

DOCUMENT 00 7253

**GENERAL CONDITIONS
(Design-Build)**

TABLE OF CONTENTS

ARTICLE 1 – GENERAL	1
1.01 Defined Terms.....	1
1.02 Documents.....	1
1.03 Precedence Of Documents.....	1
ARTICLE 2 – SCOPE OF DESIGN-BUILD OBLIGATION	2
2.01 All-Inclusive Design-Build Obligation	2
2.02 Description Of Design Requirements	3
2.03 Owner’s Right To Review	3
2.04 Description Of Construction Obligations.....	4
ARTICLE 3 – REQUIRED INVESTIGATIONS	6
3.01 Required Investigations – All Projects	6
3.02 Required Investigations – Renovation Projects.....	7
3.03 Required Investigations – Excavation And Utilities Relocation Projects	8
ARTICLE 4 – CONTRACT AWARD AND COMMENCEMENT OF THE WORK	8
4.01 Award Of Contract.....	8
4.02 Commencement Of Design and Construction Work.....	9
4.03 Subcontractors	9
ARTICLE 5 – BRIDGING DOCUMENTS, DRAWINGS AND SPECIFICATIONS	10
5.01 General	10
5.02 Intent	10
5.03 Drawing Details	11
5.04 Interpretation of Drawings And Specifications	12
5.05 Checking Of Drawings	12
5.06 Standards To Apply Where Specifications Are Not Furnished	12
5.07 Deviation From Specifications And Drawings.....	12
5.08 Ownership And Use of Drawings, Specifications And Contract Documents – Ownership Of Results/Works For Hire.....	13
ARTICLE 6 – CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS	14
6.01 Owner’s Right To Perform Construction And To Award Separate Contracts.....	14
6.02 Mutual Responsibility	14
6.03 Owner Authority Over Coordination	14
6.04 Owner Furnished Products	15
ARTICLE 7 – OWNER AND PAYMENT	15
7.01 Owner Representative(s).....	15
7.02 Means And Methods Of Design and Construction.....	16
7.03 Receipt And Processing Of Applications For Payment	16
ARTICLE 8 – CONTROL OF THE WORK	16
8.01 Supervision Of Work By Design-Build Entity	16
8.02 Observation Of Work By Owner.....	16
8.03 Delegation To Consultant	17
8.04 Access To Work.....	17

ARTICLE 9 – WARRANTY, GUARANTY, AND INSPECTION OF WORK	18
9.01 Warranty And Guaranty	18
9.02 Inspection Of Work	19
9.03 Correction Of Defective Work	20
9.04 Acceptance And Correction Of Defective Work By Owner	21
9.05 Rights Upon Inspection Or Correction	22
9.06 Samples And Tests Of Materials And Work	22
9.07 Proof Of Compliance Of Contract Provisions	23
9.08 Acceptance	23
ARTICLE 10 – DESIGN-BUILD ENTITY’S ORGANIZATION AND EQUIPMENT	23
10.01 Design-Build Entity’s Legal Address	23
10.02 Design-Build Entity’s Office At The Work Site	23
10.03 Design-Build Entity’s Superintendents Or Forepersons	23
10.04 Proficiency In English	23
10.05 Design-Build Entity’s And Subcontractors’ Employees	24
10.06 Design-Build Entity To List Trades Working	24
10.07 Design-Build Entity’s Use Of The Site	24
ARTICLE 11 – PROSECUTION AND PROGRESS OF THE WORK	24
11.01 Design-Build Entity To Submit Required Schedules	24
11.02 Design-Build Entity To Supply Sufficient Workers And Materials	25
11.03 Design-Build Entity To Protect Underground Facilities	25
11.04 Design-Build Entity To Locate Underground Utilities	26
11.05 Conneciosn To Or Alterations To Existing Conditions And Facilities	27
11.06 Lines And Grades	28
11.07 Design-Build Entity To Not Disrupt Owner Operation	28
11.08 Maintenance, Product Handling, And Protection	29
11.09 Electronic Communications And Information Distribution	28
11.10 Design-Build Entity To Require, Review, Approve And Submit Submittals And Shop Drawings In Addition To Completed Design Drawings	30
11.11 Cost Data	31
11.12 Record Documents	31
ARTICLE 12 – CLAIMS BY DESIGN-BUILD ENTITY	32
12.01 General	32
12.02 Mandatory Procedures For Disputed Work	32
12.03 Action On Claims	34
12.04 Claim Format	34
12.05 Subcontractor Claims	35
12.06 Waiver And Substantial Compliance	35
12.07 Intent	35
ARTICLE 13 – LEGAL AND MISCELLANEOUS	36
13.01 Laws And Regulations	36
13.02 Permits And Taxes	36
13.03 Concealed Or Unknown Conditions	37
13.04 Notice Of Hazardous Waste Or Materials Conditions	37
13.05 Suspension Of Work	38
13.06 Termination Of Contract For Cause	39
13.07 Termination Of Contract For Convenience	40
13.08 Contingent Assignment Of Subcontracts and Design Agreements	42
13.09 Remedies and Contract Integration	43
13.10 Patents	43
13.11 Substitution For Patented And Specified Articles	43
13.12 Interest Of Public Officers	44
13.13 Limit Of Liability	44

13.14	Severability.....	44
13.15	Ownership Of Results/Works For Hire.....	44
13.16	Free Of Liens	45
ARTICLE 14 – MODIFICATIONS OF CONTRACT DOCUMENTS		45
14.01	Alterations, Modifications And Force Account Work.....	45
ARTICLE 15 – TIME ALLOWANCES		46
15.01	Entitlement To Change Of Contract Time.....	46
15.02	Notice Of Delay	48
15.03	Time Extensions And/Or Damages Entitlements For Delays	48
15.04	Liquidated Damages	47
ARTICLE 16 – WORKING CONDITIONS AND PREVAILING WAGES		49
16.01	Use Of Site/Sanitary Rules	49
16.02	Protection Of Work, Persons, Property And Operations.....	50
16.03	Responsibility For Safety And Health	50
16.04	Emergencies	51
16.05	Use Of Roadways And Walkways	51
16.06	Nondiscrimination.....	51
16.07	Prevailing Wages, Monitoring and Enforcement.....	51
16.08	Environmental Controls.....	54
16.09	Shoring Safety Plan	54

[THIS PAGE INTENTIONALLY LEFT BLANK]

DOCUMENT 00 7253

GENERAL CONDITIONS
(Design-Build)

ARTICLE 1 – GENERAL

1.01 Defined Terms

- A. All abbreviations and definitions of terms used and not otherwise defined in this Document 00 7253 are set forth in Section 01 4200 (References and Definitions).
- B. This Document 00 7253 subdivides at first level into Articles, and then into paragraphs, then into subparagraphs.

1.02 Documents

- A. Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Contract Documents shall not be construed to create a contractual relationship of any kind between (1) Bridging Architect or any Owner Representative and Design-Build Entity; (2) Owner and/or its representatives and (except in the event of assignment upon termination) a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials, or equipment; or (3) between any persons or entities other than Owner and Design-Build Entity.
- C. Owner shall, however, be deemed to be an intended third-party beneficiary of subcontracts and purchase orders of any tier, and each such agreement shall so provide.

1.03 Precedence of Documents

- A. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
 - 1. Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
 - 2. Division 00 5000 Series Documents, including but not limited to, Document 00 5200 (Agreement), and terms and conditions referenced therein, and such other documents within the Division 00 5000 Series (i.e., starting at 00 5200 and continuing to 00 5299) and the Division 00 6000 Series Documents (i.e., starting at 00 6000 and continuing to 00 6999);
 - 3. Division 00 7300 Series Documents, including but not limited to, Supplementary Conditions, and any Division 00 8000 Series Documents (i.e., starting at 00 8000 and continuing to 00 8999);
 - 4. Division 00 7200 Series Documents, including but not limited to, Document 00 7253 (General Conditions-Design-Build);
 - 5. Division 01 (General Requirements) Series Specifications;
 - 6. Bridging Documents;
 - 7. Architectural Program Statement;
 - 8. Space Design Criteria and Data Sheets;
 - 9. Drawings;
 - 10. Technical Specifications starting with Division 02 Series and continuing to Division 33 Series;
 - 11. Written numbers over figures, unless obviously incorrect;
 - 12. Figured dimensions over scaled dimensions;
 - 13. Schedules when identified as such will control over all other portions of the Drawings;

14. Specific Notes will control over all other notes and all other portions of the Drawings except Schedules;
 15. Large-scale drawings over small-scale drawings;
 16. Specific details over standard or typical details.
- B. The Bridging Documents are considered complimentary in establishing design intent and Owner requirement. In case of conflict, the higher quality or quantity will govern.
- C. Any conflict between Drawings and Specifications above Division 1 will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- D. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.
- E. In the event the Specifications include divisions above Division 33 (e.g., Division 34 and above), then such divisions shall be included within the Contract Documents unless identified otherwise.

ARTICLE 2 – SCOPE OF DESIGN-BUILD OBLIGATION

2.01 All-Inclusive Design-Build Obligation

- A. Except as may be specifically limited and/or excluded in Document 00 5201 (Bridging Documents) and Section 01 1100 (Summary of Work), Design-Build Entity shall provide a complete, legally operable, functional and maintainable Project, in accordance with the Contract Documents, including providing, furnishing, and performing all necessary design, engineering, architectural and construction services and providing and furnishing all necessary supplies, housing, materials and equipment, and all necessary supervision, labor, and services required for the engineering, design, procurement, quality assurance and inspection, construction, installation, startup, checkout, testing, site cleanup and for the training of Owner's personnel, all in conformity with the requirements, legal requirements, criteria, performance guarantees, and warranties set forth in the Contract Documents, for a complete, full and legally operable Project in full conformance with Contract requirements. The signature and seal of a licensed engineer(s) or architect(s) shall be obtained as necessary for compliance with legal requirements.
- B. Design-Build Entity's professional architectural and engineering services shall include without limitation, all architectural services and all civil, electrical, fire protection, mechanical, structural engineering, landscape, cost estimating, planning and coordination services required to complete the Project and to perform Design-Build Entity's obligations under the Contract Documents ("Services"). Design-Build Entity and its Designers and other consultants shall possess all necessary training, licenses and permits to perform the Services, and performance of the Services shall conform to the standard of practice of a professional with substantial experience and expertise in performing professional services of like nature and complexity of the Services. Design-Build Entity's licensed architectural and engineering Designers shall owe a duty of care to Owner in performing their architectural and engineering portions of the Services.
- C. No construction or alteration of any Owner facility under the Contract Documents shall commence prior to the receipt of the written acceptance of the final Drawings and Specifications from the Owner and, as required, approvals from County and City Fire Marshals (if applicable) and all authorities having jurisdiction. Design-Build Entity shall design and construct complete, operational, a fully functional and legally operable project, in full compliance with all applicable laws, codes and standards (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems. Design-Build Entity shall have full responsibility to manage, coordinate and comply with requirements of authorities

with jurisdiction, including but not limited to, jurisdiction's City Fire Marshal, and Owner's fire and building officials.

- D. Without limiting any other provision of Contract Documents, Design-Build Entity must design and construct the Project to enable conformance with operational, fire and life safety, and applicable standards contained in Titles 15 and 24, California Code of Regulations (CCR).

2.02 Description of Design Requirements

- A. Without limiting the generality of the foregoing paragraphs, Design-Build Entity and its Designers shall prepare preliminary designs, interim designs, complete designs, engineering, working drawings, shop drawings and generate drawings and/or engineering analysis setting forth in detail the specifications and requirements for the purchasing and procurement of the services, materials and equipment, all necessary utilities and water supply for construction, and for the construction of the complete, operational, legally operable and fully functional Project and shall furnish the services of all necessary supervisors, architects, engineers, designers, draftsmen, and other personnel necessary for the preparation of those drawings and specifications required for the Work. The design shall include all disciplines necessary to design and engineer the Project, including but not limited to, architectural, civil, structural, mechanical, electrical, instrumentation and control work.
- B. Design-Build Entity shall coordinate the services of all architectural and engineering disciplines and other Designers involved in completing the Work, including without limitation, conducting design coordination meetings with Designers in the frequency necessary for Design-Build Entity to meet its design coordination obligations herein and all other provisions of Contract Documents.
- C. All professional services shall be performed with the degree of care, skill, and responsibility customary among such licensed personnel with substantial experience and expertise in work similar to the Work of this Contract.
- D. Design-Build Entity and its Designers' design shall provide that all surfaces, fixtures and equipment are readily accessible for maintenance, repair or replacement by ladders, power lifts, cat walks, and the like without exceeding the design loads of the floors, roofs, ceilings, and that such access is in conformance with Cal OSHA. All drawings, specifications, structural and electrical design calculations, site data, cost estimates and any other deliverable required by State or Federal law shall comply with State and federal standards. Design-Build Entity shall comply with any other requirements of public or private authorities with jurisdiction over the Project, the Drawings and Specifications, and tie-ins to the Project. Design-Build Entity shall comply with the applicable standard of care when preparing Drawings and Specifications to comply with applicable building codes, ordinances, statutes, laws, standards, governmental regulations and private restrictions, including necessary tie-ins, applicable to the Project and the Services, including, but not limited to, those listed in this Contract, all environmental, energy conservation, energy tie-in, and disabled access requirements, regulations and standards of the Owner (if applicable) and all other authorities having jurisdiction over the Project.
- E. Design-Build Entity shall attend meetings with the community, representatives of Owner, interested parties governmental entities, as necessary, and provide information and diagrams to fully describe the intended design and the Project.

2.03 Owner's Right to Review

- A. Owner at all times shall have the right (but not the duty) to review Design-Build Entity's design work, whether performed by Design-Build Entity or Designers of any tier, and whether in a final or preliminary form, to determine progress and conformance to the requirements of Contract Documents.

- B. In the event Owner should ever dispute the conformance of any design work (at any stage) with the intent of the Bridging Documents, then Owner's determination shall control and Design-Build Entity and/or its Designers shall perform the disputed design services and/or work to completion in accord with the Owner's determination. Design-Build Entity shall, however, retain its rights under the procedure in this Document 00 7253 (General Conditions) Article 12 for claims and disputes, and Design-Build Entity may under that procedure, in its name, advance any claim of any Designer.

2.04 Description Of Construction Obligations

- A. Without limiting the generality of the foregoing paragraph, Design-Build Entity shall provide, at a minimum, the following Services and materials and equipment, provided, however, that these sections shall not be construed in any way to limit Design-Build Entity's obligations hereunder to design, engineer, furnish, construct, checkout, startup, and test a complete, operable and maintainable Project in accordance with the provisions of the Contract Documents.
- B. Design-Build Entity shall furnish the services of all personnel, including supervisors, engineers, designers and draftsmen necessary for the Work. Except as otherwise provided in Contract Documents, Design-Build Entity shall obtain, at Design-Build Entity's expense, all governmental and private approvals, licenses, and permits required to complete the Work, including but not limited to, all aspects of coordination and approvals of any type from state and/or local agencies and authorities with jurisdiction, for example and not by way of limitation, County and City Fire Marshal, and Owner's building officials.
- C. Design-Build Entity shall provide, install and complete as specified and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing (except that testing to be provided by the Owner), site cleanup, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Project including required permanent interconnection for electricity, and any other utilities and demonstration of fully satisfactory operation of all systems and equipment.
- D. Design-Build Entity shall provide all equipment and materials and furnish the services of all supervision, buyers, inspectors (other than any Owner-engaged-inspector acting solely on Owner's behalf), expeditors, and other personnel necessary to procure all materials and equipment for the construction of the Project. Design-Build Entity shall provide, install, complete and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction utilities (including all water, power and sanitary facilities), transportation (including road or other infrastructure and improvements on and off the Site), customs clearance, quality assurance, and other facilities and services (including any temporary or consumable materials, water, fuels, and electricity necessary for the proper execution and completion of the Work, including any of the utilities, as required). Design-Build Entity shall maintain all materials and equipment in accordance with manufacturer's requirements while such materials and equipment are in transit or care and custody of the Design-Build Entity. Design-Build Entity shall supervise and direct the Work, and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to design and construct the complete, operational, legally operable and fully functional Project and appurtenant projects described in the Contract Documents. Without limiting the generality of the foregoing, Design-Build Entity shall provide any and all construction required for the temporary upgrading of any public or private road which is inadequate for the performance of the Work, temporarily relocate any interference in public or private roadways necessary for the transportation of equipment and materials, and repair all excessive damage to, or deterioration (other than fair wear and tear) of, any public or private road which arises out of the performance of the Work.
- E. Design-Build Entity shall provide all Project-related insurance (See Document 00 7316 – Supplementary Conditions – Insurance and Indemnification – Design Build), except as otherwise

provided by Contract Documents.

- F. Design-Build Entity shall supervise and direct Work, and shall furnish the services of all supervisors, foremen, skilled and unskilled labor, quality control and all other personnel in sufficient quantities and with sufficient skills necessary to perform the Services in accordance with the Contract Documents. At Owner's request, Design-Build Entity shall replace, at Design-Build Entity's expense, any individual if it is determined by Owner and Design-Build Entity that such individual's continued presence would jeopardize the quality or timely completion of the Work. Whenever required by applicable laws or the Contract Documents, Design-Build Entity shall employ licensed personnel as necessary to perform engineering, design, architectural, or other professional services in the performance of the Work.
- G. Design-Build Entity shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract Documents, and Owner shall not be responsible for or exercise any control over the actions or omissions of Design-Build Entity, any supplier, or any of their employees or agents performing any of the Work or Design-Build Entity's warranty obligations. Design-Build Entity shall prosecute the Work continuously and diligently and complete the Work in accordance with all requirements of the Contract Documents.
- H. Design-Build Entity shall coordinate ingress and egress to and from the Site so as to minimize disruption to the Work and to traffic in the vicinity of the Site. DBE shall ensure ingress and egress to adjacent facilities is not impeded or blocked, unless previously addressed or discussed with Owner and noticed to affected parties. Hours of work affecting restricted access to adjacent businesses or residents shall be between 9 a.m. – 4 p.m.
- I. The Design-Build Entity shall be solely responsible for developing a construction phasing strategy this acceptable to the County, and that allows for continuous 24/7 operations of the existing fire station. The DBE construction phasing strategy shall also address the temporary relocation of all equipment, supplies and fire fighting apparatus, and shall include provision acceptable to the County for protecting items from the weather and construction activities, including the incorporation of security measures. The DBE will also be responsible for providing all temporary utilities, including temporary power required to facilitate the construction phasing and cut-over of the building systems.
- J. Design-Build Entity shall be responsible for the layout of the Work and shall perform all necessary surveying during the construction of the Projects. Design-Build Entity shall take field measurements, verify all field conditions, and carefully compare all of the foregoing and other available information with Contract Documents. The accuracy of all grades, elevations, alignments, and plumbing of any structures and the location of all facilities described in the final plans and specifications shall be the responsibility of the Design-Build Entity. Design-Build Entity shall preserve all permanent survey construction monuments and benchmarks. Prior to the final completion date, Design-Build Entity shall accurately correct all Project documents to as-built conditions and deliver to Owner these as-built documents in accordance with the Contract Documents. Such documents shall show the location of the Project and shall show all related easements, improvement, utilities and rights of way above and below ground, on and off the Site, as of the date of delivery of such documents. Such documents shall also show the dimensions and the distances to the nearest benchmarks.
- K. Design-Build Entity shall provide appropriate installation and startup representatives from suppliers of major equipment and all necessary supervising personnel, all equipment, tools, construction and temporary material, and all labor for checkout, startup and testing. Design-Build Entity shall be responsible for checkout, startup and testing of the Project and shall carry out those activities in accordance with all applicable codes and legal requirements, startup and checkout requirements and procedures as set forth in the Contract Documents or established by any Owner-engaged Commissioning Agent.

- L. While Design-Build Entity shall provide all required safety and warning signs, and wage notices, Design-Build Entity may not post any other signs without Owner's express written consent.
- M. Design-Build Entity shall be responsible for Site security until Final Completion, or termination of the Work. Such security shall include, to the extent reasonably necessary, barriers, lighting, controlled access, and other measures required to prevent vandalism, theft, and danger to personnel, the Project, materials and equipment.
- N. Design-Build Entity shall prepare or cause to be prepared and shall furnish to Owner all drawing logs, drawings, manufacturer's drawings and data, supplier manuals and operating manuals in accordance with the Contract Documents.
- O. Design-Build Entity shall ensure that Owner and its representatives shall, at all times, have access to the Project for all purposes. In order to allow Owner and its representatives to be present, Design-Build Entity shall give Owner at least three (3) days advance notice of any system or equipment checkout or testing. If Owner desires access to any places where work is being performed or from which materials and equipment are being obtained, Design-Build Entity shall provide or arrange reasonable access thereto and shall provide Owner reasonable advanced notice of any factory tests or other off site tests. Design-Build Entity shall maintain the Site in a safe condition to permit Owner and any person authorized in writing by Owner to inspect and review all field work during working hours, including materials and equipment, installation, calibration, startup and testing.
- P. As part of the procurement of equipment, to be determined by Owner and Design-Build Entity during Project Design, Design-Build Entity shall provide to Owner a list of recommended operating spare parts, which list shall include all relevant costs and ordering lead time information with terms and conditions. If requested, Design-Build Entity shall procure such operating spare parts from Suppliers, as requested by Owner, on behalf of Owner. The cost of such operating spare parts shall be covered by Contract Modification.
- Q. Design-Build Entity shall perform all services and activities necessary to comply with all applicable governmental regulations and requirements and to obtain all applicable governmental reviews and approvals for and regarding the Work.
- R. When any equipment or portion of the Work is damaged, Design-Build Entity shall inform Owner as soon as possible and provide Owner a damage report detailing such occurrence, any required repairs, and the estimated duration of such repairs.
- S. Except for special inspections performed by Owner, Design-Build Entity shall provide to Owner all tests and measurements, laboratory analyses, and reports made or prepared in connection with the Work.
- T. Design-Build Entity's progress schedules shall be in accordance with Section 01 3200 Progress Schedules and Reports.
- U. Design-Build Entity shall be responsible for all labor relations matters relative to the Work on the Site and shall at all times use all reasonable efforts to maintain harmony among all workers employed in connection with the Work on the Site.

ARTICLE 3 – REQUIRED INVESTIGATIONS

3.01 Required Investigations –All Projects

- A. For all Projects, and prior to submitting a Proposal and as a condition of executing Document 00 5200 (Agreement), Design-Build Entity shall make reasonable efforts to investigate fully the

Work of the Contract per the requirements of this Article.

- B. Design-Build Entity shall visit the Site, examine thoroughly and understand fully the nature and extent of the Contract Documents, Work, Site, locality, actual conditions and as-built conditions, and all other information made available before executing the Work Authorization. Design-Build Entity's investigation shall include, without limitation, requesting and thoroughly examining of all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, product specification(s) or reports, made available by Owner for contracting purposes or during Design-Build Entity's pre-construction services, of existing above ground and (to the extent applicable) below ground conditions (together, "Existing Conditions Data"), including, as applicable, Underground Facilities, geotechnical data, as-built data, utility surveys, record documents of all types, hazardous materials surveys, or similar materials which may appear in the Contract Documents, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Design-Build Entity and safety precautions and programs incident thereto.
- C. Also, Design-Build Entity shall: (i.) completely and thoroughly correlate all Existing Conditions Data, and shall provide Owner with prompt written notice of all conflicts, errors, ambiguities, or discrepancies of any type, that it discovered in or among the Contract Documents and the Existing Conditions Data, and (ii.) subject to Owner's approval conduct any such additional or supplementary examinations, investigations, explorations, tests, studies and data compilations, concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Design-Build Entity and safety precautions and programs incident thereto or which Design-Build Entity deems necessary to determine that it could perform and furnish the Work in accordance with the time, price and other terms and conditions of Contract Documents.
- D. By executing Document 00 5200 (Agreement), Design-Build Entity agrees that Owner has responded to and resolved any conflict, error or ambiguity in the Existing Conditions Data and Contract Documents that Design-Build Entity has brought to Owner's attention. During performance of the Contract, Design-Build Entity will be charged with knowledge of all information that it should have learned in performing its required pre-construction services and pre-construction investigations and other obligations, and shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Design-Build Entity should have known as a part of this Work. Design-Build Entity shall be responsible for the resultant losses, including, without limitation, the cost of correcting Defective Work.
- E. In performing the Work of the Contract Documents, Design-Build Entity shall rely on the results of its own independent investigations of existing conditions and not on information provided by Owner. Design-Build Entity shall conduct such further investigations of existing conditions as are necessary for Design-Build Entity to perform the Services and shall advise Owner of any further design or other services necessary to complete the Project.

3.02 Required Investigations—Renovation Projects

- A. For Projects involving renovation of existing facilities, Design-Build Entity shall verify by independent investigation all such aboveground and as-built conditions, and bring any discrepancies to Owner's attention through written question. In executing Document 00 5200 (Agreement), Design-Build Entity shall rely on the results of its own independent investigation and shall not rely on Owner-supplied information regarding aboveground conditions and as-built conditions, and Design-Build Entity shall accept full responsibility for its verification work sufficient to complete the Work as intended.

- B. Regarding aboveground and as-built conditions shown on the Contract Documents or supplied by Owner, such information has been compiled in good faith, however, Design-Build Entity must independently verify such information. Design-Build Entity shall also consider fully the fact that information supplied regarding existing above ground and as-built conditions at or contiguous to the Site is in many cases based on information furnished to Owner by others (e.g., the prior owner or builders), and that due to their age or their chain of custody since preparation, may not meet current industry standards for accuracy. Owner does not expressly or impliedly warrant or represent that information as to aboveground conditions or as-built conditions indicated in the Contract Documents or supplied by Owner, is correctly shown or indicated, or otherwise complete for construction purposes.

3.03 Required Investigations—Excavation and Utilities Relocation Projects

- A. For Projects involving excavation or relocation of existing utilities, Design-Build Entity shall make reasonable efforts to verify information regarding Underground Facilities, including but not limited to, requesting additional information or verification of information as necessary.
- B. Because of the nature and location of Owner and the Project, the existence of Underground Facilities is deemed inherent in the Work of the Contract, as is the fact that Underground Facilities are not always accurately shown or completely shown on as-built records, both as to their depth and location. Design-Build Entity shall, therefore, take care to note the existence and potential existence of Underground Facilities, in particular, above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities. Design-Build Entity shall carefully consider all supplied information, request additional information Design-Build Entity may deem necessary, and visually inspect the Site for above ground indications of Underground Facilities (such as, for example not by way of limitation, the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site). Design-Build Entity shall also consider fully the fact that information supplied regarding existing Underground Facilities at or contiguous to the Site is in many cases based on information furnished to Owner by others (e.g., the builders of such Underground Facilities or others), and that due to their age or their chain of custody since preparation, may not meet current industry standards for accuracy.

The DBEs proposing on this project are warned that the Site contains hazardous substances known to pose serious personal health and other related dangers. The successful DBE shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection therewith. DBEs shall be responsible for preparing and maintaining a Health and Safety Plan that shall govern the successful removal of any hazardous materials prior to demolition of existing structures.

- C. Design-Build Entity shall also consider local underground conditions and typical practices for Underground Facilities, either through its own direct knowledge or through its subcontractors, and fully consider this knowledge in assessing the existing information and the reasonableness of its reliance.
- D. Regarding subsurface conditions other than Underground Facilities shown on the Contract Documents or otherwise supplied by Owner, Design-Build Entity may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated in the Contract Documents. Owner is not responsible for the completeness of any subsurface condition information, Design-Build Entity's conclusions or opinions drawn from any subsurface condition information, or subsurface conditions that are not specifically shown. (For example, Owner is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is

shown.)

ARTICLE 4 – CONTRACT AWARD AND COMMENCEMENT OF THE WORK

4.01 Award of Contract

- A. Owner will make its Conditional Award of Contract by issuing a Notice of Conditional Award.
- B. As a condition to Owner signing Document 00 5200 (Agreement), however, Design-Build Entity shall deliver to Owner the executed agreements, forms, bonds and insurance documents required by Document 00 1119 (Request for Proposals) and Document 00 4200 (Proposal Form) in the required quantities and within the required times.
- C. Bonds shall specifically include:
 - 1. Corporate surety bond, in the form of Document 00 6113.13 (Construction Performance Bond), in the penal sum of 100% of the Design-Build Entity's Proposal as accepted, to guaranty faithful performance of the Work; and
 - 2. Corporate surety bond, in the form of Document 00 6113.16 (Construction Labor and Material Payment Bond), in the penal sum of 100% of the Design-Build Entity's Proposal as accepted, to guaranty payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in performance of Contract Documents.
- D. Sureties on payment and performance bonds shall be satisfactory to Owner. Corporate sureties on these bonds and on bonds accompanying Proposals shall be duly licensed to do business in the State of California and shall have an A.M. Best Company financial rating of A, VIII or better.
- E. Document 00 7316 (Insurance and Indemnification) incorporated herein by this reference, provides insurance requirements.

4.02 Commencement of Design and Construction Work

- A. When Design-Build Entity and Owner have signed the Contract Documents and all other applicable conditions have been satisfied, Owner will serve a Notice to Proceed With Design Services (Document 00 5501) on Design-Build Entity to that effect. When Design-Build Entity has obtained all required approvals (including without limitation from Owner and County Fire Marshal) to begin actual on-Site construction of all or a portion of the Work, Owner will serve a Notice to Proceed with Construction (Document 00 5500) on Design-Build Entity to that effect. Any Notice to Proceed shall be issued by depositing it in a post office or post office box regularly maintained by United States Postal Service in a pre-paid wrapper directed to Design-Build Entity at legal address or (at Owner's option) by delivery by other means authorized for notices under the Contract documents at legal address. No construction Work may be performed at the Site until Owner and County Fire Marshal has approved Construction Documents and Owner has issued Notice to Proceed with Construction.
- B. The start date for Contract Time shall be on the date indicated in the applicable Notice to Proceed. If no date is indicated, the start date for Contract Time shall be the 15th Day from the date that Design-Build Entity receives, by hand or overnight delivery or facsimile transmission, Owner's written Notice to Proceed, unless the Notice to Proceed is served by mail only, in which case the start date for Contract Time shall be the fifth Day following the mailing date. The total number of Days for completion of the Work under the Contract Documents shall be as provided in Document 00 5200 (Agreement).

4.03 Subcontractors

- A. All subcontracts that were not listed by the Design-Build Entity in its Proposal shall be awarded by

the Design-Build Entity in accordance with the Contract Documents.

- B. Design-Build Entity shall, at a minimum, do all of the following:
1. Provide public notice of the availability of work to be subcontracted.
 2. Provide a fixed date and time on which the subcontracted work will be awarded.
 3. If more than one subcontractor that was not listed by the Design-Build Entity in its Proposal is to be awarded a subcontract by the Design-Build Entity, the Design-Build Entity may provide multiple listing and award dates as necessary for completion of the Project Work, according to the Subcontractor Procurement Plan developed in accordance with Section 01 1102 (Summary of Work – Design-Build Contractor Services).
 4. With Owner's concurrence and in compliance with all applicable legal, regulatory and professional standards and Contract Documents requirements), Design-Build Entity may release design packages for construction to properly awarded design-build subcontractors prior to completion of Construction Documents. Owner's consent shall not be unreasonably withheld, provided, however, Design-Build Entity and its Subcontractors must complete Construction Documents and details under procedures permitting Owner rights of review and acceptance of final details sufficient to assure compliance with design intent.
- C. In any contract between Design-Build Entity and a Subcontractor, and in a contract between a Subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the Contract Documents (not greater than 5%). If Design-Build Entity provides written notice to any Subcontractor who is not a member of Design-Build Entity's team in its Proposal, prior to or at the time the Subcontractor's bid is requested, that a bond may be required and the Subcontractor subsequently is unable or refuses to furnish a bond to Design-Build Entity, then Design-Build Entity may withhold retention proceeds in excess of the percentage specified in the Contract Documents from any payment made by Design-Build Entity to the Subcontractor.
- D. Design-Build Entity shall provide Owner with additional versions of Document 00 4330 (Subcontractors List) as follows:
1. Within fourteen (14) days of award of any subcontract, a Document 00 4330 identifying all Subcontractors not included on a prior Document 00 4330; and
 2. Before commencing any construction Work, a complete Document 00 4330 identifying all Subcontractors, however and whenever procured.
- E. All Subcontractors bidding on subcontracts shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code. Without limiting the forgoing, Design-Build Entity shall not substitute any other person or firm in place of any Subcontractor listed in the Proposal. Consistent with the Subcontractor Listing Law, Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other Design-Build Entity without Owner's written approval. At Owner's request, Design-Build Entity shall provide Owner with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.
- F. Subcontract agreements shall preserve and protect the rights of Owner under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Design-Build Entity shall require the Subcontractor's written agreement (1) to be bound to the terms of Contract Documents and (2) to assume vis-à-vis Design-Build Entity all the obligations and responsibilities that Design-Build Entity assumes toward Owner under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Design-Build Entity is subject under the Contract Documents.)
- G. Design-Build Entity shall provide for the assignment to Owner of all rights any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guaranties relating to the Work performed by the Subcontractor under the Contract Documents.

- H. All Subcontractors performing Work on the Project Site, whether included in Design-Build Entity's Proposal or otherwise, must have an Experience Modification Rate (EMR) of 1.00 or less.

ARTICLE 5 – BRIDGING DOCUMENTS, DRAWINGS AND SPECIFICATIONS

5.01 General

- A. Bridging Documents supplied under Document 00 5201 establish the design intent and the minimum requirements for the quality and type of materials to be used in the Project. Bridging Documents and any addenda will be used to confirm that Design-Build Entity-prepared Design Development and Construction Documents are in conformance with the design intent and the minimum requirements for the quality and type of materials to be used in the Project.
- B. Design-Build Entity-prepared Construction Documents are the Drawings and Specifications for construction. Subject to all provisions of Contract Documents, Design-Build Entity shall construct the Project in accordance with those Drawings and Specifications. The warranty and other requirements in the Contract Documents (including Bridging Documents), however, shall constitute the minimum design, material, quality, workmanship and other standards required under the Contract Documents, and shall have higher precedence in case of inconsistency with the Design-Build Entity prepared Construction Documents.
- C. Where Owner has specified equipment or materials, Design-Build Entity shall provide the specified equipment or materials (regardless of any Design-Build Entity contention that proposed equipment or materials meet or exceed Owner's requirements).
- D. Design-Build Entity shall be fully responsible for all design errors, including without limitation all errors, inconsistencies and omissions in the Design-Build Entity-prepared Construction Documents, and shall report any such matter to Owner promptly following discovery. Design-Build Entity has full "turnkey" responsibility to deliver the fully functional, operational Project described in Document 00 5201 (Bridging Documents), as referenced in the Contract Documents.

5.02 Intent

- A. Final Drawings and Specifications shall describe a functionally complete and operable Project (and all parts thereof) to be constructed in accordance with the requirements of Contract Documents and in compliance with all applicable codes and standards. Unless expressly excluded elsewhere in the Contract Documents, Design-Build Entity shall perform any work, provide services and furnish any materials or equipment that may reasonably be inferred from the requirements of Contract Documents or from prevailing custom or trade usage as being required to produce this intended result. Design-Build Entity shall furnish all permits, temporary controls, machinery, tools, facilities, employee training and testing, hoisting facilities, shop drawings, storage, testing, security, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, documents, reports, agreements and all general conditions, seismic requirements, general requirements and incidentals and any other items required or necessary to timely and fully complete such Work described and the results intended by Contract Documents and, in particular, Drawings and Specifications and (as applicable) Bridging Documents.
- B. Design-Build Entity shall interpret Bridging Documents words or phrases used to describe Work (including services), materials or equipment that have well-known technical or construction industry or trade meaning in accordance with that meaning. Bridging Documents' intent specifically includes the intent to require construction that complies with all applicable laws, codes and standards.
- C. Divisions and Specification Sections and the identification on any Bridging Documents shall not

control Design-Build Entity in preparing final Construction Documents, dividing Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.

5.03 Drawing Details

- A. A typical or representative detail on Drawings shall constitute the standard for workmanship and material throughout corresponding parts of Work, as long as it otherwise complies with all Bridging Documents requirements. Where necessary, and where reasonably inferable from Drawings, Design-Build Entity shall adapt such representative detail for application to such corresponding parts of Work. If Owner requests, the details of such adaptation shall be subject to prior approval by Owner. Repetitive features shown in outline on Drawings which otherwise comply with Bridging Documents shall be in exact accordance with corresponding features completely shown.

5.04 Interpretation Of Bridging Documents

- A. Should any discrepancy appear or any dispute arise as to the importance of anything contained in Bridging Documents, or should Design-Build Entity have any questions or requests relating to Bridging Documents or any Contract Document for which Owner is responsible under the Contract Documents, Design-Build Entity shall refer the matter to Owner, in writing. Owner will issue with reasonable promptness written responses, clarifications or interpretations as Owner may determine necessary, which shall be consistent with the intent of and be reasonably inferable from Contract Documents. Such written clarifications or interpretations shall be binding upon Design-Build Entity. If Design-Build Entity believes that a written response, clarification or interpretation justifies an adjustment in Contract Sum, Design-Build Entity shall give Owner prompt written notice as provided in Section 01 2600 (Modification Procedures and Pricing of Changed Work). If the parties are unable to agree to the amount or extent of the adjustment, if any, then Design-Build Entity shall perform the Work in conformance with Owner's response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article 12 of this Document 00 7253.

5.05 Checking Of Drawings

- A. Before undertaking each part of construction Work, Design-Build Entity shall carefully study and compare Contract Documents and check and verify pertinent figures shown in the Contract Documents and all applicable field measurements. Design-Build Entity shall be responsible for all errors, except for those attributable to Contract Documents for which Owner is responsible and which could not have been avoided even by such comparison. Unless obviously incorrect or otherwise expressly provided, figures shown on final Drawings shall be followed; Design-Build Entity shall not scale measurements. Design-Build Entity shall promptly report to Owner, in writing, any conflict, error, ambiguity or discrepancy that Design-Build Entity may discover in any Contract Document, along with (1) an indication of whether Owner or Design-Build Entity is responsible for that Contract Document, and (2) Design-Build Entity's proposed resolution.

5.06 Standards To Apply Where Specifications Are Not Furnished

- A. Wherever in the Contract Documents (including without limitation Bridging Documents), or in any orders given by Owner, it is provided that Design-Build Entity shall furnish materials or manufactured articles or shall do work for which no detailed or performance specifications are set forth, and Document 00 5201 (Bridging Documents) does not otherwise establish the applicable standard, the following general specifications shall apply.
- B. Design and construction shall meet the standards required to provide Owner with a first class, fully functional Project, designed and constructed in a manner consistent with the standards, equipment, materials and design, found in comparable, first class, fully functional, contemporary

facilities of similar type and function.

- C. Materials or manufactured articles shall be of the grade, in quality and workmanship, consistent with the requirements of this Contract and obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work for which no detailed specifications are set forth herein shall conform to the requirements of this subparagraph.

5.07 Deviation From Specifications And Drawings

- A. Design-Build Entity shall perform Work in accordance with Drawings and Specifications. Deviations from Drawings and from the dimensions therein given, or from the Specifications, whether or not error is believed to exist, and whether or not error is responsibility of Design-Build Entity and its Designers, shall be made only when approved in writing by Owner and, if required, by other authority having jurisdiction. Design-Build Entity may deviate from Drawings or the dimensions given in the Drawings, and may deviate from the Specifications, only upon Owner's advance written approval of the proposed deviation, either by Change Order, Change Directive or Supplemental Instruction. Design-Build Entity will be responsible for all additional Owner costs relating to such matters, including, but not limited to, any additional costs of Bridging Architect.
- B. Change Orders changing the approved Drawings and Technical Specifications are subject to approval (i) by Owner as provided in Article 14 of this Document 00 7253 and Section 01 2600 (Modification Procedures and Pricing of Changed Work).
- C. Design-Build Entity's design and construction experience was a material factor in its selection as Design-Build Entity for this Project. Design-Build Entity shall rely on its experience and proactively cooperate, coordinate and schedule (as necessary) Change Requests, submittals, field questions (if any), inspections, and document assembly, to facilitate the prompt and efficient use of the Change Order and Change Directive procedure as necessary to prevent delay in actual field construction.

5.08 Ownership And Use Of Drawings, Specifications And Contract Documents -- Ownership Of Results/Works for Hire

- A. Any interest (including copyright interests) of Design-Build Entity or its Subcontractors or consultants, including Designers (together, "Sub-consultants"), in studies, reports, memoranda, computational sheets, Construction Documents, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes, and any other original works of authorship (including electronic media) created by Design-Build Entity or its Sub-consultants in connection with the Work, shall become the property of Owner. To the extent permitted by Title 17 of the United States Code, work product produced under the Contract Documents shall be deemed works for hire and all copyrights in such works shall be the property of Owner. In the event that it is ever determined that any works created by Design-Build Entity or its Sub-consultants under the Contract Documents are not works for hire under U.S. law, Design-Build Entity hereby assigns to Owner all copyrights to such works. With Owner's prior written approval, Design-Build Entity and its Sub-consultants may retain and use copies of such works for reference and as documentation of experience and capabilities.
- B. Design-Build Entity and its Sub-consultants shall, however, retain the copyright in their standard details, and grant Owner an unlimited license to use such details for all purposes reasonably related to the Project, including, without limited to, the operation, maintenance, repair, renovation, restoration, and expansion thereof. Should Owner desire to reuse any of the items specified above and not use the services of Design-Build Entity or applicable Sub-Designer, then the Owner agrees to assume any and all obligations for their reuse and, if applicable, process the same through all authorities having jurisdiction, and Owner releases Design-Build Entity and its

Sub-consultants from liability associated with the reuse.

- C. Owner acknowledges that (i) any functionally required elements, such as standard space configurations, (ii) individual standard features such as windows, doors and other ordinary building components, (iii) functional elements whose design or placement is dictated by utilitarian concerns, and (iv) any other design element which any applicable law generally excludes from the scope of a copyright, are excluded from the copyright granted to Owner.

ARTICLE 6 – CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.01 Owner’s Right to Perform Construction and to Award Separate Contracts

- A. Owner may perform with its own forces, construction or operations related to the Project. Owner may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility owners perform other work. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the terms “Contractor” or “Design-Build Entity” in these Contract Documents shall mean the Design-Build Entity herein.

6.02 Mutual Responsibility

- A. Design-Build Entity shall afford all other contractors, utility owners and Owner (if Owner is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials. Design-Build Entity shall ensure that the execution of its Work properly connects and coordinates with others’ work, and shall cooperate with them to facilitate the progress of the Work.
- B. Design-Build Entity shall coordinate its Work with the work of other separate contractors, Owner, and utility owners. Design-Build Entity shall hold coordination meetings with other contractors, Owner and its representatives, and utility owners as required by Section 01 3119 (Project Meetings).
- C. Unless otherwise provided in the Contract Documents, Design-Build Entity shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design-Build Entity shall not endanger any work of other separate contractors, Owner or utility owners by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Owner and the others whose work will be affected.
- D. Design-Build Entity’s duties and responsibilities under Article 6 of this Document 00 7253 are for the benefit of Owner and also for the benefit of such other contractors and utility owners working at the Site to the extent that there are comparable provisions for the benefit of Design-Build Entity in the direct contracts between Owner and such other contractors and utility owners.
- E. To the extent that any part of Design-Build Entity’s Work is to interface with work performed or installed by other contractors or utility owners, Design-Build Entity shall inspect and measure the in-place work. Design-Build Entity shall promptly report to Owner in writing any defect in in-place work that will impede or increase the cost of Design-Build Entity’s interface unless corrected. Owner will require the contractor responsible for the Defective Work to make corrections so as to conform to its contract requirements, or, if the defect is the result of an error or omission in any Contract Documents for which Owner is responsible (i.e., excluding Construction Documents), issue a Change Order. If Design-Build Entity fails to measure, inspect and/or report to Owner in writing defects that are reasonably discoverable in Contract Documents for which Owner is

responsible, Design-Build Entity shall bear all costs of accomplishing the interface acceptable to Owner. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.

6.03 Owner Authority over Coordination

- A. Owner will have authority over coordination of the activities of multiple contractors in cases where Owner performs work with its own forces or contracts with others for the performance of other work on the Project, or utilities work on the Site. Owner may at any time and in its sole discretion, designate a person or entity other than Owner to have authority over the coordination of the activities among the various contractors. Owner's authority with respect to coordination of the activities of multiple contractors and utility owners shall not relieve Design-Build Entity of its obligation to other contractors and utility owners to coordinate its Work with other contractors and utility owners as specified in this Article. Design-Build Entity shall promptly notify Owner in writing when another Design-Build Entity on the Project fails to coordinate its work with the Work of Contract Documents.
- B. Design-Build Entity shall suspend any part of the Work or carry on the same in such manner as directed by Owner when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or claims by Design-Build Entity will be allowed if the suspension or Work change is due in whole or in part to Design-Build Entity's failure to perform its obligation to coordinate its Work with other contractors and utility owners. Damages or claims will be allowed only to the extent of fault by Owner if the suspension or Work change is due in whole or in part to another Design-Build Entity's failure to coordinate its work with Design-Build Entity, other contractors, and utility owners. Owner reserves the right to back charge Design-Build Entity for any damages or claims incurred by other contractors as a result of Design-Build Entity's failure to perform its obligations to coordinate with other contractors and utility owners. Owner may deposit the funds retained with a Court of competent jurisdiction pursuant to applicable interpleader procedures and Design-Build Entity releases Owner of further liability regarding such funds.

6.04 Owner Furnished Products

- A. Where Owner procures products or materials directly, Owner's responsibilities shall include:
 - 1. Arrange for and deliver Owner-reviewed Shop Drawings, Product Data, and Samples, to Design-Build Entity.
 - 2. Arrange and pay for delivery to site.
 - 3. On delivery, inspect products jointly with Design-Build Entity.
 - 4. Submit claims for transportation damage and replace damaged, defective, or deficient items.
 - 5. Arrange for manufacturers' warranties, inspections, and service.
- B. Where Owner procures products or materials directly, Design-Build Entity's responsibilities shall include:
 - 1. Review Owner-reviewed Shop Drawings, Product Data, and Samples.
 - 2. Receive and unload products at site; inspect for completeness or damage jointly with Owner.
 - 3. Handle, store, install, and finish products.
 - 4. Repair or replace items damaged after receipt.
 - 5. Install into Project per Contract Documents.

ARTICLE 7 – OWNER AND PAYMENT

7.01 Owner Representative(s)

- A. Owner Representative(s) will have limited authority to act on behalf of Owner as set forth in the Contract Documents. Except as otherwise provided in these Contract Documents or subsequently identified in writing by Owner, Owner will issue all communications to Design-Build Entity through Owner Representative, and Design-Build Entity shall issue all communications to Owner through Owner Representative in a written document delivered to Owner. Should any direct communications between Design-Build Entity and Owner's consultants, architects or Architect/Engineers not identified in Document 00 5200 (Agreement) occur during field visits or by telephone, Design-Build Entity shall immediately confirm them in a written document copied to Owner.

7.02 Means and Methods of Design and Construction

- A. Subject to those rights specifically reserved in the Contract Documents, Owner will not supervise, or direct, or have control over, or be responsible for, Design-Build Entity's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Design-Build Entity's failure to comply with laws and regulations applicable to the furnishing or performance of Work (including Services). Owner will not be responsible for Design-Build Entity's failure to perform or furnish the Work in accordance with Contract Documents.

7.03 Receipt and Processing Of Applications for Payment

- A. As required by Section 01 2000 (Measurement and Payment), Design-Build Entity shall prepare the schedules, submit Applications for Payment and warrant title to all Work covered by each Application for Payment. Owner will review Design-Build Entity's Applications for Payment and Owner will and make payment thereon, and Design-Build Entity shall make payments to Subcontractors, suppliers and others, as required by Section 01 2000.

ARTICLE 8 – CONTROL OF THE WORK

8.01 Supervision of Work by Design-Build Entity

- A. Design-Build Entity shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents.
- B. Design-Build Entity is fully responsible for Design-Build Entity's own acts and omissions. Design-Build Entity is responsible for all acts and omissions of its Subcontractors, suppliers, Designers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Design-Build Entity.
- C. Design-Build Entity shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and procedures, safety precautions and programs in connection with the Work. Design-Build Entity shall be responsible to see that the completed Work complies accurately with Contract Documents.
- D. In addition to Design-Build Entity's Project Manager as described in Document 00 5200 (Agreement), Design-Build Entity shall keep on the Site at all times during Work progress a competent resident Superintendent, who shall not be replaced without Owner's express written consent. The Superintendent shall be Design-Build Entity's representative at the Site and shall have complete authority to act on behalf of Design-Build Entity.

8.02 Observation of Work by Owner

- A. Owner Representative(s). See paragraph 7.01 above.
- B. In exercising its responsibilities and authorities under the Contract Documents, Owner does not assume any duties or responsibilities to any Subcontractor or supplier and does not assume any duty of care to Design-Build Entity, Design-Build Entity's Subcontractors, Designers or suppliers. Except as expressly set forth in the Contract Documents, in exercising their respective responsibilities and authorities under the Contract Documents, neither Bridging Architect nor any Owner Representative assume any duties or responsibilities to any Subcontractor, sub-Subcontractor, Designer or supplier nor assume any duty of care to Design-Build Entity or any Subcontractor, sub-Subcontractor, Designer or suppliers.
- C. Work shall be performed under Owner's general observation and administration. Design-Build Entity shall comply with Owner's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Design-Build Entity of any obligations or liabilities under the Contract Documents. Owner's failure to review or, upon review, failure to object to any aspect of Work (including Services) reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.

8.03 Delegation To Consultant

- A. Owner may delegate to Bridging Architect and/or other Owner consultant (collectively for purposes of this paragraph, "Consultant") the Owner's role (or portions thereof) under the Contract Documents to observe construction and to perform construction administration including receiving, reviewing, and responding to RFI submittals (if any), and initial review of change order requests. When Owner so delegates these functions, Design-Build Entity must copy Owner on all writings, RFI's, submittals and communications pertaining to such delegated matters, and Owner shall have the right to affirm or disaffirm Bridging Architect or Consultant decisions and recommendations (but must do so promptly). Owner shall at all times retain the sole right to sign and approve change orders.
- B. If engaged, Consultant will advise and consult with Owner, but will have authority to act on behalf of Owner only to extent provided in the Contract Documents or as set forth in writing by Owner. Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with Work. Consultant will not be responsible for or have control over the acts or omissions of Design-Build Entity, Subcontractors or their agents or employees, or any other persons performing Work.
- C. Consultant may review Design-Build Entity's submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents.
- D. Consultant may visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with Contract Documents. Based on its observations, Consultant may recommend to Owner that it disapprove or reject Work that Consultant believes to be defective or will not produce a complete Project that conforms to Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by Contract Documents. Owner will also have authority to require special inspection or testing of Work, whether or not the Work is fabricated, installed or completed.
- E. Consultant may conduct inspections to recommend to Owner the dates that Design-Build Entity has achieved Substantial Completion and Final Acceptance, and will receive and forward to

Owner for review written warranties and related documents required by Contract Documents.

8.04 Access to Work

- A. During performance of Work, Owner and its agents, officers, consultants, and employees may at any time enter upon Work, shops or studios where any part of the Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Design-Build Entity shall provide proper and safe facilities for this purpose, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as Owner's interests may require. Other contractors performing work for Owner may also enter upon Work for all purposes required by their respective contracts. Subject to the rights reserved in the Contract Documents, Design-Build Entity shall have sole care, custody, and control of the Site and its Work areas.
- B. Owner may, at any time, and from time to time, during the performance of the Work, enter the Work Site for the for the purpose of installing any necessary work by Owner labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, Owner shall endeavor not to interfere with Design-Build Entity and Design-Build Entity shall not interfere with other work being done by or on behalf of Owner.
- C. If, prior to completion and final acceptance of all the Work, Owner takes possession of any structure or facility (whether completed or otherwise) comprising a portion of the Work with the intent to retain possession thereof (as distinguished from temporary possession contemplating return to Design-Build Entity), then, while Owner is in possession of the same, Design-Build Entity shall be relieved of liability for loss or damage to such structure other than that resulting from the Design-Build Entity's fault or negligence. Such taking of possession by Owner shall not relieve the Design-Build Entity from any provisions of the Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure or facility.
- D. If, following installation of any equipment or facilities furnished by Design-Build Entity, defects requiring correction by Design-Build Entity are found, Owner shall have the right to operate such unsatisfactory equipment or facilities and make reasonable use thereof until the equipment or facilities can be shut down for correction of defects without injury to Owner.

ARTICLE 9 – WARRANTY, GUARANTY, AND INSPECTION OF WORK

9.01 Warranty and Guaranty

- A. **General Representations and Warranties.** Design-Build Entity represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with Title 24, California Code of Regulations and the terms of Contract Documents. Design-Build Entity warrants that all design and construction services shall be performed in accordance with generally accepted professional standards of good and sound design and construction practices and all requirements of Contract Documents, and that the design as developed will comply with the Bridging Documents and the intended use of the Project. Design-Build Entity warrants that Work, including but not limited to each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, architecture and/or engineering, materials, construction and workmanship. Design-Build Entity warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses, and permits, Bridging Documents and all descriptions set forth therein, and all other requirements of Contract Documents. Design-Build Entity shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.

- B. **Extended Guaranties.** Any guaranty exceeding two years provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Design-Build Entity shall supply Owner with all warranty and guaranty documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- C. **Environmental and Toxics Warranty.** The covenants, warranties and representations contained in this paragraph are effective continuously during Design-Build Entity's Work on the Project and following cessation of labor for any reason including, but not limited to, Project completion. Design-Build Entity covenants, warrants and represents to Owner that:
1. To Design-Build Entity's knowledge after due inquiry, no lead or asbestos-containing materials were installed or discovered in the Project at any time during Design-Build Entity's construction thereof. If any lead or asbestos-containing materials were discovered, Design-Build Entity made immediate written disclosure to Owner.
 2. To Design-Build Entity's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Design-Build Entity's construction thereof.
 3. To Design-Build Entity's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Design-Build Entity's construction thereof. If any such materials were discovered, Design-Build Entity made immediate written disclosure to Owner.
 4. Design-Build Entity's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Design-Build Entity claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such laws, ordinances, codes, or regulations, with which Design-Build Entity has not complied. If there are any such notices with which Design-Build Entity has complied, Design-Build Entity shall provide Owner with copies thereof.

9.02 Inspection of Work

- A. All materials, equipment, and workmanship used in Work shall be subject to inspection and testing at all times during construction and/or manufacture in accordance with the terms of Contract Documents. Work and materials, and manufacture and preparation of materials, from beginning of construction until final completion and acceptance of Work, shall be subject to inspection and rejection by Owner, its agents, representatives or independent contractors retained by Owner to perform inspection services, or governmental agencies with jurisdictional interests. Design-Build Entity shall provide them proper and safe conditions for such access and advise them of Design-Build Entity's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, Owner shall be afforded access for inspection at the source of supply, manufacture or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- B. Design-Build Entity shall give Owner a minimum of two business days' notice of readiness of Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- C. Owner will hire through separate contract, a Special Inspection and Materials Testing Laboratory. Upon advance notice as set forth above, Owner will endeavor to schedule required inspections, but if resources are not available, Design-Build Entity may need to reschedule the Work at no additional cost to the Owner. If Work fails any inspection, Design-Build Entity will be responsible for Owner's reinspection costs.

- D. In the event that a scheduled inspection is canceled in less than 24 hours' notice by Design-Build Entity and the Owner incurs costs associated with the cancellation, Design-Build Entity will reimburse Owner for the actual costs of the canceled inspections. The amount will be deducted from payment owed Design-Build Entity.
- E. If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Design-Build Entity shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish Owner with the required certificates of inspection, or approval. Owner will pay the cost of initial testing and Design-Build Entity shall pay all costs in connection with any follow-up or additional testing. Design-Build Entity shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Design-Build Entity's purchase thereof for incorporation in the Work.
- F. If Design-Build Entity covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of Owner, Design-Build Entity shall uncover the Work at Owner's request. Design-Build Entity shall bear the expense of uncovering Work and replacing Work.
- G. In any case where Design-Build Entity covers Work contrary to Owner's request, Design-Build Entity shall uncover Work for Owner's observation or inspection at Owner's request. Design-Build Entity shall bear the cost of uncovering Work.
- H. Whenever required by Owner, Design-Build Entity shall furnish tools, labor and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Design-Build Entity. If Work is found to be satisfactory, Owner, in manner herein prescribed for paying for alterations, modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- I. Owner shall select testing agencies to conduct required tests and inspections for the Project. A list of required structural tests and inspections prepared by Design-Build Entity shall be provided to the designated testing agency, Owner's representative and Inspector prior to the start of construction.
- J. The testing agency shall forward the test results to Design-Build Entity, Owner, the Project Inspector, and any authority having jurisdiction requested by Owner, within 14 days of the date of the test.
- K. Inspection of the Work by or on behalf of Owner, or Owner's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Design-Build Entity shall have an absolute duty, in the absence of a written Change Order signed by Owner, to perform Work in conformance with the Contract Documents.
- L. Any inspection, evaluation, or test performed by or on behalf of Owner relating to the Work is solely for the benefit of Owner, and shall not be relied upon by Design-Build Entity. Design-Build Entity shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by Owner, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Design-Build Entity shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

9.03 Correction of Defective Work

- A. Design-Build Entity shall correct Defective Work promptly upon knowledge of it. If Design-Build Entity fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, Owner may order Design-Build Entity to replace any Defective Work, or stop any portion of Work to permit Owner (at Design-Build Entity's expense) to replace such Defective Work. These Owner rights are entirely discretionary on the part of Owner, and shall not give rise to any duty on the part of Owner to exercise the rights for the benefit of Design-Build Entity or any other party.
- B. Owner may direct Design-Build Entity to correct any Defective Work or remove it from the Site and replace it with Work that is not defective and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting from the correction or removal. Design-Build Entity shall be responsible for any and all claims, costs, losses and damages caused by or resulting from such correction or removal. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Owner may decide the proper amount or, in its discretion may elect to leave the Contract Sum unchanged and deduct from moneys due Design-Build Entity, all such claims, costs, losses and damages caused by or resulting from the correction or removal. If Design-Build Entity disagrees with Owner's calculations, it may make a claim as provided in Article 12 of this Document 00 7253. Owner's rights under this paragraph shall be in addition to any other rights it may have under the Contract Documents or by law.
- C. Correction period:
1. With respect to equipment and machinery supplied by Design-Build Entity and incorporated into the Work and placed into continuous service, if within one year after the date of Final Completion of the portion of the Work incorporating the equipment and/or machinery (or, to the extent expressed by Change Order or Certificate of Final Completion, one year after Owner's written acceptance of such equipment), or such longer period as may be prescribed by laws or regulations, or by the terms of the Contract Documents, any equipment or machinery is found to be defective, Design-Build Entity shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work
 2. With respect to structures within the scope of Work, if within one year after the date of Final Completion, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, Design-Build Entity shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work.
 3. Design-Build Entity shall remove any Defective Work rejected by Owner and replace it with Work that is not defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Design-Build Entity fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced.
 4. Design-Build Entity shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Design-Build Entity fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.
- D. Where Defective Work or rejected Work (and damage to other Work resulting therefrom) has been removed and replaced under this provision after the commencement of the correction period, the correction period hereunder with respect to such Work shall be extended for an additional period of one year after such removal and replacement has been satisfactorily completed.

- E. If following installation of any equipment, machinery, or facilities furnished by Design-Build Entity, defects requiring correction by Design-Build Entity are found, Owner shall have the right to operate such defective equipment or facilities and make reasonable use thereof until the equipment, machinery, or facilities can be shut down for correction of defects without causing injury to Owner.

9.04 Acceptance and Correction of Defective Work by Owner

- A. Owner may accept Defective Work. Design-Build Entity shall pay all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such Defective Work. If Owner accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Owner may deduct from moneys due Design-Build Entity, all claims, costs, losses, damages, expenses and liabilities attributable to the Defective Work. If Design-Build Entity disagrees with Owner's calculations, Design-Build Entity may make a claim as provided in Article 12 of this Document 00 7253. If Owner accepts any Defective Work after final payment, Design-Build Entity shall pay to Owner, an appropriate amount as determined by Owner.
- B. Owner may correct and remedy a deficiency if, after five Days' written notice to Design-Build Entity, Design-Build Entity fails to correct Defective Work or to remove and replace rejected Work as set forth in this Article; or provide a plan for correction of Defective Work acceptable to Owner; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, Owner may exclude Design-Build Entity from all or part of the Site; take possession of all or part of Work and suspend Design-Build Entity's Work related thereto; take possession of all or part of Design-Build Entity's tools, appliances, construction equipment and machinery at the Site; and incorporate in Work any materials and equipment stored at the Site or for which Owner has paid Design-Build Entity but which are stored elsewhere. Design-Build Entity shall allow Owner, its representatives, agents, employees, and other contractors and Owner's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph. Design-Build Entity shall be responsible for all claims, costs, losses, damages, expenses and liabilities incurred or sustained by Owner in exercising such rights and remedies. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Owner may deduct from moneys due Design-Build Entity, all claims, costs, losses and damages caused by or resulting from the correction or removal. If Design-Build Entity disagrees with Owner's calculations, Design-Build Entity may make a claim as provided in Article 12 of this Document 00 7253.

9.05 Rights upon Inspection or Correction

- A. Design-Build Entity shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by Owner of its rights and remedies under this Article 9. Where Owner exercises its rights under this Article 9, it retains all other rights it has by law or under the Contract Documents including, but not limited to, the right to terminate Design-Build Entity's right to proceed with the Work under the Contract Documents and/or make a claim or back charge where a Change Order cannot be agreed upon.
- B. Inspection by Owner shall not relieve Design-Build Entity of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments or otherwise shall not operate to waive Owner's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of the Work paid therefore. Design-Build Entity's obligation to complete the Work in accordance with Contract Documents shall be absolute, unless Owner agrees otherwise in writing.

9.06 Samples and Tests of Materials and Work

- A. Design-Build Entity shall furnish, in such quantities and sizes as may be required for proper examination and tests, samples or test specimens of all materials to be used or offered for use in connection with Work. Design-Build Entity shall prepare samples or test specimens at its expense and furnish them to Owner. Design-Build Entity shall submit all samples in ample time to enable Owner to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.
- B. Test samples or specimens of material for testing shall be taken by the Bridging Architect, his or her representative, Project Inspector or representative of the testing agency. In no case shall Design-Build Entity or vendor select the sample.

9.07 Proof of Compliance of Contract Provisions

- A. In order that Owner may determine whether Design-Build Entity has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of Work and materials, Design-Build Entity shall at any time, when requested, submit to Owner properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

9.08 Acceptance

- A. Inspection by Owner or its authorized agents or representatives, any order or certificate for the payment of money, any payment, acceptance of the whole or any part of Work by Owner, any extension of time, any verbal statements on behalf of Owner or its authorized agents or representatives shall not operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to Owner herein or therein or any right to damages provided in the Contract Documents. Any waiver of any breach of the Contract Documents shall not be held to be a waiver of any other subsequent breach.

ARTICLE 10 – DESIGN-BUILD ENTITY’S ORGANIZATION AND EQUIPMENT

10.01 Design-Build Entity’s Legal Address

- A. Address given in Design-Build Entity’s Proposal is hereby designated as Design-Build Entity’s legal address. Design-Build Entity may change its legal address by notice in writing, delivered to Owner, which in conspicuous language advises Owner of a change in legal address, and which Owner accepts in writing. Notice procedures are provided in Agreement.

10.02 Design-Build Entity’s Office at the Work Site

- A. Design-Build Entity shall maintain an office at the Site, which office shall be headquarters of a Design-Build Entity representative authorized to transmit to and receive from Owner, communications, instructions or Drawings. Communications, instructions, or Drawings given to Design-Build Entity’s representative or delivered at the Site office in representative’s absence shall be deemed to have been given to Design-Build Entity.

10.03 Design-Build Entity’s Superintendents or Forepersons

- A. Design-Build Entity shall at all times be represented on Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that Owner may give, and shall be liable for faithful observance of instructions delivered to Design-Build Entity or to authorized representative or representatives on Site.. The obligations of this paragraph are in addition to all matters relating to Design-Build Entity’s Project Manager described in Document

00 5200 (Agreement)

10.04 Proficiency in English

- A. Supervisors, security guards, safety personnel and employees who have unescorted access to the Site shall possess proficiency in the English language in order to understand, receive and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.

10.05 Design-Build Entity's And Subcontractors' Employees

- A. Design-Build Entity shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If Owner notifies Design-Build Entity that any of its employees, or any of its Subcontractors' employees on Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses threatening or abusive language to any person on Work representing Owner, or violates sanitary rules, or is otherwise unsatisfactory, and if Owner requests that such person be discharged from Work, then Design-Build Entity or its Subcontractor shall immediately discharge such person from Work and the discharged person shall not be re-employed on the Work except with consent of Owner.

10.06 Design-Build Entity to List Trades Working

- A. Design-Build Entity shall list the trades working on the Site and their scheduled activities on a daily basis, and provide a copy of that list to Owner.

10.07 Design-Build Entity's Use of the Site

- A. Design-Build Entity shall not make any arrangements with any person to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between Owner and any owner, former owner or tenant of such land, structure or buildings. Design-Build Entity may not occupy Owner-owned property outside the limit of the Work as indicated on the Drawings unless it obtains prior written approval from Owner.

ARTICLE 11 – PROSECUTION AND PROGRESS OF THE WORK

11.01 Design-Build Entity To Submit Required Schedules

- A. At the pre-scheduling conference described in Section 01 3200 (Progress Schedules and Reports, para 1.04.B), or as otherwise agreed by the parties, Design-Build Entity shall submit to Owner for review and discussion, and again in final form prior to the first payment application, the following documents:
 - 1. Schedule of Values (“SOV”) per Section 01 2000;
 - 2. Progress schedules and reports as required in Section 01 3200, as applicable;
 - 3. Quality Control program and other submittals; and
 - 4. Schedule of submittals per Section 01 3300.
- B. No progress payment shall be due or owing to Design-Build Entity until such schedules are submitted to and acceptable to Owner as meeting the requirements of the Contract Documents. Owner's acceptance of Design-Build Entity's schedules will not create any duty of care or impose on Owner any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve Design-Build Entity from Design-Build Entity's full responsibility therefore.

- C. Before commencing any portion of Work, Design-Build Entity shall inform Owner in writing as to time and place at which Design-Build Entity wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to Owner a reasonable time in advance of time at which Design-Build Entity proposes to begin Work, so that Owner may complete necessary preliminary work without inconvenience or delay to Design-Build Entity.

11.02 Design-Build Entity To Supply Sufficient Workers And Materials

- A. Unless otherwise required by Owner under the terms of Contract Documents, Design-Build Entity shall at all times keep on the Site materials and employ qualified workers sufficient to prosecute Work at a rate and in a sequence and manner necessary to complete Work within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.
- B. At any time during progress of Work should Design-Build Entity directly or indirectly (through Subcontractors) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then Owner may require Design-Build Entity to accelerate the Work and/or furnish additional qualified workers or materials as Owner may consider necessary, at no cost to Owner. If Design-Build Entity does not comply with the notice within three Business Days of date of service thereof, Owner shall have the right (but not a duty) to provide materials and qualified workers to finish the Work or any affected portion of Work, as Owner may elect. Owner may, at its discretion, exclude Design-Build Entity from the Site, or portions of the Site or separate work elements during the time period that Owner exercises this right. Owner will deduct from moneys due or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing Work. Owner will deduct from funds or appropriations set aside for purposes of Contract Documents the amount of such payments and charge them to Design-Build Entity as if paid to Design-Build Entity. Design-Build Entity shall remain liable for resulting delay, including liquidated damages (if any) and indemnification of Owner from claims of others.
- C. Exercise by Owner of the rights conferred upon Owner in this subparagraph is entirely discretionary on the part of Owner. Owner shall have no duty or obligation to exercise the rights referred to in this subparagraph and its failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of Owner's right to exercise such rights in other concurrent or future similar circumstances. (The rights conferred upon Owner under this subparagraph are, like all other such rights, cumulative to Owner's other rights under any provision of the Contract Documents.)

11.03 Design-Build Entity To Protect Underground Facilities

- A. Drawings may indicate above and below grade structures and Underground Facilities such as: drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities. Design-Build Entity shall locate these known existing installations before proceeding with trenching or other operations that may cause damage. Design-Build Entity shall further locate, by carefully excavating with small equipment, potholing and principally by hand, all such utilities or installations that are to remain and that are subject to damage. If additional utilities whose locations are unknown are discovered, Design-Build Entity shall immediately report to Owner for disposition of the same.
- B. Additional utilities whose locations are unknown to Owner are suspected to exist. Design-Build Entity shall be alert to their existence; if they are encountered, Design-Build Entity shall immediately report to Owner for disposition of the same. Design-Build Entity shall also investigate the existence of existing service laterals, appurtenances or other types of utilities,

indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site, even if not shown or indicated in information supplied by Owner or the regional notification center. Design-Build Entity shall immediately secure all such available information and notify Owner and the utility owner, in writing, of its discovery.

- C. At all times during construction, all operating Underground Facilities shall remain in operation, unless the Contract Documents expressly indicate otherwise. Design-Build Entity shall maintain such Underground Facilities in service where appropriate; shall repair any damage to them caused by the Work; and shall incorporate them into the Work, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Design-Build Entity shall take immediate action to restore any in service installations damaged by Design-Build Entity's operations.

11.04 Design-Build Entity to Locate Underground Utilities

- A. Before commencing work of digging trenches or excavation, Design-Build Entity shall also review all information available regarding subsurface conditions, including but not limited to information supplied in Document 00 3132 (Geotechnical Data and Existing Conditions), and subject to the terms and conditions of these documents, Design-Build Entity shall also comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part:

"Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two working days, but no more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation."

- B. Design-Build Entity shall contact USA, and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Design-Build Entity is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, Design-Build Entity shall provide Owner with copies of all USA records secured by Design-Build Entity. Design-Build Entity shall advise Owner of any conflict between information provided in Document 00 3132 (Geotechnical Data and Existing Conditions), the Drawings and that provided by USA records. Design-Build Entity's excavation shall be subject to and comply with the Contract Documents, including without limitation all applicable requirements set forth in this Document 00 7253 (General Conditions).
- C. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Design-Build Entity's attention, including reasonable action taken to protect or repair damage, shall be determined as provided in this Document 00 7253.
 - 1. At no additional cost to Owner, Design-Build Entity shall incorporate into the Work main or trunk line utilities identified in the Contract Documents and other utilities or underground structures known or reasonably discernible and that will remain in service, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Design-Build Entity shall take immediate action to restore any in service installations damaged by Design-Build Entity's operations. Should Owner determine that Design-Build Entity has not responded in a timely manner or not diligently pursued completion of the Work, Owner may restore service and deduct the costs of such

- action by Owner from the amounts due under the Contract.
2. Consistent with Government Code Section 4215, as between Owner and Design-Build Entity, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or Document 00 3132 (Geotechnical Data and Existing Conditions). Owner will compensate for the cost of locating and repairing damage not due to Design-Build Entity's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or Document 00 3132 (Geotechnical Data and Existing Conditions) with reasonable accuracy, and equipment on the Project necessarily idled during such work.
- D. Design-Build Entity shall have full responsibility for: (i.) reviewing and checking all available information and data and information supplied from the regional notification center; (ii.) locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation including, but not limited to, and by way of example only, engaging qualified locating services and all necessary back hoeing and potholing; (iii.) coordination of the Work with the owners of such Underground Facilities during construction; and (iv.) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- E. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by Owner or in information on file at USA or is otherwise reasonably available to Design-Build Entity, then Design-Build Entity shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven Days), and prior to performing any Work in connection therewith (except in an emergency as required by this Document 00 7253), identify the owner of such Underground Facility and give written notice to that owner and to Owner. During such time, Design-Build Entity shall be responsible for the safety and protection of such Underground Facility.
- F. Design-Build Entity shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that is owned and was built by Owner only where the Underground Facility:
1. Was not shown or indicated in the Contract Documents or in the information supplied pursuant to Document 00 3132 (Geotechnical Data and Existing Conditions) or in information on file at USA; and
 2. Design-Build Entity did not know of it; and
 3. Design-Build Entity could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Price or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to Design-Build Entity pursuant to Document 00 3132 (Geotechnical Data and Existing Conditions), in information on file at USA, or otherwise reasonably available to Design-Build Entity.)
- G. Design-Build Entity shall bear the risk that Underground Facilities not owned or built by Owner may differ in nature or locations shown in information made available by Owner pursuant to Document 00 3132 (Geotechnical Data and Existing Conditions), in information on file at USA, or otherwise reasonably available to Design-Build Entity. Underground Facilities are inherent in construction involving digging of trenches or other excavations and Design-Build Entity is to apply its skill and industry to verify the information available.

11.05 Connections To Or Alterations To Existing Conditions And Facilities

- A. In planning and performing the Work, every effort shall be made to minimize the levels of noise, dirt, dust, molds, biological organisms (e.g., aspergillus), fumes, odors and similar items to the

extent possible. Design-Build Entity shall remove, cut, alter, replace and repair existing building infrastructure, including without limitation plumbing, medical gas, fire and life safety equipment, utilities and casework, consistent with Design-Build Entity's coordination and planning responsibilities to not interfere with ongoing Owner operations, as necessary to install new Work. Except as otherwise shown or specified, Design-Build Entity shall not cut, alter or remove any structural Work, and shall not disturb any ducts, plumbing, steam, gas, or electrical Work without approval of Owner.

- B. Unless otherwise specified or indicated, Design-Build Entity shall make all connections or alterations to existing facilities, including structures, drain lines, and utilities such as water, sewer, gas, telephone, and electric, necessary to complete the Work of the Contract Documents. In each case, Design-Build Entity shall provide advance notice to and receive permission from Owner or the owning utility prior to undertaking any connection or making any alterations.
- C. Design-Build Entity shall restore existing conditions (walls, structures, partitions, floors, mechanical and electrical Work, etc.) disturbed or removed as a result of performing required new Work to the original conditions. Existing conditions or facilities to be altered or extended and found to be defective in any way, shall be reported to Owner before commencing Work. Materials and workmanship used in restoring conditions or facilities shall conform or exceed in type and quality that of original existing construction, except as otherwise shown or specified or required by codes or applicable standards.

11.06 Lines And Grades

- A. All Work shall be done to the lines, grades, and elevations indicated on the Drawings.
- B. Owner may such provide basic horizontal and vertical control points to be used as datums for the Work, as may be indicated on Drawings and Specifications; however, all further survey, layout, and measurement work shall be performed by Design-Build Entity as a part of the Work.
- C. Design-Build Entity shall provide at its cost an experienced, appropriately licensed civil engineer or land surveyor, and all required instrument persons, competent assistants, and such instruments, tools, stakes and other materials required to complete the survey, layout, and measurement of work. In addition, Design-Build Entity shall furnish at its cost competent persons and such tools, stakes, and other materials as Owner may require in establishing or designating control points, or in checking survey, layout, and measurement work performed by Design-Build Entity.
- D. Design-Build Entity shall locate control points before commencing construction Work on any Site, preserve all reference points throughout construction, and promptly replace all points which become lost or destroyed.
- E. Design-Build Entity shall keep Owner informed, a reasonable time in advance, of the times and places at which it wishes to do Work, so that any checking deemed necessary by Owner may be done with minimum inconvenience to Owner and minimum delay to Design-Build Entity.
- F. Design-Build Entity shall remove and reconstruct Work which is improperly located.

11.07 Design-Build Entity To Not Disrupt Owner Operation

- A. Design-Build Entity shall schedule and execute all Work in a manner that does not interfere with or disrupt Owner operations, including but not limited to, parking, utilities, noise, vibration, odors/fumes, access by employees and administration, access by vendors and any other person or entity using Owner facilities or doing business with Owner. Design-Build Entity shall produce and supply coordination plans and make timely requests to Owner, following Owner procedures,

for any necessary interference of construction with Owner, with which Owner will reasonably cooperate. At a minimum, Design-Build Entity shall make every effort to minimize the levels of noise, vibration, dirt, dust, molds, biological organisms, fumes, odors and similar items to the extent possible and in accordance with local ordinances or other requirements.

- B. Design-Build Entity's use of service areas and equipment and vehicle ingress and egress shall be kept to the minimum essential to its operations. Non-essential vehicles and equipment shall be kept out of such areas. In the event of unavoidable conflict with Owner's operations, and upon request of facility staff or vehicle attendants, Design-Build Entity shall eliminate such conflicting use immediately for emergency services.
- C. Design-Build Entity shall produce and supply coordination plans and requests to Owner, following Owner procedures, for all necessary interface of construction with Owner, which Owner will reasonably cooperate with.

11.08 Maintenance, Product Handling, And Protection

- A. Design-Build Entity shall transport, deliver, handle, and store materials and equipment at the Site in such a manner as to prevent the breakage, damage or intrusions of foreign matter or moisture, and otherwise to prevent damage. Design-Build Entity shall arrange for Owner right of inspection or observation of all materials and equipment in fabrication, assembly or transport, which right Owner may exercise in its sole unfettered discretion.
- B. Design-Build Entity shall provide Owner with copies of the OSHA Material Safety Data Sheets (MSDS) for all products containing a hazardous substance, examples: Adhesives, paints, sealants, and the like.
- C. Design-Build Entity shall provide packaged material in manufacturer's original containers with seals unbroken and labels intact until incorporated into the Work.
- D. Design-Build Entity shall remove all damaged or otherwise unsuitable material and equipment promptly from the Site.
- E. Design-Build Entity shall protect all work in place.
- F. Cost of maintenance of systems and equipment prior to either Substantial Completion or Final Completion will be considered as included in Contract prices and no direct or additional payment will be made therefore.

11.09 Electronic Communications and Information Distribution

- A. To maximize the efficiency of Project communication, Design-Build Entity agrees to work collaboratively with Owner to implement a common, accessible system for creating and maintaining Project reports, storing and retrieving Project minutes, logs, CAD files, and other critical Project documentation.
- B. All communications recognized under the Contract Documents shall be in writing, in the form of a serialized document, by type of communication. For example, RFI's shall be serialized beginning with RFI No. 1; payment applications shall be serialized beginning with Payment Application No. 1, submittals shall be serialized per specification section and transmitted with transmittal sheets beginning with Transmittal No. 1; and correspondence shall be serialized beginning with letter No. 1. Design-Build Entity may propose other record management and identification systems or protocols, intended to facilitate orderly transmittal of project information, storage and retrieval of such information, which Owner will review consistent with these stated objectives, and accept or reject in its sole discretion.

- C. All documents requiring signatures for approval prior to implementing action, as stipulated in other portions of these Contract Documents, shall require a manually signed, serialized letter delivered to the other party at its address for notice otherwise specified in the Contract Documents, either personally or by mail. Electronic data transfer of such correspondence will serve to expedite preliminary concurrence of information, only. Receipt of "hard copy" signature on forms is required prior to implementing action or work as the conditions may require. For example, change orders and authorizations for extra cost, require signatures. A party may acknowledge receipt of correspondence by e-mail, but in the absence of such acknowledgment, mail or personal delivery is required.
- D. All emails shall be copied to Owner's and Design-Build Entity's Project Representative. Owner reserves the right to preclude e-mail communication, in whole or in part, as Project needs may require.
- E. Communication between Owner and Design-Build Entity shall not be via Twitter, Facebook, or other types of instant text message systems. Any such communications shall be inadmissible for any purpose related to this Contract.

11.10 Design-Build Entity to Require, Review, Approve and Submit Submittals and Shop Drawings In Addition To Completed Design Drawings

- A. Design-Build Entity's design team must obtain from Design-Build Entity's construction team, and then independently review and approve (and so indicate thereon), all technical submittals, to verify the quality of the Work and its conformance to design intent. Design-Build Entity's technical submittals consist of Shop Drawings, Manufacturer's Data, Samples and Miscellaneous Submittals.
 - 1. Shop Drawings include, but are not limited to, custom prepared data such as fabrication, erection and installation drawings, schedule information, setting diagrams, actual shop work manufacturing instructions, custom templates, special wiring diagrams, coordination drawings, individual system or equipment inspection and test reports, concrete design mixes, Design-Build Entity engineering calculations and specially prepared operating and maintenance instructions, as applicable to the Work.
 - 2. Manufacturer's Data includes, but is not limited to, standard prepared data for manufactured products such as a manufacturer's production specification and installation instructions, printed statements of compliance and applicability, catalogue cuts, product photographs, product operation and maintenance instruction and spare-parts listings, printed product warranties, as applicable to the Work.
 - 3. Samples include, but are not limited to, physical samples of the Work such as sections of manufactured or fabricated Work, cuts or containers of materials, complete units for repetitively used products, paint samples, textile swatches, specimens for coordination of visual effect, graphic symbols and units of Work to be used for independent inspection and testing, as applicable to the Work.
 - 4. Miscellaneous Submittals include, but are not limited to, job-prepared warranties and guaranties, maintenance agreements, project photographs, Design-Build Entity's survey data, excavating/foundation field reports, tradesmen testing/qualifying/certifying reports, list and delivery schedule for Owner-furnished and Design-Build Entity installed equipment, printed industry standards, record drawings, as-built records, collected and bound operating and maintenance manuals, keys and other security, protection and/or safety devices, maintenance tools and spare parts, as applicable to the Work.
- B. Design-Build Entity shall coordinate all technical submittals from Subcontractors or otherwise, and review them for completeness and compliance with applicable Contract Documents. Design-Build Entity's design team must independently review and approve (and so indicate thereon), all technical submittals, prior to their coordination and review by Design-Build Entity.
- C. Design-Build Entity shall submit submittals to Owner for review in strict accordance with Section

01 3300 (Submittals). Design-Build Entity's submittal of Shop Drawings shall be in addition to Design-Build Entity's Design Documents developed pursuant to the Contract Documents. Submission of a submittal shall constitute Design-Build Entity's representation that all requirements of Section 01 3300 (Submittals) have been complied with. All submittals will be identified as Owner may require and in the number of copies specified in Section 01 3300 (Submittals).

- D. Design-Build Entity shall not perform Work that requires submission of a Shop Drawing or Sample or other submittal prior to submission and favorable review of the Shop Drawing or Sample or submittal. Where a Shop Drawing or Sample or other submittal is required by Contract Documents or the final Schedule of Shop Drawing and Sample Submittals accepted by Owner, any related Work performed prior to Owner's approval of the pertinent submittal shall be at the sole expense, responsibility and risk of Design-Build Entity.

11.11 Cost Data

- A. Design-Build Entity shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Design-Build Entity of each class of materials, tools and appliances used by Design-Build Entity in Work, and the amount of each class of materials used in each subdivision of Work. Design-Build Entity shall provide Owner with monthly summaries of this information. If Design-Build Entity maintains or is capable of generating summaries or reports comparing actual Project costs with Proposal estimates or budgets, Design-Build Entity shall provide Owner with a copy of such report upon Owner's request and whenever it is generated.
- B. Design-Build Entity shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. Design-Build Entity shall provide Owner with copies for each Day Design-Build Entity works on the Project, to be delivered to Owner either the same Day or the following morning before starting work at the Site. Design-Build Entity shall take monthly progress photographs of all areas of the Work. Design-Build Entity shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- C. Owner shall have the right to audit and copy Design-Build Entity's books and records of any type, nature or description relating to the Project (including but not limited to financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Design-Build Entity's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, Owner shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Proposal and negotiation documents, cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by Design-Build Entity. Owner and any other applicable governmental entity shall have the right to inspect all information and documents maintained under this paragraph 11.11., at any time during the Project and for a period of five years following Final Completion. This right of inspection shall not relieve Design-Build Entity of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

11.12 Record Documents

- A. Design-Build Entity shall maintain in a safe place at the Site, construction records to include, but not limited to, the following documents to be maintained on a current basis:
 - 1. One record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change

Orders, Work Directives, Force Account orders, and written interpretations and clarifications, organized and in good order and marked to show all as-built changes made during construction.

2. Shop drawings; product data/material data sheets; samples; submittal; purchases; materials; equipment; inspections; applicable handbooks; Title 15; Title 24; the California Uniform Building Code; maintenance and operating manuals and instructions; other related documents and revisions which arise out of the Construction Contracts. Design-Build Entity shall maintain records in duplicate, of principal building layout lines, elevations for the bottom of footings, floor levels, and key site elevations (certified by a qualified surveyor or professional engineer, if necessary).
- B. Design-Build Entity shall make all such records available to Owner. At the completion of the Project, Design-Build Entity shall deliver all such records to the Owner to have a complete set of record as-built drawings.
- C. Design-Build Entity's failure to comply with recordkeeping requirements under this subparagraph entitles Owner to withhold five percent of any Application for Payment until compliance.

ARTICLE 12 – CLAIMS BY DESIGN-BUILD ENTITY

12.01 General

- A. The claim notice and documentation procedure described in this Article 12 applies to all claims and disputes arising under the Contract Documents, including without limitation any claim or dispute by any Subcontractor or material supplier. All Subcontractor and supplier claims of any type shall be brought only through Design-Build Entity as provided in this Article 12. Under no circumstances shall any Subcontractor or supplier make any direct claim against Owner.
- B. "Claim" means a written demand or written assertion by Design-Build Entity seeking, as a matter of right, the payment of money, the adjustment or interpretation of Contract Documents terms, or other relief arising under or relating to Contract Documents. In order to qualify as a "claim," the written demand must state that it is a claim submitted under this Article 12. A voucher, invoice, proposed change, Application for Payment, cost proposal, RFI, change order request, or other routine or authorized form of request for payment is not a claim under the Contract Documents. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a claim under the Contract Documents by submitting a separate claim in compliance with claim submission requirements.
- C. The provisions of this Article 12 constitute a non-judicial claim settlement procedure, and also step one of a two-step claim presentment procedure by agreement under Section 930.2 of the California Government Code. Specifically, step one is compliance with this contract claims procedure and filing/administering timely contract claims in accordance with the Contract Documents first. Step two is filing a timely Government Code Section 910 claim in accordance with the California Government Code.
- D. The provisions of this Article 12 shall survive termination, breach or completion of the Contract Documents. Design-Build Entity shall bear all costs incurred in the preparation and submission of a claim. Pursuant to Government Code Section 930.2, the one-year period in Government Code section 911.2 to file a Government Code Section 910 claim shall be reduced to 150 days. Any Government Code Section 910 claims shall be presented in accordance with the Government Code and shall affirmatively indicate Design-Build Entity's prior compliance with the claims procedure herein and previous dispositions of claims submitted hereunder.

12.02 Mandatory Procedures for Disputed Work

- A. Disputed Work and Contract Procedures. Should it appear to Design-Build Entity that the Work

to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, or should any dispute arise regarding the true value of any work performed, work omitted, extra work that the Design-Build Entity may be required to perform, time extensions, payment to the Design-Build Entity during performance of this Contract, performance of the Contract, and/or compliance with Contract procedures, Owner decisions or directions, Owner actions or inactions, or should Design-Build Entity otherwise seek extra time or compensation FOR ANY REASON WHATSOEVER (hereafter, "Disputed Work"), then Design-Build Entity shall so advise Owner in writing and complete any applicable procedures set forth in the Contract for addressing and/or resolving such matters (including but not limited to other Articles of this Document 00 7253 and Section 01 2600 [Modification Procedures and Pricing of Changed Work]).

- B. Timely Notice and Review of Disputed Work Required. Before commencing any Disputed Work (e.g., disputed RFI responses, Supplemental Instructions, Information Bulletins, decisions, etc.), or within ten (10) Days after Design-Build Entity's first knowledge of the Disputed Work, whichever is earlier, Design-Build Entity shall file a written notice and preliminary good faith cost proposal for the Disputed Work with Owner stating clearly and in detail its objection and reasons for contending the Disputed Work is outside or in breach of the requirements of Contract Documents. It is the responsibility of the Design-Build Entity to substantiate that the Disputed Work is in fact a change from the base scope of Work.
1. The written notice must identify the subcontractors, vendors, suppliers affected, if any, sufficient for Owner to visit the Site to inspect the work and/or conduct a telephonic interview of the persons involved, and/or to photograph the work in question; and Design-Build Entity shall supply digital photographs by email and provide Owner with contact information for all involved subcontractors, suppliers of any tier, to facilitate prompt "in person" review at the next job site meeting.
 2. The preliminary cost proposal must provide a good faith preliminary estimate of the labor (workers, crews), equipment and/or materials involved, and a corresponding good faith preliminary estimate of cost.
 3. The written notice and preliminary cost proposal for Disputed Work must be placed, by Design-Build Entity, as a specific discussion item on the Agenda for the next weekly meeting, where both Owner and Design-Build Entity shall then make a good-faith effort to review the Disputed Work, involving all Subcontractors, vendors, and other involved parties.
 4. If discussions at the weekly meeting do not resolve the Disputed Work, then Design-Build Entity shall update its written notice and preliminary cost proposal based upon the discussions at the weekly meeting, and shall calendar the matter for discussion at the project executive level to occur within 10 days of the weekly meeting unless mutually agreed otherwise. The attendees at the project executive level meeting shall include all appropriate parties to the dispute and, in addition, senior level representatives of the Owner's and Design-Build Entity's Project team who have, or who have been designated with, primary responsibility for administration of the Contract.
 5. If the initially required written notice and preliminary cost proposal for Disputed Work is not issued within the time period required herein, or if Design-Build Entity proceeds with the Disputed Work without first having given the notice of the Disputed Work, Design-Build Entity shall be deemed to have waived its rights to further claim on the specific issue.
- C. Timely Notice of Potential Claims Required. Owner will review Design-Build Entity's timely notice and preliminary cost proposal for Disputed Work at the Project executive level, and provide a decision. If, after receiving the decision, Design-Build Entity disagrees with it or still considers the Work required of it to be outside of the requirements of Contract Documents, then Design-Build Entity shall so notify Owner, in writing, within ten (10) Days after receiving the decision, by submitting a notice of potential claim, stating that a formal claim will be issued. (If for any reason Owner should fail to act or provide a decision on a notice and preliminary cost proposal within thirty (30) days, then Design-Build Entity shall submit a notice of potential claim within ten days

following the thirtieth (30th) day, i.e., or by the 40th day following the notice and preliminary cost proposal.) In all cases, Design-Build Entity shall continue to prosecute the Disputed Work to completion.

- D. **Claim Negotiations Required.** Upon receipt of Design-Build Entity's notice of potential claim, Design-Build Entity and Owner shall negotiate the claim, again, once at the Project level, and a second time at the executive level, if necessary, to try and reach agreement. If Design-Build Entity and Owner fail or are unable to schedule or complete such negotiations, then the notice of potential claims shall be deemed denied.
- E. **Quarterly Claims Required.** At the end of each calendar year quarter (March 31, June 30, September 30 and December 31) of each year, for each and every notice of potential claim that Design-Build Entity may have submitted in that quarter, Design-Build Entity shall submit a formal claim in the form specified herein. Design-Build Entity may file a single consolidated claim each quarter, or may file separate claims each quarter, as Design-Build Entity sees fit, provided Design-Build Entity complies with the requirements below. (Design-Build Entity may defer until the next reporting period the filing of a formal claim for any notices of potential claim timely issued within the last 21 days of the prior quarter.) The formal claim(s) shall include all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting Design-Build Entity's position, for each notice of potential claim that Design-Build Entity intends to pursue as a formal claim (further described below).
- F. **Claim Updates Required.** If Disputed Work persists longer than a single calendar quarter, then Design-Build Entity shall, every quarter until the Disputed Work ceases, submit to Owner a document titled "Claim Update" that shall update and quantify all elements of the claim as completely as possible. Design-Build Entity's failure to submit a Claim Update or to quantify costs every quarter shall result in waiver of the claim for that period. Claims or Claim Updates stating that damages, total damages (direct and indirect), schedule impact and/or any time extension will be determined at a later date shall not comply with this subparagraph and shall result in Design-Build Entity waiving its claim(s). Design-Build Entity shall also maintain a continuing "claims log" that shall list all outstanding claims and their value, and provide such log to Owner quarterly.

12.03 Action on Claims

- A. **Final Decision.** Upon receipt of Design-Build Entity's formal claim(s) including all arguments, justifications, cost or estimates, schedule analysis, and documentation supporting its position as required herein, and if the claims negotiations are unsuccessful, Owner or its designee will review the issue and render a final determination. If Owner should fail to provide a decision, then such claims shall be deemed denied after 45 days following their receipt.
- B. **Mediation.** All Design-Build Entity formal claims shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be confidential, non-binding and utilize the services of a mediator mutually acceptable to the parties and, if the parties cannot agree, a mediator selected by the American Arbitration Association from its panel of approved mediators trained in construction industry mediation. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved Design-Build Entity claims shall be submitted to the same mediator. The cost of mediation shall be equally shared by all parties to the mediation.

12.04 Claim Format

- A. Design-Build Entity shall submit the formal claim(s) with a cover letter and certification of the accuracy of the formal claim.

- B. The formal claim(s) shall list separately each notice of potential claim that Design-Build Entity intends to pursue as a formal claim(s), and for each such item separately, Design-Build Entity shall provide the following:
1. Summary of the claim, including underlying facts, entitlement, schedule analysis, quantum calculations, contract provisions supporting relief;
 2. List of documents relating to claim including Specifications, Drawings, clarifications/requests for information, schedules, notices of delay, and any others;
 3. Chronology of events and correspondence;
 4. Analysis of claim merit;
 5. Analysis of claim cost; and
 6. Attach supporting cost and schedule documents as required in this Article and elsewhere in the Contract Documents (e.g., Section 01 3200 [Progress Schedules and Reports]).
- C. For each notice of potential claim that Design-Build Entity intends to pursue as a formal claim, Design-Build Entity shall establish in the formal claim a direct causal link between the separate item of cost/time requested, the separate notices of potential claim timely issued, and the specific changed Work asserted. Total cost claims shall not be allowed.
- D. Claims shall be calculated in the same manner as Change Orders per Section 01 2600 (Modification Procedures and Pricing of Changed Work).

12.05 Subcontractor Claims

- A. Design-Build Entity shall require each Subcontractor, sub-Subcontractor and supplier to comply with this claims procedure, to provide Design-Build Entity with timely notice and documentation of all claims; and Design-Build Entity shall present as its claims, all Subcontractor, sub-Subcontractor and supplier claims of any type, and prove them under the terms of the Contract Documents. Owner shall not be directly liable to any Subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages or extra costs of any type arising out of or resulting from the Project.

12.06 Waiver and Substantial Compliance

- A. If Design-Build Entity fails to comply with this Article 12 as to any claim or Disputed Work, then Design-Build Entity shall waive its rights to such claim. All claim(s), Disputed Work items or issue(s) not raised in a timely notice, timely notice of potential claim and then timely claim submitted under this Article 12, may not be asserted in any subsequent arbitration, litigation or legal action, and any award (or portion thereof) issued contrary to this preclusion shall be vacated to the extent contrary.
- B. Design-Build Entity may request an extension of time to comply with the claims procedure herein, but must do so in advance of time periods expiring and Owner must give its approval in writing (which approval may be withheld in Owner discretion.) As to any other feature of the claim procedure herein (and its claims waiver feature), it may not be waived or altered absent a written Change Order signed by both parties and accepted as to form by their legal counsel.
- C. Owner in its sole discretion, may consider Design-Build Entity's substantial compliance with the required initial notice and cost proposal, provided Design-Build Entity demonstrates good faith and a manifest lack of prejudice to Owner from late written notice, for example, contemporaneous Owner/Design-Build Entity discussions and review of Disputed Work with full opportunity to investigate and verify costs and work performed. Under no circumstances may substantial compliance be considered when the required written notice is more than 21 calendar days late.
- D. Owner shall not be deemed to waive or alter any provision under this Article 12, if at Owner's sole discretion, a claim is administered in a manner not in accord with this Article 12.

12.07 Intent

- A. The claim notice and documentation procedure described in this Article 12 is intended to require notice and sufficient documentation of claims, potential claims, disputes and disagreements, to permit discussions and negotiations of the matters in question, between and among all parties involved, prior to and contemporaneously with the matters in question, in sufficient time for the parties to make informed decisions, mitigate and document costs and potential costs.
- B. Under no circumstances may this procedure be interpreted, modified or viewed to permit, claims, potential claims or change order requests for Disputed Work that has been performed, covered up or otherwise become unavailable for reasonable contemporaneous verification and negotiation with involved parties (e.g., Design-Build Entity, Subcontractor, suppliers, Owner, Bridging Architect, etc.).

ARTICLE 13 – LEGAL AND MISCELLANEOUS

13.01 Laws and Regulations

- A. Design-Build Entity shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall to the greatest extent permitted by law, protect and indemnify Owner and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by Design-Build Entity or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of Work to ascertain compliance of all applicable laws, ordinances, regulations and orders.
- B. Whenever Bridging Documents require larger sizes or higher standards than are required by any applicable law, ordinance, regulation or order, Bridging Documents shall govern. Whenever Bridging Documents require something that will violate such laws, ordinances, regulations or orders, then such laws, ordinances, regulations or orders shall govern.
- C. Design-Build Entity shall comply with applicable portions of Title 15 and Title 24, California Code of Regulations (Uniform Building Code) (most recent edition), Public Contract Code. Whenever Contract Documents require larger sizes or higher standards than are required by any applicable law, ordinance, regulation or order, Contract Documents shall govern. Whenever Contract Documents require something that will violate such laws, ordinances, regulations or orders, then such laws, ordinances, regulations or orders shall govern.
- D. Design-Build Entity shall maintain in the Project Office a current copy of Title 15 and 24 of the California Code of Regulations at all times during construction.

13.02 Permits and Taxes

- A. Design-Build Entity shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable), pay all charges and fees, including fees for street opening permits, comply with, implement and acknowledge effectiveness of all permits, initiate and cooperate in securing all required notifications or approvals therefore, and give all notices necessary and incident to due and lawful prosecution of Work, unless otherwise provided herein. Owner will pay applicable building permits, school, sanitation and water fees, except as otherwise provided in the Contract Documents. If, under federal excise tax law, any transaction hereunder constitutes a sale on which a federal excise tax is imposed, and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the Owner, upon request, will execute a certificate of exemption which will certify (1) that the Owner is a political subdivision of the state for the purpose of such exemption, and (2) that the sale is for

the exclusive use of the Owner. No excise tax for such materials shall be included in any bid price. Design-Build Entity shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into Work, and all other taxes properly assessed against equipment or other property used in connection with Work, without any increase in the Contract Sum. Design-Build Entity shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where Owner may have already obtained permits for the Work.

13.03 Concealed or Unknown Conditions

- A. If either of the following conditions is encountered at Site when digging trenches or other excavations that extend deeper than four feet below the surface, Design-Build Entity shall give a written Notice of Differing Site Conditions to Owner promptly before conditions are disturbed, except in an emergency as required by this Document 00 7253, and in no event later than seven Days after first observance of:
 - 1. Subsurface or Latent physical conditions which differ materially from those indicated in the Contract Documents; or
 - 2. Unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- B. In response to Design-Build Entity's Notice of Differing Site Conditions under this paragraph, Owner will investigate the identified conditions, and if they differ materially and cause increase or decrease in Design-Build Entity's cost of, or time required for, performance of any part of the Work, Owner will issue either a Proposal Form or a Construction Change Directive under the procedures described in the Contract Documents, including without limitation Section 01 2600 (Modification Procedures and Pricing of Changed Work). If Owner determines that physical conditions at the Site are not latent or are not materially different from those indicated in Contract Documents or that no change in terms of the Contract Documents is justified, Owner will so notify Design-Build Entity in writing, stating reasons. Design-Build Entity shall in all cases continue to prosecute the Work.
- C. Design-Build Entity shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Latent or materially different Site conditions (whether above or below grade) if:
 - 1. Design-Build Entity knew of the existence of such conditions at the time Design-Build Entity submitted its Proposal; or
 - 2. Design-Build Entity should have known of the existence of such conditions as a result of having complied with the requirements of Contract Documents; or
 - 3. The information or conditions claimed by Design-Build Entity to be Latent or materially different consist of information, conclusions, opinions or deductions of the kind that this Document 00 7253 precludes reliance upon; or
 - 4. Design-Build Entity was required to give written Notice of Differing Site Conditions and failed to do so within the time required.
- D. If Owner and Design-Build Entity are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or Contract Time required under this paragraph, Design-Build Entity may make a claim as provided in Article 12 of this Document 00 7253.

13.04 Notice of Hazardous Waste or Materials Conditions

- A. Design-Build Entity shall give a written Notice of Hazardous Materials Condition to Owner promptly, before any of the following conditions are disturbed (except in an emergency as required by this Document 00 7253), and in no event later than 24 hours after first observance of any:

1. Material that Design-Build Entity believes may be hazardous waste or hazardous material, as defined in Section 25117 of the Health and Safety Code (including, without limitation, asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law (“hazardous material”); or
 2. Other material that may present an imminent substantial danger to persons or property exposed thereto in connection with Work at the Site (“other materials”).
- B. Except as otherwise provided in the Contract Documents or as provided by applicable law, Design-Build Entity shall not be required to give any notice for the disturbance or observation of any such hazardous materials or other materials where such matter is disturbed or observed as part of the scope of Work under the Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where Design-Build Entity complies with all requirements in the Contract Documents and applicable law respecting such materials.
- C. Design-Build Entity's Notice of Hazardous Materials Condition shall indicate whether the hazardous materials or other materials were shown or indicated in the Contract Documents to be within the scope of Work, and whether the hazardous materials or other materials were brought to the Site by Design-Build Entity, its Subcontractors, suppliers, or anyone else for whom Design-Build Entity is responsible.
- D. Design-Build Entity shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials if:
1. Design-Build Entity knew of the existence of such hazardous materials or other materials at the time Design-Build Entity submitted its Proposal; or
 2. Design-Build Entity should have known of the existence of such hazardous material or other materials as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies, and data concerning the conditions at or contiguous to the Site prior to submitting its Proposal;
 3. Design-Build Entity failed to give the written notice within the time required by this Document 00 7253; or
 4. Design-Build Entity failed to give advance written notice, at least sixty (60) days prior to date when removal was required, of hazardous materials known to exist and required to be removed prior to execution of the Work.
- E. If Owner determines that conditions involve hazardous materials or other materials and that a change in Contract Document terms is justified, Owner will issue either a Proposal Form or Construction Change Directive under the procedures described in the Contract Documents, including without limitation Section 01 2600 (Modification Procedures and Pricing of Changed Work). If Owner determines that conditions do not involve hazardous materials or other materials or that no change in Contract Document terms is justified, Owner will notify Design-Build Entity in writing, stating the reasons for its determination.
- F. If Owner and Design-Build Entity are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or Contract Time required, Design-Build Entity may make a claim as provided in Article 12 of this Document 00 7253.
- G. In addition to the parties' other rights under this Document 00 7253, if Design-Build Entity does not agree to resume Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, Owner may order the disputed portion of Work deleted from the Work, or performed by others, or Owner may invoke its right to terminate Design-Build Entity's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant. If Design-Build Entity does not agree with Owner's determination of any adjustment in the Contract Sum or Contract Time as a result, Design-Build Entity may make a claim as provided in Article 12 of this Document 00 7253.

13.05 Suspension of Work

- A. Owner may, without cause, order Design-Build Entity in writing to suspend, delay or interrupt Work in whole or in part for such period of time as Owner may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay or interruption, calculated using the measures set forth in Section 01 2600 (Modification Procedures and Pricing of Changed Work). No adjustment shall be made to extent that:
1. Performance is, was or would have been so suspended, delayed or interrupted by another cause for which Design-Build Entity is responsible or otherwise not entitled to compensation under the Contract Documents; or
 2. An change order is made or denied under any other provision of Contract Documents; or
 3. The suspension of Work was the direct or indirect result of Design-Build Entity's failure to perform any of its obligations hereunder. Adjustments made in cost of performance may have a mutually agreed fixed or percentage fee; if the parties cannot agree, Design-Build Entity may file a claim under Article 12 of this Document 00 7253.

13.06 Termination of Contract for Cause

- A. Owner may declare Design-Build Entity in default of Contract Documents and Owner may terminate Design-Build Entity's right to proceed under the Contract Documents for cause:
1. Should Design-Build Entity make an assignment for the benefit of creditors; admit in writing its inability to pay its debts as they become due; file a voluntary petition in bankruptcy; be adjudged a bankrupt or insolvent; be the subject of an involuntary petition in bankruptcy which is not dismissed within 60 Days; file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation; file any answer admitting or not contesting the material allegations of a petition filed against Design-Build Entity in any such proceeding; or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Design-Build Entity or of all or any substantial part of its properties or if Design-Build Entity, its directors or shareholders, take action to dissolve or liquidate Design-Build Entity; or
 2. Should Design-Build Entity commit a material breach of the Contract Documents; If Owner declares Design-Build Entity in default due to material breach, however, Owner must allow Design-Build Entity an opportunity to cure such breach within ten Days of the date of notice from Owner to Design-Build Entity providing notice of the default; or, if such breach is curable but not curable within such ten-Day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Design-Build Entity to avail itself of a time period in excess of ten Days, Design-Build Entity must provide Owner within the ten-Day period with a written plan acceptable to Owner to cure said breach which includes, for example, evidence of necessary resources, Subcontractor commitments, schedules and recovery schedules meeting Contract Document requirements and showing a realistic and achievable plan to cure the breach. Design-Build Entity must then diligently commence and continue such cure according to the written plan); or
 3. Should Design-Build Entity violate or allow (by a Subcontractor or other person or entity for which Design-Build Entity is responsible) a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Project or Work and does not cure (or cause to be cured) such violation within ten Days of the date of the notice from Owner to Design-Build Entity demanding such cure; or, if such violation is curable but not curable within such ten-Day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Design-Build Entity to avail itself of a time period in excess of ten Days, Design-Build Entity shall provide Owner within the ten-Day period with a written plan to cure said violation acceptable to Owner, and then diligently commence and continue performance of such cure according to the written plan.)

- B. If Owner at any time reasonably believes that Design-Build Entity is or may be in default under the Contract Documents as provided above, Owner may in its sole discretion notify Design-Build Entity of this fact and request written assurances from Design-Build Entity of performance of Contract Documents and a written plan from Design-Build Entity to remedy any potential default under the terms of Contract Documents which Owner may advise Design-Build Entity of in writing. Design-Build Entity shall, within 10 Days of Owner's request, deliver a written cure plan which meets the requirements of the written plan deliverable under this subparagraph above. Failure of Design-Build Entity to provide such written assurances of performance and the required written plan, within ten Days of request, will constitute a material breach of Contract Documents sufficient to justify termination for cause.
- C. In event of termination for cause, Owner will immediately serve written notice thereof upon Surety and Design-Build Entity. Surety shall have the rights and obligations set forth in Document 00 6113.13 (Construction Performance Bond). Subject to the Surety's rights under the Performance Bond (which rights are waived upon a default thereunder), Owner may take over the Work and prosecute it to completion by contract or by any other methods it may deem advisable.
- D. In the event of termination by Owner:
1. Owner will compensate Design-Build Entity for the value of the Work delivered to Owner upon termination as determined in accordance with the Contract Documents, subject to all rights of offset and back charges, and provided that Design-Build Entity provides Owner with updated as-builts and Project Record Documents showing the Work performed up to the date of termination. However, Owner will not compensate Design-Build Entity for its costs in terminating the Work or any cancellation charges owed to third parties.
 2. Design-Build Entity shall deliver to Owner possession of the Work in its then condition including, but not limited to, all designs, architectural and engineering, Project records, Project Record Documents, cost data of all types, Bridging Documents and contracts with vendors and Subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. Design-Build Entity shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this subparagraph shall not be interpreted to diminish any right which Owner may have to claim and recover damages for any breach of Contract Documents or otherwise, but rather, Design-Build Entity shall compensate Owner for all loss, cost, damage, expense, and/or liability suffered by Owner as a result of such termination and failure to comply with Contract Documents.
 3. Owner's rights under this paragraph shall be specifically enforceable to the greatest extent permitted by law. Owner shall, to the extent applicable, have all other rights and remedies set forth in the Contract Documents.
- E. Owner may terminate portions or parts of the Work for cause, provided these portions or parts (1) have separate geographic areas from parts or portions of the Work not terminated or (2) are limited to the work of one or more specific trades or Subcontractors. In such case, Design-Build Entity shall cooperate with a completing Design-Build Entity as required under Article 6 of this Document 00 7253.
- F. In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Design-Build Entity shall have the recovery rights as specified below. Any Design-Build Entity claim arising out of a termination for cause, however, shall be made in accordance with Article 12 of this Document 00 7253. No other loss cost, damage, expense or liability may be claimed, requested or recovered by Design-Build Entity.

13.07 Termination of Contract for Convenience

- A. Owner may terminate performance of the Work under the Contract Documents for convenience in accordance with this clause in whole, or from time to time in part, whenever Owner shall determine that termination is in Owner's best interest. Termination shall be effected by Owner delivering to Design-Build Entity notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated and the effective date of the termination.
- B. After receiving a notice of termination for convenience, and except as otherwise directed by Owner, Design-Build Entity shall:
1. Stop Work under the Contract Documents on date and to extent specified in notice of termination;
 2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete portion of Work under the Contract Documents which is not terminated;
 3. Terminate all orders and subcontracts to extent that they relate to performance of Work terminated by the notice of termination;
 4. Assign to Owner in manner, at times, and to extent directed by Owner, all right, title, and interest of Design-Build Entity under orders and subcontracts so terminated. Owner shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of Owner to extent Owner may require. Owner's approval or ratification shall be final for purposes of this paragraph;
 6. Transfer title to Owner, and deliver in the manner, at the times, and to the extent, if any, directed by Owner, all fabricated or unfabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of, Work terminated by the notice of termination, and completed or partially completed drawings, drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to Owner;
 7. Use its best efforts to sell, in manner, at times, to extent, and at price or prices that Owner directs or authorizes, any property of types referred to in this subparagraph, but Design-Build Entity shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at price or prices approved by Owner. Proceeds of transfer or disposition shall be applied to reduce payments to be made by Owner to Design-Build Entity under the Contract Documents or shall otherwise be credited to the price or cost of Work covered by Contract Documents or paid in such other manner as Owner may direct;
 8. Complete performance of the part of the Work which was not terminated by the notice of termination; and
 9. Take such action as may be necessary, or as Owner may direct, to protect and preserve all property related to Contract Documents which is in Design-Build Entity's possession and in which Owner has or may acquire interest.
- C. After receipt of a notice of termination for convenience under this subparagraph, Design-Build Entity shall submit to Owner its termination claim, in form and with all certifications required by Article 12 of this Document 00 7253. Design-Build Entity's termination claim shall be submitted promptly, but in no event later than 6 months from effective date of the termination. Design-Build Entity and Owner may agree upon the whole or part of the amount or amounts to be paid to Design-Build Entity because of a total or partial termination of Work. If Design-Build Entity and Owner fail to agree on the whole amount to be paid to Design-Build Entity because of the termination for convenience of the Work under this subparagraph, Owner's total liability to Design-Build Entity by reason of the termination shall not exceed the total (without duplication of any items) of:
1. The reasonable cost to Design-Build Entity, without profit, for all Work performed prior to the effective date of the termination, including Work done to secure the Project for

termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the schedule of values. Deductions shall be made for cost of materials to be retained by Design-Build Entity, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits against cost of Work. Reasonable cost will include reasonable allowance for Project overhead and general administrative overhead not to exceed a total of ten percent of direct costs of such Work. When, in Owner's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of Contract Documents and excessive actual cost shall be disallowed.

2. A reasonable allowance for profit on cost of Work performed as determined under this subparagraph, provided that Design-Build Entity establishes to Owner's satisfaction that Design-Build Entity would have made a profit had the Project been completed, and provided further that the profit allowed shall not exceed 5 percent of cost.
 3. Reasonable costs to Design-Build Entity of handling material returned to vendors, delivered to Owner or otherwise disposed of as directed by Owner.
 4. A reasonable allowance for Design-Build Entity's internal administrative costs in preparing termination claim.
 5. Except as provided in this subparagraph, Owner shall not be liable for costs incurred by Design-Build Entity or Subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, post-termination general administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting Design-Build Entity's Proposal, attorney's fees of any type, and all costs relating to prosecution of claim or lawsuit.
 6. Owner shall have no obligation to pay Design-Build Entity under this subparagraph unless and until Design-Build Entity provides Owner with updated and acceptable as-builts and Project Record Documents for Work completed prior to termination.
- D. In arriving at the amount due Design-Build Entity under this clause, there shall be deducted in whole (or in the appropriate part[s] if the termination is partial):
1. All unliquidated advances or other payments on account previously made to Design-Build Entity, including without limitation all payments applicable to the terminated portion of Contract Documents;
 2. Any claim which Owner may have against Design-Build Entity in connection with Contract Documents; and
 3. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Design-Build Entity or sold under provisions of this Document 00 7253, and not otherwise recovered by or credited to Owner.

13.08 Contingent Assignment of Subcontracts and Design Agreements

- A. Design-Build Entity hereby assigns to Owner each Subcontract for a portion of the Work and each Design agreement, provided that:
1. The assignment is effective only after Owner's termination of Design-Build Entity's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract or Designer) for cause or for convenience, under Document 00 7253.
 2. The Assignment is effective only for the Subcontracts and Design agreements which Owner expressly accepts by notifying the Subcontractor or Designer in writing;
 3. The assignment is subject to the prior rights, if any, of the Surety, obligated by Document 00 6113.13 (Construction Performance Bond) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
 4. After the effectiveness of an assignment, Design-Build Entity shall, at its sole cost and expense, sign all instruments and take all actions reasonably requested by Owner to evidence and confirm the effectiveness of the assignment in Owner; and

5. Nothing in this paragraph shall modify or limit any of Design-Build Entity's obligations to Owner arising from acts or omissions occurring before the effectiveness of any Subcontract or Design agreement assignment, including but not limited to all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract or Design agreement.

13.09 Remedies and Contract Integration

- A. Subject to Contract Documents provisions regarding Design-Build Entity claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter-claims, disputes and other matters in question between Owner and Design-Build Entity arising out of or relating to Contract Documents, any breach thereof or the Project, shall be the applicable court of competent jurisdiction identified in Document 00 5200 (Agreement). All Owner remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances Owner shall have any and all other equitable and legal rights and remedies which it would have according to law.
- B. The Contract Documents, any Contract Modifications and Change Orders shall represent the entire and integrated agreement between Owner and Design-Build Entity regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written modifications. Owner and Design-Build Entity represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications and the parties are not and will not rely on any other information.
- C. In any proceeding to enforce the Contract Documents, Design-Build Entity and Owner agree that the finder of fact shall receive detailed instructions on the meaning and operation of the Contract Documents, including their conditions, limitations of liability and remedies clauses, claims procedures and any other provisions impacting major defenses and theories of liability of the parties. Detailed findings of fact shall be requested, to verify Contract enforcement.
- D. Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

13.10 Patents

- A. Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Proposal price for doing the Work. To the greatest extent permitted by law, Design-Build Entity shall defend, indemnify and hold harmless Owner and each of its officers, employees, consultants and agents, including, but not limited to, the Board, Bridging Architect and each Owner representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, royalties, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Design-Build Entity agrees to indemnify and hold

harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

13.11 Substitution for Patented and Specified Articles

- A. Except as noted specifically in Bridging Documents, whenever in Bridging Documents, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or equal." Design-Build Entity may offer any substitute material or process that Design-Build Entity considers equal in every respect to that so designated and if material or process offered by Design-Build Entity is, in opinion of Owner, equal in every respect to that so designated, its use will be approved. However, Design-Build Entity may utilize this right only by timely submitting Document 00 6325 (Substitution Request Form) as provided in Document 00 0119 (Instructions to Proposers), or as otherwise provided in Contract Documents. A substitution will be approved only if it is a true "equal" item in every aspect of its design and quality, including but not limited to its dimensions, weights, service requirements, durability, functioning, and impact on contiguous construction elements, overall schedule and design.

13.12 Interest of Public Officers

- A. No representative, officer, or employee of Owner, no member of the governing body of the locality in which the Project is situated, no member of the locality in which Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

13.13 Limit of Liability

- A. OWNER, AND EACH OF ITS OFFICERS, BOARD MEMBERS, EMPLOYEES, CONSULTANTS AND AGENTS INCLUDING, BUT NOT LIMITED TO, BRIDGING ARCHITECT AND EACH OTHER OWNER REPRESENTATIVE, SHALL HAVE NO LIABILITY TO DESIGN-BUILD ENTITY FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

13.14 Severability

- A. Any provisions or portions thereof of Contract Documents that are prohibited by, unlawful, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof in the Contract Documents.

13.15 Ownership of Results/Works for Hire

- A. The architectural and/or engineering analysis, Design Development Documents and Construction Documents, that are prepared pursuant to the Contract Documents are and shall remain the property of Owner. Design-Build Entity hereby does and shall cause all Subcontractors and others who prepared such design documents for the Project to transfer, convey, and assign to Owner all rights throughout the world in the nature of copyright and trademark in and to all versions of such design documents, including but not limited to the Contract Documents, but only to the extent such materials apply to Owner and/or to the Project. (Owner shall not have the copyright in an architect's or engineer's standard details, however, other than a license as necessary for this Project). Owner shall have the right to distribute, copy or to cause the

distribution and copying of such Construction Documents to third parties as may reasonably be necessary in connection with the Project.

- B. Any and all artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Design-Build Entity or its Subcontractors or designers in connection with services performed under the Contract Documents shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of Owner. In the event that it is ever determined that any works created by Design-Build Entity or its Subcontractors or designers under this Contract are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to Owner. With the prior written approval of Owner, Design-Build Entity may retain and use copies of such works for reference and as documentation of its experience and capabilities.

13.16 Free Of Liens

- A. Design-Build Entity shall at all times keep the Site and all areas where Work is to be performed free and clear of all liens, claims and encumbrances arising by or through Design-Build Entity, including without limitation any lien arising by virtue of any labor or materials provided by any laborer, materialman, mechanic, employee, supplier or other ("Lien"). Should Design-Build Entity not either pay or cause to be released (pursuant to a mechanics lien release bond or otherwise) any Lien by any date within five business days after notice from Owner, Owner may, at its sole election, either pay the Lien in an amount determined by Owner in its sole discretion, or (ii) purchase a release bond for the Lien in the required statutory amount, in either case with funds obtained by setting off any amounts otherwise due or to become due Design-Build Entity, and reduce the Contract Sum by such amount. If funds are insufficient, Design-Build Entity shall promptly pay the deficiency to Owner.

ARTICLE 14 – MODIFICATIONS OF CONTRACT DOCUMENTS

14.01 Alterations, Modifications and Force Account Work

- A. No modification or deviation from the Owner approved Drawings and Specifications will be permitted except by written addenda, written Change Order or written Supplemental Instruction. As appropriate or otherwise required by law, Change Orders are subject to approval by the Owner.
- B. Owner may, without notice to the sureties, make alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, contract or otherwise change the Contract Time; delete any item or portion of the Work; and require extra Work. Design-Build Entity shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. In the case of any ordered extra Work, Owner reserves the right to furnish all or portions of associated labor, material, and equipment, which Design-Build Entity shall accept and use without payment for costs, markup, profit, or otherwise for such Owner-furnished labor, materials, and equipment.
- C. Owner may make changes to the Work during the course of construction to bring the Work into compliance with environmental requirements or standards established by state and federal statutes and regulations enacted after the Contract has been awarded. Design-Build Entity shall be compensated for changes affecting the Contract Time or Contract Sum of the Work as set forth in this Article 14 and in Section 01 2600 (Modification Procedures and Pricing of Changed Work).
- D. Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written

Change Order that shall specify:

1. The Work performed in connection with the change to be made;
 2. The amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the Work ordered; and
 3. The extent of the adjustment in the Contract Time, if any.
- E. A Change Order will become effective when signed by Owner and Design-Build Entity. If Owner exercises its right to decide disputed issues pertaining to changed Work as set forth in Articles 12 and 14 of this Document 00 7253, then the resulting Change Order shall be effective when signed by Owner, notwithstanding that Design-Build Entity has not signed it.
- F. Changes not affecting the Contract Time or Contract Sum of the Work, in Owner's discretion, may be set forth in a written RFI-Reply executed by Owner. Execution of such an RFI-Reply constitutes Design-Build Entity's agreement to make the specified change without change to the Contract Sum or the Contract Time.
- G. Changes or deviations from Contract Documents affecting the Contract Time or Contract Sum of the Work shall not be made without the authority of an effective Change Order or Construction Change Directive as provided in Section 01 2600 (Modification Procedures and Pricing of Changed Work), except in cases of emergency discussed in Article 16 of this Document 00 7253.
- H. If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the Contract Documents shall be increased or decreased by the amount that Design-Build Entity and Owner may agree upon as a reasonable and proper allowance for the cost increase or decrease. If an agreement cannot be reached, then Owner will reach a determination, which shall be final, subject to Design-Build Entity's rights under Article 12 of this Document 00 7253. In all cases Design-Build Entity shall perform the changed Work as directed by Owner subject to Design-Build Entity's rights under Article 12 of this Document 00 7253.
- I. Design-Build Entity shall, upon Owner's request, permit inspection of the original unaltered Proposal estimate, subcontract agreements, purchase orders relating to the change, and documents substantiating all costs associated with its cost proposal or claims arising from changes in the Work.
- J. Changes in the Work made pursuant to this Article 14 and extensions of Contract Time necessary by reason thereof shall not in any way release the guaranties and warranties given by Design-Build Entity pursuant to provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties of bonds executed pursuant to said provisions. The Sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of time made by reason thereof.
- K. Procedures for Modifications of Contract Documents and for calculating the cost of extra Work are given in Section 01 2600 (Modification Procedures and Pricing of Changed Work). Regarding delay and impact costs of any nature, Design-Build Entity may not seek delay compensation for on-Site or off-Site costs based on formulas, e.g., "Eichleay" or other formula. Rather, Design-Build Entity shall prove actual costs resulting from such delays. If Design-Build Entity requests compensation for delay to the construction, then Design-Build Entity shall prove and document actual costs plus markup per the cost categories and procedures in Section 01 2600 (Modification Procedures and Pricing of Changed Work) in order to request, claim or prove compensation for delay.
- L. Change Orders in excess of Owner's approved limit must be approved by Owner's Board and a performance bond rider covering the changed Work executed before proceeding with the changed Work. Design-Build Entity is charged with knowledge of Owner's approved Change Order limits and procedures in effect at the applicable time.

ARTICLE 15 – TIME ALLOWANCES

15.01 Entitlement to Change of Contract Time

- A. The Contract Time may only be changed by Change Order or by Contract Modification, and all time limits stated in the Contract Documents are of the essence of Contract Documents.
- B. The Contract Time will be adjusted in an amount equal to the time lost due to:
 - 1. Changes in the Work ordered by Owner;
 - 2. Acts or neglect by Owner, Bridging Architect, any Owner representative, utility owners or other contractors performing other work, in breach of their responsibilities established in the Contract Documents, provided that Design-Build Entity has fully and completely performed its responsibilities under the Contract Documents; or
 - 3. Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise set forth in this subparagraph, earthquakes, civil or labor disturbances, strikes or acts of God, provided damages resulting therefrom are not the result of Design-Build Entity's failure to protect the Work as required by Contract Documents.
- C. The Contract Time shall not be extended for any cause identified above, however, unless:
 - 1. Design-Build Entity actually has been prevented from completing any part of the Work within the Contract Time due to delay that is beyond Design-Build Entity's control and due to reasons for which Design-Build Entity is not responsible (delays attributable to and within the control of a Subcontractor, or its subcontractors, or supplier shall be deemed to be delays within the control of Design-Build Entity);
 - 2. A claim for delay is made as provided herein; and
 - 3. Design-Build Entity submits a Time Impact Evaluation as required under Section 01 3200 (Progress Schedules and Reports) that demonstrates actual delay to critical Work activities that actually delay the progress of the Work in the amount of time requested.
- D. Where Design-Build Entity is prevented from completing any part of the Work within the Contract Time due to delay beyond the control of both Owner and Design-Build Entity (including, but not limited to, adverse weather of all types and acts of other contractors or utilities), an extension of Contract Time, in an amount equal to the time lost due to such delay (without compensation), shall be Design-Build Entity's sole and exclusive remedy for such delay.
- E. Delays due to abnormal or adverse weather conditions shall not exceed 36 calendar days per year. Adverse weather delays may be allowed only if the number of workdays of adverse weather exceeds these parameters on a monthly basis, and Design-Build Entity proves that adverse weather actually caused delays to work that is on the critical path. Design-Build Entity shall give written notice of intent to claim an adverse weather day within one Day of the adverse weather day occurring.
- F. In order to qualify as an adverse weather delay with respect to the foregoing parameters, daily rainfall must exceed .25 of an inch or more as measured by the National Oceanic & Atmospheric Administration weather station closest to the Project.
- G. Adverse weather delay for precipitation shall be recognized for the actual period of time Design-Build Entity proves it was delayed by precipitation exceeding the specified parameters. For example, and not by way of limitation, if precipitation exceeding the specified parameters does not in fact delay Design-Build Entity's progress on the critical path, then no time extension shall be recognized; and conversely, if Design-Build Entity proves to Owner's satisfaction that precipitation exceeding the specified parameters causes delay to Design-Build Entity for a period longer than the number of precipitation days incurred (e.g., if it rains or snows during grading work), then Design-Build Entity shall be entitled to a time extension equal to the actual period of such delay.

- H. Design-Build Entity shall include the foregoing precipitation parameters as a monthly activity in its progress schedule. As Work on the critical path is affected by precipitation, Design-Build Entity shall notify Owner and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float.
- I. Design-Build Entity shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for Owner to not grant a time extension due to adverse weather, where Design-Build Entity could have avoided or mitigated the potential delay by exercising reasonable care.

15.02 Notice of Delay

- A. Within seven Days of the beginning of any delay, Design-Build Entity shall notify Owner in writing, by submitting a notice of delay, of all anticipated delays resulting from the delay event in question. Within seven (7) additional days, Design-Build Entity shall provide a written schedule document that demonstrates delay to the critical path using a Time Impact Evaluation as specified in Section 01 3200 (Progress Schedules and Reports). Owner will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this paragraph.

15.03 Time Extensions and/or Damages Entitlements for Delays

- A. Design-Build Entity may receive a time extension and be compensated for delays caused directly and solely by Owner.
- B. Design-Build Entity may receive a time extension without compensation for delays resulting in whole or in part from causes beyond the reasonable control of Design-Build Entity and Owner, e.g. adverse weather conditions exceeding Contract Documents parameters, earthquakes, Acts of God and epidemics. In such cases, a time extension without compensation shall constitute Design-Build Entity's sole and exclusive remedy for such delays.
- C. Design-Build Entity shall not be entitled to any time-related damages or compensation including, but not limited to, extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays caused in whole or in part by Design-Build Entity's failure to perform its obligations under the Contract Documents, or during periods of delay concurrently caused by Design-Build Entity and either Owner or others.
- D. Design-Build Entity shall not be entitled to damages for delay to the Work caused by the following reasons:
 - 1. Owner's right to sequence the Work in a manner which would avoid disruption to Owner's tenants and their contractors or other prime contractors and their respective subcontractors, exercised as a result of Design-Build Entity's failure to perform its cooperation and coordination responsibilities required by Contract Documents; Owner's enforcement of any government act or regulation; or the provisions of the Contract Documents;
 - 2. For changed Site conditions that are beyond the parties' contemplation, except that Owner may approve direct costs associated with unknown conditions (but not costs or damages which result from such delays); and
 - 3. Extensive requests for clarifications to Contract Documents or Contract Modifications thereto, provided such clarifications or Contract Modifications are processed by Owner or its consultants in a reasonable time commensurate with Contract Documents requirements.

15.04 Liquidated Damages

- A. Time is of the essence. Execution of Contract Documents by Design-Build Entity shall constitute acknowledgement by Design-Build Entity that Design-Build Entity understands, has ascertained and agrees that Owner will actually sustain damages in the amount fixed in the Contract Documents for each and every Day during which completion of Work required is delayed beyond expiration of time fixed for completion or extensions of time allowed pursuant to provisions hereof. Design-Build Entity and Owner agree that specified measures of liquidated damages shall be presumed to be the damages actually sustained by Owner as defined below, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.
- B. Liquidated damages shall be considered not as a penalty but as agreed monetary damage sustained by Owner for increased Project administration expenses, including extra inspection, construction management and architectural and engineering expenses related to the Project and Contract Documents because Design-Build Entity failed to perform and complete Work within time fixed for completion or extensions of time allowed pursuant to provisions hereof. Liquidated damages shall not be deemed to include within their scope additional damages or administrative costs arising from Defective Work, lost revenues, interest expenses, cost of completion of the Work, cost of substitute facilities, claims and fines of regulatory agencies, damages suffered by others or other forms of liability claimed against Owner as a result of delay (e.g., delay or delay related claims of other contractors, subcontractors or tenants), and defense costs thereof. Design-Build Entity shall be fully responsible for the actual amount of any such damages it causes, in addition to the liquidated damages otherwise due Owner.
- C. Owner in its sole discretion may deduct from any money due or to become due to Design-Build Entity subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages. Should Design-Build Entity fall behind the approved Progress Schedule, Owner may deduct liquidated damages based on its estimated period of late completion. Owner need not wait until Final Completion to withhold liquidated damages from Design-Build Entity's progress payments. Should money due or to become due to Design-Build Entity be insufficient to cover aggregate liquidated damages due, then Design-Build Entity forthwith shall pay the remainder of the assessed liquidated damages to Owner.

ARTICLE 16 – WORKING CONDITIONS AND PREVAILING WAGES

16.01 Use of Site/Sanitary Rules

- A. All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. Design-Build Entity shall furnish toilets for use of Design-Build Entity's and Subcontractors' employees on the Site where needed, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed and maintained subject to Owner's approval.
- B. Design-Build Entity shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by Owner, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Design-Build Entity shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to the owner or occupant thereof resulting from the performance of Work.
- C. During the progress of the Work, Design-Build Entity shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Design-Build Entity shall remove all waste materials, rubbish and debris from and about the Site as well as all tools, appliances, construction equipment and machinery

and surplus materials. Design-Build Entity shall leave the premises clean and ready for occupancy by Owner at Substantial Completion of Work. Design-Build Entity shall restore to original condition all property not designated for alteration by Contract Documents.

- D. Design-Build Entity shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Design-Build Entity subject any part of Work or adjacent property to stresses or pressures that will endanger it. Design-Build Entity shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment or structures to accommodate performing the Work.

16.02 Protection of Work, Persons, Property and Operations

- A. Design-Build Entity shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with Work. Design-Build Entity shall comply with all safety requirements specified in any safety program established by Owner, or required by state, federal or local laws and ordinances. Design-Build Entity shall be responsible for all damage to Work, property or structures, all injuries to persons, and all damage and interruptions to Owner's operations, arising from the performance of Work of the Contract Documents. Except as otherwise expressly approved by Owner in writing, Design-Build Entity shall at all times perform all Work in a manner which does not interrupt, damage or otherwise adversely impact any facilities, operations, or real or personal property of Owner, its officers, employees, agents, invitees, licensees, lessees or contractors.
- B. Design-Build Entity shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Build Entity shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.
- C. Design-Build Entity shall remedy all damage, injury, loss or interruption to any property or operations referred to above, caused, directly or indirectly, in whole or in part, by Design-Build Entity, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Design-Build Entity's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. Owner and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Design-Build Entity's Work.
- D. Design-Build Entity shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- E. Owner may, at its option, retain such moneys due under the Contract Documents as Owner deems necessary until any and all suits or claims against Design-Build Entity for injury to persons, property or operations shall be settled and Owner receives satisfactory evidence to that effect.

16.03 Responsibility for Safety and Health

- A. Design-Build Entity shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Site. These laws include the

Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and Owner's safety regulations as amended from time to time. Design-Build Entity shall comply with all Owner directions regarding protective clothing and gear.

- B. Design-Build Entity shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Design-Build Entity shall notify Owner, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Design-Build Entity's control. Design-Build Entity shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Design-Build Entity, Subcontractors or persons from recognized hazards until the responsible party corrects the hazard. Design-Build Entity shall provide protective clothing and gear to all visitors to the Site.
- C. Design-Build Entity shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Site where Work under the Contract Documents is to be performed: Owner designated routes for ingress and egress thereto and any other Owner designated area. Except those routes for ingress and egress over which Design-Build Entity has no right of control, within such areas, Design-Build Entity shall provide safe means of access to all places at which persons may at any time have occasion to be present.

16.04 Emergencies

- A. In emergencies affecting the safety or protection of persons or Work or property at the Site or adjacent thereto, Design-Build Entity, without special instruction or authorization from Owner, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by Owner. Design-Build Entity shall give Owner prompt written notice if Design-Build Entity believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If Owner determines that a change in the Contract Documents is required because of the action taken by Design-Build Entity in response to such an emergency, a Change Order or Construction Change Directive will be issued to document the consequences of such action. Emergency contact names & phone numbers, where Design-Build Entity's Superintendent and Project Manager can be reached at any time, are to be provided to the Owner, within 10 days after issuance of a Notice to Proceed for any construction.

16.05 Use of Roadways and Walkways

- A. Design-Build Entity shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic. Before beginning any interference and only with Owner's prior concurrence, Design-Build Entity may provide detour or temporary bridge for traffic to pass around or over the interference, which Design-Build Entity shall maintain in satisfactory condition as long as interference continues. Unless otherwise provided in the Contract Documents, Design-Build Entity shall bear the cost of these temporary facilities.

16.06 Nondiscrimination

- A. No person or entity shall discriminate in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in Section 12940 of the Government Code. Every Design-Build Entity for public works violating the provisions of Section 1735 of the Labor Code is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the Labor Code.

16.07 Prevailing Wages, Monitoring and Enforcement

- A. This Project is subject to the requirements of Division 2, Part 7, Chapter 1 of the Labor Code (Public Works), Design-Build Entity shall pay to persons performing labor in and about Work

provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the Work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and Owner to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. Design-Build Entity shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site.

- B. Design-Build Entity shall forfeit, as a penalty to Owner, Two Hundred Dollars (\$200.00) for each worker employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such worker is paid less than the said stipulated rates for any work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the California Labor Code. The sums and amounts which shall be forfeited pursuant to this paragraph and the terms of the Labor Code shall be withheld and retained from payments due to Design-Build Entity under the Contract Documents, pursuant to this Document 00 7253 and the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by Owner. The Labor Commissioner pursuant to Labor Code Section 1775 shall determine the final amount of forfeiture.
- C. Design-Build Entity shall insert in every subcontract or other arrangement which Design-Build Entity may make for performance of work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code.
- D. Design-Build Entity stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code Section 1813. Failure to so comply, including without limitation Labor Code Section 1776, shall constitute a default under this Contract.
- E. Design-Build Entity and its Subcontractors shall be responsible for compliance with Labor Code Section 1776.
 - 1. Design-Build Entity and Subcontractors must keep accurate payroll records, showing the name, address, social security number, Work classification, 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 him or her in connection with the Work of the Contract documents. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776.
 - 2. The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of Design-Build Entity as required by Labor Code Section 1776.
 - a. (X) Design-Build Entity shall inform Owner of the location of records enumerated above, including the street address, city and county, and shall, within five working Days, provide a notice of a change of location and address.
 - b. (Y) Design-Build Entity or Subcontractor has 10 Days in which to comply subsequent to receipt of a written notice requesting the records enumerated above. In the event that Design-Build Entity or Subcontractor fails to comply with the ten-Day period, he or she shall, as a penalty to Owner on whose behalf the contract is made or awarded, forfeit \$100.00 for each calendar Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Design-Build Entity is not subject to a penalty assessment pursuant to this paragraph due to the failure of

- a Subcontractor to comply with this paragraph.
3. Design-Build Entity shall also deliver certified payrolls to Owner with each Application for Payment as described in Section 00 2000 (Measurement and Payment).
- F. Owner has not established a labor compliance program. Therefore, this Contract is subject to Public Contract Code Section 20133(b)(3)(B), which requires Owner to reimburse the Department of Industrial Relations (DIR) for certain costs of performing prevailing wage monitoring and enforcement on this Project, and the requirements of Title 8, Division 1, Chapter 8, Subchapter 4.5 of California Code of Regulations (Compliance Monitoring and Enforcement by Department of Industrial Relations). Design-Build Entity will be fully responsible for reporting to and providing all documentation and other information required by the DIR, and for paying all resulting penalties, fines, and other amounts due on account of any prevailing wage or other labor, wage or hour violation. Without limiting the foregoing, Design-Build Entity will forward certified payroll records directly to the Labor Commissioner in accordance with 8 CCR.
- G. Pursuant to 8 CCR 16451, Design-Build Entity shall post on the Project Site a Notice containing the following language:
- “This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public works projects.
- The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the CMU at any office of the Division of Labor Standards Enforcement (DLSE).
- Local Office Telephone Number: ***[Design-Build Entity to provide]***
- Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the project that the CMU may take legal action against those responsible.
- Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc.) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the project.
- For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the Department of Industrial Relations website found at www.dir.ca.gov/dlse/PublicWorks.html.”
- H. Design-Build Entity shall assist Owner in conducting the pre-job conference required by 8 CCR 16454.
- I. Design-Build Entity and all Subcontractors shall keep accurate payroll records in accordance with Labor Code Section 1776. Such records shall be furnished to the Compliance Monitoring Unit each month, no later than the time Design-Build Entity submits each Application for Payment as

described in Section 00 2000 (Measurement and Payment). And within 10 days of any separate request by the Compliance Monitoring Unit. Payroll records shall be furnished in a format prescribed by section 16401 of Title 8 of the California Code of Regulations, with use of the current version of DIR's "Public Works Payroll Reporting Form" (A-1-131) and "Statement of Employer Payments" (DLSE Form PW26) constituting presumptive compliance with this requirement, provided the forms are filled out accurately and completely. If the Compliance Monitoring Unit has provided for and requires the electronic submission of certified payroll reports in lieu of paper forms, Design-Build Entity shall comply with the electronic submission requirements. Design-Build Entity shall provide Owner with a concurrent electronic copy of any electronic payroll report submission.

- J. If directed by the Labor Commissioner, Owner shall withhold Contract payments when payroll records are delinquent or inadequate.

16.08 Environmental Controls

- A. Design-Build Entity shall comply with all rules, regulations, ordinances, and statutes that apply to any work performed under the Contract Documents including, without limitation, any toxic, water and soil pollution controls and air pollution controls specified in Government Code, Section 11017 and as required by applicable Air Quality Management District, California Water Quality Control Board, SWPPP, and Best Management Practices. Design-Build Entity shall be responsible for insuring that Design-Build Entity's employees, Subcontractors and the public are protected from exposure to airborne hazards or contaminated water, soil or other toxic materials used during or generated by activities on the Site or associated with the Project.

16.09 Shoring Safety Plan

- A. At least five Days in advance of excavating any trench five feet or more in depth, Design-Build Entity shall submit to Owner a detailed plan showing the shoring, bracing and sloping design and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
- B. During the course of Work, Design-Build Entity shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth. Design-Build Entity will be solely responsible for any damage or injuries that may result from excavating or trenching. Owner's acceptance of any drawings showing the shoring or bracing design or work schedule shall not relieve Design-Build Entity of its responsibilities under this paragraph.
- C. Cal/OSHA Permit. Design-Build Entity shall comply with Labor Code 6500 and shall obtain, as applicable, a permit as required by Cal/OSHA for each of the following:
 - 1. Construction of trenches or excavations that are five feet or more in depth and into which a person is required to descend.
 - 2. Construction or demolition of any building, structure, or scaffolding for falsework more than three stories high, or the equivalent height (36 feet).
 - 3. Erection or dismantling of vertical shoring systems more than three stories high, or the equivalent height (36 feet).
 - 4. The underground use of diesel engines in mines or tunnels.

END OF DOCUMENT