12.2.4 If the Contractor fails to correct nonconforming work, as per Paragraph 3.5, the State may correct the nonconforming work in accordance with Paragraph 2.3. If the Contractor does not proceed with correction of such nonconforming work, within such time fixed by written notice from the State, the State may remove and store the salvable materials articles and/or equipment at the Contractor's expense. If the Contractor does not pay all costs of such removal and storage within 14 days after written notice, the State may, upon 14 additional calendar days written notice, sell such materials articles and/or equipment at an auction or private sale, and shall account for the proceeds thereof, after deducting costs and damages that would have been borne by the Contractor, including compensation for the State's services and expenses made necessary thereby. If the proceeds of a sale do not cover all costs that the Contractor would have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the State.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged Work executed by the State or separate contractors, whether fully completed or partially completed, which is caused by the Contractor's correction or removal of Work that is not in accordance with requirements of the Contract Documents.

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have in the Contract Documents. Establishment of the time period of 1 year, as described in Subparagraph 3.5.1, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with requirements of the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 **ACCEPTANCE OF NONCONFORMING WORK:** If the State prefers to accept any or all of the Work that is not in accordance with requirements of the Contract Documents, the State may do so instead of requiring its correction and/or removal, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment to the Contractor has been made.

## **ARTICLE 13 - MISCELLANEOUS PROVISIONS**

13.1 **GOVERNING LAW:** The Contract shall be governed by the law of the State of California.

13.2 **SUCCESSORS AND ASSIGNS:** The Contract binds the Contractor, the Contractor's partners, successors, assigns and legal representatives to the State in respect to covenants, agreements and obligations contained in the Contract Documents. 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 in the Contract Documents.

13.3 **WRITTEN NOTICE:** Written notice shall be deemed to have been duly served if delivered in person to the individual; or a member of the firm or entity; or to an officer of the corporation for which it was intended; or if delivered to or sent by US mail to the last business address known to the party giving notice.

13.4 **CONTRACTOR'S USE OF COMPUTER SOFTWARE:** The Contractor, by signing the Agreement, certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of the Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

13.5 **INDEPENDENT CONTRACTOR:** Contractor, and the agents, subcontractors, and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.

13.6 **UNENFORCEABLE PROVISIONS:** In the event that any provision of this Contract is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Contract have force and effect and shall not be affected thereby.

13.7 **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State.

13.8 **DOMESTIC PARTNERS:** For Contracts executed or amended after July 1, 2004, the Contractor may elect to offer domestic partner benefits to the Contractor's employees in accordance with Public Contract Code Section 10295.3. However, the Contractor cannot require an employee to cover the costs of providing any benefits which have otherwise been provided to all employees regardless of marital or domestic partner status.

13.9 **AIR OR WATER POLLUTION VIOLATION:** Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

13.10 **CERTIFICATION BY CONTRACTOR OF DISABLED VETERAN BUSINESS ENTERPRISE/SMALL BUSINESS PARTICIPATION**

13.10.1 If, for this agreement, the Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, the Contractor must certify in writing to the State, the total amount the Contractor received under the contract, the name and address of the DVBE firms that participated in the performance of the contract, the amount each DVBE received from the Contractor, that all payments have been made to the DVBE and the actual percentage of DVBE participation achieved. Additionally, if for this agreement, the Contractor made a commitment to achieve 25% Small Business participation, the Contractor must certify in writing to the State, the actual percentage of Small Business participation that was achieved. The Contractor is instructed to comply with the procedures stated in CLOSEOUT PROCEDURES, Section 01 77 00. This certification shall be completed pursuant to Section 999.5 of the Military and Veterans Code (M&VC) and Section 14841 of the Government Code. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

END OF DOCUMENT