

Design Build Trade Contract Agreement Between Owner and Trade Contractor

This Trade Contract ("Trade Contract") is entered into as of **September 26, 2018** ("Effective Date") by and between:

The Owner ("**Owner**"):
County of San Mateo
Project Development Unit (PDU)
1402 Maple Street
Redwood City, CA 94063

AND

Trade Contractor ("**Trade Contractor**" or "**Contractor**"):
BEI Construction
1101 Marina Village Parkway, Suite 100
Alameda, CA 94501
Lic. No. 528322

The Project is the Regional Operations Center (ROC) Data Center Infrastructure Buildout ("**Project**").

The Owner and Trade Contractor agree as set forth below.

1. PROJECT DESCRIPTION

1.1 Project. The Project consists defined in the scope below:

1.1.1 Provisioning and Installation of data center Cabinets, PDU's, ARD's and Associated APC Hardware

1.1.2 Provisioning and Installation of Cabling and all related support systems

1.1.3 Provisioning and installation of Electrical Distribution Busway within the Data Center.

1.1.4 Design, Provisioning, and installation of security fencing within the Data Center.

1.2 Definitions. All defined terms will be capitalized throughout the Trade Contract. The definitions for this Trade Contract appear in alphabetical order in Exhibit 2 to this Agreement and may also be set forth in quotations the first time the term is used for convenience.

2. THE WORK

2.1 Work. The Trade Contractor will provide all necessary management, supervision, labor, engineering, materials, equipment, tools, supplies, replacement equipment, services, testing, warranty, maintenance, transportation, insurance and/or any other act or thing required to diligently and fully perform and complete the portions of the work described as

follows and with the intent to match the current design, equipment, functionality, and integration with the Regional Operations Center Project (the "**Work**") in strict accordance with the "**Contract Documents**" as defined in Article 3.

2.1.1 Contract Scope of Work – See Exhibit A.

2.1.2 Concept Drawings – See Exhibit B.

2.1.3 Contract Information Package – See Exhibit C.

2.1.4 Definitions and General Conditions – See Exhibit 2

2.2 Performance of the Work. Trade Contractor shall furnish and pay for all: (1) management, (2) supervision, (3) labor; (4) engineering (5) materials; (6) equipment; (7) supplies; (8) tools; (9) replacement equipment, (10) services, (11) testing (12) warranty, (13) maintenance, (14) transportation, (15) insurance, (16) taxes; (17) applicable permits, if any; and or any other act or thing required to diligently and fully perform and complete the portions of the work described as follows and with the intent to match the current design, equipment, functionality, and integration with the Regional Operations Center Project.

2.2.1 Trade Contractor will use commercially reasonable efforts to incorporate products and materials made in America into the Work.

2.3 Standard of Care. The Trade Contractor will perform the Design Services in a timely and professional manner consistent with the degree of care and skill customarily exercised by California licensed design professionals designing similar systems in California that are of similar nature, scope, size and complexity. The Trade Contractor will supervise and direct the Work using the Trade Contractor's best skill and attention and all Work will be performed in a timely workmanlike manner consistent with the degree of care and skill customarily exercised by California State licensed contractors experienced in constructing systems in California that are of similar nature, scope, size and complexity.

2.4 Design Professionals

2.4.1 The Trade Contractor will cause all professional services for the Design Services to be performed by appropriately California State licensed professional engineers or architects qualified for their Project duties. Those portions of the Work that Trade Contractor does not customarily perform with its own personnel will be performed by subconsultants under written subcontract and subject to Owner's approval, which will not be unreasonably withheld. If the Trade Contractor engages others to perform professional services for the Project, the Trade Contractor must cause Owner to be named as a third-party beneficiary through written contract, with full rights against the party providing the services if such services fail to satisfy the standard of care in Section 2.3.

2.4.2 Each agreement with a subconsultant must include the following provisions:

2.4.2.1 the standard of care set forth in Section 2.3;

2.4.2.2 the provisions of Article 16 regarding books and records;

2.4.2.3 a provision assigning the consulting agreement to Owner if Trade Contractor is terminated, effective upon notice from Owner to the subconsultant that it is taking assignment of the consulting agreement;

2.4.2.4 insurance requirements consistent with this Agreement;

2.4.2.5 an indemnification that indemnifies the Indemnified Parties against all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, cost and expenses, including legal fees and disbursements, to the extent caused by the negligent acts or omissions, breach of contract or willful misconduct of the subconsultant or those for whom it is responsible; and

2.4.2.6 a provision that binds the subconsultant to the dispute resolution procedures set forth in Article 17.

2.5 Provided Design Information. Owner does not warrant the accuracy or completeness of any design information it provides to the Trade Contractor. Trade Contractor must review all such information with the due care expected of a design professional relying on the work of another for any errors, inconsistencies, inaccuracies, or incompleteness, and will promptly inform the Owner upon discovery of any of such problems.

2.6 Means and Methods. The Trade Contractor is solely responsible for all construction means, methods, techniques, sequences, and procedures and for safety precautions and programs in connection with the Work. The Trade Contractor is entirely responsible for the acts and omissions of its agents or employees, "**Subcontractors,**" suppliers, any of their agents or employees, or any other persons performing any of the Work on behalf of the Trade Contractor and agrees that the Owner is not responsible for its acts or omissions or the acts or omissions of those for whom it is responsible.

2.7 Subcontracts and Purchase Orders. Those portions of the Work that Trade Contractor does not customarily perform with its own personnel will be performed by a Subcontractor under written Subcontract. The term Subcontractor includes subcontractors of any tier. All Subcontracts must include the Contract Documents and bind the Subcontractor to the Trade Contractor to the same extent as the Trade Contractor is bound to the Owner under this Trade Contract. Any Subcontractors used or employed by the Trade Contractor must possess the appropriate California state licenses and certifications required for performance of the Work and carry out their Work using the same degree of skill and care established in Section 2.3 for their profession and discipline. The Subcontractor and its employees are obligated to carry out their Work in strict accordance with the Contract Documents. All purchase orders must be in writing.

2.7.1 Trade Contractor is responsible for the acts and omissions of its Subcontractors and of persons or entities either directly or indirectly employed by its Subcontractors. Nothing contained in this Trade Contract creates a contractual relationship between the Owner and Subcontractor.

2.7.2 **Subletting and Subcontracting Fair Practices Act.** Trade Contractor must comply with all requirements of the Subletting and Subcontracting Fair Practices Act commencing with Public Contract Code section 4100, et seq.

2.7.2.1 The Trade Contractor must include the name and location of business for each Subcontractor who will perform a portion of the Work, if the Subcontractor's

portion of the Work is in excess of 1/2 of 1% of the Trade Contractor's bid or \$10,000, whichever is greater, at the time of bid or within 24 hours after the deadline for the bid in accordance with Public Contract Code section 4104.

2.7.2.2 The Trade Contractor will list only 1 Subcontractor for each portion of the Work.

2.7.2.3 If the Trade Contractor fails to specify a Subcontractor as required under Section 4100, et seq., the Trade Contractor agrees that it is fully qualified and capable of performing that portion of the Work itself and that Trade Contractor will perform that portion of the Work itself on this Project.

2.7.2.4 Trade Contractor may not substitute a Subcontractor in place of its listed Subcontractor unless it can demonstrate one of the conditions or situations set forth in Public Contract Code section 4107.

2.7.2.5 Violation of the Subletting and Subcontracting Fair Practice Act are grounds for cancellation of the Trade Contract or penalty under Public Contract Code section 4110 and disciplinary actions under Section 4111.

2.7.3 **Preliminary Notice.** Trade Contractor will, within 5 business days of receipt, forward to Owner, all Preliminary Notices served on it by any person or entity entitled to assert a payment bond or stop notice claim. Trade Contractor will maintain a written record of all Preliminary Notices received by it including the manner of receipt, date of receipt, and name and address of person or entity serving the Preliminary Notice.

3. **CONTRACT DOCUMENTS**

3.1 **Contract Documents.** The Trade Contractor's Contract Documents ("**Contract Documents**") include this Trade Contract, and all Exhibits, the "**Construction Documents**," and all subsequent contract modifications issued after execution of this Trade Contract such as amendments and "**Change Orders**." The Contract Documents referred to in this Trade Contract are incorporated by reference as though set forth in full.

3.2 **Precedence.** The Contract Documents are intended to be fully cooperative and complementary. Trade Contractor will promptly notify Owner in writing through a request for clarification or information if it notices any conflict between or among Contract Documents. If there is a conflict between or among the various Contract Documents, the most stringent requirement or highest standard will govern unless the response to the request for clarification or information dictates otherwise.

3.3 **Acknowledgement.** The Trade Contractor acknowledges it has carefully examined and understands this Trade Contract and the other Contract Documents; has investigated the nature, locality and site of the Project and the conditions and difficulties under which the Work is to be performed, and enters into this Trade Contract on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of the Owner, or any of their respective officers, agents, servants, or employees.

4. RELATIONSHIPS OF THE PARTIES

4.1 Trade Contractor and Owner. The Trade Contractor's relationship with the Owner is that of an independent contractor whose involvement in the Project is to act solely in the capacity of a California licensed contractor and not as an agent, fiduciary, partner, member of, subsidiary of, or otherwise affiliated with the Owner. The Trade Contractor agrees to cooperate and collaborate with the Owner, and to exercise the Trade Contractor's best skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in the most expeditious and economical manner consistent with the Owner's best interests. The Owner agrees to timely furnish and approve all information required by the Contract Documents and to make timely payments to the Trade Contractor in accordance with the requirements of the Contract Documents.

5. APPLICABLE LAWS.

5.1 The Trade Contractor agrees to comply with all federal, state, municipal and local laws, ordinances, rules, regulations, building codes and standards, orders, notices and requirements applicable to its Work on the Project. The Project must be designed to be capable of complying with all Applicable Laws and the Design Standards set forth in the following Exhibit's, and the Project's design must be based upon and incorporate design and engineering principles, materials and equipment that comply with Good Engineering and Construction Practices.

6. TRADE CONTRACTOR QUALIFICATIONS.

6.1 Licensing. The Trade Contractor warrants that it is authorized to do business in the State of California and is properly licensed by all necessary governmental, public and other authorities having jurisdiction over the Project for performance of the Work. If Trade Contractor is self-performing Design Services, Trade Contractor warrants that it is authorized to do business in the State of California and is properly licensed by all necessary Governmental Agencies having jurisdiction over the Project for performance of the Design Services. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects shall be filed within 10 years of the date of the alleged violation.

6.2 Site Investigation. The Trade Contractor represents that it has visited the Project site, has reviewed and analyzed the criteria design package, as well as any other documentation provided by the Owner such as geotechnical data, hazardous material surveys, and the Owner's existing drawings, and is familiar with the local conditions under which the Work is to be performed. The Trade Contractor will cooperate with the Owner in conducting further investigation of the existing conditions, if required, with respect to all accessible space.

7. DESIGN AND CONSTRUCTION WORK

7.1 Design Phases.

7.1.1 Preliminary Design. During Preliminary Design, the Trade Contractor, in collaboration with the Owner will prepare the Final Design for the Owner's approval. The Final

Design must be consistent with the Project Criteria and Design Standards and reflect any revisions requested by the Owner that are consistent with the Project Criteria and Design Standards.

7.2 Notice to Proceed. The Owner will issue a Notice to Proceed stating the date of commencement of the construction. Upon receipt of the Notice to Proceed, the Trade Contractor will procure all required payment and performance bonds pursuant to Section 13.4.

7.3 Permits and Fees. Trade Contractor will secure and pay for all Cal OSHA permits and fees necessary for execution of the Work.

7.4 Representative. If required by the Owner, the Trade Contractor will provide a qualified, on-site, Project representative who is authorized to receive orders, and make decisions regarding the Work. The Project representative may not be changed without Owner's written consent, which will not be unreasonably withheld.

7.4.1 The Trade Contractor's authorized representative is: **Mike Kramer, 510-813-5757, mkramer@beiconstruction.com**

7.5 Field Supervision. If required by the Owner, the Trade Contractor will provide a qualified superintendent or foreman at the site to receive orders and make day to day decisions regarding the Work and to properly supervise all employees, subcontractors and their agents and employees, and other persons performing any Work under the Trade Contract to ensure that the Work is carried out in accordance with the Contract Documents. Trade Contractor's superintendent may not be changed without Owner's and Owner's written consent, which will not be unreasonably withheld.

7.5.1 The Trade Contractor's Field Supervisor is: **Erik Pittam, 510-813-6904, erik@beiconstruction.com**

7.6 Communications. The Owner and Trade Contractor will communicate directly. The Owner will not communicate directly with Trade Contractor's subcontractors.

7.7 Collaboration. The Trade Contractor will work collaboratively with the Owner, and its consultants, and all permitting and regulatory agencies, and other trade contractors to inform the design process and deliver best value to the Owner.

7.8 Field Measurements. Notwithstanding the dimensions on the Construction Documents, it is the responsibility of the Trade Contractor to take field measurements to ensure the proper matching and fitting of its Work with existing conditions.

7.9 Layout and Protection. Trade Contractor is responsible for its own layout. Trade Contractor will preserve and protect all line and grade benchmarks and will not cause damage to other trade contractors' benchmarks or lay-out points. Any additional surveying or layout caused because of Trade Contractor's failure to take the necessary precautions to protect the data will be performed at Trade Contractor's own cost and expense.

7.10 Project Meetings. The Trade Contractor will attend all Project meetings as more particularly described in the Contract Specifications to discuss preconstruction, jobsite procedures, progress and scheduling, and to resolve any pending design or construction issues.

7.11 Materials and Equipment. All materials and equipment required under the Contract Documents will be new and of good quality. No substitutions will be accepted on this

Project unless the specified materials or equipment have been discontinued or unless the Owner, after evaluation, has approved the substitution through written Change Order. Materials will be furnished in ample quantities and procured in time to ensure uninterrupted progress of the Work. All materials will be properly stored and protected as required by the Contract Documents and any loss or damage due to improper storage or protection will be borne by the Trade Contractor.

7.12 Storage of Materials and Equipment. Storage of equipment and materials will be coordinated through the Owner and in accordance with the Contract Specifications. Trade Contractor will maintain its storage area and will keep its storage areas clean, safe and secure. Any materials or equipment stored offsite will be insured or stored in a bonded warehouse. The risk of loss will remain on the Trade Contractor for all materials and equipment stored off-site per Section 7.131.

7.13 Risk of Loss. All Work at the Project site, or in preparing or delivering materials or equipment to the Project site, is performed exclusively at the risk of the Trade Contractor until the completed Work is accepted by the Owner. Trade Contractor may be named as an additional insured on the Builder's Risk policy provided by the project (Design Build Entity) DBE and, subject to the terms and conditions of that policy, may be insured for some risk of loss under this provision. Owner make no representations or warranties regarding the scope, if any, or adequacy of the Builder's Risk coverage.

7.14 Submittals. The Trade Contractor will submit to the Architect (or Owner's designated Project Manager) through Owner all "**Shop Drawings**," "**Product Data**," "**Samples**" and similar submittals (collectively referred to as "**Submittals**") required by the Contract Documents with reasonable promptness and in such sequence to avoid delays in the Work or in the activities of the, Owner, or other trade contractors. The Trade Contractor will not submit any Submittal that is merely a tracing or copy of any of the Construction Documents. Each Submittal will be prepared by the Trade Contractor, a Subcontractor, or supplier of the Trade Contractor and will be submitted according to the Project specifications. Any Submittals that are not required by the Construction Documents may be returned by the Architect (or Owner's designated Project Manager) or Owner without action.

7.14.1 By reviewing and transmitting a Submittal to the Architect (or Owner's designated Project Manager) through the Owner, the Trade Contractor represents that it has coordinated the information contained within the Submittal with the existing field conditions, the Contract Documents, and requirements of the Work and other contiguous work. Submittals that are not marked as reviewed for compliance with the Contract Documents and approved by the Trade Contractor may be returned by the Architect (or Owner's designated Project Manager) without action. Trade Contractor should take into account that the Owner will have a minimum of 7 business days to review Submittals before transmitting to the Architect (or Owner's designated Project Manager) for approval.

7.14.2 Upon return of any Submittal to the Trade Contractor from the Architect (or Owner's designated Project Manager) or Owner, the Trade Contractor will make any correction required in accordance with the Contract Documents and, within 1 week or less, furnish corrected resubmissions to Owner for further review and transmission to the Architect (or Owner's designated Project Manager) for approval. The Trade Contractor will not perform any of the Work for which the Contract Documents require a Submittal until the respective Submittal has been approved by the Architect (or Owner's designated Project Manager). Upon receipt of approval from the Architect (or Owner's designated Project Manager) on a Submittal, the Trade Contractor will file a final corrected copy with the Owner and furnish other copies as may be

needed or requested by Owner r. If the Trade Contractor fails to timely submit or resubmit Submittals required to maintain the Project Schedule, the Trade Contractor will be liable for all costs, expenses, and damages resulting from the delays.

7.14.3 The Trade Contractor's submission of a Shop Drawing to the Architect (or Owner's designated Project Manager) through Owner constitutes the Trade Contractor's representation, upon which the Owner, Architect (or Owner's designated Project Manager), and Owner may rely, that the Trade Contractor has reviewed the submission for accuracy and compliance with all Contract Documents, and that all original engineering, if required, has been performed by a qualified California State licensed professional engineer. Review of Shop Drawings by the Architect (or Owner's designated Project Manager) will not constitute an undertaking by the Architect (or Owner's designated Project Manager) to identify deficiencies in the Submittal.

7.15 Lean Requirements. If it so chooses, the Owner will develop, oversee and facilitate a lean construction management and communications plan in accordance with the techniques developed by the Lean Construction Institute. The principles and techniques will be referred to as "**Lean Construction**," "**Lean Design**" or "**Lean**." The Trade Contractor represents that it will cooperate with the, Owner, Architect (or Owner's designated Project Manager) and other trade contractors in applying Lean Construction principles to its Work and the Project.

7.16 Safety. The Trade Contractor will comply with all provisions of Contract Documents regarding safety. Trade Contractor's failure to familiarize itself with the applicable requirements of law, regulations, and the documents cited in this Section will not relieve Trade Contractor from fully complying with their contents. The Trade Contractor is required to attend all weekly safety meetings conducted by the Owner. The Trade Contractor is solely responsible for safety at the Project site. The Owner's management and coordination of the safety requirements does not extend to direct control over or charge of the acts or omissions of the Trade Contractor, its Subcontractors, agents or employees or any other person performing portions of the Work.

7.16.1 Removal of Unit Workers. Owner has the right, which right will not be unreasonably exercised, to require Trade Contractor to remove from the Work any person employed by Trade Contractor, including persons employed by its Subcontractors, who by misconduct, by failure to properly perform their duties, by failure to comply with site safety procedures, by failure to operate construction equipment in a safe manner or by failing to comply with Owner's Drug and Alcohol Prevention Program are considered by Owner to be unfit for further service on the Work.

7.16.2 Unsafe or Hazardous Conditions. The Trade Contractor will stop any part of the Work that the Owner deems unsafe until corrective measures satisfactory to the Owner as required in the Contract Specifications, and the Trade Contractor agrees that it will not have or make any claim for damages growing out of Work stoppages arising from unsafe conditions. If the Trade Contractor fails to take corrective measures, the Owner may do so at Trade Contractor's cost and expense, and the Owner may deduct the cost of the corrective measures from any payments due or to become due to the Trade Contractor. Failure on the part of the Owner to stop unsafe practices does not relieve or diminish the Trade Contractor's safety responsibilities.

7.16.3 Safety Laws. The Trade Contractor will give notice and comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

7.16.5 Emergency Action Plan. Prior to mobilization, Trade Contractor shall provide Owner with a site-specific Emergency Action Plan ("EAP")/Health and Safety Plan. The EAP shall include a list of Trade Contractor's key personnel. This list must provide after-hours telephone numbers for all key personnel who may be contacted in an emergency. Trade Contractor shall keep its EAP current during performance of the Work.

7.17 Quality Control. Throughout the construction process, the Trade Contractor will comply with the Quality Assurance and Quality Control the requirements of the Contract Documents.

7.18 Cutting and Patching. Trade Contractor will be responsible for all cutting and patching required in the prosecution of the Work as further specified in the Contract Specifications. Trade Contractor will not damage or endanger a portion of the Work or partially or completed construction of other trade contractors' work by excavating, cutting, patching or otherwise altering the construction. The Trade Contractor will promptly notify the Owner before cutting, patching or modifying any construction work.

7.19 Cleaning Up. Trade Contractor will perform its Work to maintain the site in a clean, safe and orderly condition. Trade Contractor will protect material, equipment, filters, ducts, plenums or other systems to avoid contamination with dust, moisture, solvents or construction debris. All clean-up will be in accordance with the Contract Specifications. Upon Completion of the Work, Trade Contractor will remove from the Project site all materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, and equipment used in the performance of its Work.

7.20 Test and Inspections. Tests, inspections and approvals of portions of the Work required by the Trade Contract, the Contract Documents, or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction over the Project will be coordinated by the Trade Contractor with the Owner. The Trade Contractor will coordinate with the Owner and arrange for tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority.

7.20.1 Payment. The Trade Contractor will pay for all testing and inspection including the structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents, unless otherwise specified.

7.20.2 Covered Work Prior to Inspection. If a portion of the Work is covered contrary to the Owner's request, or prior to inspection by the proper authorities specifically expressed in the Contract Documents, it will be uncovered for inspection and examination by the Owner, Architect (or Owner's designated Project Manager) or other proper authorities and be replaced at the Trade Contractor's expense without change in the Trade Contractor's Contract Time.

7.20.3 Final Inspections. The Trade Contractor will coordinate the correction and Completion of the Work with the Owner. Following issuance of a "**Certificate of Substantial Completion**" for the entire Project, or a designated portion of construction work, the Owner will evaluate the Completion of the Work with the Trade Contractor and make recommendations to the Owner and Architect (or Owner's designated Project Manager) when the Trade Contractor's Work is ready for final inspection. The Owner will conduct final inspections with, the Trade Contractor, and Architect (or Owner's designated Project Manager).

7.21 Non-Conforming Work and Correction. Within 24 hours' notice, the Trade Contractor will commence correction of the Work that is rejected by the Owner, and/or Architect (or Owner's designated Project Manager) for failing to conform to the requirements of the Contract Documents, including Work destroyed or damaged construction (whether completed or partially completed) caused by the Trade Contractor's correction or removal of the non-conforming Work, whether discovered before or after Substantial Completion of the Project and whether or not fabricated, installed or completed. The Trade Contractor will bear all costs associated with correction of non-conforming Work.

7.22 Record Drawings. The Trade Contractor will maintain "**Record Drawings**" as required by the Contract Documents. Trade Contractor will take control of the structural model and maintain the as-built conditions in the model.

7.23 Building Commissioning. The Owner will schedule and oversee the Trade Contractor's final testing and start-up of utilities, operational systems and equipment and assist the Owner with the building commissioning. All inspections and testing will be conducted by the Owner or by other governing authorities. During commissioning and before Final Completion, the Owner will oversee Trade Contractor's operation, adjustment and balancing of all equipment, and training of Owner's employees in the correct operation and maintenance of equipment.

7.24 Punchlist. When the Trade Contractor considers its Work substantially complete it will notify the Owner and the Owner, in conjunction with the Architect (or Owner's designated Project Manager) and Trade Contractor, will prepare a list of incomplete or unsatisfactory items and a schedule for their completion. All punchlist work will be corrected in accordance with the Contract Specifications. The Owner will schedule and monitor the progress of all punchlist Work and conduct inspections with the Owner and Architect (or Owner's designated Project Manager) to determine whether the Work is substantially complete.

7.24.1 Final Punchlist. The Owner, in conjunction with the Architect (or Owner's designated Project Manager) will prepare a final punchlist upon Substantial Completion for the entire Project. Any non-conforming Work will be corrected by the Trade Contractor and its responsible Subcontractors.

7.25 Close-Out. Before Completion of the Work and in accordance with the Contract Documents, the Trade Contractor will transmit to the Owner all required as-built drawings, operation and maintenance manuals, references, warranties, attic stock, keying schedule, etc., for review and transmission to the Owner as required by the Contract Specifications.

8. OWNER

8.1 Information and Documents. The Owner will provide information regarding requirements for the Project, including the Contract Documents, surveys and other information describing the Project site.

8.2 Development Fees. The Owner will secure and pay for all approvals, easements, assessments and fees required for the development, construction, use or occupancy of the Project, except as specified in the Contract Documents.

8.3 Owner's Representative. The Owner's designated representative is **Michael Rypkema, PDU Information Technology & Security Manager**, or another person who may be designated by the County in writing.

8.4 Architect (or Owner's designated Project Manager). The Architect (or Owner's designated Project Manager) will directly retain consultants for other design services if needed.

8.4.1 The Architect's or Owner's designated Project Manager) representative for this Project is Michael Rypkema.

8.5 Owner. The Owner will make reasonable efforts, in its discretion, to collaborate with the trade contractors to achieve completion of the Project in an efficient, economical and timely manner.

8.6 Legal Accounting and Insurance Services. The Owner will furnish all legal, accounting and insurance counseling services as it may deem necessary for Owner's purposes at any time for the Project, including auditing services the Owner may require to verify the Trade Contractor's applications for payment, or to ascertain how or for what purposes the Trade Contractor has used the money paid by or on behalf of the Owner.

9. COMPENSATION

9.1 Payment of Price. The Owner will pay Trade Contractor based on the prices set forth in the Bid Schedule and Bid Form agreed to by Owner (two million nine hundred seventy-six thousand eight hundred twenty-two dollars and no/cents, \$2,976,822.00) as provided for in this Trade Contract. The Trade Contract Price will be adjusted for changes agreed upon pursuant to the procedures set forth in this Trade Contract. If applicable, unit priced work is subject to adjustments of quantities as specified in the Contract Documents. Trade Contractor warrants that the Trade Contract Price includes all costs to complete all the Work, including payment of all taxes that may be assessed against Trade Contractor in performing the Work.

9.2 Schedule of Values. Before the first payment can be made, Trade Contractor shall prepare and submit a Schedule of Values to Owner for approval. The Schedule of Values shall be submitted not later than 10 Days after the Trade Contract Date. The Schedule of Values shall allocate the Trade Contract Price to the various portions of the Work as identified by Owner. In addition, the Schedule of Values shall be accompanied by a separate document that lists the names and contract values of Trade Contractor's lower-tier subcontractors. Owner will review the Schedule of Values to assure that the level of detail is adequate to accurately determine the value of work in place. Once Owner has approved the Schedule of Values, it becomes the basis for Trade Contractor's progress payments. Owner approval of the Schedule of Values is a condition of payment.

9.3 Progress Payments. Owner will make monthly progress payments, based on the Schedule of Values, from funds received from Owner as the Work proceeds. Trade Contractor shall submit a proper application for payment to Trade Contractor on or before the day of each month. Applications for payment shall include: (1) An itemization of the amounts requested, related to the various elements of work required by the Trade Contract covered by

the requested payment; (2) The total amount of the current Trade Contract Price; and (3) The total of amounts previously paid.

1.1.1 Timely submission of an application for payment is a condition of payment. Progress payments are subject to Owner's approval. Progress payments do not constitute approval or acceptance of any Work.

1.1.2 **Lien Releases.** Trade Contractor's applications for payment shall be accompanied by appropriate lien releases.

9.4 Retention. The Owner will withhold 5% retention on the entire amount of the monthly application for payment under Public Contract Code section 7107 and 9203. Retention will be withheld until the Project achieves Final Completion of the Work unless the Owner, in its sole discretion, agrees to release the Trade Contractor's retention earlier and provided that the Trade Contractor's Work has been accepted by the Owner, Architect, Owner and other necessary agencies with jurisdiction over the Project.

1.1.3 **Substitution of Securities.** To the extent required by law, Owner will consider and approve reasonable and appropriate requests under Public Contract Code for substitution of securities or establishment of an escrow account for retention. Nothing contained in this Section prevent Owner from withholding payment when grounds exist for doing so under the Contract Documents.

9.5 Owner Payment to Subcontractors and Suppliers. The Owner will not have an obligation to pay a Subcontractor for Work performed unless required by law. However, if the Owner receives a stop notice or has reason to believe that the Trade Contractor is not paying its Subcontractors and suppliers, the Owner may make payment of sums due to Trade Contractor through joint check or pay Subcontractors and suppliers directly and withhold those payments from Trade Contractor.

9.6 Stop Notices and Claims. Upon submission of an application for payment, the Trade Contractor warrants that all Work included in the application for payment has been performed in accordance with the Contract Documents and that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment and to the best of the Trade Contractor's knowledge, information and belief, will pass to the Owner free and clear of all stop notices, claims, security interests or encumbrances. Trade Contractor will provide executed conditional waivers and release of claims for all amounts included in the application for payment. Waivers must comply with the requirements of California Civil Code and will be submitted on the forms provided in the Billing Procedures set forth in the Contract Documents.

9.7 Final Payment. Upon Completion of the Work, the Trade Contractor will submit a final payment application. All prior progress estimates will be subject to correction in the final application for payment. If items remain to be completed at that time, then the Trade Contractor in conjunction with the Owner and Architect (or Owner's designated Project Manager) will create a punchlist pursuant to Section 7.22. The Owner may withhold from the final payment due to the Trade Contractor the estimated cost to complete the Work, plus 5% retention until Final Completion of the Project unless the Owner agrees to early release of retention. The amount retained by the Owner for punchlist items will be released to the Trade Contractor as each punchlist item is completed minus 5% retention. Upon Final Completion of the Project, final payment of the retention, if unencumbered, will be paid no later than 30 Days after Final

Completion of the entire Project but in no event later than the time prescribed under the Public Contract Code.

9.8 No Diversion of Payments. Trade Contractor agrees that it will not divert funds received as payments under this Trade Contract but shall only apply such funds to the Work. Upon Owner's request, Trade Contractor shall provide, within a reasonable time, written proof of its compliance with this subsection.

9.9 Evaluation of Application for Payment. Before submitting the Trade Contractor's application for payment to the Architect (or Owner's designated Project Manager) for certification, the Owner will review and make recommendations for payment based on the approved Trade Contractor's schedule of values, the Owner's observations and evaluation of the Work, and on the data and documentation substantiating the Trade Contractor's application for payment. Based on that review, the Owner will forward the application for payment to the Architect (or Owner's designated Project Manager) for certification with a recommendation that the Owner pay all undisputed items. An approval of an application for payment is subject to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to Completion of the Work and to specific qualifications expressed by Architect (or Owner's designated Project Manager) or Owner. The Owner, Architect (or Owner's designated Project Manager), are entitled to rely on the accuracy and completeness of the information furnished by the Trade Contractor and approval will not be deemed to represent that a detailed examination, audit, or arithmetic verification of the documentation submitted with the Trade Contractor's application for payment has been made or that exhaustive or continuous on-site inspections have been made to verify that the Work is in accordance with the Contract Documents. A recommendation for payment by the Owner and certification by the Architect (or Owner's designated Project Manager) does not represent that the Owner or Architect (or Owner's designated Project Manager) has ascertained how or for what purpose the Trade Contractor has used money previously paid.

9.10 Declining an Application for Payment. To the greatest extent authorized by law, and when consistent with this Agreement, Owner may decline to approve all or any part of an application for payment for any of the following reasons: (1) unsatisfactory job progress, (2) unacceptable or unauthorized work, (3) disputed work, (4) Trade Contractor's failure to comply with any material provision of this Trade Contract, (4) third party claims filed against Owner, Owner's bonds or the Project arising from Trade Contractor's performance of this Trade Contract, (5) Trade Contractor's failure to make timely payments for labor, materials or equipment, or (6) any part of an Application for Payment or part of an Application for Payment not approved by the Owner.

9.11 Set-off. To the greatest extent authorized by law, Owner may deduct or set-off from any amounts due or to become due to Trade Contractor, any sums owing by Trade Contractor to Owner under this Trade Contract, or as may be necessary to protect Owner from any sums owing by Trade Contract for labor, materials, equipment, or from claims asserted against Owner, its bonds or the Project.

9.12 Evidence. Before issuance of final payment, Owner may request satisfactory evidence that: (i) all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied; (ii) insurance required by the Contract Documents will remain in force after final payment and will not be canceled or allowed to expire until at least 30 Days prior written notice has been given to the Owner; (iii) the Trade Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (iv) surety, if any, has consented to final payment, (v) building

commissioning has occurred and the Owner has received all close-out documents required; and (vi) other data establishing payment or satisfaction of obligations, such as releases and waivers of liens, claims, security interests or encumbrances arising out of this Trade Contract have been received. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Trade Contractor will furnish a bond to indemnify the Owner against stop notices under Section 9.13, provided that the Subcontractor's work is Work that the Trade Contractor has been paid for by the Owner.

9.13 Stop Notice. If any claim or stop notice is made or filed against the Owner, or the Project funds by any person claiming that the Trade Contractor or any of its Subcontractors or suppliers has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if at any time there is evidence of nonpayment or of any claim or stop notice for which, if established, the Owner might become liable and that is chargeable to the Trade Contractor, the Owner may, in its discretion, allow the Trade Contractor to file a bond with the Owner in an amount equal to 125% of the claim stated in the stop notice the Owner will release the funds to the Trade Contractor. If the Owner does not permit the Trade Contractor to post a bond, the Owner will have the right to retain from any payment then due or thereafter to become due an amount that it deems sufficient to: (1) satisfy, discharge and/or defend against any claim or stop notice action that may be brought or judgment, which may be recovered; (2) make good any nonpayment, damage, failure or default; or (3) compensate the Owner for the claim. The Trade Contractor will indemnify and hold Owner harmless against any and all losses, liability, damages, costs and expenses, including legal fees and disbursements, which may be sustained or incurred by either or both of them in connection with the Trade Contractor's failure to timely and properly make payments to its Subcontractors and suppliers. The Owner will have the right to withhold from Trade Contractor a reasonable amount for the foregoing purposes. If the amount is insufficient to cover the amount of the claim, the Trade Contractor will be liable for the difference and will make payment to the Owner upon 30-Day's written notice.

9.14 Payment Not Acceptance of Work. Approval of an application for payment (final or otherwise) or partial or entire use or occupancy of the Project by the Owner will not be used as conclusive evidence that the Work was properly performed or constitute acceptance of Work that is not in accordance with the Contract Documents.

9.15 Payments Withheld. To the extent legally allowed, in addition to the Trade Contractor's 5% retention, the Owner may withhold payments due to the Trade Contractor as may be necessary to cover: (i) stop notice claims; (ii) defective work not remedied; (iii) failure of Trade Contractor to make proper payments to its Subcontractors or suppliers; (iv) completion of the Trade Contract if there exists a reasonable doubt that the Work cannot be completed for the balance then unpaid; (v) damage to another trade contractor or third party caused by Trade Contractor; (vi) amounts that may be due to the Owner for claims against Trade Contractor; (vii) failure to provide Owner with timely updates required by this Trade Contract; (viii) site clean-up; (ix) failure of the Trade Contractor to comply with requirements of the Contract Documents; (x) disputed amounts in the application for payment; and (xi) legally permitted penalties.

9.16 Waiver of Claims. Acceptance of final payment by the Trade Contractor will constitute a waiver of claims by Trade Contractor and its Subcontractors and suppliers except for those previously made in writing and identified by the Trade Contractor as unsettled at the time of final application for payment.

10. CONTRACT TIME AND SCHEDULING

10.1 Contract Time. The "Contract Time" is the time allotted in the Contract Specifications for the Work. Time is of the essence.

10.2 Scheduling. The Trade Contractor will participate and cooperate with the Owner in the development of schedules and other efforts to achieve timely Completion of the Work. Trade Contractor shall keep itself informed of the overall progress of Project construction and shall faithfully prosecute the Work to avoid delaying completion of the Project construction. Trade Contractor shall prosecute the Work at the times and in the order as Owner and Trade Contractor agree, subject to modification as may be necessary for the expeditious completion of the Work. Trade Contractor shall provide a written schedule. Trade Contractor's written schedule must show in detail the procurement, submittal review, fabrication, delivery, and installation activities for all major components of the Work. Trade Contractor agrees to meet its written schedule and apprise Owner each month or more frequently, if required by Owner, of Trade Contractor's progress against its schedule.

10.3 Prosecution of the Work. The Trade Contractor will commence the Work when notified to do so by the Owner and will diligently prosecute and complete its Work pursuant to the most current Master Project Schedule. The Trade Contractor will coordinate its Work with other trade contractor work being performed on the Project so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of the construction work on the Project, and in accordance with the Contract Time and Project Master Schedule.

10.3.1 Schedule Slippage. The Trade Contractor will notify the Owner within 48 hours of any slippage in the Project Schedule because of its Work and must submit a detailed recovery plan for evaluation and approval by the Owner. All costs associated with the recovery will be the responsibility of the Trade Contractor.

10.3.2 Acceleration. The Owner, through the Owner, may direct the Trade Contractor to work overtime. If the Trade Contractor is not in default under any of the terms or provisions of this Trade Contract or of any of the other Contract Documents, the Owner will pay the Trade Contractor for actual additional wages paid, if any, as established in **Exhibit 2**.

10.4 Permitted Delays. If the Trade Contractor is delayed, obstructed, hindered or interfered with in the commencement, prosecution or Completion of the Work by: (i) any intentional act or omission of the Owner, or Architect (or Owner's designated Project Manager); (ii) "Owner Elected Changes;" (iii) [intentionally blank], (iv) damage caused by a "Force Majeure Event;" (v) "Unforeseen and Differing Site Conditions;" and/or (vi) "Owner's Suspension of the Work," and the critical path of the Project Master Schedule is impacted extending the Substantial Completion Date, then the Trade Contractor will be entitled to an extension of the Contract Time for the same period of time that the Substantial Completion Date was delayed provided that the delay, obstruction, interference or hindrance was not caused, in whole or in part by any fault, neglect, act or omission of the Trade Contractor, its employees, Subcontractors or suppliers. Notwithstanding the above, the Trade Contractor will not be entitled to any such extension of time unless the Trade Contractor (1) notifies the Owner and Owner in writing of the cause or causes of the delay, obstruction, hindrance or interference within 48 hours of the commencement of the delay and (2) demonstrates that it could not have anticipated or avoided the delay, obstruction, hindrance or interference and has used all available means to minimize the consequences of the delay. Any failure to provide the required written notice shall constitute a waiver of all delay claims related to the alleged delay.

10.5 Delays Caused by Trade Contractor. If the progress of the Work or the Project is delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect, or act or failure to act by the Trade Contractor or any of its employees, Subcontractors or suppliers and the delay causes any additional cost, expense, liability or damage to the Owner, Owner, or Architect (or Owner's designated Project Manager), (including legal fees and disbursements incurred by the Owner, Owner, or the Architect (or Owner's designated Project Manager), whether incurred in defending claims arising from the delay or in seeking reimbursement and indemnity from the Trade Contractor and its surety), or any damages or additional costs or expenses for which the Owner, Owner, or the Architect (or Owner's designated Project Manager) may or will become liable, then the Trade Contractor and its surety will compensate the Owner, Owner, and/or Architect (or Owner's designated Project Manager) for, and indemnify them against, all such costs, expenses, damages and liability.

11. CHANGES IN THE WORK

11.1 Change Orders. A Change Order is a mutually agreed written order adjusting either the Trade Contractor's Trade Contract Price and Contract Time or both. All changes in the Work will only be authorized by an Owner executed Change Order and performed under the applicable conditions of the Contract Documents. A Change Order signed by the Trade Contractor indicates the Trade Contractor's agreement to adjustment in the Trade Contract Price and/or Contract Time and that adjustment fully and completely resolves any claim by Trade Contractor and any of its Subcontractors and suppliers for additional compensation or time arising from or related to the subject of the Change Order. Change Orders for additional Work are limited to the following circumstances:

- 11.1.1 Owner Elected Changes;
- 11.1.2 Force Majeure Events;
- 11.1.3 Unforeseen and Differing Site Conditions
- 11.1.4 Owner's Suspension of the Work as defined in Section 18.3.

11.2 Owner Initiated Changes. The Trade Contractor must submit a rough order of magnitude of the change to the Owner within 3 business days receipt of the scope of a proposed change order and a complete cost proposal, including any change in Contract Time under Section 10.4, within 10 business days of receipt.

11.3 Trade Contractor Initiated Changes. The Trade Contractor must give the Owner written notice of a proposed change within 3 business days of discovery of the facts or circumstances giving rise to the proposed change order.

11.4 Submission. All claims for additional compensation to the Trade Contractor will be presented in writing to Owner and approved by the Owner before the expense is incurred. The Owner will review all proposed change orders within 10 business days of receipt and make a recommendation to the Owner to prevent delays to the Project.

11.5 Pricing. If any change under this Section causes an increase or decrease in Trade Contractor's cost of, or the time required for, the performance of any part of the Work, Owner will modify the Subcontract in writing.

11.5.1 Payment and Performance Bonds. All Trade Contractor proposals for all potential change orders will include payment and performance bond costs as required by the California Public Contract Code and any other applicable law.

11.6 Continued Performance. No Work will be allowed to lag pending the adjustment through Change Order, but will be promptly executed as directed, even if a dispute arises. In no event, will Trade Contractor be authorized to discontinue or diminish work performance due an alleged or actual dispute.

11.7 Failure to Reach Agreement. If the Owner and Trade Contractor cannot agree on the value of the proposed change order, or if the Owner fails to approve or disapprove of the proposed change within 10 business days, the Trade Contractor will proceed with the Work promptly under a written "**Construction Work Directive**" of the Owner and will perform the Work on a time and material basis. If the Work is performed under a Construction Work Directive, the Trade Contractor must submit all required data under Section 11.4 within 10 Days of completion of the Work covered by the Construction Work Directive to perfect its claim. Failure of the Trade Contractor to provide the Owner with notice of its disputed claim and to submit the written claim within 10 Days of completion of the Work in dispute constitutes an agreement on the part of the Trade Contractor that it will not be paid for its Work. No claim will be considered after the Work in question has been performed unless a written Change Order has been executed or timely written notice of claim has been made by the Trade Contractor. Trade Contractor will not be entitled to claim or to sue for damages, whether for loss of profits or otherwise, because of an omission of any item or portion of Work covered by the executed Change Order.

11.8 Omitted Work. If the Trade Contractor omits Work that is included in the Contract Documents, the Owner will have the right to withhold from payments due or to become due to the Trade Contractor in an amount which, in the Owner's opinion, is equal to the value of Work that was omitted until the Work is performed.

11.9 Contract Time Impacts and Extended Costs. The Trade Contractor will not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is allowable under Section 10.4 and claimed in a proposed change order. Except as otherwise required by law, no claims will be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. Nothing contained in this Section will be construed as restricting the rights and remedies of Trade Contractor in violation of Civil Code or Public Contract Code. If this provision is determined to conflict with any provision of law, this provision will be reformed to provide the greatest protection to the Owner under the law.

11.10 Surety. All changes, additions or omissions in the Work ordered in writing by the Owner are part of the Work and will be performed and furnished in strict accordance with all terms and provisions of this Trade Contract and the other Contract Documents. The Trade Contractor will keep its surety informed of all modifications to this Trade Contract. The obligations of Trade Contractor's surety are not to be reduced, waived or adversely affected by the issuance of Change Orders even if the Owner fails to inform the surety of the Change Order(s) and the Owner will not be required to obtain consent of the surety to any Trade Contract modifications.

12. HAZARDOUS MATERIALS.

12.1 Hazardous Materials and Substances. Trade Contractor represents and warrants that it has and will exercise the degree of care, skill, efficiency, and judgment of California State licensed contractors with special expertise in the proper removal, transportation, and disposal of "**Hazardous Substances.**"

To the greatest extent permitted under the law, the Trade Contractor shall bear full and exclusive responsibility for (i) any release of Hazardous Substances that it brings onto the property during the course of performance of this Contract and (ii) for any release of Hazardous Substances caused by the Trade Contractor's negligence or willful misconduct, regardless of whether the Trade Contractor has brought the Hazardous Substances onto the property. The Trade Contractor shall also be responsible to the extent its negligent act or omission results in a release that exacerbates an existing environmental condition of the property. (Each event described in the foregoing sentences of this Section 13.1 for which Trade Contractor is responsible is referred to as a "Release"). The Trade Contractor shall immediately report any Release to the Owner and shall also report any release of Hazardous Substance that Trade Contractor contends is not a Release.

The Trade Contractor shall be solely responsible for all claims resulting from a Release (whether first-party or third-party claims), including claims respecting response to, removal and remediation of the above described Release and associated property and groundwater, and the payment of any fines or penalties levied against Owner by any governmental or regulatory agency as a result of a Release. Trade Contractor shall hold harmless, indemnify and defend Owner from any claims resulting from a Release.

For purposes of this Section only, the term "claims" shall include (i) all claims, notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction, and (ii) any claim, cause of action, administrative or judicial proceeding brought against the Owner, their directors, or agents, or any cost (including reasonable attorney's fees), damage or liability sustained or suffered by any person or entity, including Owner, and their agents.

12.2 All Hazardous Substances disposed of under the Work shall be properly disposed of according to federal, state, and local laws, at the expense of Trade Contractor. The Trade Contractor shall dispose Hazardous Substances under its own EPA Generator Number or under the EPA Generator Number of any subcontractor retained by Trade Contractor to conduct such disposal. In no event shall the Owner be identified as the generator. The Trade Contractor shall notify the Owner of any such Hazardous Substances and the Owner reserves the right to a copy of the results of any tests conducted on the Hazardous Substances and, at its cost, to perform additional tests or examine those Hazardous Substances, prior to their disposition.

12.3 Hazardous Materials and Substances. If Hazardous Substances or materials (of a type legally requiring an employer to notify its employees) are being used or stored on the Project site by the Trade Contractor, its Subcontractor or anyone directly or indirectly employed or retained by them, the Trade Contractor will immediately provide written notice of the chemical composition to the Owner in sufficient time to permit compliance with the law by the Owner, and other trade contractors at the Project site. If the Trade Contractor encounters an unforeseen material reasonably believed to be a Hazardous Substance on site, the Trade Contractor will immediately stop Work in the affected area and report the condition to the Owner in writing. Work will resume in the affected area once the Hazardous Substance is rendered harmless or removed, as determined by a licensed laboratory retained by the Owner.

12.4 Material Safety Data Sheets ("MSDS"). The Hazardous Communications Standard (Title 29, Code of Federal Regulations, Part 1910, as amended) specifies a list of compounds. The Trade Contractor will identify and report any compound that appears on the list in the following manner: MSDS must be kept on file by the Trade Contractor at the Project site, with a regularly updated list of MSDS's copied to the Owner. The MSDS must contain all information required by Title 29; all hazardous compounds must be clearly labeled as to content, with appropriate warnings noted, and name and address of the manufacturer listed; and all employees using these compounds must be trained in protective handling and potential hazards.

12.5 Indemnification. To the fullest extent permitted by law, Trade Contractor agrees to indemnify and hold harmless the Owner, its agents, officials, and members, the Architect, and Owner's designated Project Manager, and other trade contractors from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, cost and expenses, including legal fees and disbursements, caused by the negligent mishandling by Trade Contractor or its Subcontractors and suppliers of any Hazardous Substances.

12.6 The provisions of Section 12 are intended to be binding upon and inure to the benefit of the parties and their successors and assigns and shall survive the termination of the Contract. The indemnity in Section 12.5 shall inure to the benefit of both Owner even if the Trade Contract is assigned to the Owner.

13. INSURANCE AND BONDS

13.1 Insurance Requirements. The Trade Contractor will procure separate insurance coverage in the amounts set forth below:

13.1.1 General liability: Combined single limit for bodily injury and property damage per occurrence and in the aggregate. General aggregate shall apply per project. Limits shall not be less than; \$1,000,000 occurrence / \$2,000,000 aggregate.

13.1.2 Commercial auto liability: Combined single limit for bodily injury and property damage. Limits shall not be less than: \$1,000,000.

13.1.3 Worker's compensation and employer's liability: Limits shall not be less than as required by the State of California.

13.1.4 Employers' Liability -- \$1,000,000 each accident; \$1,000,00 policy limit bodily injury by disease; \$1,000,000 each employee bodily injury by disease.

13.1.5 Professional Liability (Errors and Omissions) -- \$1,000,000 per occurrence.

13.1.6 Cyber Liability -- \$1,000,000 per occurrence for Privacy and Network Security.

13.1.7 Other coverage/limits: Limits shall not be less than: The General Aggregate limit shall apply separately to Subcontractor's work under this contract.

13.1.8 For subcontracts in excess of \$250,000 an additional \$5,000,000 Excess Liability Insurance policy shall be maintained over the General Liability coverage. All such policies shall be issued by a company rated by Best as A- or better with a financial classification

of VIII or better or an equivalent rating by Moody's or Standard & Poor's. Policies issued by companies for Workers' Compensation and Employer's Liability Insurance may be issued by companies (i) that have a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's); or (ii) that are acceptable to the County of San Mateo.

13.2 Waiver of Subrogation. Trade Contractor waives all rights against Owner, Architect (or Owner's designated Project Manager), and all other trade contractors and subcontractors for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the Work, except such rights as Trade Contractor may have to the proceeds of the insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of those policies will cause them to be endorsed or obtain consent.

13.3 Builder's Risk. The Design Build Entity (DBE) will obtain and maintain in force during the construction phase of the Project a Builder's Risk Insurance policy or policies that will insure against physical loss and/or damage on an "all risks" basis, excluding earthquake and normal policy exclusions, to all buildings, structures, materials and real property on site, which are intended to be, or have already been incorporated into and forming part of the Project, whether or not the buildings, structures, materials or real property will have been supplied or made available to Trade Contractor or Subcontractors by Trade Contractor, Owner or DBE. The Builder's Risk policy will be endorsed to add Owner and all trade contractors and subcontractors as additional named insureds, as their interests may appear and to waive the carrier's right of recovery under subrogation against DBE and all trade contractors whose interests are insured under the policy.

13.4 Required Trade Contractor Bonds. Prior to commencement of construction, the Trade Contractor will furnish a payment and a performance bond to the Owner, each in the amount equal to 100% of the Contract Price, in a form acceptable to the Owner, within 2 business days after the notice to proceed with construction and prior to commencement of the Work. The surety supplying the bonds must be an admitted surety insurer, as defined in Code of Civil Procedure Section, authorized to do business as a surety in the State of California and satisfactory to the Owner. Failure to timely furnish the required payment and performance bonds constitutes a default under this Trade Contract and the Owner will have all of the rights and remedies provided under this Trade Contract and afforded by law including, but not limited to, damages for material breach of contract and the Owner may award this Trade Contract to the next lowest responsive and responsible Bidder, or may call for new bids. Full compensation for furnishing the payment and performance bonds are included in the Trade Contractor's not to exceed amount for the Cost of the Work.

13.4.1 Payment of Subcontractors. Without limiting the responsibilities of Trade Contractor and its surety under the terms of this Trade Contract, Trade Contractor and its surety agree to promptly pay all lawful claims of Subcontractors, materialmen, laborers, persons, firms or corporations for labor or services performed or materials, supplies, machinery equipment, rentals, fuels, oils, tools, appliances, insurance and other items furnished, used, or consumed in connection with the prosecution of the Work including Change Orders, and will indemnify and save harmless the Owner from and against all liability loss, damage and expense, including interest, costs and attorneys' fees, which the Owner and/or its surety may sustain by reason of Trade Contractor's or its surety's failure to do so.

14. INDEMNIFICATION

14.1 Trade Contractor's Performance. To the fullest extent permitted by law and public policy of the State of California, Trade Contractor will indemnify, protect, defend and hold harmless Owner and its Board of Supervisors, and Architect (or Owner's designated Project Manager), including each of their officers, agents, directors, partners, members, employees, affiliates, parents and subsidiaries, and each of them, from and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or equity, of every kind and nature whatsoever arising out of or in any way relating to: (i) this Trade Contract; (ii) actual or alleged acts or omissions by Trade Contractor or any of its Subcontractors, vendors, suppliers, employees, or persons for whom it is responsible, regardless of whether the acts or omissions are negligent; or (iii) the Work including, but not limited to claims for:

14.1.1 Personal injury, including bodily injury, sickness or disease, or death to any persons, employees or agents of Trade Contractor, Owner, Architect (or Owner's designated Project Manager) or any other trade contractor and/or damage to property of anyone (including loss of use) caused or alleged to be caused in whole, or in part, by any actual or alleged negligent act or omission of Trade Contractor or anyone directly or indirectly employed by Trade Contractor or anyone for whose acts Trade Contractor may be liable regardless of whether the personal injury or property damage is caused, in part, by an indemnified party.

14.1.2 Penalties, fees and costs imposed because of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the act or omission of the Trade Contractor.

14.1.3 Infringement of any patent rights, which may be brought against Owner, or Architect (or Owner's designated Project Manager) arising out of the Work.

14.1.4 Project Claims or stop notices for labor performed or materials used or furnished to be used on the Project, including all incidental or consequential damages resulting to Owner, or Architect (or Owner's designated Project Manager) from stop notices.

14.1.5 Failure of Trade Contractor or any of its Subcontractors to comply with the applicable Insurance provisions set forth in Section 13.

14.1.6 Claims by third parties, including other trade contractors, alleging or arising, in whole or in part, out of actual or alleged acts or omissions by Trade Contractor, any of its Subcontractors or suppliers (regardless of tier), and/or any of its or their respective directors, officers, employees, agents, partners, affiliates, subsidiaries, parents, successors and assigns (including without limitation, claims regarding alleged or actual delays, failure to cooperate or coordinate, damage to work performed by others, interferences, disruption, etc.).

14.1.7 Any violation or infraction by Trade Contractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees including, but not limited to, the use of Owner's or others' equipment, hoists, elevators, or scaffolds.

14.2 The specific listing in subsections 14.1.1 through 14.1.7 will not in any way limit Trade Contractor's agreement to indemnify any indemnified person for all acts and omissions of the Trade Contractor, and anyone for whom Trade Contractor is responsible in the performance of the Work and other obligations under this Trade Contract. The obligation to defend and indemnify will apply notwithstanding that Trade Contractor is actively involved in the events that give rise to the claims for which a defense or indemnity is sought. The indemnity, defense, and

other obligations under this Section 14 will apply even if the Trade Contractor was only partially negligent.

14.3 The indemnification provisions in subsections 14.1.1 through 14.1.7 will extend to claims occurring after this Trade Contract is terminated as well as while it is in force. Such indemnity provisions apply regardless of any negligent act or omission of the Owner, and Architect (or Owner's designated Project Manager) or of any other person to be indemnified hereunder. Trade Contractor, however, will not be obligated under this Trade Contract to indemnify Owner, or Architect (or Owner's designated Project Manager) from claims arising from the sole negligence or willful misconduct of the person to be indemnified hereunder, or for defects in design furnished by an indemnified party. Trade Contractor will not be required to provide a defense or to indemnify Owner, or Architect (or Owner's designated Project Manager) against their own respective active negligence. If Owner, or Architect (or Owner's designated Project Manager) are actively negligent, however, Trade Contractor will continue to indemnify each of those parties and provide a defense but only to the extent and in proportion to the degree that the Owner, , or Architect (or Owner's designated Project Manager) were not actively negligent. Nothing herein will be construed to impose any obligation in conflict with the provisions of Civil Code section 2782 and/or Insurance Code section 11580.04. In the event of a conflict, the provision conflicting with Civil Code section 2782 and/or Insurance Code section 11580.04 will be modified to limit Trade Contractor's obligations to the greatest extent permitted by law.

14.4 Duty to Defend. The Trade Contractor will:

14.4.1 At Trade Contractor's own cost, expense and risk, defend all claims as defined in Section 14.1 that may be brought or instituted by third persons including, but not limited to, government agencies or employees of Trade Contractor, against Owner, Architect (or Owner's designated Project Manager), or any other person to be indemnified by Trade Contractor;

14.4.2 Pay and satisfy any judgment or decree that may be rendered against Owner, Architect (or Owner's designated Project Manager), or any other person to be indemnified by Trade Contractor arising out of a claim; and/or

14.4.3 Reimburse Owner, Architect (or Owner's designated Project Manager) or any other person to be indemnified by Trade Contractor for all legal expense incurred by any of them in connection with the claim or in enforcing the indemnity granted in this section.

14.4.4 The duty to defend will apply, and Trade Contractor will be required to furnish a defense, notwithstanding that there has not yet been an adjudication or finding of liability on the part of the Trade Contractor or any person to be indemnified, or as to whether an exception to provide a defense or indemnity may apply.

14.5 Survival. The duty to indemnify and defend the Owner, and Architect (or Owner's designated Project Manager) will survive Final Completion of the Project or termination of this Trade Contract.

15. WARRANTY AND GUARANTEES

15.1 Warranty. Trade Contractor warrants all Work for a period of 1 year commencing from the Substantial Completion Date of the Project or the date of repair, whichever is later, and for longer periods specified in the Construction Documents for certain

equipment manufacturers or suppliers. The Trade Contractor will repair or replace all deficient or defective Work, provided that the Work was properly maintained and/or used, together with any other Work that is displaced during repair or replacement without expense to Owner. Trade Contractor's warranty excludes improper or insufficient maintenance, improper operation, normal wear and tear and normal usage. Trade Contractor will procure all Subcontractor and manufacturer express warranties required under the Construction Documents on the Owner's behalf and will transmit the warranties to Owner before Completion of the Work and Project close-out. Establishment of the 1-year express warranty period for correction of Work relates only to the specific obligation of the Trade Contractor to correct defective or non-conforming Work and has no relationship to statute of limitations periods for legal claims arising from this Trade Contract. This provision will survive Final Completion of Project and/or termination of this Trade Contract.

16. DOCUMENT RETENTION & EXAMINATION

16.1 Audit. In accordance with Government Code section 8546.7, records of both the Owner and the Trade Contractor will be subject to examination and audit by the State Auditor General for a period of 3 years after final payment. Trade Contractor will make available to the Owner any of the Trade Contractor's other documents related to the Work immediately upon request of the Owner as set forth in Section 16.2.

16.2 Records. The Trade Contractor will keep full and detailed accounts and exercise controls as may be necessary for proper financial management under this Trade Contract. In addition to the State Auditor rights above, the Owner will have the right during normal business hours to audit and copy the Trade Contractor's documents related to this Project including, but not limited to, records, books, estimates, correspondence, instructions, drawings, receipts and invoices for materials, supplies and equipment, temporary facilities, etc., contracts, purchase orders, vouchers, memorandums, Change Orders and all substantiating documentation, certified payroll, bid documents, and other data relating to the Cost of Work and the Contract Price in order to evaluate accuracy and completeness of Trade Contractor's billing. Should the audit disclose a material discrepancy from the payment applications or requirements of the Contract Documents, then in addition to repaying Owner all sums due and owing, Trade Contractor will pay 7% interest computed monthly from the date of the overpayment. Trade Contractor agrees to remit payment of all monies due and owing no later than 90 Day's after receipt of notice or, at Owner election, Owner may deduct the sums against any monies due to Trade Contractor. The Trade Contractor will preserve all Project records for a period of at least 3 years after Final Completion of the Project, or for such longer period as may be required by law. The Trade Contractor will incorporate Article 16 auditing provisions into all Subcontracts and require Subcontractors to keep detailed and accurate accounting records for their portion of the Work for a period of at least 3 years.

17. DISPUTE RESOLUTION PROCEDURE

17.1 CLAIMS

17.1.1 The claim notice and documentation procedures described in this Article apply to all claims and disputes arising under the Contract Documents, including without limitation any claim or dispute by any Subcontractor or material supplier, and any claims arising under tort law as well as contract law.

17.1.2 Compliance with all change order and disputed work procedures set forth in this Article is a prerequisite to filing a Public Contract Code Claim pursuant to this section.

Claims must be submitted at (and no later than) the end of each calendar year quarter (March 31, June 30, September 30 and December 31) of each year, for each notice of potential claim that Trade Contractor may have submitted in that quarter. Claims submitted after the end of each calendar year quarter shall be untimely and may be rejected on that basis by the Owner.

17.1.3 In accordance with the procedures set forth in Public Contract Code sections 9204 and 20104-20104.6, a Contractor may submit a claim by registered or certified mail with return receipt requested, for one or more of the following: (a) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the Owner; (b) payment by the Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to this contract and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or (c) payment of an amount that is disputed by the Owner. To qualify as a "claim," the written demand must state that it is a claim submitted under this Article, Trade Contractor shall submit the formal claim(s) with a cover letter and certification of the accuracy of the claim. 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 notice and claim in compliance with claim submission requirements herein.

17.1.4 The Contractor shall furnish reasonable documentation to support the claim, including but not limited to:

17.1.4.1 A clear, concise recital of the basis upon which the claim is asserted, including a designation of the provisions of the Contract Documents upon which the claim is based, underlying facts, entitlement, schedule analysis, quantum calculations, contract provisions supporting relief;

17.1.4.2 A statement as to the amount of time and/or compensation sought pursuant to the claim;

17.1.4.3 Whether the Contractor's claim arises from an ongoing occurrence, and if so a description of the specific Work activities affected by the claim;

17.1.4.4 A time impact analysis if Contractor requests a time extension;

17.1.4.5 Full and complete cost records supporting the amount of any claim for additional compensation; and

17.1.4.6 A notarized certification by the Contractor as follows: "Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et seq., the undersigned hereby certifies that the information contained herein is a true, accurate and complete statement of all features relating to the claim asserted."

17.1.5 Claims shall be calculated in the same manner as Change Orders per Section 11. EXCEPT WHERE PROVIDED BY LAW, OR ELSEWHERE IN THESE CONTRACT DOCUMENTS (IF APPLICABLE), OWNER SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES, AND CONTRACTOR SHALL NOT INCLUDE THEM IN ITS CLAIMS. CONTRACTOR SHALL BE LIMITED IN ITS RECOVERY ON CLAIMS TO THE CHANGE ORDER CALCULATIONS SET FORTH IN SECTION 11.

17.1.6 Failure by the Contractor to provide sufficient documentation will result in denial of the claim. The Owner reserves the right to request additional documentation, or clarification of the documentation provided.

17.1.7 Upon receipt of a claim, the Owner will conduct a reasonable review and provide a written statement to the Contractor identifying what portion of the claim is disputed and what portion is undisputed within 45 days of receipt of the claim. The Owner and Contractor may, by agreement, extend the 45-day period. For any undisputed portion of a claim, the Owner must make payment within 60 days of its issuance of the written statement.

17.1.8 If the Contractor disputes the Owner's written statement, or if the Owner fails to respond, the Contractor may demand an informal conference to meet and confer for settlement of the issues in dispute. The Owner will then schedule the meet and confer conference within 30 days of the demand. Within 10 business days following the meet and confer conference, the Owner will provide a written statement identifying the portion of the claim that remain in dispute. Any payment due on an undisputed portion of the claim will be made within 60 days of the meet and confer conference.

17.1.9 After the meet and confer conference, any disputed portion of the claim shall be submitted to non-binding mediation. Alternatively, upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. If mediation is unsuccessful, the parts of the claim that remain in dispute shall be subject to applicable procedures set forth below.

17.1.10 Failure of the Owner to respond to a claim within the time periods described above shall result in the claim being deemed rejected in its entirety. Additionally, amounts not paid in a timely manner shall bear interest at 7 percent per year.

17.1.11 If the mediation is unsuccessful, Contractor must file a government claim pursuant to Government Code section 910 et seq. to initiate a civil action.

17.1.12 In any civil action filed to resolve claims, the court shall submit the matter to nonbinding mediation within 60 days following the filing or responsive pleading, provided that the parties have not already participated in mediation of the claim as outlined above.

17.1.13 The provisions of this Section 17 shall survive termination, breach or completion of the Contract Documents. Contractor shall bear all costs incurred in the preparation and submission of a claim.

17.2 Continuation of Work. Trade Contractor must diligently continue to prosecute its Work, including Work that is disputed between Owner and Trade Contractor, and Owner must continue to make all undisputed payments to Trade Contractor, regardless of the existence of a dispute or the pendency of legal proceedings between Trade Contractor and Owner.

18. TERMINATION, SUSPENSION, ABANDONMENT

18.1 Owner for Cause. The Owner may terminate this Trade Contract upon not less than 7 Days written notice and an additional 7 Days to commence curing if the Trade Contractor is in material breach of any term or provision of this Trade Contract. The notice will set forth the reason for termination and the effective date of termination. If the Owner terminates this Trade

Contract for cause, the Trade Contractor will not be entitled to any further payments until Final Completion of the Project. The Trade Contractor will be entitled to payment for Work rendered through the effective date of termination upon Final Completion of the Project provided that the Work is completed within the Trade Contract Price and Contract Time, subject to adjustment through Change Order, if applicable, and the Owner did not have to expend any additional money for the performance of the Work set forth in this Trade Contract or under other contracts as a result of the Trade Contractor's breach. Nothing stated in this paragraph will prevent the Owner from pursuing and recovering any damages allowed by law from Trade Contractor arising out of the breach of this Trade Contract. If a court of competent jurisdiction deems that termination of the Trade Contractor was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 18.2.

18.2 Termination by Owner for Convenience. Owner may terminate for convenience the performance of the Work under the Contract Documents 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 for convenience may only be effected by Owner delivering to Trade Contractor a written "Notice of Termination for Convenience", specifying the extent to which performance of the Work under the Contract Documents is terminated and the effective date of the termination. All disputes over termination will be resolved under Section 17 and 18.

18.2.1 After receiving a notice of termination for convenience under this subparagraph, and except as otherwise directed by Owner, Trade Contractor shall:

18.2.2 Stop Work under the Contract Documents on date and to extent specified in notice of termination for convenience;

18.2.3 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;

18.2.4 Terminate all orders and subcontracts to extent that they relate to performance of Work terminated by the notice of termination;

18.2.5 Assign to Owner in manner, at times, and to extent directed by Owner, all right, title, and interest of Trade Contractor 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;

18.2.6 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 subparagraph;

18.2.7 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;

18.2.8 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 Contractor 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 Trade Contractor 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;

18.2.9 Complete performance of the part of the Work which was not terminated by the notice of termination; and

18.2.10 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 Contractor's possession and in which Owner has or may acquire interest.

18.2.11 After receipt of a notice of termination for convenience, Contractor shall submit to Owner its termination for convenience claim, in form and with all certifications required by Section 17. Trade Contractor's termination for convenience claim shall be submitted promptly, but in no event later than 6 months from effective date of the termination. Trade Contractor and Owner may agree upon the whole or part of the amount or amounts to be paid to Contractor because of a total or partial termination of Work under this subparagraph. If Trade Contractor and Owner fail to agree on the whole amount to be paid to Contractor because of the termination of the Work under this subparagraph, Owner's total liability to Trade Contractor by reason of the termination shall be the total (without duplication of any items) of:

18.2.11.1 The reasonable cost to Trade Contractor, 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 Contractor, 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.

18.2.11.2 A reasonable allowance for profit on actual and allowable cost of Work performed as determined in this subparagraph provided that Trade Contractor establishes to Owner's satisfaction that Trade Contractor would have made a profit had the Project been completed and provided further that the profit allowed shall not exceed 5 percent of cost.

18.2.11.3 Reasonable costs to Trade Contractor of handling material returned to vendors, delivered to Owner or otherwise disposed of as directed by Owner.

18.2.11.4 A reasonable allowance for Trade Contractor's internal administrative costs in preparing termination claim.

18.2.11.5 Except as provided in this subparagraph, Owner shall not be liable for costs incurred by Trade Contractor 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 Contractor's Proposal, attorney's fees of any type, and all costs relating to prosecution of claim or lawsuit.

18.2.12 Owner shall have no obligation to pay Trade Contractor under this subparagraph unless and until Contractor provides Owner with updated and acceptable as-builts and Project Record Documents for Work completed prior to termination.

18.3 Suspension. If the Project is suspended by the Owner and all labor has ceased for 30 consecutive Days or more, the Trade Contractor will be compensated for Work performed before receipt of notice of the suspension. The notice of suspension will set forth the reason for suspension and the effective date of suspension. If the Project is resumed and provided that the suspension was not caused or due to any fault or neglect of the Trade Contractor, then the Trade Contractor's compensation will be equitably adjusted through Change Order.

19. MISCELLANEOUS PROVISIONS

19.1 Governing Law. This Trade Contract will be governed and construed in accordance with the laws of the State of California without regard to the principles of the conflict of laws. Both parties agree that any claim or enforcement of a judgment or alternative dispute award or any legal action between the parties related in any way to the Project will be venued in the San Mateo County Superior Court.

19.2 Severability. The terms and conditions of this Trade Contract will be interpreted in accordance with their plain meaning, and not strictly for or against either party. Any rule of construction or interpretation to the contrary will be of no force or effect with respect to this Trade Contract. If a court of competent jurisdiction finds any term or provision of this Trade Contract to be void or unenforceable for any reason such term or provision will be deemed severed, and the remainder of the Trade Contract will remain in full force and effect according to its terms and provisions, to the maximum extent permitted by law.

19.3 Commencement of Statute of Limitations. Causes of action between the parties to this Trade Contract pertaining to acts or failures to act will be deemed to have accrued and the applicable statutes of limitations will commence to run not later than either the date of Substantial Completion for the Project, or the date of a recorded Notice of Completion, whichever is later. The statute of repose applicable to any cause of action for a latent deficiency will commence upon the same date. However, nothing in this Paragraph shall impact the accrual of a cause of action, by discovery, of a latent deficiency.

19.4 Waiver. No action or failure to act by the Owner, or Trade Contractor waives any right or duty afforded them under this Trade Contract, nor will such action or failure to act constitute approval of or acquiescence in a breach of this Trade Contract, unless specifically agreed to in writing.

19.5 Modifications. All modifications to the terms and conditions set forth in this Trade Contract must be in writing and signed by an authorized representative of both parties.

19.6 Attorneys' Fees. In any proceedings for breach of contract and damages, or for any other dispute or claim pursuant to this Agreement, neither party may recover against the other party attorney's fees and/or costs. Recovery of attorney's fees and costs are limited to the specific subjects in this Document relating to indemnities or as required by statute.

19.7 Limit of Liability. OWNER, AND EACH OF ITS OFFICERS, BOARD MEMBERS, EMPLOYEES, CONSULTANTS AND AGENTS INCLUDING, BUT NOT LIMITED TO, ARCHITECT/ENGINEER AND EACH OTHER OWNER REPRESENTATIVE, SHALL HAVE NO LIABILITY TO CONTRACTOR FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

19.8 Counterparts. This Trade Contract may be executed in Counterparts, each of which will be deemed an original, and all of which when taken together will constitute one instrument.

19.9 Section Headings. The section headings contained in this Trade Contract are for reference purposes only and will not in any way affect the meaning or interpretation of this Trade Contract.

19.10 Time is of the Essence. Time is of the essence with respect to each provision of this Trade Contract.

19.11 Ineligible Subcontractors. Trade Contractor is prohibited from subcontracting with a Subcontractor who is ineligible to perform construction work on a public works project pursuant to Public Contract Code.

19.12 Legal Citations. Legal citations to statutory requirements are included in the Trade Contract are for convenience and an omission of any statutory requirement or incorrect citation will not relieve the Trade Contractor or its Subcontractors from compliance with the law.

19.13 Exhibits. The Exhibits referred to in this Agreement and listed below are incorporated into this Agreement by reference as though set forth in full:

- Exhibit A – Contract Scope of Work
- Exhibit B – Concept Drawings
- Exhibit C – San Mateo County Documents, including:
 - a. Project Directory
 - b. Form of Performance Bond
 - c. Form of Payment Bond
- Exhibit 1 not used
- Exhibit 2 Definitions and General Conditions

19.14 CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD, WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION.

19.15 Entire Agreement. The Trade Contract and Contract Documents constitute the entire agreement between the Owner and the Trade Contractor and supersede all contemporaneous or prior oral and written negotiations, representations, or agreements by the parties with respect to the subject matter.

This Trade Contract is entered into as of the Effective Date first written above.

Owner
COUNTY OF SAN MATEO

By: *D. Bazan*

Name: Deborah Bazan

Title: Director, PDU

Trade Contractor
BEI Construction

By: *R. Davis*

Name: Robin Davis

Title: Manager

Trade Contractor License No. 528322

Exhibit A

Contract Scope of Work

Section #1 Data Center Cabinets, PDU's, ARD's and associated APC Hardware

The selected contractor will provide and install ACP ISX# ISX0001532476-0014 ISX Number includes Onsite delivery coordination, placement, and configuration of Cabinets, and Installation of Air Removal Doors, Temperature Sensor installation, ISX InfraXtructure Management Software and hardware and Solution Accessories by APC. (See Attached BOM for Details)

Contractor will be responsible for coordination with McCarthy/APC for the transport of cabinets from 1st floor delivery area to second floor Data Center location (See Attached summary of proposed pathway) All building surfaces will be required to be protected for this equipment move.

Contractor will be responsible for coordinating layout of cabinets, seismically bolting down cabinets, baying cabinets together, installation of Cabinet PDU's, connection of PDU's to Starline Busway, and "Rekeying" cabinets.

Cabinets located within the PSC side of the Data Center will be required to be "re-keyed" using a traditional Lock and Key. Cabinets located within the ISD side of the Data Center will be required to have key card access locks installed that will work with the building Access System. Contractor will need to coordinate with McCarthy and the County Project Development Team to define this hardware specification.

*Note: The selected contractor is only responsible for the installation of the hardware **NOT** the configuration.*

Specifics related to labor provided by APC can be found within their scope of work/ISX number or by contacting APC directly. CDCDG is also available for a detailed explanation of the APC services included.

Please refer to the drawing package for cabinet layout and configuration.

Section #2 Provisioning and Installation of Telecommunications Cabling and all related support systems

The Selected Contractor will provide and install Copper and Fiber telecommunications cabling within the Data Center and between the Data Center and IDF's and MPOE's.

The Data Center is comprised of two specific spaces, The PSC Side (Rows 1-3) and the ISD Side (Rows 4-6) The infrastructure design has been developed with specific criteria and input from the COSM and was developed based on current need, expansion, and future bandwidth potential that the County anticipates. It is a hybrid solution consisting of Top of Rack / End of Row Fiber and Copper with a copper analog overlay (primarily on the PSC side) for specific Radio functionality.

Cable tray pathways will be stacked with dual 12" wide cable trays above each row and a "Cross Row" single 12" tray as defined in the attached drawing set. Fiber runner will be installed above each row for fiber distribution from End of Row to Top of Rack. All cable tray will be

supported from the top of cabinet utilizing the Starline Stanchion System included in the Starline BOM. (See Attached Detail in drawing set)

Descriptions below correspond with the single line drawing set (attached) for Fiber and Copper Cabling.

NOTE: All Fiber and CAT 6 Copper "In Row" lengths and all Copper connecting Patch Panels in the Cabinets to 66 Blocks on the wall should be verified prior to ordering. The entire Fiber solution utilizes an MTP pre-terminated format and will come pre-tested from the factory.

Field testing will be required, but at a reduced quantity for validation purposes only. All Factory tests will need to be included in the project close out package. All copper will be factory terminated on one end with field termination required on the other with full field testing included based on the standards defined in section 4.

Grounding and Bonding will be required and will require tying into the perimeter cable tray installed by McCarthy in accordance with the standards defined in section 4.

Fiber Layer

1. PSC

End of Row to End of Row R1-C1 to R2-C1, R1-C1 to R3-C1, R2-C1 to R3-C1
60 Pair LC/UPC MMOM4, 3 MTP 40GB MMOM4, 12 Pair LC/APC SM, 3 MTP SM

2. ISD

End of Row to End of Row R4-C1 to R5-C1, R4-C1 to R6-C1, R5-C1 to R6-C1
60 Pair LC/UPC MMOM4, 3 MTP 40GB MMOM4, 12 Pair LC/APC SM, 3 MTP SM

3. ISD TO PSC

End of Row to End of Row R1-C1 to R5-C1, R2-C1 to R5-C1, R3-C1 to R5-C1
36 Pair LC/UPC MMOM4, 3 MTP 40GB MMOM4, 36 Pair LC/APC SM, 3 MTP SM

4. PSC ROW 1

End of Row to Top of Rack R1-C1 to R1-C2, C3, C4, C5, C6, C7, C8, C9
12 Pair LC/UPC MMOM4, 3 MTP 40GB MMOM4, 12 Pair LC/APC SM, 3 MTP SM

5. PSC ROW 2

End of Row to Top of Rack R2-C1 to R2-C2, C3, C4, C5, C6, C7, C8, C9, C10, C11
12 Pair LC/UPC MMOM4, 3 MTP 40GB MMOM4, 12 Pair LC/APC SM, 3 MTP SM

6. PSC ROW 3

End of Row to Top of Rack R3-C1 to R3-C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, C13, C14, C15
12 Pair LC/UPC MMOM4, 3 MTP 40GB MMOM4, 12 Pair LC/APC SM, 3 MTP SM

7. ISD ROW 4

End of Row to Top of Rack R4-C1 to R4-C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12
12 Pair LC/UPC MMOM4, 3 MTP 40GB MMOM4, 12 Pair LC/APC SM, 3 MTP SM

8. ISD ROW 5

End of Row to Top of Rack R5-C1 to R5-C2, C3, C4, C5, C6, C7, C8, C9, C10
12 Pair LC/UPC MMOM4, 3 MTP 40GB MMOM4, 12 Pair LC/APC SM, 3 MTP SM

9. *ISD ROW 6*

End of Row to Top of Rack R6-C1 to R6-C2, C3, C4, C5, C6, C7, C8, C9, C10, C11
12 Pair LC/UPC MMOM4, 3 MTP 40GB MMOM4, 12 Pair LC/APC SM, 3 MTP SM

Building Backbone Fiber Optic Cabling

10. 1st Floor IDF to DC R5 C1 24 Pair LC/UCP MMOM4, 12 Pair LC/APC SM @ 200'

11. 2nd Floor IDF to DC R5-C1 24 Pair LC/UCP MMOM4, 12 Pair LC/APC SM @ 75'

12. MPOE West to MPOE South 72 Pair LC/UCP MMOM4, 72 Pair LC/APC SM @ 175'

13. MPOE West to DC R5-C1 144 Pair LC/UCP MMOM4, 144 Pair LC/APC SM @ 250'

14. MPOE South to DC R5-C1 144 Pair LC/UCP MMOM4, 144 Pair LC/APC SM @ 200'

Copper Layer #1

15. *PSC*

End of Row to End of Row R1-C1 to R2-C1, R1-C1 to R3-C1, R2-C1 to R3-C1
24 Copper CAT 6 Cables (Patch Panel to Patch Panel)

16. *ISD*

End of Row to End of Row R4-C1 to R5-C1, R4-C1 to R6-C1, R5-C1 to R6-C1
24 Copper CAT 6 Cables (Patch Panel to Patch Panel)

17. *ISD TO PSC*

End of Row to End of Row R1-C1 to R5-C1, R2-C1 to R5-C1, R3-C1 to R5-C1
24 Copper CAT 6 Cables (Patch Panel to Patch Panel)

18. *PSC ROW 1*

A. End of Row to Top of Rack R1-C1 to R1-C2, C3, C4, C5, C6, C7, C8, C9

24 Copper CAT 6 Cables (Patch Panel to Patch Panel)

B. End of Row to Wall Cross Connect

24 Copper CAT 5 Cables (Patch Panel to 66 Block)

C. R1-C4 (Dispatch Distribution) to Wall Cross Connect

24 Copper CAT 5 Cables (Patch Panel to 66 Block)

D. R1-C4 (Dispatch Distribution) to R2-C2 (Viper 1 Cab)

96 Copper CAT 6 Cables (Patch Panel to Patch Panel)

E. R1-C4 (Dispatch Distribution) to R3-C5 (Misc. 1 Cab)

48 Copper CAT 6 Cables (Patch Panel to Patch Panel)

F. R1-C4 (Dispatch Distribution) to R3-C7 (Motorola Cab 1)

48 Copper CAT 6 Cables (Patch Panel to Patch Panel)

G. R1-C4 (Dispatch Distribution) to R30C8 (Motorola Cab2)

48 Copper CAT 6 Cables (Patch Panel to Patch Panel)

H. R1-C4 (Dispatch Distribution) to R2-C5 (Logging Recorder Cab)

48 Copper CAT 6 Cables (Patch Panel to Patch Panel)

I. R1-C4 (Dispatch Distribution) to R1-C7 (Message Switch Cabinet)

48 Copper CAT 6 Cables (Patch Panel to Patch Panel)

J. R1-C8 (Lawnet Cabinet) to Wall Cross Connect

50 Pair Copper (Patch Panel-RJ14 to 66 Block)

19. PSC ROW 2

A. End of Row to Top of Rack R1-C1 to R1-C2, C3, C4, C5, C6, C7, C8, C9

24 Copper CAT 6 Cables (Patch Panel to Patch Panel)

B. End of Row to Wall Cross Connect

24 Copper CAT 5 Cables (Patch Panel to 66 Block)

C. R2-C2 (Viper 1 Cab) to Wall Cross Connect

200 pair Copper (Patch Panel to 66 Block)

D. R2-C5 (Logging Recorder Cab) to Wall Cross Connect

200 Pair Copper (Patch Panel to 66 Block)

20. PSC ROW 3

A. End of Row to Top of Rack R1-C1 to R1-C2, C3, C4, C5, C6, C7, C8, C9, C10, C11

24 Copper CAT 6 Cables (Patch Panel to Patch Panel)

B. End of Row to Wall Cross Connect

24 Copper CAT 5 Cables (Patch Panel to 66 Block)

C. R3-C2 (TEA Radio Cab) to Wall Cross Connect

200 Pair Copper (Patch Panel to 66 Block)

D. R3-C5 (Misc. Cab) to Wall Cross Connect

50 Pair Copper (Patch Panel to 66 Block)

E. R3-C7 (Motorola Cab 1) to Wall Cross Connect

200 Pair Copper (Patch Panel to 66 Block)

F. R3-C8 (Motorola Cab 2) to Wall Cross Connect

200 Pair Copper (Patch Panel to 66 Block)

G. R3-C9 (Motorola Cab 3) to Wall Cross Connect

200 Pair Copper (Patch Panel to 66 Block)

- H. R3-C10 (Motorola Cab 4) to Wall Cross Connect
 - 50 Pair Copper (Patch Panel to 66 Block)
- I. R3-C3 (FSA 1 Cabinet) to Wall Cross Connect
 - 50 Pair Copper (Patch Panel to 66 Block)
- J. R3-C11 (Paging Cab) to Wall Cross Connect
 - 50 Pair Copper (Patch Panel to 66 Block)
 - 21. *ISD ROW 4*
- A. End of Row to Top of Rack R4-C1 to R4-C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12
 - 24 Copper CAT 6 Cables (Patch Panel to Patch Panel)
- B. End of Row to Wall Cross Connect
 - 24 Copper CAT 5 Cables (Patch Panel to 66 Block)
- C. R4-C7 (Radio Cab 2) to Wall Cross Connect
 - 150 Pair Copper (Patch Panel to 66 Block)
 - 22. *ISD ROW 5*
- A. End of Row to Top of Rack R5-C1 to R5-C2, C3, C4, C5, C6, C7, C8, C9, C10
 - 24 Copper CAT 6 Cables (Patch Panel to Patch Panel)
- B. End of Row to Wall Cross Connect
 - 24 Copper CAT 5 Cables (Patch Panel to 66 Block)
 - 23. *ISD ROW 6*
- A. End of Row to Top of Rack R6-C1 to R6-C2, C3, C4, C5, C6, C7, C8, C9, C10, C11
 - 24 Copper CAT 6 Cables (Patch Panel to Patch Panel)
- B. End of Row to Wall Cross Connect
 - 24 Copper CAT 5 Cables (Patch Panel to 66 Block)
 - 24. *PSC Cross Connect to Outside Rooms*
- A. 300 Pair from Backboard to MPOE West
 - (66 Block to 66 Block)
- B. 100 Pair from Backboard to MPOE South
 - (66 Block to 66 Block)
- C. 100 Pair from Backboard to IDF 2nd Floor
 - (66 Block to Patch Panel)

25. ISD Cross Connect to Outside Rooms

- A. 150 Pair from Backboard to MPOE West
(66 Block to 66 Block)
- B. 150 Pair from Backboard to MPOE South
(66 Block to 66 Block)
- C. 100 Pair from Backboard to IDF 1st Floor
(66 Block to Patch Panel)
- D. 100 Pair from Backboard to IDF 2nd Floor
(66 Block to Patch Panel)

Section #3 Provisioning and Installation of Starline Busway Electrical Distribution and all related support systems

The Selected Contractor will procure and install the Starline Busway system designed for the distribution of A/B power in the Data Center. McCarthy provided PDU's will be located at the end of each row and provide corresponding A/B power for each row within the Data Center (See attached Drawing set).

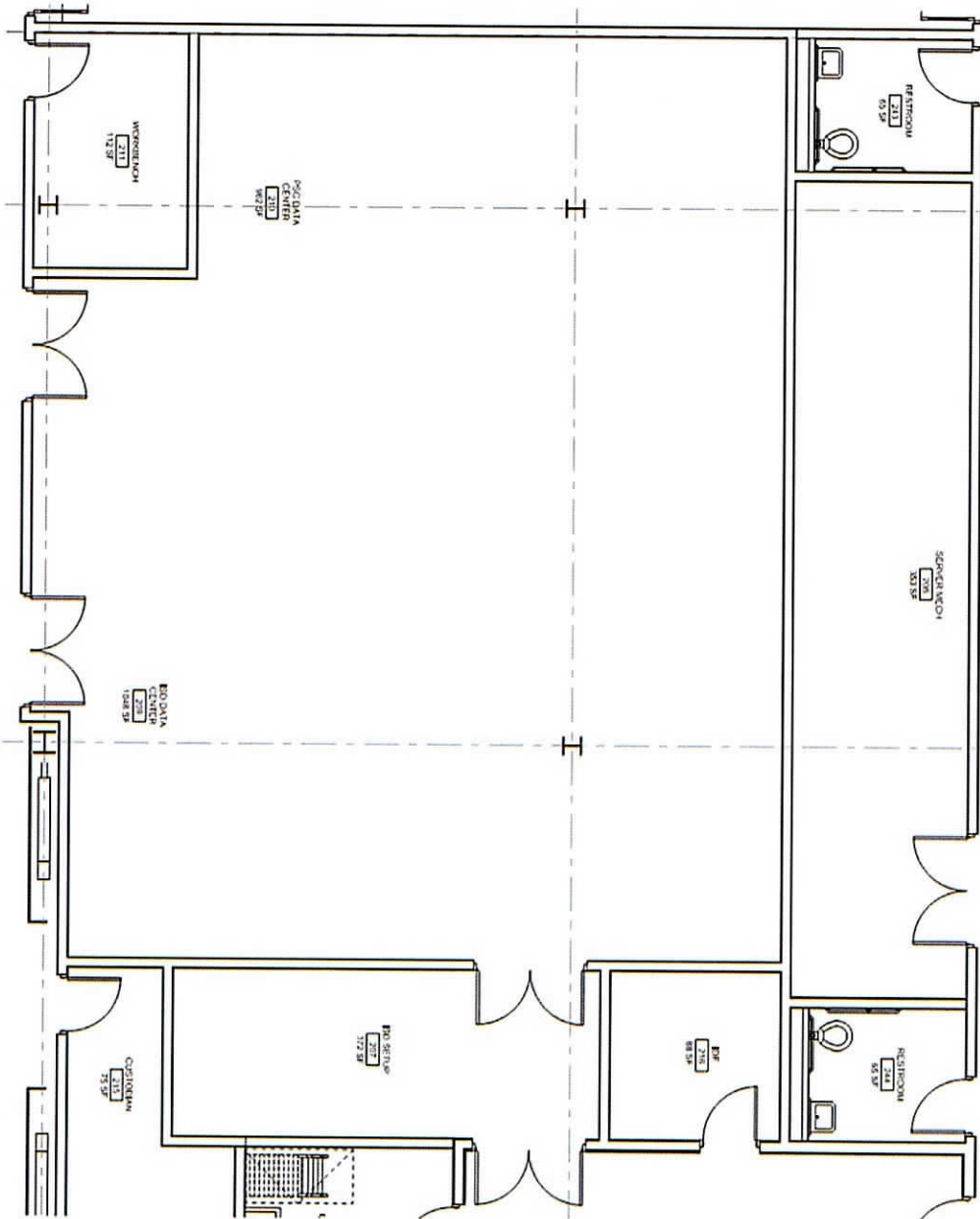
The selected contractor will be required to coordinate with McCarthy for the installation and connection of the Starline Busway to the Schneider End of Row PDU's.

The selected contractor will need to coordinate with McCarthy/COSM for Electrical System Testing and Integrated System Testing once the Starline Busway and APC Cabinets/PDU's have been installed in accordance with section 9.

Section #4 Design, Provisioning, and Installation of Security fencing separating PSC and ISD sides of the Data Center.

The Selected Contractor will be required to design a fence separation the PSC and COUNTY sides of the data center. The fence should consist of two sections located on the north and south end of row 3. Each section of fence will need to go from the respective cabinet at the end of each row to the corresponding wall and will need to include a "crash" gate for egress from the PSC side of the Data Center into the ISD side of the Data Center. Fencing height will need to be floor to ceiling with appropriate pathways/cutouts for any cable pathways that it will impede.

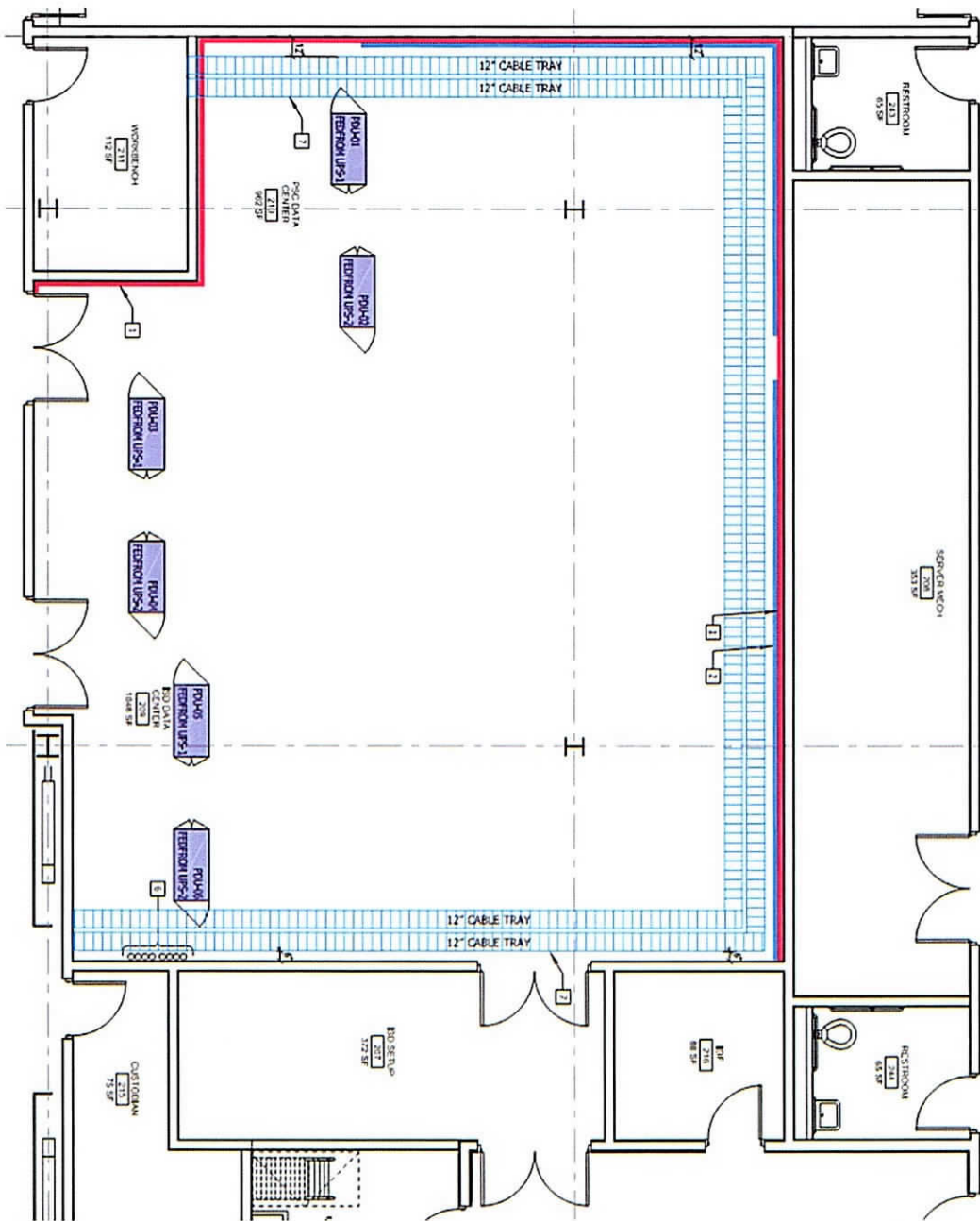
Exhibit B Concept Drawings



FINAL CONSTRUCTION DRAWING
SAN MATEO - DATA CENTER

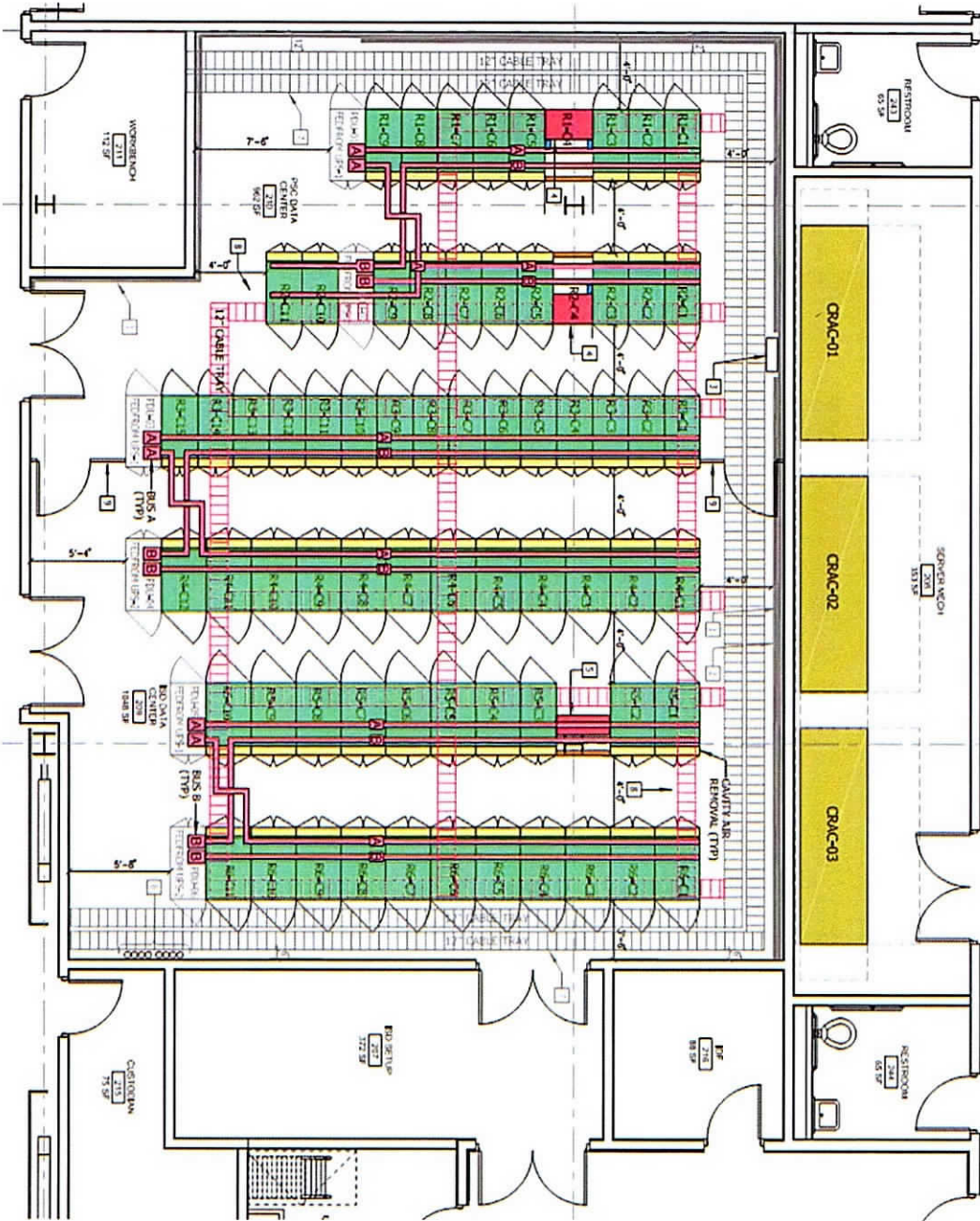
SCALE: 3/16" = 1'-0"
DATE: 11.17.2018





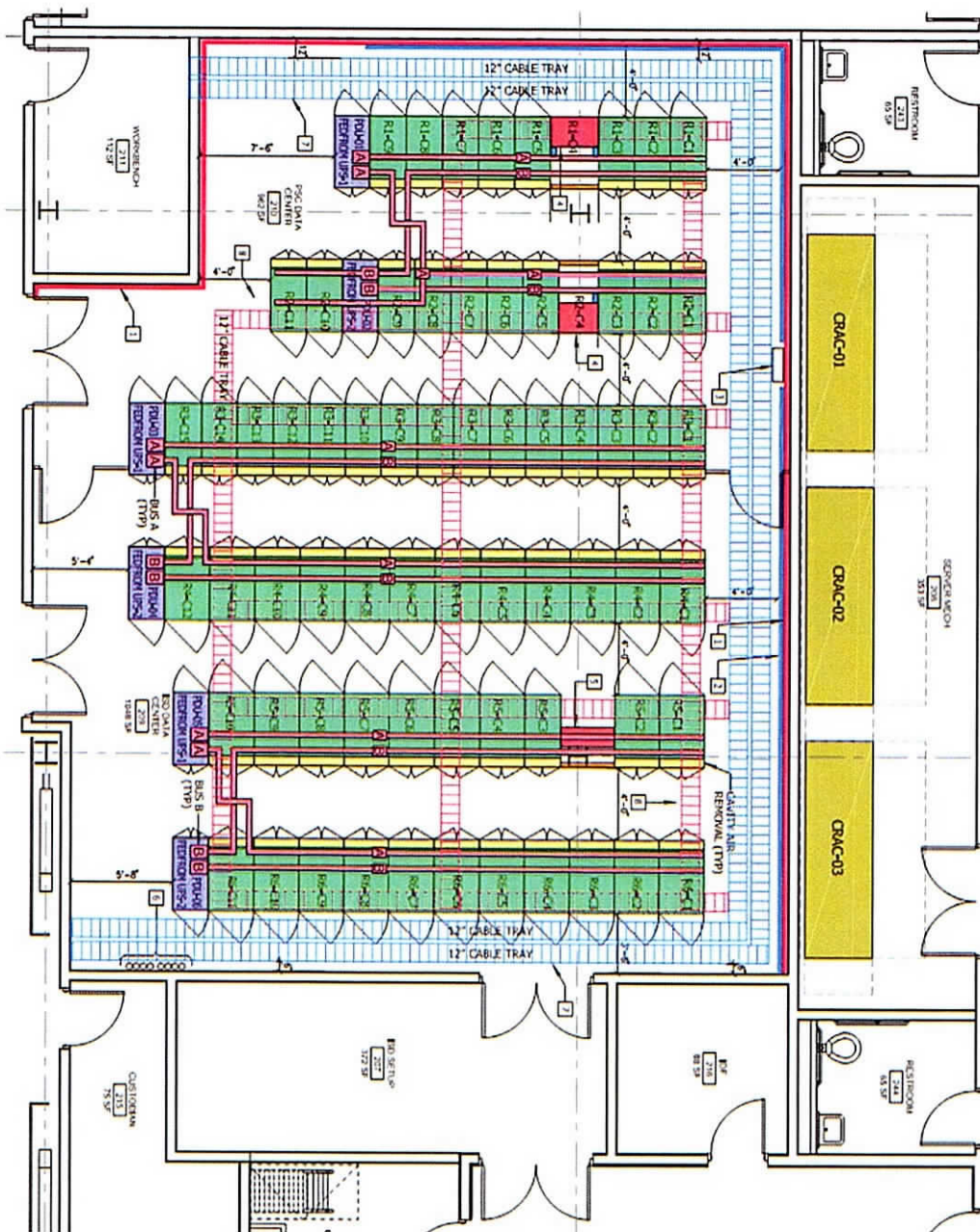
REFERENCE NOTES

- 1 3/4 INCH PLYWOOD BACKING.
- 2 66 BLOCKS WITH SPARK GAP, 6-3/4 INCHES WIDTH FOR INCOMING FEED CABLES.
- 3 7\"/>



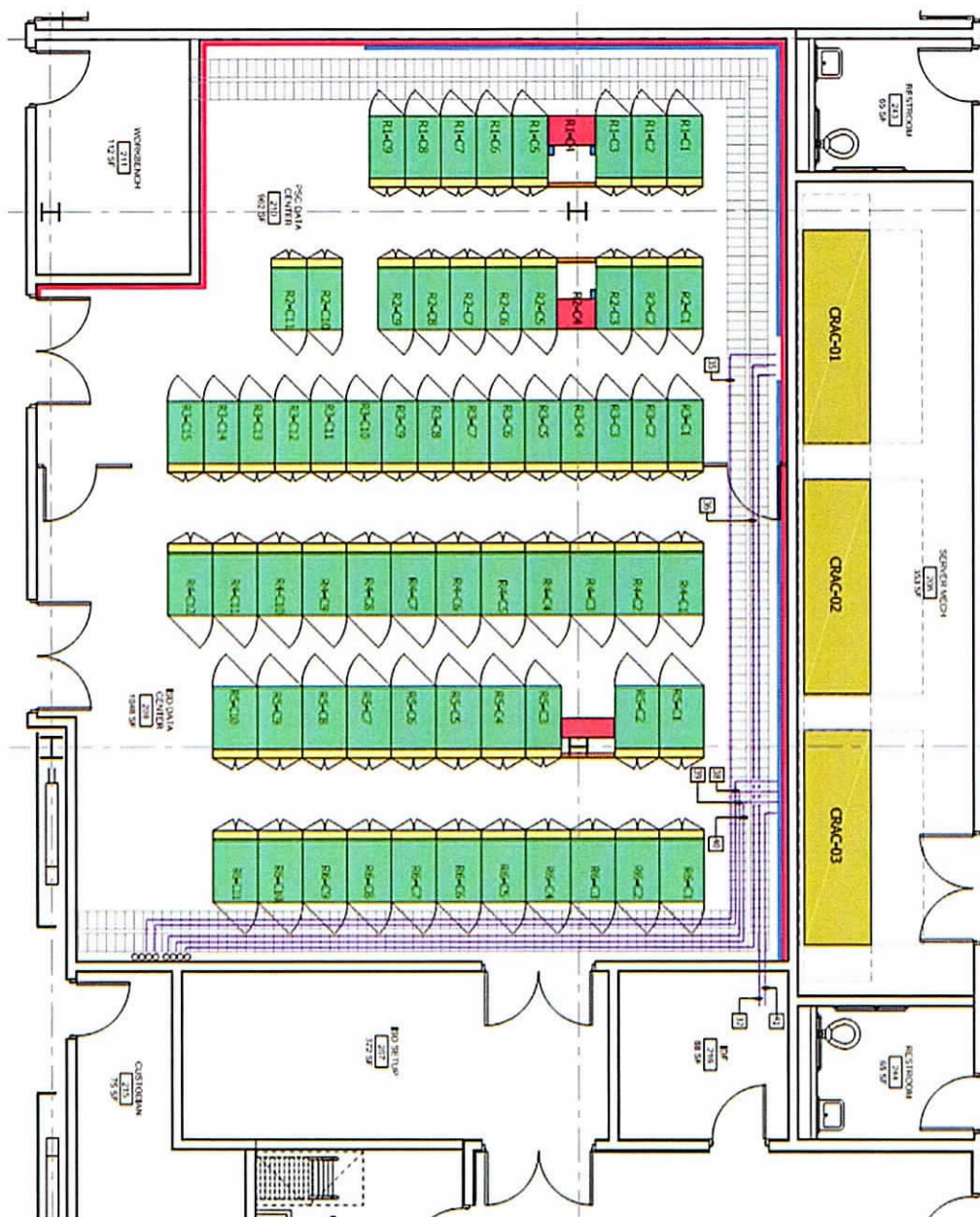
REFERENCE NOTES

- 1 3/4 INCH PLYWOOD BACKING.
- 2 66 BLOCKS WITH SPARK GAP, 6-3/4 INCHES WIDTH FOR INCOMING FEED CABLES.
- 3 7' DEEP PAGING CONTROLLER.
- 4 20' 2-POST RELAY RACK WITH VERTICAL WIRE MANAGEMENT.
- 5 24" X 24" POST MOUNTED NEMA BOX.
- 6 (8) 4" CONDUIT ONLY STUDS.
- 7 CABLE TRAY TO BE INSTALLED BY THE DBE.
- 8 CABLE TRAY TO BE INSTALLED BY A THIRD PARTY CONTRACTOR.
- 9 SECURITY FENCE SEPARATING PSC FROM ISO, FENCE SHOULD BE FLOOR TO DROP CEILING WITH EMERGENCY CRASH GATE LEADING INTO ISO AREA.



REFERENCE NOTES

- 1 3/4 INCH PLYWOOD BACKING.
- 2 66 BLOCKS WITH SPARK GAP, 6-3/4 INCHES WIDTH FOR INCOMING FEED CABLES.
- 3 7\"/>



- REFERENCE NOTES – COPPER (Continued)**
- | | |
|----|---|
| 10 | 84-C5 (Pink Gold) to Wall Cross Connect
50 Paf. Copper (Patch Panel to 66 Block) |
| 11 | 84-C7 (Networks Cab 1) to Wall Cross Connect
200 Paf. Copper (Patch Panel to 66 Block) |
| 12 | 84-C9 (Networks Cab 2) to Wall Cross Connect
200 Paf. Copper (Patch Panel to 66 Block) |
| 13 | 84-C9 (Networks Cab 2) to Wall Cross Connect
200 Paf. Copper (Patch Panel to 66 Block) |
| 14 | 84-C9 (Networks Cab 2) to Wall Cross Connect
200 Paf. Copper (Patch Panel to 66 Block) |
| 15 | 84-C10 (Networks Cab 4) to Wall Cross Connect
50 Paf. Copper (Patch Panel to 66 Block) |
| 16 | 84-C10 (FSA 1 Cabinet) to Wall Cross Connect
50 Paf. Copper (Patch Panel to 66 Block) |
| 17 | 84-C11 (Trailing Gas) to Wall Cross Connect
50 Paf. Copper (Patch Panel to 66 Block) |
| 18 | End of Row to Top of Rack 84-C2 to 84-C2, C3, C4, C5, C6, C7,
C8, C9, C10, C11, C12 |
| 19 | End of Row to Top of Rack 84-C1 to 84-C2, C3, C4, C5, C6, C7,
C8, C9, C10, C11, C12 |
| 20 | 24 Copper CAT 5 Cables (Patch Panel to Patch Panel) |
| 21 | End of Row to Wall Cross Connect
24 Copper CAT 5 Cables (Patch Panel to 66 Block) |
| 22 | 84-C7 (Rack Cab 2) to Wall Cross Connect
150 Paf. Copper (Patch Panel to 66 Block) |
| 23 | End of Row to Top of Rack 84-C4 to 84-C2, C3, C4, C5, C6, C7,
C8, C9, C10 |
| 24 | 24 Copper CAT 6 Cables (Patch Panel to Patch Panel) |
| 25 | End of Row to Wall Cross Connect
24 Copper CAT 6 Cables (Patch Panel to 66 Block) |
| 26 | End of Row to Top of Rack 84-C1 to 84-C2, C3, C4, C5, C6, C7,
C8, C9, C10, C11 |
| 27 | End of Row to Wall Cross Connect
24 Copper CAT 5 Cables (Patch Panel to 66 Block) |
| 28 | End of Row to Top of Rack 84-C1 to 84-C2, C3, C4, C5, C6, C7,
C8, C9, C10, C11 |
| 29 | 24 Copper CAT 6 Cables (Patch Panel to Patch Panel) |
| 30 | End of Row to Wall Cross Connect
24 Copper CAT 5 Cables (Patch Panel to 66 Block) |
| 31 | 200 Paf. from Backboard to MPCE West
(66 Block to 66 Block) |
| 32 | 100 Paf. from Backboard to MPCE South
(66 Block to 66 Block) |
| 33 | 100 Paf. from Backboard to MPCE South
(66 Block to 66 Block) |
| 34 | 100 Paf. from Backboard to MPCE 2nd Floor
(66 Block to Patch Panel) |
| 35 | 100 Paf. from Backboard to MPCE Rooms
(66 Block to 66 Block) |
| 36 | 150 Paf. from Backboard to MPCE West
(66 Block to 66 Block) |
| 37 | 150 Paf. from Backboard to MPCE South
(66 Block to 66 Block) |
| 38 | 100 Paf. from Backboard to MPCE 1st Floor
(66 Block to Patch Panel) |
| 39 | 100 Paf. from Backboard to MPCE 2nd Floor
(66 Block to Patch Panel) |

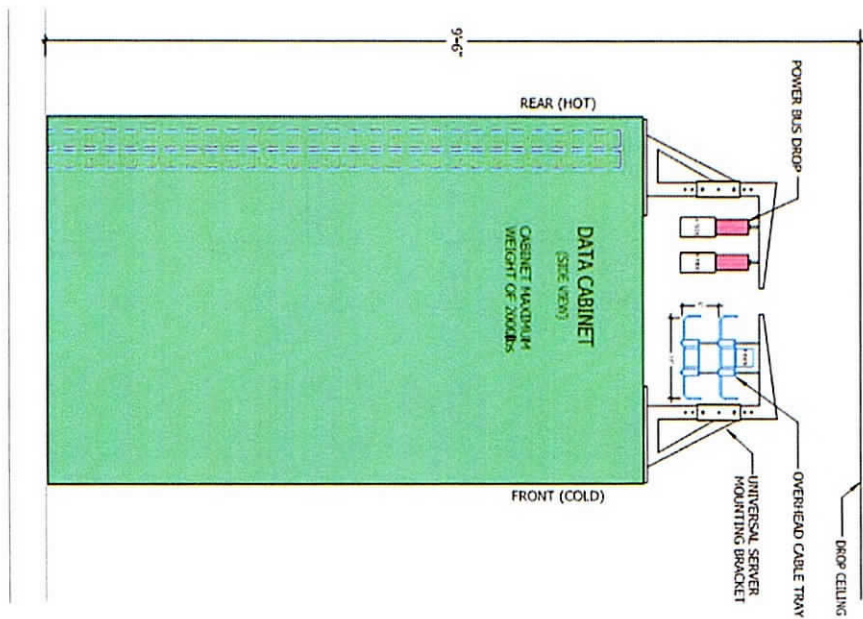
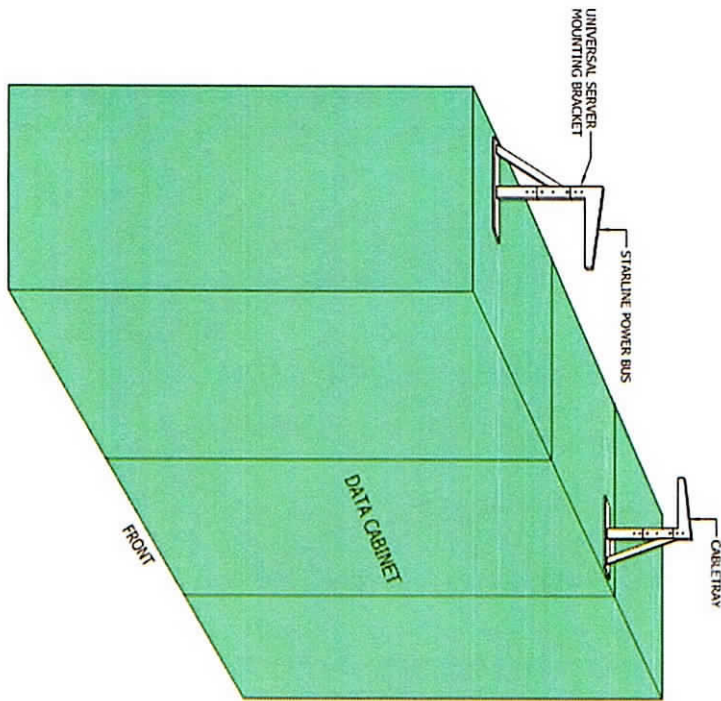


Exhibit C.a
Contractor Information Package

Project Directory

Name:	Organization:	Title:	Phone:	Email:
Michael Rypkema	PDU	IT Manager	303-817-0889	mrypkema@smcgov.org
Keith Anderson	PDU	Senior Construction Manager	650-224-7119	keitha@scipm.com
Brent Hipsher	PDU	Project Inspector	925-719-0395	bhipsher@4leafinc.com
Ephraim Bahiru	McCarthy	Sr. Project Manager	510-435-5796	ebahiru@mccarthy.com
Adam Brainerd	McCarthy	Project Superintendent	415-596-2197	abrainerd@mccarthy.com

EXHIBIT C.b

FORM OF CONSTRUCTION PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

This Construction Performance Bond ("Construction Performance Bond") is issued simultaneously with a Construction Labor and Material Payment Bond ("Payment Bond") issued with respect to the Project. As used herein, "Obligee" shall mean the County of San Mateo ("County")

1. THAT WHEREAS, **County of San Mateo**, a political subdivision of the State of California, has awarded to (Name of Contractor) as Principal a Construction Agreement dated the _____ day of _____, 20____ (Agreement), titled THE _____ PROJECT in the amount of \$_____, which Agreement is by this reference made a part hereof, for the work described as follows:

(Describe Agreement Work) _____ (Bid Number xxxxx).

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement, guaranteeing the faithful performance thereof;
3. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety are held and firmly bound unto Obligee in the sum of 100% OF THE CONTRACT SUM to be paid to Obligee or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Obligee, shall promptly and faithfully perform the covenants, conditions, and agreements of the Agreement during the original term and any extensions thereof as may be granted by Obligee, with or without notice to Surety, and during the period of any Contractor guarantees or warranties (not including any extended manufacturer/supplier warranties) required under the Agreement, and shall also promptly and faithfully perform all covenants, conditions, and agreements of any alteration of the Agreement made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless Obligee as stipulated in the Agreement, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.
5. No extension of time, change, alteration, modification, or addition to the Agreement, or of the work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.
6. Whenever Principal shall be and declared by Obligee in default under the Agreement, Surety shall promptly remedy the default, or shall promptly:
 - A. Undertake through its agents or independent contractors, reasonably acceptable to Obligee, to complete the Agreement in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or

- B. Obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and, upon determination by Oblige of the lowest responsible bidder, reasonably acceptable to Oblige, arrange for a contract between such bidder and Oblige and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by Oblige to the Principal under the Agreement and any amendments thereto, less the amount Oblige paid to Principal.
7. Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Agreement, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Oblige's rights against the others. Surety may not use Contractor to complete the Agreement absent Oblige's written consent.
8. No right of action shall accrue on this bond to or for the use of any person or corporation other than Oblige or its successors or assigns.
9. Surety will be provided with reasonable notice of any proceedings brought under the Agreement, and may join in any such proceedings, and shall be bound by any judgment.
10. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20____.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature

Name

Title

Street Address

City, State, Zip Code

SURETY

Company: (Corp. Seal)

Signature

Name

Title

Street Address

City, State, Zip Code

EXHIBIT C.c

FORM OF CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

This Construction Performance Bond ("Construction Performance Bond") is issued simultaneously with a Construction Labor and Material Payment Bond ("Payment Bond") issued with respect to the Project. As used herein, "Obligee" shall mean the County of San Mateo ("County")

1. THAT WHEREAS, **County of San Mateo**, a political subdivision of the State of California, has awarded to (Name of Contractor) as Principal a Construction Agreement, dated the _____ day of _____, 20 ____ (Agreement), titled THE _____ PROJECT located at _____ in the amount of \$_____, which Agreement is by this reference made a part hereof, for the work described as follows:

(Describe Agreement Work) (Bid Number xxxxx).

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
3. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety, are held and firmly bound unto Obligee in the sum of 100% OF THE CONTRACT SUM (\$_____), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Obligee, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to California Unemployment Insurance Code Section 13020 with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.
5. This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
6. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder.

7. Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Agreement; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Obligee's rights against the other.
8. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20____.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature

Signature

Name

Name

Title

Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

DOCUMENT

Exhibit 2 **Definitions and General Conditions**

20. DEFINITIONS

20.0 "Architect (or Owner's designated Project Manager)", which is the architect of record for Owner.

20.1 "Certificate of Substantial Completion" is a certificate prepared by the Architect (or Owner's designated Project Manager) that documents the date of Substantial Completion for the Completion of the Work, the responsibilities of the Owner and Trade Contractors for security, maintenance, heat, utilities, damage to the Work and insurance, and will fix the time within which the Trade Contractors will finish all items on their respective punchlist accompanying the Certificate. The Certificate of Substantial Completion will be submitted to the Owner, and Trade Contractors for their written acceptance of responsibilities assigned to them in the Certificate.

20.2 "Change Order" is a mutually agreed written order adjusting either the Trade Contractor Price and/or Contract Time for completing the Work in accordance with the Trade Contract. All Change Orders will be executed by the Trade Contractor and Owner.

20.3 "Completion of the Work" means completion of the Trade Contractor's Work under the Trade Contract.

20.4 "Construction Work Directive" means a written directive prepared by the Owner and executed by the Owner authorizing the Trade Contractor to proceed with a modification to the scope of Work. The Construction Work Directive is not a Change Order and will only be assembled and issued when there is not adequate time to process a Change Order prior to proceeding with revisions to the scope of the Work or if the Owner and Trade Contractor cannot agree on the value of the proposed change order.

20.5 "Construction Documents" include the 2D plans and specifications prepared by the Architect (or Owner's designated Project Manager) and its design consultants and any subsequent modifications, responses to requests for clarification and information. These documents are complementary and what is required by one is required by all.

20.6 "Owner" means County of San Mateo.

20.7 "Contract Documents" are set forth in Article 3 of the Trade Contract and include the Trade Contract, all Exhibits set forth in the Agreement, and all subsequent contract modifications issued after execution of the Trade Contract such as amendments and Change Orders.

20.8 "Contract Time" is the time allotted under the Project Schedule set forth in the Contract Specifications that the Trade Contractor must achieve Substantial Completion of its Work, subject to the Milestone Date for erection of the structural steel.

20.9 "Day" or "day" means calendar day unless specifically described as a work day or business day or unless statutorily defined.

20.10 "Design Services" means that portion of the Work pertaining to the design of the Project.

20.11 "Design Standards" are those standards for design of the Project listed in Exhibit's A, B C & 2.

20.12 "Effective Date" means the date the Trade Contractor and Owner entered into the Trade Contract, which is set forth on page 1 of the Trade Contract.

20.13 "Final Completion" occurs on the date when all trade contractors have completed their respective work in accordance with the Contract Documents; all final punchlist items have been completed and accepted by the Architect (or Owner's designated Project Manager), Owner; the building has been commissioned; all close-out documentation required under the Project specifications have been transmitted to the Owner; and a certificate of occupancy has been issued by the public agency having jurisdiction over construction of the Project. Final Completion does not include approval from agencies having jurisdiction over licensing for patient care that are unrelated to construction.

20.14 "Final Completion Date" is the date established in the Project Schedule as the Final Completion Date, which may be adjusted upon Final Completion to reflect the actual date that Final Completion occurred.

20.15 "Final Design" means the conceptual design drawings and other documents consisting of a basic description of the design of the Project that reflects the definition of the needs associated with the Project and the Project Criteria, and states on a preliminary basis, where applicable, the performance requirements or basic scope of the Project, considering the Design Standards.

20.16 "Force Majeure Event" means an Act of God as defined under Public Contract Code section 7105, civil disobedience, an act of terror, or unavoidable casualties beyond the Trade Contractor's control, and not due to any act or omission of the Trade Contractor, that necessarily extends the Substantial Completion Date.

20.17 "Hazardous Substances" means any substance, product, waste, or other material of any nature that is or becomes listed, regulated or addressed under one or more of the following Environmental Laws: (1) CERCLA, (2) Hazardous Materials Transportation Act, (3) RCRA, (4) the Clean Water Act, (5) the Toxic Substance Control Act, (6) HSAA, (7) the California Porter-Cologne Water Quality Control Act, (8) the California Hazardous Waste Management Act, (9) the California Safe Drinking Water Act, (10) the California Waste Management Act, and (11) any other federal or state law or local ordinance concerning hazardous, toxic or dangerous substances, wastes, or materials.

20.18 "Lean Construction," "Lean Design" and "Lean" refer to principles and techniques for designing and constructing a project in the most efficient and cost-effective manner that were developed by the Lean Construction Institute.

20.19 "Material Safety Data Sheets" or "MSDS" are a compilation of information required by OSHA on the identity of hazardous chemicals, health, and physical hazards, exposure limits and precautions.

20.20 "Owner" means the County of San Mateo.

20.21 "Owner Elected Changes" are changes in the Work directed by the Owner that impact Completion of the Work and are not: (i) reasonably inferable from a comprehensive review of the Construction Documents; or (ii) required as a result of a design error and omission.

20.22 "Owner's Suspension of the Work" is when the Owner elects to suspend progress during the construction phase of the Project under the Trade Contract.

20.23 "Product Data" includes illustrations, standard schedules; performance charts, instructions, brochures, diagrams and other information furnished by the Trade Contractor to illustrate materials or equipment for some portion of the Work.

20.24 "Project Scope of work" means the criteria for design of the Project set forth in Exhibit A & B.

20.25 "Project Master Schedule" means the schedule included in the Trade Contract.

20.26 "Record Documents" are drawings or the model updated daily to reflect the as-built conditions of the Work. The Record Documents will be used to generate the final as-built documents as part of the Trade Contractor's close-out requirements.

20.27 "Samples" means physical examples of materials, equipment or workmanship required by the Construction Documents that are used to establish standards by which the Work will be judged.

20.28 "Shop Drawings" means drawings, diagrams, and other data specially prepared by the Trade Contractors or its Subcontractor, manufacturer, supplier or distributor to demonstrate the way that the Trade Contractor proposes to perform its Work in accordance with the design illustrated in the Construction Documents.

20.29 "Subcontractor" means a person or entity in direct contract with the Trade Contractor to perform portions of Work for the Project and includes all tier-subcontractors.

20.30 "Submittals" includes Shop Drawings, Product Data, Samples and similar documentation required by the Project specifications or other Construction Documents.

20.31 "Substantial Completion Date" is the date when the construction work for the entire Project has been substantially completed and the Project has received governmental approval for beneficial occupancy for staffing and stocking.

20.32 "Trade Contract Price" includes all costs to complete all the Work, including payment of all taxes that may be assessed against Trade Contractor in performing the Work.

20.33 "Trade Contractor" is the licensed contractor identified on page 1 of the Trade Contract that is performing certain construction Work at the Project on behalf of the Owner. Other trade contractors performing work on the Project on behalf of the Owner are referred to as "other trade contractors" or "trade contractors."

20.34 "Trade Contract" is the written construction agreement between the Owner and the Trade Contractor for performance of the Work on this Project.

20.35 "Unforeseen and Differing Site Conditions" means discovery of an unknown, unforeseen, or differing site conditions as defined in Public Contract Code section 7104 or its successor and also includes discovery of an unknown, existing hazardous substance that requires removal or remediation.

20.36 "Work" includes all labor, materials, equipment and appurtenances provided by the Trade Contractor necessary for all preconstruction services and complete construction of its portion of the Project in strict accordance with the Contract Documents.

21. WORKERS AND WORKERS COMPENSATION

21.1 Trade Contractor will at all times enforce strict discipline and good order among its employees. Trade Contractor will not employ on the Project any unfit person or any one not skilled in the Work assigned.

21.2 Any person in the employ of the Trade Contractor whom Owner believes may be incompetent or unfit will be dismissed from the Project and will not be re-employed on this Project except with the written approval of the Owner.

21.3 Trade Contractor and its Subcontractors are required to secure the payment of compensation of its employees in accordance with Labor Code section 3700. Before commencing the Work, each Trade Contractor and Subcontractor will sign and file a certification with the Owner under Labor Code section 1861 stating the following:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work under this Trade Contract.

22. RESPONSIBILITY FOR REMOVAL, RELOCATION, OR PROTECTION OF EXISTING UTILITIES.

22.1 Consistent with Government Code section 4215, and notwithstanding any other provision of the Contract Documents, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site, if the utilities are not identified in the Construction Documents made a part of the invitation for bid. Trade Contractor will be reasonably compensated for the cost of locating, repairing damage, not due to the failure of the Trade Contractor to exercise reasonable care, and removing or relocating the utility facilities not indicated in the Construction Documents with reasonable accuracy. Notwithstanding the above, the Owner will not be required to indicate the presence of existing service laterals or appurtenances whenever the presence of utilities on the Project site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Project site. If Trade Contractor discovers utility facilities not identified by Owner in the Construction Documents, it will immediately notify the Owner in writing. The Owner will notify the utility company. The public utility, where they are the owner, will have the sole discretion to perform repairs or relocation work or permit the Trade Contractor to do repairs or relocation work at a reasonable price.

23. INSPECTION FEES FOR PERMANENT UTILITIES.

23.1 All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation will be paid for by the Trade Contractor.

24. MOCK-UPS

24.1 Trade Contractor will provide all mock-ups as required by the Construction Documents. Mock-ups will be installed in a location on-site or at such other locations to be designated by the Owner. Approved mock-ups will remain as standard of acceptance of the Work and, where practical and approved, may be incorporated in the Work. If not so incorporated, they will be demolished and removed by the Trade Contractor when directed by the Owner to do so.

24.2 The Owner in conjunction with the Architect (or Owner's designated Project Manager) will promptly investigate the conditions, and if they find that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in the Trade Contract Price, or Contract Time for any part of the Work, the Owner will issue a Change Order under the Trade Contract.

24.3 If the 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, the Owner will notify Trade Contractor in writing, stating reasons Trade Contractor will not be entitled to an adjustment in the Trade Contract Price or Contract Time regarding claimed latent or materially different site conditions (whether above or below grade) if:

24.3.1 Trade Contractor knew of the existence of the conditions at the time Trade Contractor submitted its bid; or

24.3.2 Trade Contractor should have known of the existence of the conditions as a result of having complied with the requirements of Contract Documents; or

24.3.3 The information or conditions claimed by Trade Contractor to be latent or materially different consist of information, conclusions, opinions or deductions of the kind that precludes reliance upon; or

24.3.4 Trade Contractor was required to give written notice of differing site conditions under the Contract Documents and failed to do so within the time required.

24.4 In the event of a dispute, the Trade Contractor will not be excused from the Contract Time to complete its Work and will proceed with all Work to be performed under the Trade Contract.

25. REGULATORY REQUIREMENTS

25.1 Trade Contractor represents and warrants: (a) that it is familiar with State of California, fire marshal, and other regulatory requirements in connection with the Project; (b) that it is aware that State of California, fire marshal, and other regulatory requirements, including without limitation, design review, approval processes, and inspection, can be time-consuming, involve long lead times, be subject to significant delays, and be subject to uncertainties and

difficulties with respect to availability of resources and budgetary problems in connection with such governmental agencies; and (c) that notwithstanding (a) and (b), the Contract Time and Trade Contract Price are sufficient, and that no additional time or compensation will be required or authorized for such matters.

26. AIR POLLUTION CONTROL

26.1 Trade Contractor will comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt will be labeled to indicate that the contents fully comply with the applicable material requirements. Dust control will be provided for all demolition operations and Trade Contractor will provide dust control as required for its operations.

27. FIRE PROTECTION

27.1 Trade Contractor will provide fire watch and be responsible for all fire prevention in connection with the Work. Open fires will not be permitted on or about the Project site.

27.2 The Trade Contractor will make chemical fire extinguishers available at the location where the Trade Contractor performs any torch cutting or welding operations. Trade Contractor will provide the Owner with notice prior to undertaking any torch cutting and welding operations. Trade Contractor, if performing cutting or welding operations, will undertake all appropriate safety measures including but not limited to a fire watch, fire extinguishers, fire blankets and will be responsible for any damage caused by its operations.

28. PROTECTION OF WORK AND PROPERTY

28.1 Trade Contractor will be responsible for providing a safe place for the performance of its Work and for the physical conditions and safety of areas affected by its Work. Trade Contractor will take all necessary precautions to provide for the safety and protection of all persons who may come in contact with the Work and for all property within or adjacent to the Project site including adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures. Trade Contractor will repair any damage caused by its operations at its own expense and will provide protection to prevent damage, injury or loss to:

28.1.1 employees and other persons at the Project site;

28.1.2 equipment, materials, and vehicles stored at the site or off-site if under the care, custody, or control of the Trade Contractor or its Subcontractor;

28.1.3 Existing structures, property and the work of other trade contractors when carrying out Trade Contractor's Work.

28.2 Trade Contractor will:

28.2.1 Enclose the working area with a substantial barricade and arrange Work to cause minimum amount of inconvenience and danger to the public.

28.2.2 Provide substantial barricades around any shrubs or trees indicated to be preserved.

28.2.3 Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the Owner.

28.2.4 Preserve and protect from injury all buildings, pole lines and all direction, warning, and mileage signs that have been placed within the right-of-way.

28.3 All Trade Contractor field offices will be constructed of fire resistant materials. The Owner will allocate space for storage and field offices as Project conditions permit. Construction details of the Trade Contractor's field office and their location on the site will be subject to the approval of the Owner and will contain adequate fire protection equipment. Field office relocation, if required, will be at the Trade Contractor's expense.

28.4 The Owner will require Trade Contractor to provide barricades (lighted, if required), fences, and protection necessary for general safety as related to its Work. Trade Contractor will notify the Owner 24 hours prior to removing any safety installation. Any Trade Contractor damaging or removing any safety or protective work during the performance of its Work will be responsible for the immediate restoration of the safety or protective installations to ensure continuous compliance with all applicable safety regulations and any safety requirements.

28.5 Trade Contractor is responsible to notify the Owner of any water damaged or wet materials that have been installed and, if responsible, to repair these damaged materials to the satisfaction of the Owner immediately.

28.6 These precautionary measures will apply continuously and not be limited to normal working hours.

28.7 If damage to persons or property occur as a result of the Work, Trade Contractor will be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The Owner will be entitled to inspect and copy any documentation, video, or photographs.

29. PAYROLL RECORDS

29.1 The Trade Contractor and each Subcontractor will maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee performing labor in connection with the Work. Trade Contractor will certify under penalty of perjury that records maintained and submitted by Trade Contractor are true and accurate and that the employer has complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any Work performed on the Project. Trade Contractor will also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

29.2 The payroll records will be certified and submitted by the Trade Contractor on a monthly basis with its application for payment or at other times that may be designated by the Owner. The Trade Contractor will also provide the following:

29.2.1 A certified copy of the employee's payroll records will be made available for inspection or furnished to the employee or his or her authorized representative on request.

29.2.2 A certified copy of all payroll records described will be made available for inspection or furnished upon request of the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards, or the Department of Industrial Relations ("DIR").

29.3 The certified payroll records will be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or will contain the same information as the forms provided by the DLSE.

29.4 Any copy of records made available for inspection and furnished upon request to the public will be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Trade Contractor or any Subcontractor will not be marked or obliterated.

29.5 In the event of noncompliance with the requirements of this Section, the Trade Contractor will have 10 days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. If non-compliance is evident after the 10-day period, the Trade Contractor will, as a penalty to the Owner, forfeit Twenty-Five Dollars (\$25.00) for each 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, the penalties will be withheld from progress payments due.

30. PREVAILING RATES OF WAGES

30.1 This Project is subject to California State prevailing wages. Trade Contractor will comply with any applicable California prevailing wage laws. The Trade Contractor acknowledges and agrees that it has performed its own investigation as to the applicability of California prevailing wage laws commencing with Labor Code section 1720 et seq. Trade Contractor agrees that the Contract Price includes full compensation for all labor in compliance with California Labor Code and that no additional compensation will be owed to Trade Contractor in the event that Trade Contractor is required to pay higher wages or incur additional costs that Trade Contractor contends it did not anticipate.

30.2 Prevailing Wages

30.2.1 Contractor 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. Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site.

30.2.2 Contractor shall forfeit, as a penalty to Owner, up to Two Hundred Dollars (\$200.00) for each laborer, workman, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, workman or mechanic 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 subparagraph and the terms of

the Labor Code shall be withheld and retained from payments due to Contractor under the Contract Documents, 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.

30.2.3 Contractor shall insert in every subcontract or other arrangement which Contractor 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.

30.2.4 Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code sections 1776 and 1810-1815. Failure to so comply shall constitute a default under this Contract.

30.2.5 Contractor and its Subcontractors shall be responsible for compliance with Labor Code sections 1810-1815.

30.2.6 Eight hours of labor performed in execution of the Contract constitutes a legal day's work. The time of service of any workman employed on the Project is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week.

30.2.6.1 Contractor and its Subcontractors shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the Project. The record shall be kept open at all reasonable hours to the inspection Owner and to the Division of Labor Standards Enforcement.

30.2.6.2 Contractor or its Subcontractors shall, as a penalty to Owner, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the Contract Documents by the respective Contractor or Subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Labor Code §§ 1810-1815.

30.2.6.3 Work performed on the Project by employees of Contractor or its Subcontractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

30.2.7 Contractor and its Subcontractors shall be responsible for compliance with Labor Code section 1776.

30.2.7.1 Contractor 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.

30.2.7.2 The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor as required by Labor Code section 1776.

30.2.7.3 Contractor 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.

30.2.7.4 Contractor 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 Contractor 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. Contractor is not subject to a penalty assessment pursuant to this subparagraph due to the failure of a Subcontractor to comply with this subparagraph.

30.2.8 Contractor shall also deliver certified payrolls to Owner with each Application for Payment.

31. EMPLOYMENT OF APPRENTICES

31.1 The Trade Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Trade Contractor or any Subcontractor. The Trade Contractor will obtain a certificate of apprenticeship before employing any apprentice pursuant to Section 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

32. NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

32.1 Pursuant to Labor Code section 1735 and other applicable provisions of law, the Trade Contractor and its Subcontractors will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, national origin, age, political affiliation, marital status, or disability on this Project. The Trade Contractor will take affirmative action to ensure that employees are treated during employment or training without regard to their race, color, religion, sex, gender identity, national origin, age, political affiliation, marital status, or disability and will comply with the following requirements:

32.1.1 During the performance of this Trade Contract, Trade Contractor and its Subcontractors will not deny the Trade Contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, gender identity, age, physical or mental disability, nor will they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), sex or gender identity. Trade Contractor will insure that the evaluation and treatment of employees and applicants for employment are free of discrimination.

32.1.2 Trade Contractor will comply with the provisions of the Fair Employment and Housing Act (Gov. Code section 12900 et seq.), the regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code sections 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.

32.1.3 Trade Contractor will permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to its books, records, accounts, other sources of information and its facilities as the Department or Agency requires to ascertain compliance with this clause.

32.1.4 Trade Contractor and its Subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements.

32.1.5 The Trade Contractor will include the nondiscrimination and compliance provisions of this clause in all Subcontracts.

33. LABOR/EMPLOYMENT SAFETY

33.1 The Trade Contractor will maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4.

33.2 Employers on a construction project are responsible for the health and safety for their workers as regulated by municipal, State, and Federal acts and regulations. In addition to the Safety Manual, Trade Contractor is obligated to comply with all laws, regulations, and codes concerning safety as will be applicable to the Work and to the safety standards established during the progress of the Work.

34. OCCUPANCY

34.1 The Owner reserve the right to occupy or utilize any portion of the Work at any time before Final Completion of the Project, and such occupancy or use will not constitute acceptance of any part of Work covered by this Trade Contract.

35. NOTICE OF THIRD PARTY CLAIMS

35.1 Pursuant to Public Contract Code section 9201, the Owner will provide Trade Contractor with timely notification of the receipt of any third-party claim relating to the Trade Contract.

36. CHANGE IN NAME AND NATURE OF TRADE CONTRACTOR'S LEGAL ENTITY

36.1 If a change in name or nature of the Trade Contractor's legal entity is anticipated, the Trade Contractor will notify the Owner to ensure that the change will be properly reflected on the Trade Contract.

37. ASSIGNMENT OF ANTITRUST ACTIONS

37.1 Pursuant to Public Contract Code section 7103.5 and Government Code sections 4554 and 4553, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Trade Contractor or Subcontractor offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Trade Contract or any Subcontract. This assignment will be made and become effective at the time the Owner makes final payment to the Trade Contractor, without further acknowledgment by the parties.

38. PROHIBITED INTERESTS

38.1 No public official or representative of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, supervise, make, accept, approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, will be or become directly or indirectly interested financially in this Trade Contract.

39. LAWS AND REGULATIONS

39.1 Trade Contractor will give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of Work. If Trade Contractor observes that the Construction Documents are at variance with any laws, ordinances, etc., Trade Contractor will promptly notify the Owner, in writing, and any necessary changes will be adjusted as provided for in this Trade Contract for changes in Work. If Trade Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without notice to the Owner, it will bear all costs associated with any required corrections or repairs.

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

40. DRUG FREE WORKPLACE CERTIFICATION.

40.1 Trade Contractor certifies that it has complied with Government Code section 8355 relating to a drug free workplace and will comply with the requirements included in the Owner's Safety and Quality Programs. Trade Contractor will submit a certificate under penalty of perjury stating that Trade Contractor will:

40.1.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

40.1.2 Establish a drug-free awareness program to inform employees about: (i) the dangers of drug abuse in the workplace; (ii) the person's or organization's policy of maintaining a drug-free workplace; (iii) any available drug counseling, rehabilitation, and employee assistance programs; and (iv) the penalties that may be imposed upon employees for drug abuse violations.

40.1.3 Trade Contractor will require that each employee performing Work on the Project be given a copy of the statement required by Section 40.1.1 and that the employee agrees to abide by the terms of the statement as a condition of employment.

41. OWNERSHIP OF CONSTRUCTION DOCUMENTS

41.1 The Architect (or Owner's designated Project Manager) and its design consultants retain all rights, title, and interests under common law, statutory and copyright Federal or State law in the Construction Documents prepared and sealed by them, as well as any other documents prepared by the Architect (or Owner's designated Project Manager) and any of the Architect (or Owner's designated Project Manager)'s design consultants for construction of the Project. The Trade Contractor may retain 1 record set of the Construction Documents for the limited purpose of defense of any subsequent claims involving this Project. The Trade Contractor will not own or claim a copyright in the Construction Documents and other documents prepared by the Architect (or Owner's designated Project Manager) or other design consultants. All copies of the Construction Documents will be returned, or suitably accounted for, to the Owner upon completion of the Project. The Construction Documents and other documents prepared by the Architect (or Owner's designated Project Manager) are furnished to the Trade Contractor for use solely with respect to this Project. They are not to be used by the Trade Contractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Trade Contractor is granted a limited, non-exclusive, license to use and reproduce applicable portions of the Construction Documents and other documents prepared by the Architect (or Owner's designated Project Manager) for use in the performance of the Work under the Trade Contract. Notwithstanding the above, the Trade Contractor retains all rights, title and interest to its construction and fabrication details input into any model to illustrate means and methods for constructing, fabricating or installing portions of the construction Work

41.2 Copies. All copies made under this license will bear the statutory copyright notice, if any, shown on the Construction Documents and any other documents prepared by the Architect (or Owner's designated Project Manager) and its design consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyright or other reserved rights and interests.

RESOLUTION NO. 076158

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

*** * * * ***

RESOLUTION AUTHORIZING THE DIRECTOR OF THE PROJECT DEVELOPMENT UNIT OR HIS/HER DESIGNEE TO: A) EXECUTE AN AGREEMENT WITH BEI CONSTRUCTION INC. FOR THE DATA CENTER INFRASTRUCTURE BUILDOUT FOR THE REGIONAL OPERATIONS CENTER IN AN AMOUNT NOT TO EXCEED \$2,976,822; AND, B) EXECUTE CONTRACT AMENDMENTS AND CHANGE ORDERS THAT WILL INCREASE THE COUNTY'S MAXIMUM FISCAL OBLIGATION BY NO MORE THAN \$297,682 OR 10% IN AGGREGATE AND/OR MODIFY THE CONTRACT TERM, TERMS, AND/OR SERVICES WHERE AUTHORIZED BY LAW SO LONG AS IT DOES NOT CAUSE THE TOTAL COST OF CONSTRUCTION OF THE REGIONAL OPERATIONS CENTER TO EXCEED THE CURRENT OR REVISED FISCAL PROVISIONS.

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, on October 20, 2015, your Board approved a Design/Build Agreement with McCarthy Building Company for the construction of the Regional Operations Center (ROC) which includes a new Data Center; and

WHEREAS, the County Data Center, which supports the County's data storage, network, and information technology infrastructure, is currently housed in a temporary leased colocation facility that will be decommissioned and dismantled once services are transferred to the ROC Data Center;

WHEREAS, this contract will allow for the provisioning, commissioning, and installation of the infrastructure for the ROC Data Center;

WHEREAS, the Design for the Data Center and associated Bill of Materials was created by California Data Center Design Group (CDCDG) and reviewed by County ISD Engineers and Management;

WHEREAS, the design provisions included industry best standards and practices which were presented to specialized contractors; and

WHEREAS, on August 24, 2018, the PDU issued an RFP for the ROC Data Center Infrastructure Buildout; and

WHEREAS, BEI Construction, Inc. submitted the lowest, responsive, and responsible bid, and has experience working on other essential service buildings, a clear understanding of the ROC project and Data Center, and can accommodate the timeline of the ROC project; and

WHEREAS; a specialized team under the Project Development Unit will manage the contract with BEI Construction, Inc.; and

WHEREAS, County Counsel has reviewed and approved the Resolution as to form; and

WHEREAS, approval of these actions will contribute to the Shared Vision 2025 outcome of Collaborative Community by establishing an agreement that allows the County of San Mateo to provide essential computing functions from a centralized and modernized location at the County Government Center.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board of Supervisors adopt a resolution authorizing the Director of the Project Development Unit, or his/her designee to;

A) Execute an agreement with BEI Construction, Inc. for Data Center Infrastructure for the Regional Operations Center in an amount not to exceed \$2,976,822; and,

B) Execute contract amendments and change orders that will increase the County's maximum fiscal obligation by no more than \$297,682 or 10% in aggregate and/or modify the contract term, terms, and/or services where authorized by law so long as it does not cause the total cost of construction for Regional Operations Center to exceed the current or revised fiscal provisions.

* * * * *

RESOLUTION NUMBER: 076158

Regularly passed and adopted this 25th day of September, 2018.

AYES and in favor of said resolution:

Supervisors:

DAVE PINE

CAROLE GROOM

DON HORSLEY

WARREN SLOCUM

DAVID J. CANEPA

NOES and against said resolution:

Supervisors:

NONE



*President, Board of Supervisors
County of San Mateo
State of California*

Certificate of Delivery

I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.



Deputy Clerk of the Board of Supervisors