



WHERE OAKLAND SHINES

**DESIGN-BUILD
REQUEST FOR PROPOSALS**

PROJECT:

LIGHTHOUSE HIGH SCHOOL, LODESTAR ELEMENTARY AND MIDDLE SCHOOL

Tenant Improvement Project

ISSUED: August 31, 2023

TABLE OF CONTENTS

SECTION 00 - IMPORTANT DATES..... 4

SECTION 01 – INTRODUCTION 5

 A. THE DESIGN-BUILD PROCUREMENT PROCESS..... 5

 B. PROJECT APPROACH 6

 C. PROJECT COMPLETION 6

SECTION 02 - PROJECT SCOPE OF WORK 7

 A. PROJECT DESCRIPTION..... 7

 B. PROJECT BUDGET AND SCHEDULE 7

 C. SCOPE OF WORK 8

SECTION 03 – RFP SUBMISSION GENERAL REQUIREMENTS 9

 A. GENERAL INFORMATION..... 9

 B. RFP PROVISIONS 13

 C. ELECTRONIC FORMAT..... 14

 D. SUBMISSION OF PROPOSAL..... 14

 E. RFP EVALUATION CRITERIA 14

SECTION 04 – RFP SUBMISSION SPECIFIC REQUIREMENTS 17

 A. COVER LETTER 17

 B. PRICE PROPOSAL 17

 C. TECHNICAL EXPERTISE 19

 D. DESIGN EXCELLENCE 21

 E. ACCEPTABLE SAFETY RECORD..... 21

 F. ADDITIONAL REQUIREMENTS 22

 G. INTERVIEWS 23

SECTION 05 – LIGHTHOUSE PROVIDED INFORMATION 24

Design-Build Request For Proposals

| | |
|--|-----------|
| A. DRAWINGS | 24 |
| SECTION 06 - CONTRACT AND GENERAL CONDITIONS | 25 |
| SECTION 07 - NEGOTIATIONS | 25 |
| SECTION 08 – ATTACHMENTS AND LINK TO DOCUMENTS..... | 27 |
| A. DRAWINGS | |
| B. PROJECT DOCUMENTS | |
| C. BOILER PLATE CONTRACT AND GENERAL CONDITIONS | |
| D. SUBSTITUTION REQUEST FORM | |
| E. NON-COLLUSION AFFADAVIT | |
| F. RFP CERTIFICATIONS | |

Design-Build Request For Proposals

SECTION 00 - IMPORTANT DATES

1. Issue RFP August 31, 2023
2. Job Walk 10:00 AM PDT, September 11, 2023
 - a. Meet at main building of Lodestar at 701 105th Avenue, Oakland, CA, 94603. 10AM-11AM, then continue to Lighthouse at 444 Hegenberger Road, CA 94621.
3. Written Questions Due from Proposers...No later than 4:00 PM PDT, September 18, 2023
4. Responses to Questions due from Lighthouse September 25, 2023
5. Proposals Due No later than 4:00 PM PDT, September 29, 2023
6. Announce Selected Design-Build Entity October 2, 2023
7. Lighthouse Board of Trustees Contract Approval October 4, 2023

All dates are subject to change at Lighthouse Public School's discretion.

SECTION 01 – INTRODUCTION

A. THE DESIGN-BUILD PROCUREMENT PROCESS

The Lighthouse LLC and Lodestar LLC Board of Directors have approved the use of a design-build construction delivery method for the Lighthouse and Lodestar Tenant Improvement Project (the “Project”).

Lighthouse Community Public Schools (“Lighthouse”) has established a procedure to pre-qualify design-build teams using a Questionnaire based on the document developed by the Director of the Department of Industrial Relations (DIR), (Ed. Code § 17250.25 (b)). Potential DBE’s will a complete SOQ containing all information requested for review and consideration by Lighthouse.

Lighthouse will award a contract to the DBE that provides the “best value” (as defined in Education Code § 17250.15) to Lighthouse using the criteria set forth in this RFP. The terms, “design-build entity (ies)” and “design-build team” shall be as defined in Education Code section 17250.15.

The design-build procurement includes the following process:

1. Use of a two-phase solicitation process; a Request for Qualifications (RFQ), which has been completed, and a Request for Proposal (RFP).
2. Use of a RFP describing the Project for a competitive procurement by the design-build entities.
 - a. The numerical score from the RFQ will not carry over to the RFP scoring criteria.
 - b. The RFP selection will use a “best value” approach as defined in Education Code section 17250.15 for the selection of the design-build entity.
3. Award and execution of a Not to Exceed (NTE) contract.
4. After the Construction Documents are approved by the City of Oakland Planning and Building Department and other entitlement processes are complete, open book subcontractor trade package bidding and conversion of the NTE amount to a Guaranteed Maximum Price (GMP) by contract amendment.

B. PROJECT APPROACH

Lighthouse Community Public Schools (“Lighthouse”) will conduct an optional job walk on the date and time set forth in Section 02. Each design-build entity will need to review the Project criteria, the available record drawing documents provided by Lighthouse, and all other documentation provided in the RFP or referred to in the RFP. It is the intention of Lighthouse for all design-build entities to fully understand the Project scope of work and the existing conditions of the

Design-Build Request For Proposals

Project site and existing conditions. Lighthouse is providing these resources to assist the design-build entities to prepare a complete submission to this RFP.

Based on this information, the design-build entities will develop an efficient approach to the Project and provide a fixed price for fee, general conditions, and design costs. The selection process is further described herein.

Once the successful design-build entity has been selected, Lighthouse will enter into a Not to Exceed (NTE) contract with a fixed price component for fee, general conditions, and design costs. After the contract is issued, a Notice to Proceed (NTP) will be issued for completion of the final Project Specifications, and the coordination of the Project criteria and phasing plan for Lighthouse review and acceptance. Two additional NTP's will be issued. The second NTP will be issued to start the design process, and the third for the construction phase. After the buyout of the subcontractor trade packages, the contract will be amended to convert the NTE with a fixed price component for fee, general conditions, and design costs, to a GMP with a fixed price component for fee, general conditions, and design costs. The GMP may contain a contingency or contingencies that are recommended by the design-build entity and approved by Lighthouse.

The design-build entity will be required to submit 50% and 100% drawing packages to Lighthouse or as otherwise required in the contract documents. After review comments have been resolved, the design-build entity will complete the Construction Documents and obtain all necessary permits and satisfy all permitting requirements of the City of Oakland Planning and Building Department.

C. PROJECT COMPLETION

The design-build entity is responsible for achieving substantial completion and final completion for each element of work. The design-build entity is also responsible for obtaining all required approvals, completing any furniture and equipment installation requirements, start-up and commissioning, certifications, and meeting all warranty/guarantee requirements.

SECTION 02 - PROJECT SCOPE OF WORK

A. PROJECT DESCRIPTION

Lighthouse Community Public Schools is seeking a qualified DBE for the design and construction of tenant improvement projects at Lodestar and Lighthouse Schools, located at 701 105th Avenue, Oakland CA 94603 and 444 Hegenberger Road, Oakland CA 94621, respectively.

Founded in 2002, LCPS operates two public charter schools — Lighthouse (K-12) and Lodestar (K-12) — serving over 1,500 students in East Oakland. With a vision of transforming its community through creating a family of exceptional schools serving youth and families in Oakland, its mission is to prepare diverse students for college, a career of their choice, and to be lifelong changemakers.

Lighthouse is located at 444 Hegenberger Road, Oakland CA 94621. The campus consists of one building that provides 37 classrooms in a total of 92,480 square feet of space and outside recreational space.

Lodestar is located at 701 105th Avenue, Oakland CA 94603. The campus consists of three buildings providing 36 classrooms in a total of 47,439 square feet of space and an outside play area.

These two campuses are intentionally located in two neighborhoods in East Oakland (94603 and 94621) that have been historically underserved, lacking equitable educational opportunities for families. These neighborhoods have high poverty rates and have had the highest COVID positivity rates in Alameda County during the last three years. These neighborhoods also rank highest in the Oakland Community Stressors Index, the experience of chronic stress, violence, and trauma that negatively impacts communities and increases the likelihood that our students may have lower social capital, decreased collective efficacy, and measurable impact on their psychological development, health, and well-being.

The project scope will be finalized with the Design Build Entity on board, and will include but is not limited to the list below. Some items may be priced as alternates.

B. PROJECT BUDGET AND SCHEDULE

The preliminary Project Budget for the design and construction of the Project is between \$2.5-\$2.7 million dollars (includes hard and soft costs plus FFE). Lighthouse reserves the right to change the Project cost prior to contract award through addenda and after contract award in accordance with the design-build contract. The Project is scheduled to be completed by July 2024.

C. SCOPE OF WORK

The scope of work consists of designing and constructing the Project in accordance with Lighthouse's standards and all applicable laws and regulations. The Scope of Work shall include the below information.

The project scope will be finalized with the Design Build Entity on board, and will include but is not limited to the list below. Some items may be priced as alternates and a draft of the project scope of work is attached. This was developed with Lighthouse and the front-end architect, however the scope will be verified and finalized with the DBE team.

- **Lodestar:**
- *Building 1:*
 - Convert large open space east of administration into a classroom, office and staff lounge spaces.
 - If allowed by code, eliminate an exterior doorway at corner office.
 - Convert one large space up against exterior 105th Ave. wall into two separate classrooms spaces. Include new HVAC to serve those spaces.
- *Building 2:*
 - Add one new classroom in the central space.
 - Convert two long classrooms into three.
 - If allowed by code, eliminate an exterior doorway connecting to 105th Ave.
 - Add a conference and counseling room.
 - Replace HVAC serving the administration area on west side of building.
- *Sitework:*
 - Upgrade grass field and running track to synthetic turf with an AC track.*
 - Expand trash dumpster area to enclose more dumpsters.

*Grass field and running track improvement work will need to comply with Department of Toxic Substances Control (DTSC) documentation that is part of the original Lodestar Planning Commission project approvals. This work may be listed as an Additive Alternate in the Request for Proposal. Link to Envirostor for this site:

https://www.envirostor.dtsc.ca.gov/public/profile_report?global_id=60002508

- **Lighthouse:**
 - Incorporate a new 665 +/- SF classroom in the north wing interior Lobby area.
 - Replace the accordion door in the Multi-Purpose area with a solid partition.

(A link to site specific resource documents is provided in Section 08.)

Existing as-built drawings were provided in the RFQ.

Building Considerations and Assumptions

Design Build Team needs to consider the school academic calendar during planning and design of this project. Project will need to strategize around sequencing the work without displacing students. Ideally, the project would start construction spring 2024 with interior work at Lodestar and Lighthouse after the school year has ended. If awarded, upgrade of field at Lodestar can begin in advance and separate of interior work but must be completed by July 2024.

Applicable Codes and Regulatory Agencies

California Department of Education (CDE)

California Code of Regulations (CCR)

California Building Code (CBC)

California Fire Code (CFC)

Oakland Municipal Code

California Health and Safety Code

Americans with Disabilities Act

Waste Management Enclosure Access and Detail Specifications

East Bay Municipal Utilities District (EBMUD)

Dept. of Toxic Substances Control (DTSC)

Oakland Municipal Code and Planning and Building Regulations

As an improvement project on a private school site, it is understood that the project comes under the jurisdiction of the City of Oakland Planning and Building Department.

SECTION 03 – RFP SUBMISSION GENERAL REQUIREMENTS

A. GENERAL INFORMATION

1. Project Point of Contact:

Keivan Abidi, Project Director
Pacific Charter School Development
keivan@pacificcharter.org

All communications relating to this RFP must be directed to Lighthouse contact person named above. All communications between Proposers and other Lighthouse staff members, consultants or any member of the

Design-Build Request For Proposals

Lighthouse's governing Board of Education concerning this RFP are strictly prohibited. Failure to comply with these requirements may result in proposal disqualification.

2. Examination of Documents

By submitting a proposal, the Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP, it is familiar with the scope of work, and it is capable of performing quality work to achieve Lighthouse's objectives consistent with industry and professional standards.

Should a Proposer require clarification of this RFP, the Proposer shall notify Lighthouse in writing. Written questions are due from Proposers by the date set forth in Section 00. Lighthouse will issue a written addendum clarifying the matter, which will be sent to all pre-qualified Proposers.

Lighthouse reserves the right to waive minor irregularities and omissions in the information contained in any proposal, the RFP process, and to make all final determinations. Lighthouse further reserves its right to reject any or all proposals.

3. Addenda

Lighthouse reserves the right to revise or amend the RFP. Such changes, if any, will be announced by addenda to this RFP. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

4. Interested Parties

The General/ Prime Contractor/ Lead Entity and the Architect of Record will not be allowed to participate in the RFP process in any capacity as a design-build team member to more than one design-build entity. For the purposes of interpreting and applying the requirements of this paragraph, branch offices of a General/ Prime Contractor/ Lead Entity and Architect of Record that is an individual, corporation, partnership, or other legal entity, where such branch offices are owned and/or managed, in whole or in substantial part, by such individual, corporation, partnership, or other legal entity, shall be deemed identical to such General/ Prime Contractor/ Lead Entity and Architect of Record. Consultants or sub-consultants to Lighthouse who are participants or advisors to Lighthouse with respect to the Project and its requirements shall not be allowed to participate as a design-build team member or as a subcontractor or sub-consultant (of any tier) to a design-build entity.

Design-Build Request For Proposals

5. Funds for Design and Construction

Lighthouse has established a Project Budget for completing the Project Design Documents and construction of the Project between Two Million Five Hundred Thousand Dollars (\$2,500,000) and Two Million Seven Hundred Thousand Dollars (\$2,700,000), inclusive of architectural/engineering and General Contractor fees, construction, labor, materials, equipment, supervision/management of the design and construction process, and contingency. The foregoing Project Budget excludes the costs, fees, or expenses of Lighthouse's project consultants, governmental approval / permit fees, the Project Inspector during construction, the initial test and subsequent inspections of the Project during construction, and utility service connection fees assessed by third parties.

The design-build cost limitation for the Project is Two Million Seven Hundred Thousand Dollars (\$2,700,000). This cost limitation is referred to as the NTE Amount and includes both the fixed price component, which is comprised of fee, general conditions, and design costs, as well as the amount available for the subcontractor trade package buyout, which is the difference between the NTE Amount and fixed price component. Lighthouse seeks to procure the highest quality facilities meeting or exceeding the requirements and criteria established in the RFP with the funds available. Lighthouse may not be able to make an award if the proposed prices exceed the available funds for this Project.

6. Prevailing Wage Rates. The DBE and all its subcontractors shall comply with the requirements set forth in Division 2, Part 7, and Chapter 1 of the Labor Code. The Department of Industrial Relations of the State of California has determined the generally prevailing rates of wages in the locality in which the Work is to be performed. Copies of these determinations, entitled "PREVAILING WAGE SCALE" are available for review on the internet at:

http://www.dir.ca.gov/dlsr/statistics_research.html

The Respondent awarded the DBE Contract for the Work shall post a copy of all applicable prevailing wage rates for the Work at conspicuous locations at the Site of the Work. The successful Respondent and all Subcontractors performing any portion of Project construction shall pay not less than the applicable prevailing wage rate for the classification of labor provide by their respective workers in prosecution and execution of Project construction.

7. No Commitment to Award DBE Contract; Lighthouse' Reservation of Rights. Issuance of this RFP and Lighthouse' receipt or review of RFP Responses does not commit Lighthouse to award of the DBE Contract. Lighthouse expressly reserves the right to modify the due date for RFP Responses,

Design-Build Request For Proposals

RFP requirements or action to award the DBE Contract in the sole and exclusive discretion of Lighthouse.

8. RFP Response Expenses. Respondents shall not include any expenses associated with the preparation of RFP Response as part of a pricing proposal incorporated into a RFP Response.
9. Project References. Lighthouse reserves the right, but assumes no obligation, to contact and interview any person or organization identified in a Respondent's RFP Response, including, without limitation, Project References. Each Respondent assumes sole responsibility for providing accurate contact information for the Respondent's references. Incorrect contact information provided by a Respondent for a reference identified in the Respondent's RFP Response may, in the sole and absolute discretion of Lighthouse, result in the reference being stricken and not considered for evaluation purposes.
10. RFP Forms. The required RFP Response Contents incorporates a number of forms ("RFP Forms"), each of which must be completed, executed and/or notarized, as set forth in the substantive terms of the RFP Forms. The following are the RFP Forms incorporated into this RFP:

| RFP Attachment | Description |
|----------------|---|
| A | Drawings (SharePoint Link Provided-see Section 08) |
| B | Project Documents (SharePoint Link Provided-see Section 08) |
| C | Boilerplate Construction Contract and General Conditions |
| D | Substitution Request Form |
| E | Non-Collusion Affidavit |
| F | RFP certifications |

11. Specified Project Items. The Project Documents include specified materials, equipment and other items (collectively "Specified Project Items"). Respondents' RFP Responses shall be deemed to incorporate all Specified Project Items, except for the Specified Project Items for which Lighthouse accepts a proposed substitution incorporated into a Respondent's RFP Response. Any request of a Respondent to substitute a substitution for any Specified Project Item shall be in accordance with the following. If any of the Specified Project Items in the Project Documents include a reference to other materials, equipment or other products which are deemed to be an acceptable alternative to the Specified Project Items, such identified acceptable alternative materials, equipment or other products are not a "substitution" for purposes of this Paragraph. Respondents may propose substitutions of multiple Specified Project Items, which taken together constitute all or a part of a building system.

Design-Build Request For Proposals

12. **Proposed Substitution.** For Lighthouse to consider a proposed substitution for a Specified Project Item, a Respondent may propose such substitution(s) as part of its RFP Response. If a Respondent elects to submit proposed substitutions for any Specified Project Item, the following process shall apply: (i) such Respondent shall identify proposed substitutions for any Specified Project Item on the Substitution Request Form (Attachment D) submitted concurrently with the Respondent's RFP Response; (ii) each proposed substitution for each Specified Project Item is accompanied by rationale substantiating the equivalency and/or suitability of the proposed substitution to the Specified Project Item; (iii) the Respondent's Proposal sets for the cost impact if Lighthouse accepts or rejects each proposed substitution for a Specified Project Item; and (iv) Lighthouse will review the proposed substitution and the substantiating data to determine whether to accept or reject the proposed substitution. If a Respondent submits proposed substitution(s) for Specified Project Item(s) with the Respondent's RFP Response and any such proposed substitution is accepted by Lighthouse, the Respondent must indicate the cost impact of each such proposed substitution in its Proposal; failure of such a Respondent to do so will result in rejection of the Respondent's RFP Response for non-responsiveness.
13. **Non-Collusion Affidavit.** The form of Non-Collusion Affidavit included with the RFP as Attachment E must be completed and duly executed on behalf of the Respondent. The failure of a Respondent to submit a completed and executed Non-Collusion Affidavit with its Proposal will result in rejection of the Proposal for non-responsiveness.
14. **RFP Certifications.** The RFP Certifications Form is incorporated into this RFP as Attachment F. In addition to other materials required to be submitted with the RFP Response, each Respondent must complete, execute and submit the RFP Certifications form along with the balance of the documents forming the Respondent's RFP Response.

B. RFP PROVISIONS

The following information is provided to Proposers for submission of the price proposal. The information provided is subject to change. Proposing firms will bear all costs of this RFP.

1. Only design-build teams prequalified by the RFQ process, are eligible to submit a response to the RFP. Where information about a subcontractor was submitted in the SOQ and given weight during the evaluation, the failure of the design-build entity to actually perform with that subcontractor may be grounds for disqualification, termination or default.
2. Those Proposers shortlisted to respond to the RFP will provide a price proposal for consideration by Lighthouse. The Proposer shall submit all

Design-Build Request For Proposals

requested information specified in this RFP. Proposals must set forth full, accurate, and complete information as required by this solicitation, including attachments.

3. Lighthouse intends to award a contract to the responsible design-build entity whose proposal the selection committee determines meets the solicitation and offers the best overall value to Lighthouse.
4. Lighthouse reserves the right to change the Project cost prior to contract award through addenda and after contract award in accordance with the design-build contract.
5. All proposals will remain subject to acceptance for 90 days after the day of the proposal opening. Lighthouse may, at its sole discretion, release any proposal prior to that date.
6. In addition to, and without limitation upon any other requirements of this RFP, Lighthouse shall have the right to disqualify any design-build entity and reject any proposal should it determine that any information submitted by any Proposer during the RFQ or RFP process is untrue or misleading as determined by Lighthouse.

C. ELECTRONIC FORMAT

Only PDF electronic submissions will be accepted. Submittals received after the time and date indicated may not be accepted. Proposers are solely responsible for ensuring all proposals are received by the deadline by Lighthouse. Lighthouse shall not be responsible for any delivery issues including, but not limited to, misdirected email, delays, etc.

Please submit the price proposal electronically as a PDF. The price proposal shall comprise a Not-to-Exceed figure to deliver complete design-build services as described in this RFP. The price proposal shall further break down the Not-to-Exceed figure into the following components:

D. SUBMISSION OF PROPOSAL

Electronic submissions will be submitted and addressed as follows:

Keivan Abidi, Project Director
Pacific Charter School Development
keivan@pacificcharter.org

E. RFP EVALUATION CRITERIA

The RFP is valued at **a maximum** of 1000 points. The individual scoring criteria is listed below.

Design-Build Request For Proposals

The points assigned to the Price Proposal will be based on a straight-line scale ratio. The lowest price proposal will receive the maximum **300** points. The points assigned to the next lowest price proposal will be based on a straight-line scaled ratio. See example below.

Lowest Proposed Price = **300** points

Example:

| | |
|---|-------------------|
| Lowest Proposed Price is awarded: | 300 Points |
| Second Lowest Proposed Price is awarded: | 270 Points |
| Third Lowest Proposed Price is awarded: | 240 Points |
| Fourth Lowest Proposed Price is awarded: | 210 Points |

The points assigned to Design Excellence will be based on a straight-line scale ratio. The highest ranked proposed design will receive the maximum **300** points. The points assigned to the next highest proposed design will be based on a straight-line scaled ratio. See example below.

Highest Ranked Proposed Design = **300** points

Example:

| | |
|--|-------------------|
| Highest Ranked Proposed Design | 300 Points |
| Next Highest Ranked Proposed Design | 270 Points |
| Next Highest Ranked Proposed Design | 240 Points |
| Next Highest Ranked Proposed Design | 210 Points |

When the evaluation is complete, the responsive Proposers shall be ranked by the selection committee based on a determination of best value provided. The selection committee is not required to rank more than the top three Proposers. Lighthouse, in its sole discretion, may conduct negotiations with one or more of the responsive Proposers as set forth in Section 08.

RFP SCORING MATRIX

| CATEGORY | | | | POINTS |
|----------|---|---|--|----------|
| A | | Cover Letter Information | | |
| | 1 | Identification of Bidder | | Required |
| | 2 | Acknowledgement of Addenda | | Required |
| | 3 | Legal Structure of Company | | Required |
| | 4 | Contact Person | | Required |
| | 5 | Proposal shall remain valid for a period of not less than 90 days | | Required |
| | 6 | SOQ identified design-build team members continue to be on the RFP submission | | Required |
| | | | | |

Design-Build Request For Proposals

| | | | | |
|----------|---------------------------------|---|-------------|--|
| B | Price Proposal | | 300 | |
| | 1 | Fee | 100 | |
| | 2 | General Conditions | 100 | |
| | 3 | Design Costs | 100 | |
| C | Technical Expertise | | 180 | |
| | 1 | Organization Chart | 30 | |
| | 2 | Design-Build Project Manager Resume | 40 | |
| | 3 | Architect Project Manager Resume | 40 | |
| | 4 | Schedule | 40 | |
| | 5 | Stakeholder Involvement | 30 | |
| D | Design Excellence | | 300 | |
| | 1 | Contextual Compatibility | 100 | |
| | 2 | Efficiency + Sustainability | 100 | |
| | 3 | Transitional Experience | 100 | |
| E | Acceptable Safety Record | | 10 | |
| F | Additional Requirements | | 110 | |
| | 1 | Termination/Claims/Litigation History | 60 | |
| | 2 | Small Business and Local Business Participation | 50 | |
| G | Interview | | 100 | |
| | TOTAL POINTS - RFP | | 1000 | |

SECTION 04 – RFP SUBMISSION SPECIFIC REQUIREMENTS

A. COVER LETTER

The General / Prime Contractor / Lead Entity will provide a maximum two-page cover letter. The cover letter may provide optional information about the design-build entity and must, at a minimum, contain the following:

1. Complete contact information, including, e-mail address for the person authorized to contractually bind the design-build entity.
2. Proposed working relationship between General/ Prime Contractor and subcontractors.
3. Name, title, e-mail address and telephone number of contact person during the period of proposal evaluation.
4. Acknowledgment of receipt of all RFP addenda, if any. List Addendum number and date issued.
5. A statement to the effect that the design-build team members identified in the SOQ continue to be on the RFP submission.
6. A statement to the effect that the proposal shall remain valid for a period of not less than 90 days from the due date of submittal.
7. Signature of person(s) authorized to bind design-build entity to the terms of the proposal.

B. PRICE PROPOSALS

Please submit the price proposals electronically. The price proposals shall comprise of a Not-to-Exceed figure to deliver complete design-build services as described in this RFP for the scope the school has described previously:

1. A. Lodestar Tenant Improvement Work: improvements noted in bridging documents provide in SharePoint Link.
2. B. Lodestar Field Upgrade: improvements noted in bridging documents provided in SharePoint Link.
3. C. Lighthouse Tenant Improvement Work: improvements noted in bridging documents provided in SharePoint Link.

PLEASE PROVIDE SEPARATE PRICE PROPOSALS FOR EACH OF THE OPTIONS ABOVE.

Each price proposal shall further break down the Not-to-Exceed figure into the following components:

1. Design, architectural and engineering services fees
2. Construction and construction management services fees and insurance
3. Cost of construction, including:

Design-Build Request For Proposals

- a. Field overhead and general conditions
- b. Office overhead and project administration
- c. Labor (actual cost of labor; any and all markup shall be explicitly identified as a component of fees in proposal category 1 and/or 2, above)
- d. Materials (actual cost of materials; any and all markup shall be explicitly identified as a component of fees in proposal category 1 and/or 2, above)
- e. Contingencies, allowances and any exclusions

Each price proposal shall include the above three items and an acknowledgment of all RFP addenda, if any, is included in the price.

IN SUMMARY, PLEASE PROVIDE SEPARATE FEE PROPOSALS FOR THE FOLLOWING OPTIONS PER THE CHART BELOW:

| Scope | Type | A & E Fees | Construction, Construction Management Fees & Insurance | Cost of Construction |
|--|--|------------|--|----------------------|
| 1.A. Lodestar Tenant Improvement work | Reconfiguration of existing space per bridging documents. | | | |
| 1.B. Lodestar Field Upgrade | Replacement of grass with synthetic turf and track per bridging documents. | | | |
| 1.C Lighthouse Tenant Improvement Work | Reconfiguration of existing space per bridging documents. | | | |

The price proposal must further include the following information:

- Standard estimating manuals used as reference
- Software used for estimating
- Experience of estimator
- Accuracy of estimates for past design-build projects

Your project estimating methodology is acknowledged to comprise a trade secret and will be kept confidential, and not designated as a public record, along with your other financial information.

C. TECHNICAL EXPERTISE

1. Team Organization Chart

Provide a Project organization chart, which clearly delineates communication/reporting relationships among the design-build team key personnel, including key sub-consultants, sub-contractors, and proposed quality control group. Indicate if any team members have changed since the SOQ submittal.

2. Design-Build Project Manager Resume

This is the premier role on the design-build team and will act as the first point of contact between the design-build team and Lighthouse's team. The position requires a minimum of five years' experience in design or construction management. Demonstrate satisfactory experience to lead, manage and control both design and construction. The design-build project manager must be solely assigned to this Project. Resumes that demonstrate cross-functional expertise such as proven project manager, construction manager, and licensed architect or engineer will receive additional consideration.

List recent relevant experience - Projects with K-12 schools in California, experience with City of Oakland approval for structural, access and fire life safety are required. Projects that are similar in size, value, type of facility and complexity will be rated favorably. Lighthouse will rate project experience most favorably if it contains a combination of both modernization and new construction. Design-build entities are encouraged to supplement and further detail the proposed design-build project manager's experience and other qualitative factors not addressed in the SOQ previously submitted.

3. Architect Project Manager Resume

A licensed professional Architect with a minimum of five years' experience in facilities of similar size and scope. Proven experience with City of Oakland is required. An Architect with construction administration experience will be rated more favorably

List recent relevant experience - Lighthouse will rate project experience most favorably if it contains a combination of both modernization and new construction. Projects with K-12 schools in California, experience with City of Oakland approval for structural, access and fire life safety are required. Design-build entities are encouraged to supplement and further detail the proposed architect project manager's experience and other qualitative factors not addressed in the SOQ previously submitted.

Design-Build Request For Proposals

4. Schedule

Provide up to a three-page narrative and Gantt chart of how your team will manage the requirements of the Project scope. The design-build entity may provide additional sheets as allowed above for diagrams, and graphics illustrating how the site will be utilized, access points, and impact on current operations.

- a. Design-build entities must demonstrate their ability to meet all phasing completion dates. Lighthouse is requesting a conceptual milestone schedule that will demonstrate the design-build entity's overall understanding of the Project scope and schedule requirements. Milestones include, but are not limited to, design reviews and completion, cost estimates, City of Oakland review and approval, offsite approvals, GMP, substantial completion, final completion, warranty management, and Project certification.
- b. Describe how the design-build entity will monitor all scheduling and milestone requirements and what steps it will take should the Project fall behind the approved schedule.
- c. Describe how the design-build entity will minimize delays at all phases of the Project.

Evaluation Criteria: Lighthouse will provide favorable evaluations for submission requirements that are well thought out given all the information that is being provided in the RFP and through additional sources listed in Section 05 Lighthouse Provided Information. Solutions that are cost effective, feasible, safe and efficient will be rated favorable. Innovative solutions will be rated favorably.

5. Stakeholder Involvement - Describe for Lighthouse how stakeholder involvement will be managed throughout the Project.

- a. Describe how the design-build entity will coordinate with the stakeholders during the first thirty (30) days of the Project to present, modify, and receive approval for the design-build entity's proposed phasing plan.
- b. Describe how stakeholder comments will be received, addressed, and managed during the design and construction phases of the Project.
- c. Indicate how cost benefit analysis will apply to requests from stakeholders.
- d. Describe how stakeholders will be included in the formation of add alternates, as well as the prioritization and selection throughout the Project.

Design-Build Request For Proposals

Evaluation Criteria: Plans that demonstrate the ability to work with stakeholders effectively for schedule, review comments, cost benefit analysis, and add alternates will be scored favorably.

D. DESIGN EXCELLENCE

This section outlines the design criteria for the proposed scope of work. The final proposed conceptual design will be evaluated based on how well the proposed overall design clearly responds to and supports the following guidelines. Creative design approaches will be deemed as going above and beyond the bounds of the guidelines listed below and will be reviewed positively. These guidelines shall be met visually through conceptual drawings, supported by a written design narrative, which shall be submitted as part of the design-build proposal. In addition, Lighthouse will review and may ask questions about the design approach as a part of the interview process. Refer to Attachment B of the RFP for additional information and minimum requirements, which shall be met in conjunction with the guidelines listed below.

1. **Contextual Compatibility:** The Project building improvements and associated site work should reveal a strong understanding of the existing building characteristics and history. The architecture should not mimic but support the predominant design character of the existing campus.
2. **Efficiency + Sustainability:** This section is related to the overall efficiency of design. The ultimate goal of this guideline is to identify sustainability as a significant design characteristic. For example, the design approach is straightforward and limits the total embodied energy of the final product. From site work and construction, throughout the entire use of the building and site, to re-use and demolition: the life of the Project is efficiently maintained and supports a sustainable identity.
3. **Transitional Experience:** Transitions between all phases of the work shall be integrated with the existing facilities.

E. ACCEPTABLE SAFETY RECORD

A design-build entity's safety record shall be deemed "acceptable" if its Experience Modification Rate (EMR) for the most recent three (3) year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three (3) year period does not exceed the applicable statistical standards for its business category, or if the design-build entity is a partner to an alternate dispute resolution system as provided in Section 3201.5 of the Labor Code.

Submission Requirements: Submit a document that indicates compliance with the above-mentioned safety record or partnership.

F. ADDITIONAL REQUIREMENTS

1. Claims/Litigation/Termination History. Provide specific information on any termination for default, termination for convenience, claims filed by or against the proposed Prime Contractor/General/Contractor/Lead Entity and the Architect in connection with any K-12 California public charter school project, litigation settled or judgments entered within the last seven (7) years related to the Prime Contractor/General/Contractor/Lead Entity and the Architect and their joint venture partners, or sub-consultants. Also, provide information relative to any convictions for filing false claims within the past ten (10) years.

2. Small Business and Local Business Participation:

Lighthouse requires design-build entities to use and include small businesses and local businesses for this Project and to comply with the following:

Small and Minority Businesses, Women's Business Enterprises (2 CFR, Section 200.321)

The Lighthouse CEO or Designee will ensure that minority businesses, women's business enterprises, and labor surplus area firms are used, when possible, in the Charter School's determination by taking the following affirmative steps:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
2. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises
5. Using the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Minority Business Development of the Department of Commerce
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Design-Build Request For Proposals

Additional consideration will be given to entities who can demonstrate outreach and commitment to creating a more diverse, equitable and inclusive workforce, specifically those that can demonstrate commitment to working with women, minority-owned, local businesses and professionals.

The following links are provided as additional resources:

<https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>

<https://ucp.dot.ca.gov/licenseForm.htm>

<https://www.bart.gov/sites/default/files/docs/CertifiedMBEWBE0809.pdf>

G. INTERVIEWS

At Lighthouse's discretion and to further assist in evaluation, all short-listed design-build entities may be requested to participate in a virtual oral interview. The interview will be used as another opportunity to clarify any issues within a given proposal and explore the approaches that may be used to satisfy all requirements for Lighthouse.

Interviews may be conducted as early as October 2, 2023.

SECTION 05 – LIGHTHOUSE PROVIDED INFORMATION

All of the following documents are included as part of this RFP and can be found in the SharePoint link provided below:

https://pacificcharter.sharepoint.com/:f:/g/EvCyJCM28MBItA5VhmZ_WWEBiODbNcCqAvZ7VsYgWdY0cA

A. DRAWINGS:

HY Architects Bridging Documents

Starkweather Bondy 2009 Drawings

HY Architects 2018 Drawings

SIM Floor Plan, Electrical, Mechanical and Structural Drawings

SECTION 06 - CONTRACT AND GENERAL CONDITIONS

Design-build entity shall comply with the Contract and the General Conditions governing the design, construction and completion of this Project. The Contract and General Conditions are attached hereto as Attachment C. Lighthouse reserves its right to revise or otherwise modify the Contract and General Conditions. Proposals shall not contain or be conditioned upon acceptance of any exceptions, changes or additions to the terms and conditions of the Contract or General Conditions. Statements contained in any proposal to the effect that a price is based on certain assumptions that are not part of the specific requirements of the RFP documents shall be deemed an improper qualification in violation of the requirements of this paragraph.

SECTION 07 - NEGOTIATIONS

Lighthouse, in its sole discretion, may elect to request proposal revisions and hold discussions and negotiations with responsive Proposers as follows to ensure that any discussions or negotiations are conducted in good faith.

- a. During negotiations, the design-build entity shall be represented by a person or persons who are familiar with all aspects of the design-build entity's proposal. At least one person acting on behalf of the design-build entity shall have the power to speak with authority on behalf of the design-build entity, and to contractually bind the design-build entity and all members of the design-build team without further authorization of persons not present. No design-build entity shall be represented and no person shall be present that is not directly interested and involved in the outcome of the RFP process-observers will not be permitted.
- b. The date, time, and place for negotiations shall be scheduled by Lighthouse. Written notice shall be given separately to the design-build entity or design-build entities selected to engage in negotiations.
- c. The length of negotiations shall be dictated by the subject matters discussed. Such time may be devoted as the RFP evaluation committee determines is appropriate and necessary. Negotiations may be held, at the discretion of Lighthouse, in one or multiple rounds.
- d. There shall be no disclosure of competing design-build entities during negotiations or prices or pricing information contained in competing proposals or of technical information that is appropriately designated as "Proprietary Information" by the design-build entity.
- e. Lighthouse shall have the right to disclose and discuss with any or all design-build entities technical information contained in any

proposal that is not appropriately designated as “Proprietary Information”.

- f. Negotiations may in a fair and impartial manner include bargaining, which includes offers and counter-offers, etc., and may apply to price, schedule, technical requirements, Contract terms or other factors or issues Lighthouse determines are relevant.

SECTION 08 – ATTACHMENTS AND LINK TO DOCUMENTS

A. DRAWINGS

HY Architects Bridging Documents:

https://pacificcharter.sharepoint.com/:f/g/EvCyJCM28MBItA5VhmZ_WWEBiODbNcCqAvZ7VsYqWdY0cA

Link to Envirostor for Lodestar Site:

https://www.envirostor.dtsc.ca.gov/public/profile_report?global_id=60002508

B. PROJECT DOCUMENTS

1) Lighthouse Supporting Documents

- i. 23-030 Lighthouse Electrical Assessment
- ii. Lighthouse HVAC Assessment Report
- iii. Lighthouse Permit Set 2009

2) Lodestar Supporting Documents

- i. 23-30 Lodestar Electrical Assessment
- ii. 170621 105th Avenue DTSC Voluntary Cleanup Agreement
- iii. Bldg. 1 2000
- iv. Bldg. 1 Elec 2000
- v. Bldg. Mech. Plans 2000
- vi. Bldg. 2 2002
- vii. Bldg. 2 Elec. 2000
- viii. Bldg. 2 Mech. Plans 2002
- ix. Bldg. 2 Structural 2002
- x. Lodestar HVAC Assessment Report
- xi. Lodestar SRA Report 2017
- xii. Lodestar Charter Permit Set 2018
- xiii. Soil Management Plan – Oct. 2017 Site Cap Plan
- xiv. Soil Management Plan Addendum July 2021 (approved DTSC)

- A. DRAWINGS (Sharepoint Link Provided)
- B. PROJECT DOCUMENTS (Sharepoint Link Provided)
- C. BOILER PLATE CONTRACT AND GENERAL CONDITIONS (attached)
- D. SUBSTITUTION REQUEST FORM (attached)
- E. NON-COLLUSION AFFADAVIT (attached)
- F. RFP CERTIFICATIONS (attached)

(BOILERPLATE)

DESIGN-BUILD AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement, effective _____, 2023, is by and between [ADD], hereinafter called the “Owner” and [ADD] hereinafter called the “Contractor.”

WITNESSETH: That the Contractor and the Owner for the consideration hereinafter named agree as follows:

ARTICLE I. SCOPE OF WORK. The Contractor agrees to furnish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all the Work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for:

[ADD PROJECT DESCRIPTION]

all in strict compliance with the plans, drawings and specifications therefore prepared by:

[ADD ARCHITECT CONTACT INFO]

(“Architect”)

and other Contract Documents relating thereto.

ARTICLE II. CONTRACT DOCUMENTS. The Contractor and the Owner agree that all of the documents listed in Article 1.1.1 of the General Conditions form the Contract Documents which form the Contract.

ARTICLE III. TIME TO COMPLETE AND LIQUIDATED DAMAGES. Time is of the essence in this Contract, and the time for Completion of the Work (“the Contract Time”) shall be [ADD] to [ADD] if no other dates are established in a Notice to Proceed from Owner.

Failure to Complete the Work within the time and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not Completed within the Contract Time are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of such delay include, but are not limited to, loss of the use of the Work, disruption of activities, costs of administration and supervision, and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that the amount herein set forth shall be the amount of damages which the Owner shall directly incur upon failure of the Contractor to Complete the Work within the Contract Time: **\$1,500**, for each calendar day by which Completion of the Work is delayed beyond the Contract Time as adjusted by Change Orders.

If Contractor causes delay to any other contractor's work on the Project that results in delayed *completion* of the Project, Contractor shall be subject to liquidated damages in the amount set forth above for each calendar day Contractor delayed *completion* of the Project. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer for such delayed *completion* of the Project are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of such delay include, but are not limited to, loss of the use of the other contractor's work and the Project, disruption of activities, costs of administration and supervision, and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that the amount set forth herein shall be presumed to be the amount of damages which the Owner shall directly incur for each calendar day that *completion* of the Project is delayed because of Contractor caused delays to the work of other contractors.

If liquidated damages accrue as described above, the Owner, in addition to all other remedies provided by law, shall have the right to assess the liquidated damages at any time, and to withhold liquidated damages (and any interest thereon) at any time from any and all retention or progress payments, which would otherwise be or become due the Contractor. In addition, if it is reasonably apparent to the Owner before liquidated damages begin to accrue that Contractor cannot or will not Complete the Work within the Contract Time, Owner may assess and withhold, from retention or progress payments, the estimated amount of liquidated damages that will accrue in the future. If the retained percentage or withheld progress payments are not sufficient to discharge all liabilities of the Contractor incurred under this Article, the Contractor and its sureties shall continue to remain liable to the Owner until all such liabilities are satisfied in full.

If Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of Completion and liquidated damages.

ARTICLE IV. PAYMENT AND RETENTION. The Owner agrees to pay the Contractor in current funds [ADD] (\$[ADD]) for work satisfactorily performed after receipt of properly documented and submitted Applications for Payment and to make payments on account thereof, as provided in the General Conditions. Contractor agrees that Owner may retain ten percent (10%) of the amount otherwise due.

ARTICLE V. CHANGES. Changes in this Agreement or in the Work to be

done under this Agreement shall be made as provided in the General Conditions.

ARTICLE VI. TERMINATION. The Owner or Contractor may terminate the Contract as provided in the General Conditions.

ARTICLE VII. PREVAILING WAGES. The Project is classified as a 'public work,' as defined in Labor Code Section 1720, to which not less than the general prevailing rate of per diem wages for work of a similar character and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of worker needed to execute the contract shall be paid to all workers employed on the Project in accordance with Labor Code Section 1771. The Work shall be performed as a public work and in compliance with all public works laws applicable to the Work, including the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof. The Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement. Copies of the prevailing rate of per diem wages are on file at the Owner's principal office and shall be made available to any interested party on request. In accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his or her employees.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

The Contractor and each Subcontractor shall keep or cause to be kept an accurate record for Work on this Contract and Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Standards Enforcement of the State Department

of Industrial Relations. the contractor and each subcontractor shall furnish the payroll record of wages paid as specified in Section 1776 directly to the Compliance Monitoring Unit (“CMU”) of the DIR on a monthly basis until the completion of the Project, or within 10 days of any separate request by the CMU.. Contract payments shall not be made when payroll records are delinquent or inadequate.

ARTICLE VIII. WORKING HOURS. In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Contractor or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Standards Enforcement. The Contractor shall as a penalty to the Owner forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

ARTICLE IX. APPRENTICES. The Contractor agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

ARTICLE X. [RESERVED].

ARTICLE XI. INDEMNIFICATION AND INSURANCE. The Contractor will defend, indemnify and hold harmless the Owner, its governing board, officers, agents, trustees, employees and others as provided in the General Conditions.

By this statement the Contractor represents that it has secured the payment of Workers' Compensation in compliance with the provisions of the Labor Code of the State of California and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The Contractor shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

Contractor shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be \$2,000,000 per occurrence for bodily injury, personal injury and property damage and the amount of automobile liability insurance shall be \$1,000,000 per accident for bodily injury and property damage combined single limit. The Owner shall be named as an additional insured on all policies provided by Contractor under this Agreement.

ARTICLE XII. ENTIRE AGREEMENT. The Contract constitutes the entire agreement between the parties relating to the Work and supersedes any prior or contemporaneous agreement between the parties, oral or written, including the Owner's award of the Contract to Contractor, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the parties' agreement pursuant to Code of Civil Procedure section 1856.

ARTICLE XIII. EXECUTION OF OTHER DOCUMENTS. The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

ARTICLE XIV. EXECUTION IN COUNTERPARTS. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

ARTICLE XV. BINDING EFFECT. Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Contractor and the Owner and their respective successors and assigns.

ARTICLE XVI. SEVERABILITY; GOVERNING LAW; CHOICE OF FORUM. If any provision of the Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Contract shall be governed by the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by Owner.

ARTICLE XVII. AMENDMENTS. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement, including change orders, signed by the parties and approved or ratified by the Governing Board.

ARTICLE XVIII. ASSIGNMENT OF CONTRACT. The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond and the Owner.

ARTICLE XIX. WRITTEN NOTICE. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.

(Contractor)

Owner

SIGNED BY (Contractor)

CALIFORNIA CONTRACTOR'S LICENSE NO.

LICENSE EXPIRATION DATE

NOTE: Contractor must give the full business address of the Contractor and sign with Contractor's usual signature. Partnerships must furnish the full name of all partners and the Agreement must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Corporations must sign with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the

signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____
_____ as Principal and
_____ as Surety, are held
and firmly bound unto _____, in the
County of _____, State of California, hereinafter called the "Owner", in the sum of
_____ Dollars (\$_____) for the payment of which sum well and truly made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, to the Owner for the full performance of a certain contract with the Owner, the terms of which are incorporated herein by reference, dated _____, 20____, for construction of:

[ADD]

The condition of this obligation is such that, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the Owner, with or without notice to the Surety, and for the period of time specified in the Contract after completion for correction of faulty or improper materials and workmanship and during the life of any guaranty or warranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreement of any and all duly authorized modifications of said Contract that may hereafter be made, then this obligation is to be void, otherwise to remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work, or to the specifications.

No further agreement between Surety and Owner shall be required as a prerequisite to the Surety performing its obligations under this bond.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals this _____ day of __, __ hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(To be signed by _____)
(Principal and Surety, _____)
(and acknowledged and _____)
(Notarial Seal attached _____)
(Affix Corporate Seal)

(Individual Principal)

(Business Address)

(Affix Corporate Seal)

(Corporate Principal)

(Business Address)

(Affix Corporate Seal)

(Corporate Surety)

(Business Address)

By: _____

The rate of premium on this bond is _____ per thousand.
The total amount of premium charged is _____.
The above must be filled in by Corporate Surety.

PAYMENT BOND
(Labor and Material)

KNOW ALL MEN BY THESE PRESENTS:

That WHEREAS, [ADD], the "Owner" of the project described below) and _____
hereinafter designated as the "Principal," have entered into a Contract for the
furnishing of all materials and labor, services and transportation, necessary, convenient,
and proper to construct:

[ADD]

WHEREAS, said agreement dated [ADD], and all of the Contract Documents are
hereby referred to and made a part hereof;

and

WHEREAS, the Principal is required, before entering upon the performance of the
work, to file a good and sufficient bond with the body by whom the Contract is awarded
to secure the claims arising under said agreement.

NOW, THEREFORE, THESE PRESENTS WITNESSETH:

That the said Principal and the undersigned _____("Surety")
are held and firmly bound unto all laborers, material men, and other persons, and bound
for all amounts due, referred to in Civil Code section 9554, subdivision (b), in
the sum of _____ Dollars (\$_____) which sum well and
truly be made, we bind ourselves, our heirs, executors, administrators, successors, or
assigns, jointly and severally, by these presents.

The condition of this obligation is that if the said Principal or any of its subcontractors, or
the heirs, executors, administrators, successors, or assigns of any, all, or either of them,
shall fail to pay any of the persons named in Civil Code section 9100, or any of the
amounts due, as specified in Civil Code section 9554, subdivision (b), that said Surety
will pay the same in an amount not exceeding the amount hereinabove set forth, and also
in case suit is brought upon this bond, will pay costs and reasonable attorney's fees to be
awarded and fixed by the Court, and to be taxed as costs and to be included in the
judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any
and all persons, companies, and corporations entitled to file claims so as to give a right of
action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become
null and void, otherwise it shall be and remain in full force and effect.

And the said Surety, for value received, thereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of said contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety this ___ day of _____, ____.

(To be signed by)
(Principal and Surety,)
(and acknowledged and)
(Notarial Seal attached)

Principal

Surety

By: _____
Attorney-in-Fact

The above bond is accepted and approved this _____ day of _____.

HAZARDOUS MATERIALS CERTIFICATION

PROJECT: [ADD] between [ADD] (“District” or “Owner”) and [ADD] (“Contractor” or “Bidder”) (“Contract” or “Project”).

1. Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations (“New Hazardous Material”), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for Owner.
2. Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.
3. Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.
4. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the Owner’s determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.
5. All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing “New Hazardous Material” will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.
6. Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant:

Name of Customer:

Job Location:

Owner:

Through Date:

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check:

Amount of Check: \$

Check Payable to:

Exceptions

This document does not affect any of the following:

- (1) Retentions.
 - (2) Extras for which the claimant has not received payment.
 - (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
Date(s) of waiver and release: _____
Amount(s) of unpaid progress payment(s): \$ _____
 - (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.
-

Signature

Claimant's Signature:

Claimant's Title:

Date of Signature:

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant:

Name of Customer:

Job Location:

Owner:

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check:

Amount of Check: \$

Check Payable to:

Exceptions

This document does not affect any of the following:
Disputed claims for extras in the amount of: \$

Signature

Claimant's Signature:

Claimant's Title:

Date of Signature:

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant:

Name of Customer:

Job Location:

Owner:

Through Date:

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

\$ _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
 - (2) Extras for which the claimant has not received payment.
 - (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.
-

Signature

Claimant's Signature:

Claimant's Title:

Date of Signature:

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant:

Name of Customer:

Job Location:

Owner:

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

This document does not affect any of the following:
Disputed claims for extras in the amount of: \$

Signature

Claimant's Signature:

Claimant's Title:

Date of Signature:

GENERAL CONDITIONS

ARTICLE 1: DEFINITIONS; GENERAL

1.1 Owner. "Owner" refers to Lighthouse Community Public Schools and unless otherwise stated, includes Owner's authorized representatives, including the Construction Manager, if a Construction Manager is designated, Owner's Board of Directors and Owner's officers, employees, agents and representatives.

1.2 Contractor. Contractor is the person or entity identified as such in the Agreement; references to "Contractor" include Contractor's authorized representatives.

1.3 Architect of Record ("AOR"). The Architect AOR is the person or entity who is a member of Contractor, licensed under the laws of the State of California as an architect and who will complete the Bridging Documents to produce complete Design Documents for review and permitting by the City of Oakland. References to the AOR include, as appropriate by the circumstances of usage, Design Consultants (who may or may not be members of Contractor) responsible for completing portions of the Design Documents.

1.4 Consulting Architect. Owner retained Contractor as a Consulting Architect under a Part 1 – Preconstruction Phase Services: Phase I, Preconstruction Period Services Agreement for Design-Build Preconstruction Services to prepare the initial schematic designs and to provide assistance to Owner to complete Bridging Documents and to provide guidance and assistance to Owner during Contractor's completion of the Programming and Schematic Design Documents for the Project.

1.5 Construction Manager ("CM"). The CM is an independent contractor to Owner and retained by Owner to assist Owner in matters relating to the Project. The Contract Documents establish the CM's authority relating to the Project.

1.6 Bridging Documents; Criteria Documents. The Bridging Documents are text descriptions, Drawings, Specifications and other instruments of services prepared by Contractor during Preconstruction Services: Phase I, Preconstruction Period Services on behalf of Owner which set forth the scope and other project criteria requirements of the Project for Guaranteed Maximum Price pricing by Contractor to produce complete Design Documents and construct the Project. The terms "Bridging Documents" and "Criteria Documents" are used interchangeably in the Contract Documents.

1.7 Design Services. Design Services refers to the services of California licensed/registered architects or engineers to complete development of the Bridging Documents to produce complete and accurate Design Documents for review and permitting by the City of Oakland and construction of the Project.

1.8 Construction Services. All of the work, labor, materials, equipment, services and other items necessary to complete construction of the Project based upon City of Oakland permitted Design Documents and Changes thereto directed or authorized by Owner in accordance with the terms of the Contract Documents.

1.9 The Work. The "Work" is the entirety of the design and construction services required by the Contract Documents, and includes all labor, materials, equipment or services provided or to be provided by Contractor to fulfill Contractor's obligations under the Contract Documents.

1.10 The Project. The Project is the total construction of which the Work performed by Contractor

under the Contract Documents which may be the whole or a part of the Project and which may include construction by Owner or by separate contractors.

1.11 Subcontractors; Sub-Subcontractors. A Subcontractor is a person or entity who has a direct contract with Contractor to perform a portion of the Work. "Subcontractor" does not include a separate contractor to Owner or Subcontractors of any separate contractors. A Sub-Subcontractor is a person or entity of any tier, who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site.

1.12 Material Supplier. A Material Supplier is any person or entity who only furnishes materials, equipment or supplies for the Work without fabricating, installing or consuming them in the Work.

1.13 Drawings and Specifications. The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing generally, the design, location and dimensions of the Work and may include without limitation, plans, elevations, sections, details, schedules or diagrams. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services. Figured dimensions on Drawings shall govern, but Work which is not dimensioned shall be as directed or required by field conditions. Specifications shall govern as to materials, workmanship and installation procedures.

1.14 Contract Documents. The Contract Documents consist of the Agreement between Owner and Contractor and all documents identified in the Agreement as forming a part of the Contract Documents. The Contract Documents shall include modifications thereto issued after execution of the Agreement.

1.15 Intent and Correlation of Contract Documents.

1.15.1 Work of the Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable therefrom as being necessary to produce the intended results. Organization of the Specifications into divisions, sections or articles, and the arrangement of Drawings shall not control Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Where any portion of the Contract Documents is silent and information appears elsewhere in the Contract Documents, such other portions of the Contract Documents shall control.

1.15.2 Technical Terms. Unless otherwise stated in the Contract Documents, words or terms which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.15.3 Conflict in Contract Documents. In the event there are conflicting provisions in the Contract Documents, the CM shall determine which of the conflicting provisions shall govern. In general, the CM shall use as a guideline the more stringent requirements or the more expensive material unless, in the opinion of the CM, other requirements are more appropriate. The decision of the CM is final and shall not be further reviewable or appealable by arbitration or litigation. If conflicts exist between portions of the Contract Documents regarding the quality of any item, product, equipment or materials, unless otherwise directed or authorized by Owner, Contractor shall provide, furnish and install the item, product, equipment or material of the highest or more stringent quality.

1.15.4 Drawing Dimensions. Dimensions given on the Drawings take precedence over scaled measurements, and large-scale Drawings take precedence over small scale Drawings. Figures take precedence over scaled dimensions. Scaling of dimensions is performed at Contractor's own risk.

1.16 Shop Drawings; Samples; Product Data ("Submittals"). Shop Drawings are diagrams, schedules and other data specially prepared for the Work by Contractor or a Subcontractor, Sub-Subcontractor, manufacturer, Material Supplier, or distributor to illustrate some portion of the Work. Samples are physical examples of materials, equipment or workmanship forming a part of, or to be incorporated into the Work. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work. Shop Drawings, Samples and Product Data prepared or furnished by Contractor or any of its Subcontractors or Material Suppliers are collectively referred to as "Submittals".

1.17 Contract Document Terms. The term "provide" means "provide complete in place" or to "furnish and install" such item. Unless otherwise provided in the Contract Documents, the terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the CM. The term "typical" as used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as "typical" in all other areas similarly marked as "typical" or which are reasonably inferable as a "typical" condition; Work in such other areas shall conform to that shown as "typical" or as reasonably inferable therefrom.

1.18 Contractor's Field Superintendent. Contractor's Field Superintendent is the individual employed by Contractor whose principal responsibility shall be the supervision and coordination of Contractor's Construction Services and activities; Contractor's Superintendent shall not perform routine construction labor.

1.19 Record Drawings. The Record Drawings are a set of the Drawings marked by Contractor during the performance of the Work to indicate completely and accurately the actual as-built condition of the Work. The Record Drawings shall be sufficient for a capable and qualified draftsman to modify the Drawings to reflect and indicate the Work actually in place at Final Completion of the Work.

1.20 Construction Equipment. "Construction Equipment" is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.

1.21 Site. The Site is the physical area designated in the Contract Documents for Contractor's performance, construction and installation of the Work.

1.22 Field Clarifications. A written or graphic document consisting of supplementary details, instructions or information issued on behalf of Owner which clarifies or supplements the Contract Documents and which becomes a part of the Contract Documents upon issuance. Field Clarifications do not constitute an adjustment of the Contract Time or the Contract Price, unless a Change Order relating to a Field Clarification is authorized and issued under the Contract Documents.

1.23 Defective or Non-Conforming Work. Defective or non-conforming Work is any Work which is unsatisfactory, faulty or deficient by: (a) not conforming to the requirements of the Contract Documents; (b) not conforming to the standards of workmanship of the applicable trade or industry; (c) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by

the Contract Documents or not in compliance with Laws; or (d) damage occurring prior to Final Completion of all of the Work. Contractor shall promptly correct, repair or replace any portion of the Work subject to a Notice of Non-Compliance.

1.24 Delivery. The term "delivery" used in conjunction with any equipment, materials or other items to be incorporated into the Work shall mean the unloading and storage in a protected condition pending incorporation into the Work.

1.25 Notice to Proceed. The Notice to Proceed is the written notice issued by or on behalf of Owner to Contractor authorizing Contractor to proceed with commencement of the Work and which establishes the date for commencement of the Contract Time for completion of the Design Services and completion of the Construction Services.

1.26 Progress Reports; Verified Reports. Progress Reports are written reports prepared by Contractor and its Subcontractors on a daily basis. Daily Progress Reports shall be completed and submitted to Owner's CM not later than 9:00 A.M. of the ensuing business day. Daily Progress Reports must include: (i) the number of labor and supervising personnel at the Site; (ii) the labor/work classification of each laborer; (iii) a detailed description of the Work in progress and completed; (iv) weather/environmental conditions; and (v) problems encountered with a potential impact to the Contract Time or the Contract Price. Verified Reports are periodic written reports prepared by Contractor and submitted to the City of Oakland; Verified Reports shall be in such form and content as required by the applicable provisions of Title 24 of the California Code of Regulations. A material obligation of Contractor is the preparation of complete and accurate Progress Reports, if required, and Verified Reports as well as the timely submission of the same.

1.27 Laws. The term "Laws" as used in the Contract Documents shall refer to all laws, ordinances, codes, rules and/or regulations promulgated by any governmental or quasi-governmental agency with jurisdiction over any portion of the Work and which apply to any portion of the Work. Laws refer to those enacted and in effect as of the execution of the Agreement, amendments thereto occurring during the performance of the Work and subsequently enacted Laws that take effect during the performance of the Work. No adjustment of the Contract Time or the Contract Price shall be allowed for Contractor's compliance with the Laws.

ARTICLE 2: Owner

2.1 Information Required of Owner.

2.1.1 Surveys; Site Information. Information, if any, concerning physical characteristics of the Site, including without limitation, surveys, soils reports, and utility locations, to be provided by Owner are set forth in the Contract Documents. Information not provided by Owner or necessary information in addition to that provided by Owner concerning physical characteristics of the Site which is required shall be obtained by Contractor without adjustment to the Contract Price or the Contract Time.

2.1.2 Furnishing of Information. Information or services to be provided by Owner under the Contract Documents shall be furnished by Owner with reasonable promptness to avoid delay in the orderly progress of the Work. Information about existing conditions furnished by Owner under the Contract Documents is obtained from sources believed to be reliable, but Owner neither guarantees or warrants that such information is complete and accurate. Contractor shall verify all information provided by Owner. To the extent that the Contract Documents depict existing conditions on or about the Site, or the Work involves the renovation, removal or

remodeling of existing improvements, or the Work involves any tie-in or other connection with any existing improvements; the conditions and/or existing improvements depicted in the Contract Documents are, as they are believed to exist. Contractor shall bear the risk of any variations between conditions or existing improvements depicted in the Contract Documents and those conditions or existing improvements actually encountered in the performance of the Work. Subject to the provisions of Article 4.2.3, the existence of any variations between conditions or existing improvements depicted in the Contract Documents and those actually encountered in the performance of the Work shall not result in any Owner liability therefor, nor shall any such variations result in an adjustment of the Contract Time or the Contract Price.

2.2 Owner's Right to Stop the Work. In addition to Owner's right to suspend the Work or terminate the Contract pursuant to the Contract Documents, Owner or CM, may, by written order, direct Contractor to stop the Work, or any portion thereof, until the cause for such stop work order has been eliminated if Contractor: (i) fails to correct Work which is not in conformity and in accordance with the requirements of the Contract Documents, or (ii) otherwise fails to carry out the Work in conformity and accordance with the Contract Documents. The right of Owner to stop the Work hereunder shall not be deemed a duty on the part of Owner to exercise such right for the benefit of Contractor or any other person or entity, nor shall Owner's exercise of such right waive or limit the exercise of any other right or remedy of Owner under the Contract Documents or the Laws. If Work is stopped or suspended pursuant to the foregoing, the Contract Price and the Contract Time are not subject to adjustment.

2.3 Partial Occupancy or Use.

2.3.1 Owner's Right to Partial Occupancy. Owner may occupy or use any completed or partially completed portion of the Work, provided that: (i) Owner has obtained the consent of, or is otherwise authorized by, public authorities with jurisdiction thereof, to so occupy or use such portion of the Work and (ii) Owner and Contractor have accepted, in writing, the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, utilities, damage to the Work, insurance and the period for correction of the Work and commencement of warranties required by the Contract Documents for such portion of the Work partially used or occupied by Owner. If Contractor and Owner are unable to agree upon the matters set forth in (ii) above, Owner may nevertheless use or occupy any portion of the Work, with the responsibility for such matters subject to resolution in accordance with the Contract Documents. Immediately prior to such partial occupancy or use of the Work, or portions thereof, Owner, Contractor, and the CM shall jointly inspect the portions of the Work to be occupied or to be used to determine and record the condition of the Work. Repairs, replacements or other corrective action noted in such inspection shall be promptly performed and completed by Contractor so that the portion of the Work to be occupied or used by Owner is in conformity with the requirements of the Contract Documents and Owner's occupancy or use thereof is not impaired. Owner's use or occupancy of the Work or portions thereof pursuant to the preceding shall not be deemed "completion" of the Work as that term is used in Public Contract Code §7107.

2.3.2 No Acceptance of Defective or Nonconforming Work. Unless otherwise expressly agreed upon by Owner and Contractor, Owner's partial occupancy or use of the Work or any portion thereof, shall not constitute Owner's acceptance of the Work not complying with the requirements of the Contract Documents or which is otherwise defective.

ARTICLE 3: CM AND CONTRACT ADMINISTRATION

3.1 Administration of the Contract.

3.1.1 Role of the CM. The CM will provide administration of the Contract as described in the

Contract Documents, and will be an Owner representative during construction until the time that Final Payment is due Contractor under the Contract Documents. The CM will advise and consult with Owner with respect to the administration of the Contract and the Work. The CM is authorized to act on behalf of Owner to the extent provided for in the Contract Documents.

3.1.2 Contractor Responsibility for Construction Means, Methods and Sequences. Neither Owner nor CM will have control over or charge of and be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, these being solely Contractor's responsibility. Owner or the CM have no control over or charge of and are not responsible for acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

3.1.3 Review of Applications for Payment. In accordance with Article 8 hereof, the CM will review Contractor's Applications for Progress Payments and for Final Payment, evaluate the extent of Work performed and the amount properly due Contractor on such Application for Payment.

3.1.4 Rejection of Work. The CM are authorized to reject Work which is defective or does not conform to the requirements of the Contract Documents. Whenever the CM considers it necessary or advisable, for implementation of the intent of the Contract Documents, the CM shall have authority to require additional inspections or testing of the Work, whether or not such Work is fabricated, installed or completed. Neither this authority of the CM nor a decision made in good faith by the CM to exercise or not to exercise such authority shall give rise to a duty or responsibility to Contractor, Subcontractors, Material Suppliers, their agents or employees, or other persons performing portions of the Work.

3.1.5 Changes to the Work; Change Orders. The CM will prepare Change Orders upon the written approval or direction of Owner.

3.1.6 Completion. The CM will conduct observations to determine the date(s) of Final Completion. The CM will receive from Contractor and forward to Owner, for Owner's review and records, written warranties and related documents or other items required by the Contract Documents upon close-out of the Work which are assembled by Contractor. The CM will verify that Contractor has complied with all requirements of the Contract Documents and is entitled to receipt of Final Payment.

3.1.7 Interpretation of Contract Documents; CM as Initial Arbiter of Disputes. The CM will interpret and decide matters concerning the requirements of the Contract Documents on written request of either Owner or Contractor. The CM's response to such requests will be made with reasonable promptness and within the time limits agreed upon, if any. If no agreement is reached establishing the time for the CM's review and response to requests under this Article 3.1.7, the CM shall be afforded a ten (10) calendar day period after receipt of such request to review and respond thereto. Interpretations and decisions of the CM will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the CM will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith. The CM's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. If there is any disagreement, dispute or other matter in controversy between Owner and Contractor, in addition to other requirements established by the Contract Documents or by law, the submission of the same to the CM for its decision shall

be a condition precedent to initiation of dispute resolution procedures.

3.2 Communications. All communications regarding the Work, the performance thereof or the Contract Documents shall be in writing; verbal communications shall be reduced to writing. Communications between Contractor and Owner's separate contractors, if any, shall be through Owner. All written communications between Contractor and any Subcontractor, Material Supplier or others directly or indirectly engaged by Contractor to perform or provide any portion of the Work shall be available to Owner, and the CM for review, inspection and reproduction as may be requested from time to time. Failure or refusal of Contractor to permit Owner or the CM to review, inspect or reproduce such written communications may be deemed a default of Contractor hereunder. Owner reserves the right to implement a computerized data logging and storage system (such as Primavera Expedition®) for communications relating to the Work. Contractor's use and access to such data logging system will be as established by Owner. Contractor's use of the data logging system will be without charge or expense to Contractor; provided, however, the Contract Time and the Contract Price shall not be subject to adjustment on account of the use of the data logging system or training of Contractor's personnel on the use and functions of the data logging system.

3.3 Termination of CM; Substitute CM. In case of termination of employment of the CM, Owner shall appoint a substitute construction manager whose status under the Contract Documents shall be that of the CM.

ARTICLE 4: CONTRACTOR

4.1 Work in Accordance With Contract Documents. Contractor shall perform all of the Work in strict conformity with the Contract Documents, including without limitation City of Oakland permitted Design Documents. Contractor shall not commence any Project construction activities unless the City of Oakland has issued a construction permit for the Work and Contractor has obtained all other approvals, reviews and/or authorizations of any public or quasi-public agency with jurisdiction over any portion of the Work (collectively "Permits"). Prior to commencement of construction activities at the Site, Contractor shall compile and present to Owner and CM all of the Permits for review and confirmation that all necessary Permits have been obtained by Contractor. Within three (3) days of Contractor submittal of all Permits to Owner and the CM, Owner and CM shall notify Contractor of Owner's acceptance of the Permits as being validly issued and that all Permits necessary for construction have been obtained ("Owner Permit Acceptance").

4.2 Site Investigation; Subsurface Conditions.

4.2.1 Contractor Investigation. Contractor shall be responsible for, and by executing the Agreement acknowledges, that it has carefully examined the Site and has taken all steps it deems reasonably necessary to ascertain all conditions which may affect the Work, or the cost thereof, including, without limitation, conditions bearing upon transportation, disposal, handling or storage of materials; availability of labor and materials; access to the Site; and the physical conditions and the character of equipment, materials, labor and services necessary to perform the Work. Any failure of Contractor to do so will not relieve it from the responsibility for fully and completely performing all Work without adjustment to the Contract Price or the Contract Time. Owner assumes no responsibility to Contractor for any understandings or representations concerning conditions or characteristics of the Site, or the Work, made by any of its officers, employees or agents prior to the execution of the Agreement, unless such understandings or representations are expressly set forth in the Agreement.

4.2.2 Subsurface Data. By executing the Agreement, Contractor acknowledges that it has examined the boring data and other subsurface data available and satisfied itself as to the

character, quality and quantity of surface and subsurface materials, including without limitation, obstacles which may be encountered in performance of the Work, insofar as this information is reasonably ascertainable from an inspection of the Site, review of available subsurface data and analysis of information furnished by Owner under the Contract Documents. Subsurface data or other soils investigation report provided by Owner hereunder are not a part of the Contract Documents. Information contained in such data or report regarding subsurface conditions, elevations of existing grades or below grade elevations are approximate only and is neither guaranteed or warranted by Owner to be complete and accurate. Contractor shall examine all boring and other subsurface data to make its own independent interpretation of the subsurface conditions and acknowledges that its bid is based upon its own opinion of the conditions which may be encountered.

4.2.3 Subsurface Conditions. If the Work under the Contract Documents involves digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall promptly and before the following conditions are disturbed, notify the CM, in writing, of any: (i) material that Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I or Class II or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Contract Documents. If upon notice to Owner of the conditions described above and upon Owner's investigation thereof, Owner determines that the conditions so materially differ or involve such hazardous materials which require an adjustment to the Contract Price or the Contract Time, Owner shall issue a Change Order in accordance with Article 9 hereof. In accordance with California Public Contract Code §7104, any dispute arising between Contractor and Owner as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse Contractor from the completion of the Work within the Contract Time and Contractor shall proceed with all Work to be performed under the Contract Documents. Owner reserves the right to terminate the Contract pursuant to Article 15.2 hereof should Owner determine not to proceed because of any condition described in (i), (ii) or (iii) above.

4.3 Supervision and Construction Procedures.

4.3.1 Supervision of the Work. Contractor shall supervise and direct performance of the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents. The CM shall be responsible for inspection of completed or partially completed portions of Work to determine that such portions are in proper condition to receive subsequent Work.

4.3.2 Responsibility for the Work. Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and all other persons performing any portion of the Work under a contract with Contractor or a Subcontractor. Contractor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the CM in their administration of the Contract, observations of the Work, or by tests, inspections or approvals required or performed by persons other than Contractor.

4.3.3 Layouts. Contractor is solely responsible for laying-out the Work so that construction of the Work conforms to the requirements of the Contract Documents and so that all component

parts of the Work are coordinated. Contractor shall be responsible for maintenance and preservation of benchmarks, reference points and stakes for the Work. The cost of maintenance and preservation of benchmarks, reference points and stakes shall be included within the Contract Price. Contractor shall be solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes.

4.3.4 Construction Utilities. Owner will provide any utility services at the Site for use during Project construction. Contractor is not responsible for securing and paying for all necessary utility services and distributions thereof at the Site. Contractor shall remove temporary utility distributions at the Site prior to Final Completion.

4.3.5 Existing Utilities; Removal, Relocation and Protection. Contractor and Owner acknowledge that the provisions of Government Code §4215 shift the burden for identification and locating utility lines and related utility appurtenances to Owner. Contractor and Owner express agree that now the provisions of Government Code §4215, Owner and Contractor waive all rights and obligations thereunder. The foregoing is based upon Contractor's obligations to complete the Design Documents for the Work and in doing so, Contractor's assumption of responsibility and liability for identifying and locating utility lines and related appurtenances.

4.3.6 Conferences and Meetings. A material obligation of Contractor under the Contract Documents is the scheduling of and attendance at required meetings by Contractor's supervisory personnel for the Work and Contractor's management personnel as required by the Contract Documents or as requested by Owner. Contractor's personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of Contractor and to bind Contractor. Contractor is solely responsible for arranging for the attendance by Subcontractors, Material Suppliers at meetings and conferences relating to the Work as necessary, appropriate or as requested by Owner.

4.3.6.1 Pre-Construction Conference. Contractor's representatives (and representatives of Subcontractors as requested by Owner) shall attend a Pre-Construction Conference at such time and place as designated by Owner. The Pre-Construction Conference will generally address the requirements of the Work and Contract Documents, and to establish construction procedures. Subject matters of the Pre- Construction Conference will include as appropriate: (i) administrative matters, including an overview of the respective responsibilities of Owner, CM, Contractor, Subcontractors, and others performing any part of the Work or services relating to the Work; (ii) Submittals; (iii) Changes and Change Order processing; (iv) employment practices, (v) Progress Schedule development and maintenance; (vi) development of Schedule of Values and payment procedures; (vii) communications procedures; (ix) Site visitor policies; (x) conduct of Contractor/Subcontractor personnel at the Site; and (xi) punchlist/close-out procedures.

4.3.6.2 Progress Meetings. Progress meetings will be conducted by the Contractor on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). Contractor's representatives and representatives of Subcontractors (as requested by Owner) shall attend Progress Meetings. Progress Meetings will be chaired by the Contractor and will generally include as agenda items: Site safety, field issues, coordination of Work, a review of a three (3) week look-ahead schedule prepared by Contractor's Superintendent and provided to all parties at least 24 hours prior to the meeting, construction progress and impacts to timely completion, if any. The purposes of

the Progress Meetings include: a formal and regular forum for discussion of the status and progress of the Work by all Project participants, a review of progress or resolution of previously raised issues and action items assigned to the Project participants, and reviews of the Progress Schedule and Submittals.

4.3.6.3 Special Meetings. As deemed necessary or appropriate by Owner, Special Meetings will be conducted with the participation of Contractor, Subcontractors and other Project participants as requested by Owner. Attendance of Contractor, Subcontractors and others as directed by Owner at such special meetings is a material obligation of Contractor under the Contract Documents.

4.3.6.4 Minutes of Meetings. Following conclusion of the Pre-Construction Conference, Progress Meetings and Special Meetings, Contractor will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless CM or Owner notifies the Contractor, as applicable, in writing of objections or corrections to minutes prepared hereunder within five (5) days of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the meeting or conference. No objections or corrections of any Subcontractor or Material Supplier shall be submitted directly to the CM or Owner; such objections or corrections shall be submitted to the Contractor. If CM or Owner timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled Progress Meeting.

4.3.7 Temporary Sanitary Facilities. At all times during Work at the Site, Contractor shall obtain and maintain temporary sanitary facilities in conformity with the Laws. Contractor shall maintain temporary sanitary facilities in a neat and clean manner with sufficient toilet room supplies. Personnel engaged in the Work are permitted to use any toilet facilities situated on the Project construction site as designated by the Owner and Owner's CM.

4.3.8 Noise and Dust Control.

4.3.8.1 Noise Control. Contractor shall install noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction Equipment noise at the Site shall be limited and only as permitted by applicable law, rule or regulation. If classes are in session at any point during the progress of the Work, and, in Owner's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operations of Owner, at Owner's request, Contractor shall schedule the performance of all such Work around normal school hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall such arrangements result in adjustment of the Contract Price or the Contract Time.

4.3.8.2 Dust Control. Contractor shall be fully and solely responsible for maintaining and upkeeping all areas of the Site and adjoining areas, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and Owner personnel. Additionally, Contractor shall take specific care to avoid deposits of airborne dust or airborne elements. Such protection devices, systems or methods shall be in accordance with the Laws, including without limitation, the regulations established by the EPA and OSHA. Additionally, Contractor shall be the sole party responsible to regularly and routinely clean up and

remove any and all deposits of dust and other elements. Damage and/or any liability derived from Contractor's failure to comply with these requirements shall be exclusively at the cost of Contractor, including, without limitation, any and all penalties that may be incurred for violations of applicable law, rule or regulation, and any amounts expended by Owner to pay such damages shall be due and payable to Owner on demand. Contractor shall replace any damaged property or part thereof and professionally clean any and all items that become covered or partially covered to any degree by dust or other airborne elements. If classes are in session at any point during the progress of Work, and, in Owner's reasonable determination, debris, powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of Owner, at Owner's request, Contractor shall schedule the performance of all such Work around normal Owner hours and make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall such arrangements result in adjustment of the Contract Price or the Contract Time.

4.3.8.3 Contractor Failure to Comply. If Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, Owner or the CM are each authorized to notify Contractor in writing of such failure and direct corrective measures and Contractor shall take immediate action to implement such corrective measures. Should Contractor fail to respond with immediate and responsive action and not later than twenty-four (24) hours from such notification, Owner shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred by Owner in connection with such actions shall be the sole responsibility of, and be borne by, Contractor; Owner may deduct such amounts from the Contract Price then or thereafter due Contractor.

4.4 Labor and Materials.

4.4.1 Payment for Labor, Materials and Services. Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for all labor, materials, equipment, tools, Construction Equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work.

4.4.2 Employee Discipline. Contractor shall enforce strict discipline and good order among Contractor's employees, the employees of any Subcontractor or Sub-Subcontractor, and all other persons performing any part of the Work at the Site. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall dismiss from its employ and direct any Subcontractor or Sub-Subcontractor to dismiss from their employment any person deemed by Owner to be unfit or incompetent to perform Work and thereafter, Contractor shall not employ nor permit the employment of such person for performance of any part of the Work without the prior written consent of Owner, which consent may be withheld in the reasonable discretion of Owner.

4.4.3 Contractor's Project Manager and Superintendent. Contractor shall employ a competent Project Manager, Superintendent and all necessary assistants. Either Contractor's Superintendent or Project Manager shall be in attendance at the Site at all times during performance of the Work. Competency of Contractor Superintendent shall include, without limitation, a minimum of three (3) years prior experience as a superintendent for a contractor on projects similar in size, scope and complexity to the Work. Contractor's communications relating to the Work or the Contract Documents shall be through Contractor's Superintendent or Project

Manager. The Superintendent and/or Project Manager shall represent Contractor and communications given to the superintendent or Project Manager shall be binding as if given to Contractor. Contractor shall dismiss Project Manager or the Superintendent or any of his/her assistants if they are deemed, in the sole reasonable judgment of Owner, to be unfit, incompetent or incapable of performing the functions assigned to them. In such event, Owner shall have the right to approve of the replacement Project Manager, Superintendent or assistants, as applicable. Contractor's Superintendent and Project Manager shall be satisfactory to Owner and shall not be changed except with the consent of Owner, unless the Superintendent or Project Manager proves to be unsatisfactory to Contractor and ceases to be employed by Contractor.

4.4.4 Prohibition on Harassment.

4.4.4.1 Owner's Policy Prohibiting Harassment. Owner is committed to providing a school site and workplace free of sexual harassment and harassment based on factors such as race, color religion, national origin, ancestry, age, medical condition, marital status, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.

4.4.4.2 Contractor's Adoption of Anti-Harassment Policy. Contractor shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim. Contractor shall require that any Subcontractor or Sub-Subcontractor performing any portion of the Work to adopt and implement policies in conformity with this Article 4.4.4.

4.4.4.3 Prohibition on Harassment at the Site. Contractor shall not permit any person, whether employed by Contractor, a Subcontractor, Sub-Subcontractor, or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to appropriate sanctions in accordance with the anti-harassment policy adopted and implemented pursuant to Article 4.4.4.2 above. Any person, performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any student, faculty member or staff of Owner or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon Owner's receipt of any notice or complaint that any person employed directly or indirectly by Contractor in performing or providing the Work has engaged in a prohibited form of harassment, Owner will promptly undertake an investigation of such notice or complaint. In the event that Owner, after such investigation, reasonably determines that a prohibited form of harassment has occurred, Owner shall promptly notify Contractor of the same

and direct that the person engaging in such conduct be immediately removed from the Site. Unless Owner's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, Owner shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof. Contractor shall defend, indemnify and hold harmless Owner and its employees, officers, Board of Directors, agents, and representatives from any and all claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys' fees, which arise out of, or pertain in any manner to: (i) the assertion by any person dismissed from performing or providing work at the direction of Owner pursuant to this Article 4.4.4.3; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of Contractor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of Contractor under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

4.5 Taxes. Contractor shall pay, without adjustment of the Contract Price, all sales, consumer, use and other taxes for the Work or portions thereof provided by Contractor under the Contract Documents.

4.6 Permits, Fees and Notices; Compliance With Laws.

4.6.1 Payment of Permits, Fees. Unless otherwise provided in the Contract Documents, Owner shall pay for the building permits, other permits, governmental fees, licenses and inspections necessary or required for construction, completion of the Work, or use/occupancy of the Work upon completion thereof, though Contractor is responsible for applying for and acquiring same. Contractor is solely responsible for obtaining all other permits or approvals and payment of fees or charges for issuance of such other permits/approvals without adjustment of the Contract Price. Contractor will pick-up Owner paid permits from the issuing authority.

4.6.2 Compliance With Laws. Contractor shall comply with and give notices required by the Laws and other orders of public authorities bearing on performance of the Work.

4.6.3 Notice of Variation From Laws. If Contractor knows, or has reason to believe, that any portion of the Contract Documents are at variance with applicable Laws, Contractor shall promptly notify the CM in writing, of the same. If Contractor performs Work knowing, or with reasonable diligence should have known, it to be contrary to laws, statutes, ordinances, building codes, rules or regulations applicable to the Work without such notice to the CM Contractor shall assume full responsibility for such Work and shall bear the attributable costs arising or associated therefrom, including without limitation, the removal, replacement or correction of the same.

4.7 Submittals.

4.7.1 Purpose of Submittals. Shop Drawings, Product Data, Samples and similar submittals (collectively "Submittals") are not Contract Documents. The purpose for submission of Submittals is to demonstrate, for those portions of the Work for which Submittals are required, the manner in which Contractor proposes to provide or incorporate such item of the Work in conformity with the information given and the design concept expressed in the Contract Documents.

4.7.2 Contractor's Submittals.

4.7.2.1 Prompt Submittals. Contractor shall review, approve and submit to the CM or such other person or entity designated by the Contract Documents, the number of copies of Submittals required by the Contract Documents.

4.7.2.2 Contractor Approval of Subcontractor Submittals. All Submittals prepared by Subcontractors, of any tier, Material Suppliers, manufacturers or distributors shall bear the written approval of Contractor and Contractor AOR thereto prior to submission to the CM for review. Any Submittal not bearing Contractor's and Contractor's AOR written approval shall be subject to return to Contractor for re-submittal in conformity herewith, with the same being deemed to not have been submitted. Any delay, impact or cost associated therewith shall be the sole and exclusive responsibility of Contractor without adjustment to the Contract Time or the Contract Price.

4.7.2.3 Verification of Submittal Information. By approving and submission of Submittals, Contractor and Contractor AOR represents to Owner and CM that Contractor has determined and verified materials, field measurements, field construction criteria, catalog numbers and similar data related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. Each Submittal shall include the following certification duly executed by Contractor's Superintendent:

"Contractor and Contractor AOR has reviewed and approved the field dimensions and construction criteria of the attached Submittal. Contractor and Contractor AOR has verified that the Submittal includes notations of any portion of the Work depicted in the Submittal which is not in strict conformity with the Contract Documents. The information in the attached Submittal has been reviewed and coordinated by Contractor and Contractor AOR with information included in other Submittals."

4.7.2.4 Contractor Responsibility for Deviations. Contractor shall not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by the CM's review of Contractor and Contractor AOR Submittals unless Contractor has specifically informed the CM in writing of such deviation at the time of submission of the Submittal, Contractor notifies the CM in writing of such deviation and the CM has given written approval to the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the CM's review thereof.

4.7.2.5 No Performance of Work Without AOR and CM Review. Contractor shall perform no portion of the Work requiring Contractor AOR's review of Submittals until the AOR has completed its review and returned the Submittal to Contractor indicating "No Exception Taken" to such Submittal and the Submittal is approved by the CM. Contractor shall not perform any portion of the Work forming a part of a Submittal or which is affected by a related Submittal until the entirety of the Submittal or other related Submittal has been fully processed. Such Work shall be in accordance with the final action taken by the CM in review of Submittals and other applicable portions of the Contract Documents.

4.7.3 AOR Review of Submittals. The AOR shall review Submittals for conformity to requirements of the Contract Documents. If the AOR returns a Submittal as rejected or requiring

correction(s) with re-submission, Contractor, so as not to delay the progress of the Work, shall thereafter resubmit, within seven (7) days, a Submittal conforming with the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in accordance with the AOR's direction. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the CM and AOR shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals. Unless otherwise provided elsewhere in the Contract Documents, the following notations or notations of a similar nature noted by the AOR on a reviewed Submittal will require Contractor action noted below.

| AOR Notation | Contractor Action |
|------------------------|--|
| No Exceptions Taken | No formal revision required. |
| Make Corrections Noted | Make revision noted; re-submission of revised Submittal not required. |
| Revise; Re-Submit | Revise Submittal in accordance with notations and re-submit for subsequent review. |
| Rejected; Re-Submit | Prepare new alternative Submittal and re-submit for review. |

4.7.4 CM Review of Submittals. Upon the AOR completion of its review of a Submittal and the AOR's acceptance of such Submittal, the AOR and/or Contractor shall submit such AOR accepted Submittal to the CM for review. The CM's review of such Submittals shall be for limited purposes of: (i) verifying that the required Submittal has been prepared; (ii) that the Submittal appears to conform to the requirements of the Contract Documents relating thereto; and (iii) that the AOR has reviewed and accepted the Submittal as conforming to the requirements of the Contract Documents. Upon completion of such review of Submittals, the CM shall return the Submittal to Contractor noting confirmation of the matters described in (i), (ii) and (iii) above. If a Submittal is returned to Contractor by the CM with a notation that (i), (ii) or (iii) above have not been verified or confirmed, Contractor shall provide the CM with reasonably satisfactory evidence to verify or confirm that (i), (ii) or (iii) above have been complied with by Contractor. No Work relating to a Submittal shall be commenced until after the applicable Submittal(s) has been reviewed and accepted by the AOR and the CM.

4.7.5 Deferred Approval Items. In the event that any portion of the Work is designated in the Contract Documents as a "Deferred Approval" item, Contractor shall be solely and exclusively responsible for the preparation of Submittals for such item(s) in a timely manner so as not to delay or hinder the completion of the Work within the Contract Time. All fees, costs or expenses incurred or necessary to incur to complete Submittals relating to Deferred Approval Items and to obtain approvals/permits therefor shall be borne solely by Contractor without adjustment of the Contract Price. Preparation, submission, approval and permitting of Submittals relating to Deferred Approval Items shall be completed without adjustment of the Contract Time.

4.8 Materials and Equipment.

4.8.1 Specified Materials, Equipment. Except as otherwise expressly set forth in the Contract Documents, references in the Bridging Documents to any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number, with or without the words "or equal" shall be deemed to establish a minimum standard of quality or performance, and shall not be construed as limiting competition. Whenever a product, material or other item is specified with reference to a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or

other trade association standard (collectively, "the Standards"), Contractor shall present an affidavit from the manufacturer when requested by the CM or required in the Specifications, certifying the product, material or other item to be furnished and installed complies with the Standards. When requested by the CM or required by the Contract Documents, support test data shall be submitted to substantiate compliance with the Standards.

4.8.2 Approval of Substitutions or Alternatives. Except for proposed substitutions identified in Contractor's Proposal and accepted by Owner, Contractor agrees to provide, furnish and install all materials, equipment and other products/items specified in the Bridging Documents and the Contract Documents.

4.8.3 Placement of Material and Equipment Orders. Contractor shall, after the City of Oakland's issuance of the construction permit, promptly and timely place all orders for materials and/or equipment necessary for completion of the Work so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Contractor shall require that any Subcontractor or Sub-Subcontractor performing any portion of the Work similarly place orders for all materials and/or equipment to be furnished by any such Subcontractor or Sub-Subcontractor in a prompt and timely manner so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Upon request of Owner or the CM, Contractor shall furnish reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, including without limitation, orders for materials and/or equipment to be provided, furnished or installed by any Subcontractor or Sub-Subcontractor.

4.8.4 Owner's Right to Place Orders for Materials and/or Equipment. Notwithstanding any other provision of the Contract Documents, in the event that Contractor shall, upon request of Owner or the CM, fail or refuse, for any reason, to provide reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, or should Owner determine, in its sole and reasonable discretion, that any orders for materials and/or equipment have not been placed in a manner so that such materials and/or equipment will be delivered to the Site so the Work can be completed without delay or interruption, Owner shall have the right, but not the obligation, to place such orders on behalf of Contractor. If Owner exercises the right to place orders for materials and/or equipment pursuant to the foregoing, Owner's conduct shall not be deemed to be an exercise, by Owner, of any control over the means, methods, techniques, sequences or procedures for completion of the Work, all of which remain the responsibility and obligation of Contractor. Notwithstanding the right of Owner to place orders for materials and/or equipment pursuant to the foregoing, the election of Owner to exercise, or not to exercise, such right shall not relieve Contractor from any of Contractor's obligations under the Contract Documents, including without limitation, completion of the Work within the Contract Time and for the Contract Price. If Owner exercises the right hereunder to place orders for materials and/or equipment on behalf of Contractor pursuant to the foregoing, Contractor shall reimburse Owner for all costs and fees incurred by Owner in placing such orders; such costs and fees may be deducted by Owner from the Contract Price then or thereafter due Contractor.

4.9 Safety.

4.9.1 Safety Programs. Notwithstanding any action by Owner or CM, Contractor shall be solely responsible for initiating, maintaining, supervising and enforcing all safety programs required by the Laws in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. Contractor's safety program shall include all actions and

programs necessary for compliance with California or federally statutorily mandated workplace safety programs, including without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code §§8350 et seq.). Without limiting or relieving Contractor of its obligations hereunder, Contractor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs. Prior to commencement of Work at the Site, Contractor shall provide the CM and Owner with Contractor's proposed safety program for the Work for review. Such review by CM and/or Owner shall not operate to relieve, impair or otherwise limit Contractor's responsibility for initiating, maintaining, supervising and enforcing safety programs. Without adjustment of the Contract Price or the Contract Time, Contractor shall modify and re-submit its proposed safety plan to incorporate modifications thereto requested by Owner or the CM. The CM is authorized to monitor Contractor's obligation to implement Contractor's safety program.

4.9.2 Safety Precautions. Contractor shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Contractor or Contractor's Subcontractors or Sub- Subcontractors; and (iii) other property or items at the site of the Work, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. Contractor shall take adequate precautions and measures to protect existing roads, sidewalks, curbs, pavement, utilities, utility easements, adjoining property and improvements thereon (including without limitation, protection from settlement or loss of lateral support) and to avoid damage thereto. When use or storage of explosives or other hazardous materials or equipment or other hazardous construction methods are necessary, Contractor shall give Owner and CM. At all times Contractor shall provide an adequate number of fire extinguishers or other approved fire/life- safety devices during Work at the Site. Each fire extinguisher shall be conspicuously displayed and clearly marked with instructions for use. Without adjustment of the Contract Price or the Contract Time, Contractor shall repair, replace or restore any damage or destruction of the foregoing items as a result of performance or installation of the Work.

4.9.3 Safety Signs, Barricades. Contractor shall erect and maintain, as required by existing conditions and conditions resulting from performance of the Contract, reasonable safeguards for safety and protection of property and persons, including, without limitation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

4.9.4 Safety Notices. Contractor shall post all notices required by applicable law and comply with the Laws bearing on safety of persons or property or their protection from damage, injury or loss.

4.9.5 Safety Coordinator. Contractor shall designate a responsible member of Contractor's organization at the Site whose duty shall be the prevention of accidents and the implementation and maintenance safety precautions and programs. This person shall be Contractor's Superintendent unless otherwise designated by Contractor in writing to Owner and the CM.

4.9.6 Emergencies; First Aid. In an emergency affecting safety of persons or property, Contractor shall act, to prevent threatened damage, injury or loss. Contractor shall maintain stocked emergency first aid kits at the Site which comply with the Laws.

4.9.7 Hazardous Materials.

4.9.7.1 General. In the event that Contractor, any Subcontractor or anyone employed directly or indirectly by them shall use, at the Site, or incorporate into the Work, any material or substance deemed to be hazardous or toxic under any law, rule, ordinance, regulation or interpretation thereof (collectively "Hazardous Materials"), Contractor shall comply with all laws, rules, ordinances or regulations applicable thereto and shall exercise all necessary safety precautions relating to the use, storage or disposal thereof.

4.9.7.2 Prohibition on Use of Asbestos Construction Building Materials ("ACBMs"). Notwithstanding any provision of the Drawings or the Specifications to the contrary, it is the intent of Owner that ACBMs not be used or incorporated into any portion of the Work. Contractor warrants to Owner that there are no materials or products used or incorporated into the Work which contain ACBMs. Whether before or after completion of the Work, if it is discovered that any product or material forming a part of the Work or incorporated into the Work contains ACBMs, Contractor shall at its sole cost and expense remove such product or material in accordance with any laws, rules, procedures and regulations applicable to the handling, removal and disposal of ACBMs and to replace such product or material with non-ACBM products or materials and to return the affected portion(s) of the Work to the finish condition depicted in the Drawings and Specifications relating to such portion(s) of the Work. Contractor's obligations under the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, Contractor's completion of the Work or Owner's acceptance of the Work. In the event that Contractor shall fail or refuse, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of Owner's written notice to Contractor of the existence of ACBM materials or products in the Work, Owner may thereafter proceed to cause the removal and replacement of such materials or products in any manner which Owner determines to be reasonably necessary and appropriate; all costs, expenses and fees, including without limitation fees and costs of consultants and attorneys, incurred by Owner in connection with such removal and replacement shall be the responsibility of Contractor. Disposal of Hazardous Materials. Contractor shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about Site resulting from Contractor's performance of Work and other activities. Contractor's obligations hereunder shall include without limitation, the transportation and disposal of any Hazardous Materials in strict conformity with the Laws.

4.10 Maintenance of Documents.

4.10.1 Documents at Site. Contractor shall maintain at the Site: (i) one record copy of the Drawings, Specifications and all addenda thereto; (ii) Change Orders approved by Owner and all other modifications to the Contract Documents; (iii) Submittals reviewed by the CM; (iv) Record Drawings; (v) Material Safety Data Sheets ("MSDS") accompanying any materials, equipment or products delivered or stored at the Site or incorporated into the Work; and (vi) all building and other codes or regulations applicable to the Work, including without limitation, Title 24, Parts 2, 3, 4, 5, 7 and 9 of the California Code of Regulations. During performance of the Work, all documents maintained by Contractor at the Site shall be available upon request to Owner, the CM for review, inspection or reproduction. Upon completion of the Work, all documents maintained at the Site by Contractor (except for codes and regulations) pursuant to the foregoing shall be assembled and transmitted to the CM for delivery to Owner.

4.10.2 Maintenance of Record Drawings. During its performance of the Work, Contractor shall maintain Record Drawings consisting of a set of the Drawings which are marked to indicate all field changes made to adapt the Work depicted in the Drawings to field conditions, changes resulting from Change Orders and all concealed or buried installations, including without limitation, piping, conduit and utility services. All buried or concealed items of Work shall be completely and accurately marked and located on the Record Drawings. The Record Drawings shall be clean and all changes, corrections and dimensions shall be marked in a neat and legible manner in a contrasting color. Record Drawings relating to the Structural, Mechanical, Electrical and Plumbing portions of the Work shall indicate without limitation, circuiting, wiring sizes, equipment/member sizing and shall depict the entirety of the as built conditions of such portions of the Work. The Record Drawings shall be continuously maintained by Contractor during the performance of the Work. At any time during Contractor's performance of the Work, upon the request of Owner, the CM, Contractor shall make the Record Drawings maintained hereunder available for Owner's review and inspection. Owner's review and inspection of the Record Drawings during Contractor's performance of the Work shall be only for the purpose of generally verifying that Contractor is continuously maintaining the Record Drawings in a complete and accurate manner; any such inspection or review shall not be deemed to be Owner's approval or verification of the completeness or accuracy thereof. The failure or refusal of Contractor to continuously maintain complete and accurate Record Drawings or to make available the Record Drawings for inspection and review by Owner may be deemed by Owner to be Contractor's default of a material obligation hereunder. Without waiving, restricting or limiting any other right or remedy of Owner for Contractor's failure or refusal to continuously maintain the Record Drawings, Owner may, upon reasonably determining that Contractor has not, or is not, continuously maintaining the Record Drawings in a complete and accurate manner, take appropriate action to cause the continuous maintenance of complete and accurate Record Drawings, in which event all fees and costs incurred or associated with such action shall be charged to Contractor and Owner may deduct the amount of such fees and costs from any portion of the Contract Price then or thereafter due Contractor. In accordance with Article 8.4.2 of these General Conditions, prior to receipt of the Final Payment, Contractor shall deliver the Record Drawings to the CM.

4.11 Use of Site. Contractor shall confine operations at the Site to areas permitted by law, ordinances or permits, subject to any restrictions or limitations set forth in the Contract Documents. Contractor shall not unreasonably encumber the Site or adjoining areas with materials or equipment. Contractor shall be solely responsible for providing security at the Site with all such costs included in the Contract Price. Owner shall at all times have access to the Site.

4.12 Clean-Up. Contractor shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material or rubbish caused or generated by performance of the Work. Without limiting the generality of the foregoing, Contractor shall maintain the Site in a "broom-clean" standard on a daily basis. In the event that the Work of the Contract Documents includes painting and/or the installation of floor covering, prior to commencement of any painting operations or the installation of any flooring covering, the area and adjoining areas of the Site where paint is to be applied or floor covering is to be installed shall be in a "broom-clean" condition. Prior to completion of the Work, Contractor shall remove from the Site all rubbish, waste material, excess excavated material, tools, Construction Equipment, machinery, surplus material and any other items which are not the property of Owner under the Contract Documents. At completion of the Work, Contractor shall clean the building interior and exterior, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal surfaces, areas where debris, dust and similar items have collected, clean and polish all glass, plumbing fixtures, finish hardware, metal/wood/stone finishes. As directed by Owner or the CM, Contractor shall remove temporary fencing, barricades, planking, temporary sanitary facilities, temporary utility distributions and other temporary facilities. Upon

completion of the Work, the Site and all adjoining areas shall be left in a neat and broom clean condition satisfactory to Owner. The CM shall be authorized to direct Contractor's clean-up obligations hereunder. If Contractor fails to clean up as provided for in the Contract Documents, Owner may do so, and all costs incurred in connection therewith shall be charged to Contractor; Owner may deduct such costs from any portion of the Contract Price then or thereafter due Contractor.

4.13 Access to the Work. Contractor shall provide the City of Oakland, Owner and the CM with access to the Work, whether in place, preparation or in progress and wherever located.

4.14 Patents and Royalties. Contractor shall defend, indemnify and hold harmless Owner and its agents, employees and officers from any claim, demand or legal proceeding arising out of or pertaining, in any manner, to any actual or claimed infringement of patent rights in connection with performance of the Work under the Contract Documents.

4.15 Cutting and Patching. Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly. Contractor shall not damage or endanger any portion of the Work, or the fully or partially completed construction of Owner or separate contractors to Owner by cutting, patching, excavation or other alteration. When modifying new Work or when installing Work adjacent to an existing structure/facility, Contractor shall match, as closely as conditions of the Site and materials will allow, the finishes, textures and colors of the existing structure/facility and refinish elements of the existing structure/facility. Contractor shall not cut, patch or otherwise alter the construction by Owner or separate contractor without the prior written consent of Owner or separate contractor thereto, which consent shall not be unreasonably withheld. Contractor shall not unreasonably withhold consent to the request of Owner or separate contractor to cut, patch or otherwise alter the Work.

4.16 Encountering of Hazardous Materials. In the event Contractor encounters Hazardous Materials at the Site which have not been rendered harmless or for which there is no provision in the Contract Documents for containment, removal, abatement or handling of such Hazardous Materials, Contractor shall immediately stop the Work in the affected area, but shall diligently proceed with the Work in all other unaffected areas. Upon encountering such Hazardous Materials, Contractor shall immediately notify the CM, in writing, of such condition. Contractor shall proceed with the Work in such affected area only after such Hazardous Materials have been rendered harmless, contained, removed or abated. In the event such Hazardous Materials are encountered, Contractor shall be entitled to an adjustment of the Contract Time to the extent that the Work is stopped and Substantial Completion of the Work is affected thereby. In no event shall there be an adjustment to the Contract Price solely on account of Contractor encountering such Hazardous Materials.

4.17 Prevailing Wage; Employment of Labor.

4.17.1 **Prevailing Wages.** The Project is a public work, the Work shall be performed as a public work and in compliance with all public works laws applicable to the Work, including the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof. The Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the

life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement. Copies of the prevailing rate of per diem wages are on file at the Owner's principal office and shall be made available to any interested party on request.

4.17.2 The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

4.17.3 The Contractor and each Subcontractor shall keep or cause to be kept an accurate record for Work on this Contract and Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Standards Enforcement of the State Department of Industrial Relations. The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner.

4.17.4 **Working Hours.** In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Contractor or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Standards Enforcement. The Contractor shall as a penalty to the Owner forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

4.17.5 **Apprentices.** The Contractor agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and

who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

4.17.6 Contractor and its subcontractors will take all steps necessary to ensure full compliance with any requirements applicable to the Work as a public works project.

4.17.7 Hours of Work.

4.17.7.1 Limits on Hours of Work. Pursuant to California Labor Code §1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code §1811, the time of service of any worker employed at any time by Contractor or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of Contractor or any Subcontractor, of any tier, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

4.17.7.2 Penalty for Excess Hours. Contractor shall pay to Owner a penalty of Twenty-five Dollars (\$25.00) for each worker employed on the Work by Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

4.17.7.3 Contractor Responsibility. Any Work performed by workers necessary to be performed after regular working hours or on Saturdays, Sundays or other holidays shall be performed without adjustment to the Contract Price or any other additional expense to Owner. Contractor shall be responsible for costs incurred by Owner which arise out of Work performed by Contractor at times other than regular working hours and regular working days. Upon determination of such costs, Owner may deduct such costs from the Contract Price then or thereafter due Contractor.

4.17.8 Employment of Independent Contractors. Pursuant to California Labor Code §1021.5, Contractor shall not willingly and knowingly enter into any agreement with any person, as an independent contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such person hold a valid Contractor's license issued pursuant to California Business and Professions Code §§7000 et seq. and such person does not meet the burden of proof of his/her independent contractor status pursuant to California Labor Code §2750.5. In the event that Contractor shall employ any person in violation of the foregoing, Contractor shall be subject to the civil penalties under California Labor Code §1021.5 and any other penalty provided by law. In addition to the penalties provided under California Labor Code §1021.5, Contractor's violation of this Article 4.18.7 or the provisions of California Labor Code §1021.5 shall be deemed an event of Contractor's default under Article 15.1 of these General Conditions. Contractor shall require any Subcontractor or Sub-Subcontractor performing or providing any portion of the Work to adhere to and comply with the foregoing provisions. If any

Subcontractor or Sub-Subcontractor violate the foregoing, the Subcontractor or Sub-Subcontractor, as applicable and Contractor shall be subject to the foregoing penalties for such violations.

4.18 Assignment of Antitrust Claims. Pursuant to California Government Code §4551, Contractor and its Subcontractor(s), of any tier, hereby offers and agrees to assign to Owner all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C.

§15) or under the Cartwright Act (California Business and Professions Code §§16700 et seq.), arising from purchases of goods, services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time Owner tenders Final Payment to Contractor, without further acknowledgment by the parties. If Owner receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under California Government Code §§4550 et seq., the assignor thereof shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by Owner as part of the Contract Price, less the expenses incurred by Owner in obtaining that portion of the recovery. Upon demand in writing by the assignor, Owner shall, within one year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose: and (i) Owner has not been injured thereby; or (ii) Owner declines to file a court action for the cause of action.

4.19 Limitations Upon Site Activities. Except in the circumstances of an emergency, no construction activities shall be permitted at or about the Site except during Owner's hours and days set forth in the Contract Documents. Work performed outside of the hours and days noted in the Special Conditions will not result in adjustment of the Contract Time or the Contract Price; unless Work outside of the hours and days noted in the Special Conditions is expressly authorized by Owner. Construction Oversight. All of the Work is subject to the City of Oakland Construction Oversight processes and procedures; a material obligation of Contractor hereunder is Contractor's compliance with the processes and procedures established by City of Oakland for the Work and all Laws. The project is not subject to Division of State Architect ("DSA") review and approval in accordance with Education Code for Charter School Operation §47610.

ARTICLE 5: SUBCONTRACTORS

5.1 Subcontracts. Any Work performed for Contractor by a Subcontractor shall be pursuant to a written agreement between Contractor and such Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required under Article 6 of these General Conditions and the termination provisions of Article 15, and obligates the Subcontractor to assume toward Contractor all the obligations and responsibilities of Contractor which by the Contract Documents Contractor assumes toward Owner and the CM. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and Owner, unless the Contract is terminated and Owner, in writing, elects to assume the Subcontract. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to Owner if the Contract is terminated by Owner pursuant to Article 15.1 hereof. Contractor shall provide to Owner copies of all executed Subcontracts and Purchase Orders to which Contractor is a party within thirty (30) days after Contractor's execution of the Agreement. During performance of the Work, Contractor shall, from time to time, as and when requested by Owner or the CM provide Owner with copies of any and all Subcontracts or Purchase

Orders relating to the Work and all modifications thereto. Contractor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the two preceding sentences is Contractor's default of a material term of the Contract Documents.

5.2 Substitution of Listed Subcontractor.

5.2.1 Substitution Process. Any request of Contractor to substitute a listed Subcontractor will be considered only if such request is in strict conformity with this Article 5.2 and California Public Contract Code §4107. All costs incurred by Owner, including without limitation, costs of the CM or attorneys' fees in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by Contractor; such costs may be deducted by Owner from the Contract Price then or thereafter due Contractor.

5.2.2 Responsibilities of Contractor Upon Substitution of Subcontractor. Owner's consent to Contractor's substitution of a listed Subcontractor shall not relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Price. The substitution of a listed Subcontractor shall not, under any circumstance, result in, or give rise to any to any increase of the Contract Price or the Contract Time on account of such substitution. In the event of Owner's consent to the substitution of a listed Subcontractor, the CM shall determine the extent to which, if any, revised or additional Submittals will be required of the newly substituted Subcontractor. In the event that the CM determines that revised or additional Submittals are required of the newly substituted Subcontractor, the CM shall promptly notify Contractor, in writing, of such requirement. In such event, revised or additional Submittals shall be submitted to CM not later than thirty (30) days following the date of the CM's written notice to Contractor pursuant to the foregoing sentence; provided that if in the reasonable and good faith judgment of the CM, the progress of the Work or completion of the Work requires submission of additional or revised Submittals by the newly substituted Subcontractor in less than thirty (30) days, the CM shall so state in its written notice to Contractor. Any revised or additional Submittals required pursuant to this Article 5.2.2 shall conform with the requirements of Article 4.7 of these General Conditions. Contractor shall reimburse Owner for all fees and costs, including without limitation fees of the CM and/or any design consultant to the CM or Owner and City of Oakland fees, incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this Article 5.2.2; Owner may deduct such fees and costs from any portion of the Contract Price then or thereafter due Contractor. In the event that additional or revised Submittals are required pursuant to this Article 5.2.2, such requirement shall not result in an increase to the Contract Time or the Contract Price.

5.3 Subcontractors' Work. Whenever the Work of a Subcontractor is dependent upon the Work of Contractor or another Subcontractor, Contractor shall require the Subcontractor to: (i) coordinate its Work with the dependent Work; (ii) provide necessary dependent data and requirements; (iii) supply and/or install items to build into the dependent Work of others; (iv) make appropriate provisions for dependent Work of others; (v) carefully examine and understand the portions of the Contract Documents (including Drawings, Specifications and Field Clarifications) and Submittals relating to the dependent Work; and (vi) examine the existing dependent Work and verify that the dependent Work is in proper condition for the Subcontractor's Work. If the dependent Work is not in a proper condition, the Subcontractor shall notify Contractor in writing and not proceed with the Subcontractor's Work until the dependent Work

has been corrected or replaced and is in a proper condition for the Subcontractor's Work.

ARTICLE 6: INSURANCE; INDEMNITY; BONDS

6.1 Workers' Compensation Insurance; Employer's Liability Insurance. Contractor shall purchase and maintain Workers' Compensation Insurance as will protect Contractor from claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed, whether such operations be by Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Contractor shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Contractor. The Employer's Liability Insurance required of Contractor hereunder may be obtained by Contractor as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by Contractor hereunder.

| Required Insurance Policy Certificate | Minimum Contractor Coverage Limits | Minimum AOR Coverage Limits | Minimum Design Consultants Coverage Limits |
|--|--|--|---|
| Workers Compensation | In accordance with law | In accordance with law | In accordance with law |
| Employers Liability | One Million Dollars (\$1,000,000) per occurrence | One Million Dollars (\$1,000,000) per occurrence | One Million Dollars (\$1,000,000) per occurrence |
| Comprehensive General Liability (including property damage and automobile liability) | One Million Dollars (\$1,000,000) per claim/Two Million Dollars (\$2,000,000) aggregate | One Million Dollars (\$1,000,000) per claim/Two Million Dollars (\$2,000,000) aggregate | One Million Dollars (\$1,000,000) per claim/Two Million Dollars (\$2,000,000) aggregate |
| Professional Liability | One Million Dollars (\$1,000,000) per claim/Two Million Dollars (\$2,000,000) aggregate, if Contractor is also the AOR | One Million Dollars (\$1,000,000) per claim/Two Million Dollars (\$2,000,000) aggregate, if the AOR is subcontractor to Contractor | One Million Dollars (\$1,000,000) per claim/Two Million Dollars (\$2,000,000) aggregate |

6.2 Commercial General Liability and Property Insurance. Contractor shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from Contractor's operations under the Contract Documents and for which Contractor may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than Contractor's employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by Contractor, or (b) by another person; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (v) contractual liability insurance applicable to Contractor's obligations under the Contract Documents; (vi) Contractor's pollution liability; and (vii) Completed Operations.

6.3 Professional Liability Insurance. Contractor shall purchase and maintain a Professional Liability Insurance policy covering the Design Services of Contractor under the Contract Documents.

6.4 Builder's Risk "All-Risk" Insurance. Owner will obtain a policy of Builders Risk insurance covering the full insurable value of the Work from the risks of loss, damage or destruction to the Work in progress or in place at the Site prior to Final Acceptance of the Work, including coverages for losses resulting from the perils of fire, malicious mischief and vandalism. The foregoing notwithstanding, if Contractor, a Subcontractor or their respective employees, agents or representatives cause or contribute to any loss covered by Owner obtained Builders Risk insurance policy, Contractor shall be solely responsible for payment of any deductible amount. In lieu of Contractor's deductible payment, Owner, may in the sole discretion of Owner, deduct and retain such deductible amount from the Contract Price then or thereafter due Contractor.

6.5 Insurance Policy Requirements. Each policy of insurance required by the Contract Documents to be obtained and maintained by Contractor shall conform to the following requirements.

6.5.1 Minimum Coverage Limits. The insurance required of Contractor hereunder shall be written for not less than coverage limits specified in the Contract Documents, or required by law, whichever is greater. In the event of any loss or damage covered by a policy of insurance required to be obtained and maintained by Contractor hereunder, Contractor shall be solely and exclusively responsible for the payment of the deductible, if any, under such policy of insurance, without adjustment to the Contract Price on account thereof.

6.5.2 Required Qualifications of Insurers. Contractor and Subcontractors' policies of Commercial General Liability and Property/Casualty insurance will be accepted by Owner only if the insurer(s) are: (i) A.M. Best rated A- or better; (ii) A.M. Best Financial Size Category VII or higher; and (iii) authorized under California law to transact business in the State of California and authorized to issue insurance policies in the State of California. If at any time during performance of the Work, the insurer(s) issuing a policy of insurance covering Commercial General Liability or Property/Casualty is/are not A.M. Best rated A- or better and is/are not A.M. Best Financial Size Category VII or higher, Contractor or Subcontractor, as applicable shall within thirty (30) days of Owner's written notice of the insufficiency of an insurer to Contractor, obtain insurance coverage(s) from alternative insurer(s) who is/are then A.M. Best rated A- or better and who is/are A.M. Best Financial Size Category VII or higher. If Contractor fails to deliver Certificate(s) of Insurance from an alternative insurer(s) meeting or exceeding the A.M. Best rating and A.M. Best Financial Size Category set forth above, within thirty (30) days of the date of Owner's issuance of a written notice pursuant to the preceding sentence, in addition to any other right or remedy of Owner under the Contract Documents or

arising by operation of the Laws, Owner may withhold disbursement of any Progress

Payment otherwise due hereunder until Contractor has delivered such Certificate(s) of Insurance from an alternative insurer(s).

6.6 Evidence of Insurance; Subcontractor's Insurance.

6.6.1 Certificates of Insurance. Prior to commencing the Work, Contractor shall deliver to Owner Certificates of Insurance evidencing the insurance coverages required by the Contract Documents. Failure or refusal of Contractor to so deliver Certificates of Insurance may be deemed by Owner to be a default of a material obligation of Contractor under the Contract Documents, and thereupon Owner may proceed to exercise any right or remedy provided for under the Contract Documents or the Laws. The Certificates of Insurance and the insurance policies required by the Contract Documents shall contain a provision that coverages afforded under such policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to Owner. The insurance policies required of Contractor hereunder shall also name Owner and its Board of Directors, officers, employees, agents, representatives and each member of the Board of Directors as additional insureds. Should any policy of insurance be canceled before Final Acceptance of the Work by Owner and Contractor fails to immediately procure replacement insurance as required, Owner reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by Owner in connection therewith from any sum then or thereafter due Contractor under the Contract Documents. Contractor shall, from time to time, furnish Owner, when requested, with satisfactory proof of coverage of each type of insurance required by the Contract Documents; failure of Contractor to comply with Owner's request may be deemed by Owner to be a default of a material obligation of Contractor under the Contract Documents.

6.6.2 Subcontractors' Insurance. Contractor shall require that every Subcontractor, of any tier, performing or providing any portion of the Work obtain and maintain the policies of insurance set forth in Articles 6.1 and 6.2 of these General Conditions; the coverages and limits of liability of such policies of insurance to be obtained and maintained by Subcontractors shall be as set forth in the Contract Documents. The policies of insurance to be obtained and maintained by Subcontractors hereunder are in addition to, and not in lieu of, Contractor obtaining and maintaining such policies of insurance. Each of the policies of insurance obtained and maintained by a Subcontractor hereunder shall conform with the requirements of this Article 6. Upon request of Owner, Contractor shall promptly deliver to Owner Certificates of Insurance evidencing that the Subcontractors have obtained and maintained policies of insurance in conformity with the requirements of this Article 6, and which name PCA and Board of Directors, officers, employees, agents, representatives and each member of the Board of Directors as additional insureds. Failure or refusal of Contractor to provide Owner with Subcontractors' Certificates of Insurance evidencing the insurance coverages required hereunder is a material default of Contractor hereunder.

6.7 Maintenance of Insurance. Any insurance bearing on the adequacy of performance of Work shall be maintained after Owner's Final Acceptance of all of the Work for the full one-year correction of Work period and any longer specific guarantee or warranty periods set forth in the Contract Documents. Should such insurance be canceled before the end of any such periods and Contractor fails to immediately procure replacement insurance as specified, Owner reserves the right to procure such insurance and to charge the cost thereof to Contractor. Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor's liabilities or responsibility for payment of damages resulting from its operations or performance of the Work under the Contract

Documents, including without limitation Contractor's obligation to pay Liquidated Damages. In no instance will Owner's exercise of its option to occupy and use completed portions of the Work relieve Contractor of its obligation to maintain insurance required under this Article until the date of Final Acceptance of the entirety of the Work by Owner, or such time thereafter as required by the Contract Documents. Contractor's Insurance Primary. All insurance and the coverages thereunder required to be obtained and maintained by Contractor hereunder, if overlapping with any policy of insurance maintained by Owner, shall be deemed to be primary and non-contributing with any policy maintained by Owner and any policy or coverage thereunder maintained by Owner shall be deemed excess insurance. To the extent that Owner maintains a policy of insurance covering property damage arising out of the perils of fire or other casualty covered by Owner's Builder's Risk Insurance or Contractor's Comprehensive General Liability Insurance of Contractor or any Subcontractor, Owner, Contractor and all Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurance coverages required herein shall be included in the Contract Price.

6.8 Indemnity. Contractor shall indemnify, defend and hold harmless the Indemnified Parties who are: (i) Owner and its Board of Directors, officers, employees, agents, representatives and each member of the Board of Directors and the CM and its agents and employees. Contractor's obligations hereunder includes indemnity, defense and hold harmless of the Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorneys' fees and costs which arise out of any failure to comply with obligations under the Contract Documents, as well as negligent, grossly negligent or willful conduct of Contractor, any Subcontractor or any person or entity engaged by them for the Work. Contractor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; (iv) Stop Notice claims asserted by any person or entity in connection with the Work; and (v) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of Contractor, any of Contractor's Subcontractors, of any tier, or any other person or entity employed directly or indirectly by Contractor or any Subcontractor in connection with the Work and their respective agents, officers or employees. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability subject to Contractor's obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, Contractor shall, at its sole cost and expense, defend the named Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the named Indemnified Parties. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are subject to, or bound by, Contractor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Contractor shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. Contractor's obligations hereunder are binding upon Contractor and these obligations shall survive notwithstanding Contractor's completion of the Work or the termination of the Contract.

6.9 Contractor shall furnish a surety bond in an amount equal to one hundred percent (100 %) of Contract price as security for faithful performance of this Contract and shall furnish a separate bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for payment of persons performing labor and furnishing materials in connection with this Contract. Aforementioned bonds shall be in the form set forth in these contract documents.

6.10 Bond Requirements. Prior to commencing any portion of the work, the Contractor shall furnish separate payment and performance bonds for its portion of the work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in

California as sureties.

6.11 To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bonds, the Owner may terminate the Contract for cause.

6.12 Surety Qualifications. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.

6.13 Alternate Surety Qualifications. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with section 995.660 of the California Code of Civil Procedure and proof of such is provided to the Owner.

ARTICLE 7: CONTRACT TIME

7.1 Final Completion of the Work Within Contract Time. The Contract Time is the period of time, including authorized adjustments thereto, allotted in the Contract Documents for achieving Final Completion of the Work. The date for commencement of the Work is the date established by the Notice to Proceed issued by Owner, which shall not be postponed by the failure to act of Contractor or of persons or entities for whom Contractor is responsible. The date of Final Completion is the date certified by the CM as such in accordance with the Contract Documents.

7.2 Progress and Completion of the Work.

7.2.1 Time of Essence. Time limits stated in the Contract Documents are of the essence. By executing the Agreement, Contractor confirms that the Contract Time is a reasonable period for performing and achieving Final Completion of the Work. Contractor shall employ and supply a sufficient force of workers, material and equipment, and prosecute the Work with diligence so as to maintain progress, to prevent Work stoppage and to achieve Final Completion of the Work within the Contract Time.

7.2.2 Substantial Completion. Substantial Completion is that stage in the progress of the Work when the Work is complete and approved by the City of Oakland and any other governmental agencies with jurisdiction over the Work or any portion thereof in accordance with the Contract Documents so Owner can occupy or use the Work for its intended purpose. Substantial Completion shall be determined by the CM upon request by Contractor in accordance with the Contract Documents. The good faith and reasonable determination of Substantial Completion by the CM shall be controlling and final.

7.2.3 Completion of Punchlist after Substantial Completion. Upon achieving Substantial Completion of the Work, Owner, the CM and Contractor shall jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by Contractor ("the Punchlist"). The exclusion of, or failure to include, any item on the Punchlist shall not alter or limit the obligation of Contractor to complete or correct any portion of the Work in accordance with the Contract Documents.

7.2.4 Final Completion. Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all Punchlist Items noted upon Substantial Completion, and the Contract has been otherwise fully performed by Contractor. Final Completion shall be determined by the CM upon request of Contractor. The good faith and reasonable determination of Final Completion by the CM shall be controlling and final.

7.2.5 Contractor Responsibility for Multiple Inspections. In the event Contractor shall request determination of Substantial Completion or Final Completion by the CM and it is determined by the CM that the Work does not then justify certification of Substantial Completion or Final Completion and re-inspection is required at a subsequent time to make such determination, Contractor shall be responsible for all costs of such re-inspection, including without limitation, the fees of the CM. Owner may deduct such costs from the Contract Price then due or thereafter due to Contractor.

7.2.6 Final Acceptance. Final Acceptance of the Work shall occur upon approval of the Work by Owner's Board of Directors; such approval shall be submitted for adoption at the next regularly scheduled meeting of Owner's Board of Directors after Final Completion is achieved. The commencement of any warranty or guarantee period under the Contract Documents shall be deemed to be the date upon which Owner's Board of Directors approves of the Final Acceptance of the Work.

7.3 Construction Schedule.

7.3.1 Submittal of Preliminary Construction Schedule. Not more than five (5) days prior to Contractor's anticipated commencement date for Construction Services at the Site, Contractor shall prepare and submit to Owner and the CM a Preliminary Construction Schedule indicating, in graphic form, the estimated rate of progress and sequence of all Work required under the Contract Documents. The Preliminary Construction Schedule shall be organized into groupings by location, responsibility, specifications, sections, etc. The purpose of the Preliminary Construction Schedule is to assure adequate planning and execution of the Work so that it is completed within the Contract Time and to permit evaluation of the progress of the Work. Unless otherwise provided in the Contract Documents, the Construction Schedules required under this Article 7 shall; (i) be prepared utilizing scheduling software accepted in advance by Owner; (ii) indicate the date(s) for commencement and completion of various portions of the Work including without limitation, procurement, fabrication and delivery of major items, materials or equipment, completion of: foundation, building framing/structural elements, mechanical/electrical/plumbing rough-in, roofing, exterior doors and windows, interior finishes, etc.; (iii) indicate manpower and other resources required for completion of each Construction Schedule activity; (iv) indicate costs for completion of each Construction Schedule activity; (v) identify each Submittal required by the Contract Documents, the date for Contractor's submission of each Submittal and the date for the return of the reviewed Submittal to Contractor; (vi) indicate sequencing and interdependencies of activities. Contractor may submit a Preliminary Construction Schedule depicting completion of the Work in a duration shorter than the Contract Time; provided that such Preliminary Construction Schedule shall not be a basis for adjustment to the Contract Price in the event that completion of the Work shall occur after the time depicted therein, nor shall such Preliminary Construction Schedule be the basis for any extension of the Contract Time, Contractor's entitlement to any extension of the Contract Time

shall be based upon the Contract Time and not on any shorter duration which may be depicted in Contractor's Preliminary Construction Schedule. If the Construction Schedules required under this Article.

7.3 incorporate therein any "float" time, such float shall be deemed to jointly belong to and owned by Owner and Contractor. As used herein, "float time" shall be deemed to refer to the time between earliest finish date and the latest finish date of each activity shown on the Construction Schedule. The Construction Schedule prepared by Contractor shall not sequester float through float suppression techniques such as extending activity durations, using preferential logic, etc.

7.3.2 Review of Preliminary Construction Schedule. Owner and the CM shall review the Preliminary Progress Schedule submitted by Contractor pursuant to Article 7.3.1 above for conformity with the requirements of the Contract Documents. Within fifteen (15) days of the date of receipt of the Preliminary Progress Schedule, the Preliminary Construction Schedule will be returned to Contractor with comments to the form or content thereof. Review of the Preliminary Progress Schedule and any comments thereto by Owner and/or the CM shall not be deemed to be the assumption of construction means, methods or sequences by Owner or the CM, all of which remain Contractor's obligations under the Contract Documents.

7.3.3 Preparation and Submittal of Contract Construction Schedule. Within ten (10) days of Owner's return of the Preliminary Construction Schedule to Contractor pursuant to Article 7.3.2 above, Contractor shall prepare and submit to the CM and Owner the Construction Schedule, fully cost and resource loaded, which incorporates therein the comments to the Preliminary Construction Schedule. Upon Contractor's submittal of such Construction Schedule, Owner and the CM shall review the same for purposes of determining conformity with the requirements of the Contract Documents. Within fifteen (15) days of the receipt of the Construction Schedule, Owner will accept such Construction Schedule or will return the same to Contractor with comments to the form or content. In the event there are comments to the form or content thereof, Contractor, shall within seven (7) days of receipt of such comments, revise and resubmit the Construction Schedule incorporating therein such comments. Upon Owner's acceptance of the form and content of a Construction Schedule, the same shall be deemed the "Accepted Construction Schedule." Owner's acceptance of a Construction Schedule shall be for the sole and limited purpose of determining conformity with the requirements of the Contract Documents. By the Accepted Construction Schedule, Owner shall not be deemed to have exercised control over, or approval of, construction means, methods or sequences, all of which remain the responsibility and obligation of Contractor in accordance with the terms of the Contract Documents. Further, the Accepted Construction Schedule shall not operate to limit or restrict any of Contractor's obligations under the Contract Documents nor relieve Contractor from the full, faithful and timely performance of such obligations in accordance with the terms of the Contract Documents. The activities, commencement and completion dates of activities, and the sequencing of activities depicted on the Accepted Construction Schedule shall not be modified or revised by Contractor without the prior consent, or direction, of Owner and the CM. Updates to the Accepted Construction Schedule pursuant to Article 7.3.5 below shall not be deemed revisions to the Accepted Construction Schedule. In the event that the Accepted Construction Schedule shall depict completion of the Work in a duration shorter than the Contract Time, the same shall not be a basis for an adjustment of the Contract Time or the Contract Price in the event that actual completion of the Work shall occur after such the time depicted in such Accepted Construction Schedule. In such event, the Contract Price shall not be subject to adjustment on account of any additional costs incurred by Contractor to complete the Work prior to the Contract Time, as adjusted in accordance with the terms of the Contract Documents. Any adjustment of the Contract Time or the Contract Price shall be based upon the

Contract Time set forth in the Contract Documents and not any shorter duration which may be depicted in the Accepted Construction Schedule.

7.3.4 Revisions to Accepted Construction Schedule. In the event that the progress of the Work or the sequencing of the activities of the Work shall materially differ from that indicated in the Accepted Construction Schedule, as determined by Owner in its reasonable discretion and judgment, Owner may direct Contractor to revise the Accepted Construction Schedule; within fifteen (15) days of Owner's direction, Contractor shall prepare and submit to the CM and Owner a revised Accepted Construction Schedule, for review and acceptance by Owner. Contractor may request consent of Owner to revise the Accepted Construction Schedule. Any such request shall be considered by Owner only if in writing setting forth Contractor's proposed revision(s) to the Accepted Construction Schedule and the reason(s) therefor. Owner may grant, deny or condition consent to such request of Contractor to revise the Accepted Construction Schedule in Owner's sole reasonable discretion.

7.3.5 Updates to Accepted Construction Schedule. Contractor shall monitor and update the Accepted Construction Schedule on a monthly basis, provide four-week rolling schedules on a weekly basis or more frequently as required by the conditions or progress of the Work, or as may be requested by Owner. Contractor shall provide Owner and the CM with updated Accepted Construction Schedules indicating progress achieved and activities commenced or completed within the prior updated Accepted Construction Schedule. Updates to the Accepted Construction Schedule shall not include any revisions to the activities, commencement and completion dates of activities or the sequencing of activities depicted on the Accepted Construction Schedule. Any such revisions to the Accepted Construction Schedule shall result in Owner's rejection of such update and Contractor shall, within seven (7) days of Owner's rejection of such update, submit to the CM and Owner an Updated Accepted Construction Schedule which does not incorporate any such revisions. Contractor shall also submit, with its updates to the Accepted Construction Schedule a narrative statement including a description of current and anticipated problem areas of the Work, delaying factors and their impact, and an explanation of corrective action taken or proposed by Contractor. If the progress of the Work is behind the Accepted Construction Schedule, Contractor shall indicate what measures will be taken to place the Work back on schedule. Owner may, from time to time, and in Owner's sole and exclusive discretion, transmit to Contractor's

7.3.6 Contractor Responsibility for Construction Schedule. Contractor shall be responsible for the preparation, submittal and maintenance of the Construction Schedules required by the Contract Documents, and any failure of Contractor to do so may be deemed by Owner as Contractor's default in the performance of a material obligation under Contract Documents. Any and all costs or expenses required or incurred to prepare, submit, maintain, and update the Construction Schedules shall be solely that of Contractor and no such cost or expense shall be charged to Owner. The Contract Price shall not be subject to adjustment on account of costs, fees or expenses incurred or associated with Contractor's preparation, submittal, and maintenance or updating of the Construction Schedules.

7.4 Adjustment to Contract Time. If Final Completion is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with this Article 7.4.

7.4.1 Excusable Delays. As used in these Contract Documents, the term "Excusable Delay" shall refer to a delay (i) that affects the critical path of the construction schedule that is prevailing at the time of the incident that caused the delay; and (ii) that is caused either by the Owner or the Architect (except for scope changes authorized by Owner pursuant to Contract Change Order); (iii) by Inclement Weather (as defined in Section 15.1.6.3); by strikes, lockouts, or other labor or industrial disturbance; by civil disturbance, riot, blockade, embargo; by act of the public enemy (including war, terrorism, sabotage, blockade, embargo); by governmental delay; by lightning, earthquake, fire, hurricane, tornado, flood, washout, explosion or other Acts of God; by pending mediation or arbitration; by unforeseen conditions; or by any other causes that are outside of the control of Contractor and/or its Subcontractors, governmental preemption in connection with a National Emergency, disease (including without limitation, delays arising out the spread of COVID-19, such as, without limitation, delays in the responsiveness of, or the unavailability of, governmental authorities to grant permit applications or signoffs or to perform inspections, or the unavailability of required meetings or governmental agencies necessary to act to grant any Approvals) or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency. As used in these Contract Documents, the term "Inclement Weather" means any type of precipitation that registers .50 inches or greater per day, as documented by the records from the National Weather Station closest to the Project Site. Contractor agrees to use its best efforts to mitigate against the consequences of Inclement Weather.

If Final Completion of the Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined by the CM; Excusable Delays shall not result in any increase in the Contract Price. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of Contractor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by Contractor in performance of any portion of the Work. Excusable Delays include unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment, materials or Construction Equipment reasonably necessary for completion and proper execution of the Work, unanticipated Inclement Weather or City of Oakland directive to stop the Work. As used in these Contract Documents, the term "Inclement Weather" means any type of precipitation that registers .50 inches or greater per day, as documented by the records from the National Weather Station closest to the Project Site. Contractor agrees to use its best efforts to mitigate against the consequences of Inclement Weather. Neither the financial resources of Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the Accepted Construction Schedule or the most recent updated Accepted Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay.

7.4.2 Compensable Delays. If Final Completion of the Work is delayed and such delay is caused by the acts or omissions of Owner, the CM, or separate contractor employed by Owner (collectively "Compensable Delays"), upon Contractor's request and notice, in strict conformity with Articles 7 and 9 of these General Conditions, the Contract Time will be adjusted by Change Order for such reasonable period of time as determined by the CM and Owner. In accordance with California Public Contract Code §7102, if Contractor's progress is delayed by any of the events described in the preceding sentence, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom, provided that Owner is liable for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the reasonable contemplation of Owner and Contractor at the time of execution of the Agreement. In such event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or Construction Equipment directly resulting from such delay, and shall exclude indirect or other consequential damages. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, Articles 9 and 14 of these General Conditions.

7.4.3 Unexcusable Delays. Unexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Articles 7.4.1 and 7.4.2 above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcusable Delays.

7.4.4 Adjustment of Contract Time.

7.4.4.1 Procedure for Adjustment of Contract Time. The Contract Time shall be subject to adjustment only in strict conformity with applicable provisions of the Contract Documents. Failure of Contractor to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of the same.

7.4.4.2 Limitations Upon Adjustment of Contract Time on Account of Delays. Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last. If an Unexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcusable Delay. In addition to the foregoing limitations upon extension of the Contract Time, no adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless such delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated Accepted Construction Schedule as of the date on which such delay first occurs. Owner shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if Owner shall deny any request by Contractor for an adjustment of the Contract Time for any delay which does not actually and directly impact Work or Work activities on the critical path of the then current and updated Accepted Construction Schedule.

7.5 Owner Right to Take-Over Work. Unless caused by Owner or the CM if Contractor fails or refuses, for any reason and at any time, to furnish adequate materials, labor, equipment or services to maintain progress of the Work in accordance with the then current Construction Schedule after twenty-four (24) hour advance written notice from Owner or the CM to Contractor of its failure or refusal, Owner may thereafter furnish or cause to be furnish such materials, labor, equipment or services necessary to maintain progress of the Work in accordance with the then current Construction Schedule. All costs, expenses or other charges (whether direct, indirect and administrative) incurred by Owner in furnishing such materials, labor, equipment or services shall be at the sole cost of Contractor and Owner may deduct the same from the Contract Price then or thereafter due Contractor. Owner's exercise of rights pursuant to the foregoing shall not be deemed a waiver or limitation of any other right or remedy of Owner under the Contract Documents.

ARTICLE 8: CONTRACT PRICE

8.1 Contract Price. The Contract Price is the amount stated in the Agreement as such, and subject to any authorized adjustments thereto in accordance with the Contract Documents, is the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents. Owner's payment of the Contract Price to Contractor shall be in accordance with the Contract Documents. The Contract Price is inclusive of all expenses, fees, costs or other charges incurred by Contractor to complete all of Contractor's obligations under the Contract Documents. The Contract Price shall not be subject to adjustment for costs incurred by Contractor, including without limitation, extended work-hours or premium labor costs to complete utility tie-ins and/or to avoid disruption of utility services or Owner's on-going operations and activities. Rebates obtained by Contractor or any Subcontractor for materials, equipment or services utilized to complete the Work or incorporated into the Work shall be deemed the property of Owner. Contractor shall completely accurately account for all rebates arising out of the Work and shall deliver proceeds to Owner reflecting the full value of all such rebates.

8.2 Cost Breakdown. Within fifteen (15) days after commencing construction activities, Contractor shall furnish a detailed estimate and complete Cost Breakdown of the Construction Services Contract Price. The Cost Breakdown shall be subject to review and approval by the CM and Owner. In the event that Owner shall reasonably object to any portion of the Cost Breakdown, within ten (10) days of Owner's receipt of the Cost Breakdown, Owner shall notify Contractor, in writing of Owner's objection(s) to the Cost Breakdown. Within five (5) days of the date of Owner's and/or the CM's written objection(s), Contractor shall submit a revised Cost Breakdown to Owner and the CM for review and approval. The foregoing procedure for the preparation, review and approval of the Cost Breakdown shall continue until Owner and the CM have accepted of the entirety of the Cost Breakdown. Once the Cost Breakdown is accepted by Owner and the CM, the Cost Breakdown shall not be thereafter modified or amended by Contractor without the prior consent and approval of Owner and the CM, which may be granted, denied or conditioned in their sole reasonable discretion.

8.3 Progress Payments.

8.3.1 Applications for Progress Payments. During Contractor's performance of the Construction Services, Contractor shall submit monthly, on the first working day of each month, to Owner and the CM, Applications for Progress Payments, on forms approved or designated by Owner, setting forth an itemized estimate of the value of the Work completed in the preceding month for the purpose of Owner's making of Progress Payments thereon. Values utilized in the Applications for Progress Payments shall be based upon Owner accepted Cost Breakdown of the Construction Services Contract Price pursuant to Article 8.2 above and such values shall be only for determining the basis of Progress Payments to Contractor, and shall not

be considered as fixing a basis for adjustments, whether additive or deductive, to the Construction Services Contract Price, or for determining the extent of Work actually completed. In addition to submitting the Application for Progress Payment, Contractor shall submit with each Application for Progress Payment a detailed summary of (i) the break-down of the Progress Payment requested reflecting the amount of the requested Progress Payment to be retained by Contractor;

(ii) the Subcontractors/Material Suppliers to whom the remaining balance of the requested Progress Payment will be disbursed to, along with the amount to be disbursed to each identified Subcontractor/Material Supplier; and (iii) the amounts disbursed by Contractor to the Subcontractors/Material Suppliers from the immediately preceding Progress Payment.

8.3.2 Owner's Review of Applications for Progress Payments. Upon receipt of an Application for Progress Payment, Owner shall cause the same to be reviewed by the CM, as soon as is practicable after receipt of such Application for Progress Payment. Such review shall be for the purpose of determining that the Application for Progress Payment is a proper Progress Payment request. For purposes of this Article 8.3.2, an Application for Progress Payment shall be deemed "proper" only if it is submitted on the form approved by Owner, with all of the requested information of such form of Application for Progress Payment completely and accurately provided by Contractor and such completed Application for Progress Payment is accompanied by: (i) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §3262 of Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment requested; (ii) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §3262 of Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment received by Contractor under the prior Application for Progress Payment; (iii) if applicable, a current union statement reflecting that Contractor and any Subcontractor of any tier, are current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which Contractor or any such Subcontractor is a party to or is otherwise bound by; (iv) a certification by Contractor that it has continuously maintained, or caused to maintained, the Record Drawings reflecting the actual as-built conditions of the Work performed for which the Progress Payment is requested, it being understood that such certification is subject to verification by Owner or the Construction Manager prior to disbursement of the Progress Payment; and (v) an updated Construction Schedule, reflecting Work actually completed and in progress. An Application for Progress Payment determined by Owner not to be a proper Application for Progress Payment shall be returned by Owner to Contractor as soon as is practicable after receipt of the same from Contractor, but in no event not more than seven (7) days after Owner's receipt thereof. Owner's return of any Application for Progress Payment pursuant to the preceding sentence shall be accompanied by a written document setting forth the reason(s) why the Application for Progress Payment is not proper.

8.3.3 Review of Applications for Progress Payments. Upon receipt of an Application for Progress Payment, the CM shall inspect and verify the Work to determine whether it has been performed in accordance with the terms of the Contract Documents and to determine the portion of the Application for Progress Payment which is properly due to Contractor under the terms of the Contract Documents.

8.3.4 Owner's Disbursement of Progress Payments

8.3.4.1 Timely Disbursement of Progress Payments. Within thirty (30) days after Owner's receipt of a proper Application for Progress Payment that it is not disputing, there shall

be paid, by Owner, to Contractor a sum equal to ninety five percent (95%) of the value of the Work indicated in the Application for Progress Payment which is actually in place as of the date of the Application for Progress Payment and as verified and approved by the CM and the pro rata portion of Contractor's overhead, supervision and general conditions costs and profit for that month; provided, however, that Owner's obligation to disburse any Progress Payment shall be subject to Owner's receipt of all documents set forth in Article 8.3.2 above, each and all of which are conditions precedent to Owner's obligation to disburse Progress Payments. If an Application for Progress Payment is determined not to be proper due to the failure or refusal of Contractor to submit documents with the Application for Progress Payment, as required by Article 8.3.2, or incompleteness or inaccuracies in any such documents submitted or if it is reasonably determined that the Record Drawings have not been continuously maintained to reflect the actual as built conditions of the Work completed or scheduled to be completed in the period for which the Progress Payment is requested, the thirty (30) day period hereunder for Owner's timely disbursement of a Progress Payment shall be deemed to commence on the date that Owner is actually in receipt of documents not submitted with the Application for Progress Payment, or corrections to documents with the Application for Progress Payment so as to render them complete and accurate, or the date upon which Contractor accurately and fully completes preparation of the Record Drawings relating to the Work for which the Progress Payment is requested.

8.3.4.2 Untimely Disbursement of Progress Payments. In the event that Owner shall fail to make any Progress Payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Progress Payment, Owner shall pay Contractor interest on the undisputed amount of such Application for Progress Payment equal to the legal rate of interest set forth in California Code of Civil Procedure §685.010(a). The foregoing notwithstanding, in the event that Owner shall determine that any Application for Progress Payment is not proper, pursuant to Article 8.3.2 above, and Owner does not return such Application for Progress Payment within the seven (7) day period provided for in Article 8.3.2, the period of time for Owner's disbursement of the Progress Payment on such Application for Progress Payment without incurring the interest liability shall be reduced by the number of days exceeding the seven (7) day return period.

8.3.4.3 Owner's Right to Disburse Progress Payments by Joint Checks. Provided that Owner is in receipt of the applicable Subcontract or Purchase Order, Owner, may in its sole discretion, issue joint checks to Contractor and such Subcontractor or Material Supplier in satisfaction of its obligation to make Progress Payments or the Final Payment due hereunder.

8.3.4.4 No Waiver of Defective or Non-Conforming Work. The approval of any Application for Progress Payment or the disbursement of any Progress Payment to Contractor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents.

8.3.5 Progress Payments for Changed Work. Contractor's Applications for Progress Payment may include requests for payment on account of Changes in the Work which have been properly authorized and approved by the CM in accordance with the terms of the Contract Documents and for which a Change Order has been issued. Except as provided for herein, no other payment shall be made by Owner for Changes in the Work.

8.3.6 Materials or Equipment Not Incorporated Into the Work.

8.3.6.1 Limitations Upon Payment. Except as expressly provided for herein, no payments shall be made by Owner on account of any item of the Work, including without limitation, materials or equipment which, at the time of Contractor's submittal of an Application for Progress Payment, has/have not been incorporated into and made a part of the Work.

8.3.6.2 Materials or Equipment Delivered and Stored at the Site. Owner may, in its sole and exclusive discretion, make payment for materials or equipment not yet incorporated into the Work if, at or prior to the time of Contractor's submittal of a an Application for Progress Payment incorporating therein a request for payment of such materials or equipment if all of the following are complied with: (i) the materials or equipment have been delivered to the Site; (ii) adequate arrangements, reasonably satisfactory to Owner, have been made by Contractor to store and protect such materials or equipment at the Site including without limitation, insurance reasonably satisfactory to Owner, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage if such coverage is not afforded under the policy of Builder's Risk insurance obtained by Contractor pursuant to the Contract Documents; and

(iii) the establishment of procedures reasonably satisfactory to Owner by which title to such materials or equipment will be vested in Owner upon Owner's payment therefor. Contractor acknowledges that the discretion to make, or not to make, payment for materials or equipment delivered or stored at the site of the Work pursuant to the preceding sentence shall be exercised exclusively by Owner; Owner's exercise of discretion not to make payment for materials or equipment delivered or stored at the Site, but not yet incorporated into the Work shall not be deemed Owner's default hereunder. In the event that Owner shall elect to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (ii) and (iii) of this Article

8.3.6.2 shall be borne solely and exclusively by Contractor and no payment shall be made by Owner on account of such costs and expenses.

8.3.6.3 Materials or Equipment Not Delivered or Stored at the Site. No payments shall be made by Owner for materials or equipment to be incorporated into the Work where such materials or equipment have not been delivered or stored at the Site. The foregoing notwithstanding, Owner may, in its sole and exclusive discretion, elect to make payment for materials or equipment not incorporated into the Work and which are not delivered or stored at the Site at or prior to the time of Contractor's submittal of an Application for Progress Payment incorporating therein a request for payment of such materials or equipment provided that each and all of the following have been complied with: (i) adequate arrangements, reasonably satisfactory to Owner, have been made by Contractor to store and protect such materials or equipment which include without limitation, insurance reasonably satisfactory to Owner, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage if coverage for the same is not afforded under the policy of Builder's Risk insurance obtained by Owner pursuant to the Contract Documents; and

(ii) the establishment of procedures reasonably satisfactory to Owner by which title to such materials or equipment will be vested in Owner upon Owner's payment therefor. Contractor acknowledges that the discretion to make, or not to make, payment for such materials or equipment pursuant to the preceding sentence shall be exercised exclusively by Owner; Owner's exercise of discretion not to make payment for such materials or equipment shall not be deemed Owner's default hereunder. In the event that

Owner shall elect to make payment for materials or equipment not at the Site, the costs and expenses incurred to comply with the requirements of (i) and (ii) of this Article 8.3.7.3 shall be borne solely and exclusively by Contractor and no payment shall be made by Owner on account of such costs and expenses.

8.3.6.4 Materials or Equipment in Fabrication or Transit. The provisions of Article 8.3.6 notwithstanding, Owner shall not make any payment on account of any materials or equipment which are in the process of being fabricated or which are in transit to the Site of or other storage location.

8.3.7 Exclusions From Progress Payments. In addition to Owner's right to withhold disbursement of any Progress Payment provided for in the Contract Documents, neither Contractor's Application for Progress Payment shall include, nor shall Owner be obligated to disburse any portion of the Contract Price for amounts which Contractor does not intend to pay any Subcontractor, of any tier, or Material Supplier because of a dispute or any other reason.

8.4 Title to Work. Contractor warrants that title to all Work covered by an Application for Progress Payment will pass to Owner no later than the time of payment. Contractor further warrants that upon submittal of an Application for Progress Payment, all Work for which a Progress Payment has been previously issued and Contractor has received payment from Owner therefor shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, stop notices, security interests or encumbrances in favor of Contractor, Subcontractors, Material Suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Substitute Security for Retention. Eligible and equivalent securities may be substituted for any monies withheld by Owner to ensure Contractor's performance under the Contract Documents at the request and expense of Contractor. Notwithstanding the foregoing, failure of Contractor to request the substitution of eligible and equivalent securities for monies to be withheld by Owner prior to submission of the first Application for Progress Payment of the Construction Services Contract Price shall be deemed Contractor's waiver of rights for same.

8.5 Final Payment.

8.5.1 Application for Construction Services Final Payment. When Contractor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, Contractor shall submit an Application for Final Payment on such form as approved by Owner. Thereupon, the CM will promptly make a final inspection of the Work and when the CM finds the Work acceptable under the Contract Documents and that the Contract has been fully performed by Contractor, the CM will thereupon promptly approve the Application for Final Payment, stating that to the best their knowledge, information and belief, the Work has been completed in accordance with the terms of the Contract Documents. The Final Payment shall include the remaining balance of the Contract Price and any retention from Progress Payments previously withheld by Owner.

8.5.2 Conditions Precedent to Disbursement of Final Payment. Neither Final Payment nor any remaining Contract Price shall become due until Contractor submits to Owner each and all of the following, the submittal of which are conditions precedent to Owner's obligation to disburse the Final Payment: (i) an affidavit or certification by Contractor that payrolls, bills for materials and other indebtedness incurred in connection with the Work for which Owner or Owner's property may or might be responsible or encumbered have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after Contractor's receipt of Final Payment is currently in effect; (iii) a written

statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover any period following Final Payment as required by the Contract Documents; (iv) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of Contractor, Subcontractors of any tier and Material Suppliers in accordance with California Civil Code §3262, with each of the same stating that there are, or will be, no claims for additional compensation after disbursement of the Final Payment; (v) Operations and Maintenance manuals and separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work; (vi) the Record Drawings; (vii) any and all other items or documents required by the Contract Documents to be delivered to Owner upon completion of the Work; (viii) the completion and submittal of all reports required by the Contract Documents, including without limitation, verified reports required by applicable provisions of the California Code of Regulations; (ix) if required by Owner, such other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, stop notices, claims, security interest or encumbrances arising out of the Contract to the extent and in such form as may be required by Owner; and (x) Affidavits of each Subcontractor to Contractor which affirm that the Subcontractor has made payments to its employees engaged in the Work in accordance with the specified general prevailing wage rate of per diem wages for the classification(s) of labor provided each such employee; such Affidavits shall be in such form and content established by Owner and shall be executed under penalty of perjury by an authorized employee or officer of each Subcontractor to Contractor.

8.5.3 Disbursement of Final Payment. Provided that Owner is then in receipt of all documents and other items set forth in Article 8.5.2 above as conditions precedent to Owner's obligation to disburse Final Payment, not later than sixty (60) days following Final Acceptance Owner shall disburse the Final Payment to Contractor. Pursuant to California Public Contract Code §7107, if there is any dispute between Owner and Contractor at the time that disbursement of the Final Payment is due, Owner may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute.

8.5.4 Waiver of Claims. Contractor's acceptance of the Final Payment is a waiver and release by Contractor of any and all claims against Owner for compensation or otherwise in connection with Contractor's performance of the Contract.

8.5.5 Claims Asserted After Final Payment. Any lien, stop notice or other claim filed or asserted after Contractor's acceptance of the Final Payment by any Subcontractor, of any tier, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of Contractor who further agrees to indemnify, defend and hold harmless Owner and its officers, agents, representatives and employees from and against any claims, demands or judgments arising or associated therewith, including without limitation attorneys' fees incurred by Owner in connection therewith. In the event any lien, stop notice or other claim of any Subcontractor, Laborer, Material Supplier or others performing Work under the Contract Documents remain unsatisfied after Final Payment is made, Contractor shall refund to Owner all monies that Owner may pay or be compelled to pay in discharging any lien, stop notice or other claim, including, without limitation all costs and reasonable attorneys' fees incurred by Owner in connection therewith.

8.6 Withholding of Payments. Owner may withhold any Progress Payment or the Final Payment, in whole or in part, or back charge Contractor to the extent it may deem advisable to protect Owner on account of: (i) defective Work or Work not in conformity with the requirements of the Contract Documents which is not remedied; (ii) failure of Contractor to make payments when due Subcontractors or Material Suppliers for materials or labor; (iii) claims filed or reasonable evidence of the probable filing of claims by Subcontractors, laborers, Material Suppliers, or others performing any portion of the Work under the Contract Documents for which Owner may be liable or responsible including, without limitation, Stop Notice Claims filed with Owner pursuant to California Civil Code §9350 et seq.; (iv) a reasonable doubt that the Contract can be completed for the then unpaid balance of the Contract Price; (v) tax demands filed in accordance with California Government Code §12419.4; (vi) other claims, penalties and/or forfeitures for which Owner is required or authorized to retain funds otherwise due Contractor; (vii) any amounts due from Contractor to Owner under the terms of the Contract Documents; (viii) violations of the obligations of Contractor or any Subcontractor relating to the employment of labor in connection with the Work; or (ix) Contractor's failure to perform any of its obligations under the Contract Documents or its default under the Contract Documents or its failure to maintain adequate progress of the Work. In addition to the foregoing, Owner shall not be obligated to process any Application for Progress Payment or Final Payment, nor shall Contractor be entitled to any Progress Payment or Final Payment so long as any lawful or proper direction concerning the Work or the performance thereof or any portion thereof, given by Owner, the CM or any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by Contractor. When Owner is reasonably satisfied that Contractor has remedied any such deficiency, payment shall be made of the amount withheld. In lieu of making payment of withheld amounts to Contractor, Owner may, in its sole exclusive discretion, apply withheld amounts to the payment and satisfactions of debts and obligations of Contractor relating to the Work. In doing, Owner shall be an agent of Contractor for the sole and limited purpose of making payment(s) to others for the Work on behalf of Contractor; payments made by Owner pursuant to the foregoing shall

be deemed payments to Contractor and the Contract Price shall be adjusted to reflect such payment(s). Owner shall not be liable to Contractor or others for its good faith decision to make or not make payment(s) of amounts withheld from Contractor pursuant to the foregoing. If Owner elects to make payments to other of amounts withheld from Contractor, Owner may do so without prior judicial determination; Owner will render Contractor a complete and accurate accounting of amounts withheld and paid to others on behalf of Contractor.

8.7 Payments to Subcontractors. Contractor shall pay all Subcontractors for and on account of Work of the Contract performed by such Subcontractors in accordance with the terms of their respective subcontracts and as provided for pursuant to California Public Contract Code §10262, the provisions of which are deemed incorporated herein by this reference. In the event of Contractor's failure to make payment to Subcontractors in conformity with California Public Contract Code §10262, the provisions of California Public Contract Code §10253 shall apply; by this reference, the provisions of California Public Contract Code §10253 are incorporated herein in its entirety, except that the references in said Section 10253 to "the director" shall be deemed to refer to Owner. Retention withheld by Contractor from a progress payment due from Contractor to a Subcontractor shall not exceed the retention withheld by Owner from Contractor under the Contract Documents. Contractor shall timely make payment of retention due Subcontractors in accordance with Public Contract Code §7107.

8.8 Computerized Job Cost Reporting System.

8.8.1 Job Cost Reporting. Contractor and each Subcontractor with a Subcontract valued at Five Hundred Thousand Dollars (\$500,000) or greater shall maintain a computerized job cost reporting system conforming with the requirements set forth herein. The computer program(s) utilized by Contractor and applicable Subcontractors shall be subject to the review and acceptance by Owner. The job cost reporting systems for the Work shall be updated in regular intervals of not more than one (1) calendar month.

8.8.2 Job Cost Reporting System Requirements. The computerized job cost programs utilized by Contractor and applicable Subcontractors shall conform and comply with generally accepted accounting principles applied in a consistent manner and with recognized and generally accepted construction industry accounting standards, guidelines and procedures. The job cost reporting system format and configuration shall follow the general format of Owner approved Cost Breakdown and budgets established for each line item shall be traceable to a bid estimate of costs. The job cost reporting systems utilized by Contractor and applicable Subcontractors shall be capable of: (i) providing overall cost status on a monthly and cumulative basis; (ii) providing comparative analysis of the original budgeted costs, actual costs, remaining budget, and projected cost of completion; the job cost reporting system shall be capable of providing comparative analysis for individual line items and the totality of the Work reflected in the job cost report and; (iii) tracking adjustments to original budget amounts for Changes to the Work (including, without limitation, issued, pending and potential Change Orders).

8.8.3 Job Cost System Information. Upon request of Owner or CM, Contractor and applicable Subcontractors shall make available written job cost reports and provide Owner and the CM with the electronic files of the

then current or requested job cost report. The foregoing are material obligations of Contractor under the Contract Documents.

ARTICLE 9: CHANGES

9.1 Changes in the Work. Owner, at any time, by issuance of a Field Order may make Changes within the general scope of the Work under the Contract Documents or issue additional instructions, require additional Work or direct deletion of Work. Owner may, without directing or authorizing a Change to the Work, request that Contractor provide a proposal for adjustment of the Contract Time and/or the Contract Price, in connection with a Change being considered by Owner ("Proposal Request"). Unless otherwise expressly provided in a Proposal Request issued on behalf of Owner to Contractor, Contractor shall respond to each Proposal Request within five (5) days of the issuance thereof. If Contractor fails or refuses to respond to a Proposal Request within said five (5) days and Owner elects to proceed with the potential Change noted in a Proposal Request, the reasonable determination of Owner of the extent of adjustment of the Contract Price or the Contract Time on account of the potential Change shall be final, binding and enforceable against Contractor. Contractor shall not proceed to implement a proposed Change noted in a Proposal Request unless specifically directed or authorized in writing by or on behalf of Owner. Contractor shall not proceed with any Change involving an increase or decrease in the Contract Price or the Contract Time without prior written authorization from the CM or Owner. The foregoing notwithstanding, Contractor shall promptly commence and diligently complete any Change to the Work subject to the written authorization issued by the CM or Owner pursuant to the preceding sentence. Contractor shall not be relieved or excused from its prompt commencement and diligent completion of any Change subject to such written authorization by virtue of the absence or inability of Contractor and Owner to agree upon the extent of any adjustment to the Contract Time or the Contract Price on account of such Change. The issuance of a Change Order pursuant to this Article 9 in connection with any Change authorized by Owner under this Article 9.1 shall not be deemed a condition precedent to Contractor's obligation to promptly commence and diligently complete any such Change authorized by Owner hereunder. Owner's right to make Changes shall not invalidate the Contract nor relieve Contractor of any liability or other obligations under the Contract Documents. Changes to the Work depicted or described in the Drawings or the Specifications shall be subject to approval by the City of Oakland. Owner may make Changes to bring the Work or the Project into compliance with environmental requirements or standards established by state or federal statutes and regulations enacted after award of the Contract.

9.2 Oral Order of Change in the Work. Any oral order, direction, instruction, interpretation, or determination from Owner or the CM which in the opinion of Contractor causes any change to the scope of the Work, or otherwise requires an adjustment to the Contract Price or the Contract Time, shall be treated as a Change only if Contractor gives Owner and the CM written notice within ten (10) days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that Owner can promptly investigate and consider alternative measures to address the order, direction, instruction, interpretation or

determination giving rise to Contractor's notice. Accordingly, Contractor acknowledges and agrees that its failure, for any reason, to give written notice within ten (10) days of such order, direction, instruction, interpretation or determination shall be deemed Contractor's waiver of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of such order, direction, instruction, interpretation or determination. The written notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested, and the source of the order, directions, instructions, interpretation or determination that Contractor regards as a Change. Unless Contractor acts in strict accordance with this procedure, any such order, direction, instruction, interpretation or determination shall not be treated as a Change and Contractor hereby waives any claim for any adjustment to the Contract Price or the Contract Time on account thereof.

9.3 Contractor Submittal of Data. Within ten (10) days after receipt of a written order directing a Change in the Work or furnishing the written notice regarding any oral order directing a Change in the Work, Contractor shall submit to the CM and Owner a detailed written statement setting forth the general nature of the Change, the amount of any adjustment to the Contract Price and impact to the then current Construction Schedule on account thereof, properly itemized and supported by a detail Construction Schedule analysis and sufficient substantiating data to permit evaluation of the same, and the extent of adjustment of the Contract Time, if any, required by such Change. No claim or adjustment to the Contract Price or the Contract Time shall be allowed if not asserted by Contractor in strict conformity herewith or if asserted after Final Payment is made under the Contract Documents.

9.4 Adjustment to Contract Price and Contract Time on Account of Changes to the Work.

9.4.1 Adjustment to Contract Price. Adjustments to the Contract Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority:

9.4.1.1 Mutual Agreement. By negotiation and mutual agreement, on a lump sum basis, between Owner and Contractor on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change. Upon request of Owner or the CM, Contractor shall provide a detailed estimate of increase or decrease in costs directly associated with performance of the Change along with cost breakdowns of the components of the Change and supporting data and documentation. Contractor's estimate of increase or decrease in costs pursuant to the foregoing, if requested, shall be in sufficient detail and in such form as to allow Owner and the CM to review and assess the completeness and accuracy thereof. Contractor shall be solely responsible for any additional costs or additional time arising out of, or related in any manner to, its failure to provide the estimate of costs within the time specified in the request of Owner, and the Consulting for such estimate.

9.4.1.2 Determination by Owner. By Owner, whether or not

negotiations are initiated pursuant to Article 9.4.1.1 above, based upon actual and necessary costs incurred by Contractor as determined by Owner on the basis of Contractor's records. In the event that the procedure set forth in this Article 9.4.1.2 is utilized to determine the extent of adjustment to the Contract Price on account of Changes to the Work, promptly upon determining the extent of adjustment to the Contract Price, Owner shall notify Contractor in writing of the same; Contractor shall be deemed to have accepted Owner's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor shall notify Owner and the CM, in writing, not more than fifteen (15) days from the date of Owner's written notice, of any objection to Owner's determination. Failure of Contractor to timely notify Owner and the CM of Contractor's objections to Owner's determination of the extent of adjustment to the Contract Price shall be deemed Contractor's acceptance of Owner's determination and a waiver of any right or basis of Contractor to thereafter protest or otherwise object to Owner's determination. Notwithstanding any objection of Contractor to Owner's determination of the extent of any adjustment to the Contract Price pursuant to this Article 9.4.1.2, Contractor shall, pursuant to Article 9.7 below, diligently proceed to perform and complete any such Change.

9.4.1.3 Basis for Adjustment of Contract Price. If Changes in the Work require an adjustment of the Contract Price pursuant to Articles 9.4.1.1 or 9.4.1.2 above, the basis for adjustment of the Contract Price shall be as follows:

9.4.1.3.1 Labor. Contractor shall be compensated for the costs of labor actually and directly utilized in the performance of the Change. Such labor costs shall be limited to field labor. Labor costs shall exclude costs incurred by Contractor in preparing estimate(s) of the costs of the Change, in the maintenance of records relating to the costs of the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the costs of supervision, including costs/salaries of Contractor's and Subcontractor(s)' superintendents and non-labor foremen and other overhead and general conditions costs associated with the Change or performance thereof.

9.4.1.3.2 Materials and Equipment. Contractor shall be compensated for the costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the performance of Changes, they shall be credited to Owner. If materials and/or equipment necessarily used in the performance of Changes are obtained from a supplier or source owned in whole or in part by Contractor, compensation therefor shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable

opinion of Owner, the costs asserted by Contractor for materials and/or equipment in connection with any Change is excessive, or if Contractor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and Owner's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. Owner may elect to furnish materials and/or equipment for Changes to the Work, in which event Contractor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

9.4.1.3.3 Construction Equipment. Contractor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by Contractor from the CM and Owner, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. Contractor shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of one thousand dollars (\$1,000.00) or less. Construction Equipment costs claimed by Contractor in connection with the performance of any Change to the Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the CM and Owner, the allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by Contractor incidental to the use of such Construction Equipment.

9.4.1.3.4 Mark-up on Costs of Changes to the Work. In determining the cost to Owner and the extent of increase to the Contract Price resulting from a Change adding to the Work, the allowance for mark-ups on the costs of the Change for all overhead (including home office and field overhead), general conditions costs and profit associated with the Change shall not exceed the percentage set forth in the Contract Documents, regardless of the number of Subcontractors, of any tier, performing any portion of any Change to the Work. If a Change to the Work reduces the Contract Price, no profit, general conditions or overhead costs shall be paid by Owner to Contractor for the reduced or deleted Work. In such event, the adjustment to the Contract Price shall be the actual cost reduction realized by the reduced or deleted Work multiplied by the percentage set forth in the Contract Documents for mark-ups on the cost of a Change adding to the scope of the Work.

9.4.1.3.5 Contractor Maintenance of Records. In the event that Contractor shall be directed to perform any Changes to the Work pursuant to Article 9.1 or 9.2, or should Contractor encounter conditions which Contractor, pursuant to Article 9.6, believes would obligate Owner to adjust the Contract Price and/or the Contract Time, Contractor shall maintain detailed records itemizing each element of costs along with substantiating evidence of costs incurred on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that more than one Change to the Work is performed by Contractor in a calendar day, Contractor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. In the event that any Subcontractor, of any tier, shall provide or perform any portion of any Change to the Work, Contractor shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Contractor's Superintendent or Contractor's authorized representative; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, complete and relate only to the Change referenced therein. All records maintained by a Subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such Subcontractor's authorized representative or Superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by Owner and the CM upon request. In the event that Contractor shall fail or refuse, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Contract Price on account of any Change to the Work is determined pursuant to this Article, Owner's reasonable good faith determination of the extent of adjustment to the Contract Price on account of such Change shall be final, conclusive,

dispositive and binding upon Contractor. Contractor's obligation to maintain records hereunder is in addition to, and not in lieu of, any other Contractor obligation under the Contract Documents with respect to Changes to the Work.

9.4.2 Adjustment to Contract Time. In the event of any Change(s) to the Work pursuant to this Article 9, the Contract Time shall be extended or reduced by Change Order for a period of time commensurate with the time reasonably necessary to perform such Change. In the event that any Change shall require an extension of the Contract Time, Contractor shall not be subject to Liquidated Damages for such period of time. If completion of the Work is delayed by causes for which Owner is responsible and the delay is unreasonable under the circumstances involved, and not within the contemplation of Contractor and Owner at the time of execution of the Agreement, Contractor shall not be precluded from the recovery of damages arising therefrom.

9.5 Change Orders. If Owner approves of a Change, a written Change Order prepared by the CM on behalf of Owner shall be forwarded to Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price (broken down by costs for labor, materials, equipment, Subcontractor mark-ups and other costs incorporated into the Change Order), if any, on account of such Change. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any claim or item relating to any Change incorporated into a Change Order not presented by Contractor for inclusion in the Change Order shall be deemed waived. Contractor shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to Contractor for execution, without the prior approval of Owner which may be granted or withheld in the sole and exclusive discretion of Owner, Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof. Contractor's attempted or purported modification or amendment of any such Change Order, without the prior approval of Owner, shall not be binding upon Owner; any such unapproved modification or amendment to such Change Order shall be null, void and unenforceable. Unless otherwise expressly provided for in the Contract Documents or in the Change Order, any Change Order issued hereunder shall be binding upon Owner only upon action of Owner's Board of Directors approving and ratifying such Change Order. In the event of any amendment or modification made by Contractor to a Change Order for which there is no prior approval by Owner, in accordance with the provisions of this Article 9.5, unless otherwise expressly stated in its approval and ratification of such Change Order, any action of the Board of Directors to approve and ratify such Change Order shall be deemed to be limited to the Change Order as prepared by the CM; such approval and ratification of such Change Order shall not be deemed Owner's approval and ratification of any unapproved amendment or modification by Contractor to such Change Order. The form and content of Change Orders shall be as set forth in the attachments to the Special Conditions.

9.6 Contractor Notice of Changes. If Contractor should claim that any instruction, request, action, condition, omission, default, or other situation obligates Owner to increase the Contract Price or to extend the Contract Time, Contractor

shall notify the CM, in writing, of such claim within ten (10) days from the date of its actual or constructive notice of the factual basis supporting the same. Owner shall consider any such claim of Contractor only if sufficient supporting documentation is submitted with Contractor's notice to the CM. Time is of the essence in Contractor's written notice pursuant to the preceding sentence. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit Owner's review and evaluation) within ten (10) days of its actual or constructive knowledge of any instruction, request, action, condition, omission, default or other situation for which Contractor believes there should an adjustment of the Contract Time or the Contract Price shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of any such instruction, request, action, condition, omission, default or other situation. In the event that Owner determines that the Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with Contractor's written notice under this Article 9.6, any such adjustment shall be determined in accordance with the provisions of Articles

9.4.1 and 9.4.2. Disputed Changes. In the event of any dispute or disagreement between Contractor and Owner or the CM regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, Contractor shall promptly proceed with the performance of such item of the Work, subject to a subsequent resolution of such dispute or disagreement in accordance with the terms of the Contract Documents. Contractor's failure or refusal to so proceed with such Work is Contractor's default of a material obligation of Contractor under the Contract Documents.

9.7 Emergencies. In an emergency affecting the safety of life, or of the Work, or of property, Contractor, without special instruction or prior authorization from Owner, the CM, is permitted to act at its discretion to prevent such threatened loss or injury. Any compensation claimed by Contractor on account of such emergency work shall be submitted and determined in accordance with this Article 9.

9.8 Minor Changes in the Work. The CM may order minor Changes in the Work not involving an adjustment in the Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order and shall be binding on Owner and Contractor. Contractor shall carry out such orders promptly.

9.9 Unauthorized Changes. Any Work beyond the extent of Work shown on the Contract Documents, or any extra Work performed or provided by Contractor without notice to the CM and Owner in the manner and within the time set forth in Articles 9.2 or 9.6 shall be considered unauthorized and at the sole expense of Contractor. Work so done will not be measured or paid for, no extension to the Contract Time will be granted on account thereof and any such Work may be ordered removed at Contractor's sole cost and expense. The failure of Owner to direct or order removal of such Work shall not constitute acceptance or approval of such Work nor relieve Contractor from any liability on account thereof.

ARTICLE 10: SEPARATE CONTRACTORS

10.1 Owner's Right to Award Separate Contracts. Owner reserves the right to perform construction or operations related to the Project with Owner's own forces or to award separate contracts in connection with other portions of the Project or other

construction or operations at or about the Site. If Contractor claims that delay or additional cost is involved because of such action by Owner, Contractor shall seek an adjustment to the Contract Price or the Contract Time as provided for in the Contract Documents. Failure of Contractor to request such an adjustment of the Contract Time or the Contract Price in strict conformity with the provisions of the Contract Documents applicable thereto shall be deemed a waiver of the same.

10.2 Owner's Coordination of Separate Contractors. Owner shall provide for coordination of the activities of Owner's own forces and of each separate contractor with the Work of Contractor, who shall cooperate with them. Contractor shall participate with each such other separate contractors and Owner in reviewing their respective Construction Schedules when directed to do so. Contractor shall make any revisions to the Accepted Construction Schedule for the Work hereunder deemed necessary after a joint review and mutual agreement. The Construction Schedules shall then constitute the Construction Schedules to be used by Contractor, separate contractors and Owner until subsequently revised.

10.3 Mutual Responsibility. Contractor shall afford Owner and separate contractors' reasonable opportunity for storage of their materials and equipment and performance of their activities at the Site and shall connect and coordinate Contractor's Work, construction and operations with theirs as required by the Contract Documents. Discrepancies or Defects. If part of Contractor's Work depends for proper execution or results upon construction or operations by Owner or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, promptly report to the CM any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor to so report shall constitute an acknowledgment that Owner's or separate contractors completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then discoverable by Contractor's reasonable diligence.

ARTICLE 11: TESTS AND INSPECTIONS

11.1 Tests; Inspections; Observations.

11.1.1 Contractor's Notice. If the Contract Documents, the Laws or any public authority with jurisdiction over any portion of the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, Contractor shall give the CM written notice of the readiness of such Work for observation, testing or inspection at least two (2) working days prior to the time for the conducting of such test, inspection or observation. If inspection, testing or observation is by authority other than Owner, Contractor shall inform the CM not less than two

(2) working days prior to the date fixed for such inspection, test or observation. Contractor shall not cover up any portion of the Work subject to tests, inspections or observations prior to the completion and satisfaction of the requirements of such test, inspection or observation. In the event that any portion of the Work subject to tests, inspection or approval shall be covered up by Contractor prior to completion and satisfaction of the requirements of such tests, inspection or approval, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time on account thereof.

11.1.2 Cost of Tests and Inspections. Owner will pay for fees, costs and expenses for the initial tests/inspections of materials/equipment forming a part of the Work which are conducted at a location within a one hundred (100) mile radius of the Site. All fees, costs or expenses for subsequent tests/inspections or for tests/inspections conducted at a location situated more than a one hundred (100) mile radius from the Site (including without limitation, travel and travel- related expenses) shall be borne solely and exclusively by Contractor. Owner may deduct such fees, costs or expenses from any portion of the Contract Price then or thereafter due Contractor.

11.1.3 Testing/Inspection Laboratory. Owner shall select duly qualified person(s) or testing laboratory(ies) to conduct the tests and inspections to be paid for by Owner and required by the Contract Documents. Tests and inspections required of the Work shall be as set forth in the Contract Documents and as required by the Laws. Test/inspection standards shall be as set forth in the Contract Documents or established by the Laws. Where inspection or testing is to be conducted by an independent laboratory or testing agency, materials or samples thereof shall be selected by the laboratory, testing agency, the CM and not by Contractor.

11.1.4 Additional Tests, Inspections and Approvals. If the CM or public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval, the CM will, upon written authorization from Owner, instruct Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to Owner, and Contractor shall give timely notice to the CM of when and where tests and inspections are to be made so the CM may observe such procedures. Owner shall bear the costs of such additional tests, inspections or approvals, except to the extent that such additional tests, inspections or approvals reveal any failure of the Work to comply with the requirements of the Contract Documents, in which case Contractor shall bear all costs made necessary by such failures, including without limitation, the costs of corrections, repeat tests, inspections or approvals and the costs of the CM's services or its consultants in connection therewith.

11.2 Delivery of Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by Contractor and promptly delivered to Contractor's AOR, with copies thereof immediately transmitted by Contractor to the CM and Owner.

11.3 Timeliness of Tests, Inspections and Approvals. Tests or inspections required and conducted pursuant to the Contract Documents shall be made or arranged by Contractor to avoid delay in the progress of the Work.

ARTICLE 12: UNCOVERING AND CORRECTION OF WORK

12.1 Inspection of the Work.

12.1.1 Access to the Work. All Work and all materials and equipment forming a part of the Work or incorporated into the Work are subject to inspection by Owner, the CM for conformity with the Contract Documents. Contractor shall, at its cost and without adjustment to the Contract Price or

the Contract Time, furnish any facilities necessary for sufficient and safe access to the Work for purposes of inspection by Owner and the CM or any other public or quasi-public authority with jurisdiction over the Work or any portion thereof.

12.1.2 Limitations Upon Inspections. Inspections, tests, measurements, or other acts of the CM hereunder are for the sole purpose of assisting them in determining that the Work, materials, equipment, progress of the Work, and quantities generally comply and conform with the requirements of the Contract Documents. These acts or functions shall not relieve Contractor from performing the Work in full compliance with the Contract Documents. No inspection by the CM shall constitute or imply acceptance of Work inspected. Inspection of the Work hereunder is in addition to, and not in lieu of, any other testing, inspections or approvals of the Work required under the Contract Documents.

12.2 Uncovering of Work. If any portion of the Work is covered contrary to the request of the CM the requirements of the Contract Documents, it must, if required by the CM be uncovered for observation by the CM and be replaced at Contractor's expense without adjustment of the Contract Time or the Contract Price.

12.3 Rejection of Work. Prior to Owner's Final Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work which is defective or not in conformity with the Contract Documents may be rejected by Owner or the CM and Contractor shall correct such rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the CM or even if they failed to observe the defective or non-conforming Work, materials or equipment.

12.4 Correction of Work. A material obligation of Contractor is its prompt correction of any portion of the Work rejected by Owner or the CM for failing to conform to the requirements of the Contract Documents, or which is determined by them to be defective, whether observed before or after Final Completion and whether or not fabricated, installed or completed. Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the services of the CM and other expenses made necessary thereby. Contractor shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of Owner or separate contractors, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective.

12.5 Removal of Non-Conforming or Defective Work. Contractor shall, at its sole cost and expense, remove from the Site all portions of the Work which are defective or are not in accordance with the requirements of the Contract Documents which are neither corrected by Contractor nor accepted by Owner.

12.6 Failure of Contractor to Correct Work. If Contractor fails to commence to correct defective or non-conforming Work within three (3) days of notice by or on behalf of Owner of such condition and promptly thereafter complete the same within a reasonable time, Owner may correct it in accordance with the Contract Documents and reduce the Contract Price by all amounts expended to do so. If Contractor does not proceed with correction of such defective or non-conforming Work within the

time fixed herein, Owner may remove it and store the salvable materials or equipment at Contractor's expense. If Contractor does not pay costs of such removal and storage after written notice, Owner may sell such materials or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by Contractor, including without limitation compensation for the CM's services, attorneys' fees and other expenses made necessary thereby. If such proceeds of sale do not cover costs which Contractor should have borne, the Contract Price shall be reduced by the deficiency. If payments of the Contract Price, then or thereafter due Contractor are not sufficient to cover such amount, Contractor and shall promptly pay the difference to Owner.

12.7 Acceptance of Defective or Non-Conforming Work. Owner may, in its sole and exclusive discretion, elect to accept Work which is defective or which is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable.

ARTICLE 13: WARRANTIES

13.1 Workmanship and Materials. Contractor warrants to Owner that all materials and equipment furnished under the Contract Documents shall be new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents. All Work shall be of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If required by the CM, or Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Any Work, or portion thereof not conforming to these requirements, including substitutions or alternatives not properly approved in accordance with the Contract Documents may be deemed defective. Where there is an approved substitution of, or alternative to, material or equipment specified in the Contract Documents, Contractor warrants to Owner that such installation, construction, material, or equipment will equally perform the function and have the quality of the originally specified material or equipment. Contractor expressly warrants the merchantability, the fitness for use, and quality of all substitute or alternative items in addition to any warranty given by the manufacturer or supplier of such item.

13.2 Warranty Work. If, within two years after the date of Final Acceptance, or such other time frame set forth elsewhere in the Contract Documents, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, or otherwise contrary to the warranties contained in the Contract Documents, Contractor shall commence all necessary corrective action not more than seven (7) days after receipt of a written notice from Owner to do so, and to thereafter diligently complete the same. In the event that Contractor shall fail or refuse to commence correction of any such item within said seven (7) day period or to diligently prosecute such corrective actions to completion, Owner may, without further notice to Contractor, cause such corrective Work to be performed and completed. In such event, Contractor shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of Owner in securing and overseeing such corrective Work. Nothing contained herein shall be construed to establish a period of limitation with respect to

any obligation of Contractor under the Contract Documents. The obligations of Contractor hereunder shall be in addition to, and not in lieu of, any other obligations imposed by any special guarantee or warranty required by the Contract Documents, guarantees or warranties provided by any manufacturer of any item or equipment forming a part of, or incorporated into the Work, or otherwise recognized, prescribed or imposed by law. Neither Owner's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by Owner shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve Contractor from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.

13.3 Survival of Warranties. The provisions of this Article 13 shall survive Contractor's completion of Work under the Contract Documents, Owner's Final Acceptance or the termination of the Contract.

ARTICLE 14: SUSPENSION OF WORK

14.1 Owner's Right to Suspend Work. Owner may, without cause, and without invalidating or terminating the Contract, order Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as Owner may determine. When all or a portion of the Work is to be suspended for any reason, Contractor and each Subcontractor shall securely fasten down all coverings, to protect the Work from damage, destruction or deterioration from any cause. Contractor shall resume and complete the Work suspended by Owner in accordance with Owner's directive, whether issued at the time of the directive suspending the Work or subsequent thereto.

14.2 Adjustments to Contract Price and Contract Time. In the event Owner shall order suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by Owner; provided however that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any such adjustment of the Contract Price shall not include any adjustment to increase Contractor's overhead, general administrative costs or profit, all of which will remain as reflected in the Cost Breakdown submitted by Contractor pursuant to the Contract Documents. In the event of Owner's suspension of the Work, the Contract Time shall be equitably adjusted.

ARTICLE 15: TERMINATION

15.1 Termination for Cause.

15.1.1 Owner's Right to Terminate. Owner may terminate the Contract, in whole or in part, upon the occurrence of any one or more of the following

events of Contractor's default: (i) if Contractor refuses or fails to prosecute the Work with diligence as will insure Final Completion of the Work within the Contract Time, or if Contractor fails to achieve Final Completion of the Work within the Contract Time; (ii) if Contractor becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if Contractor or a third party files a petition to reorganize or for protection under any bankruptcy or similar laws, or if a trustee or receiver is appointed for Contractor or for any of Contractor's property on account of Contractor's insolvency, and Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract Documents within 10 days of receipt of a request for such assurance from Owner; (iii) if Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment; (iv) if Contractor repeatedly fails to make prompt payments to any Subcontractor, of any tier, or Material Suppliers or others for labor, materials or equipment; (v) if Contractor disregards the Laws or the requirements of any public entity having jurisdiction over any portion of the Work; (vi) if Contractor disregards proper directives of the CM or Owner under the Contract Documents; (vii) if Contractor performs Work which deviates from the Contract Documents and neglects or refuses to correct such Work; or (viii) if Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents. Once Owner determines that sufficient cause exists to justify the action, Owner may terminate the Contract without prejudice to any other right or remedy Owner may have, after giving Contractor at least seven (7) days advance written notice of the effective date of termination. Owner shall have the sole discretion to permit Contractor to remedy the cause for the termination without waiving Owner's right to terminate the Contract, or otherwise waiving, restricting or limiting any other right or remedy of Owner under the Contract Documents or at law.

15.1.2 Owner's Rights Upon Termination. In the event that the Contract is terminated pursuant to this Article 15.1, Owner may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude Contractor from the Site. Owner may take possession of the Work and of all of Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by Contractor without liability to Contractor. In exercising Owner's right to prosecute the completion of the Work, Owner may also take possession of all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner deems expedient. In exercising Owner's right to prosecute the completion of the Work, Owner shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and Owner shall not be required to obtain the lowest price for completion of the Work. In the event that Owner takes bids for remedial Work or completion of the Work, Contractor shall not be eligible for the award of such contract(s).

15.1.3 Assignment and Assumption of Subcontracts. Owner shall, in its sole and exclusive discretion, have the option of requiring any Subcontractor or Material Supplier to perform in accordance with its Subcontract or Purchase Order with Contractor and assign the Subcontract or Purchase Order to Owner or such other person or entity selected by Owner to complete the Work.

15.1.4 Costs of Completion. In the event of termination under this Article 15.1, Contractor shall not be entitled to receive any further payment of the Contract Price. If the unpaid balance of the Contract Price as of the date of termination exceeds Owner's direct and indirect costs and expenses for completing the Work, including without limitation, attorneys' fees and compensation for additional professional and consultant services, such excess shall be used to pay Contractor for the cost of the Work performed in compliance with its obligations under the Contract Documents prior to the effective date of termination with a reasonable allowance for overhead and profit. If Owner's costs and expenses to complete the Work exceed the unpaid Contract Price, Contractor shall pay the difference to Owner. Payments made or due pursuant to the preceding shall not operate to limit, restrict, waive or modify any other rights or remedies of Owner under the Contract Documents, or the Laws arising out of the causes for Owner's exercise of the default termination remedy under Article 15.1.

15.1.5 Contractor Responsibility for Damages. Contractor shall be liable for all damage sustained by Owner resulting from, in any manner, the termination of Contract under this Article 15.1, including without limitation, attorneys' fees, and for all costs necessary for repair and completion of the Work over and beyond the Contract Price.

15.1.6 Conversion to Termination for Convenience. In the event the Contract is terminated under this Article 15.1, and it is determined, for any reason, that Contractor was not in default under the provisions hereof, the termination shall be deemed a Termination for Convenience of Owner and thereupon, the rights and obligations of Owner and Contractor shall be determined in accordance with Article 15.2 hereof.

15.1.7 Owner's Rights Cumulative. In the event the Contract is terminated pursuant to this Article 15.1, the termination shall not affect or limit any rights or remedies of Owner against Contractor. The rights and remedies of Owner under this Article 15.1 are in addition to, and not in lieu of, any other rights and remedies provided by the Laws or under the Contract Documents. Any retention or payment of monies to Contractor by Owner shall not be deemed to release Contractor from any liability hereunder.

15.2 Termination for Convenience of Owner. Owner may at any time, in its sole and exclusive discretion, by written notice to Contractor, terminate the Contract in whole or in part when it is in the interest of, or for the convenience of, Owner. In such case, Contractor shall be entitled to payment for: (i) Work actually performed and in place as of the effective date of such termination for convenience of Owner, with a reasonable allowance for profit and overhead on such Work, and (ii) reasonable termination expenses for reasonable protection of Work in place and suitable storage and protection of materials and equipment delivered to the Site but not yet incorporated into the Work, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by payments previously made to Contractor and as further reduced by the value of the Work as not yet completed. Contractor shall not be entitled to profit and overhead on Work which was not performed as of the effective date of the termination for convenience of Owner. Owner may, in its sole discretion, elect to have Subcontracts assigned pursuant to Article 15.1.4 above after exercising the right hereunder to terminate for

Owner's convenience.

ARTICLE 16: MISCELLANEOUS

16.1 **Governing Law.** This Contract shall be governed by and interpreted in accordance with the laws of the State of California.

16.2 **Marginal Headings; Interpretation.** The titles of the various Articles of these General Conditions and elsewhere in the Contract Documents are used for convenience of reference only and are not intended to, and shall in no way, enlarge or diminish the rights or obligations of Owner or Contractor and shall have no effect upon the construction or interpretation of the Contract Documents. The Contract Documents shall be construed as a whole in accordance with their fair meaning and not strictly for or against Owner or Contractor.

16.3 **Successors and Assigns.** Except as otherwise expressly provided in the Contract Documents, all terms, conditions and covenants of the Contract Documents shall be binding upon, and shall inure to the benefit of Owner and Contractor and their respective heirs, representatives, successors-in-interest and assigns.

16.4 **Cumulative Rights and Remedies; No Waiver.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not in lieu of or otherwise a limitation or restriction of duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Owner shall constitute a waiver of a right or remedy afforded it under the Contract Documents or at law nor shall such an action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

16.5 **Severability.** In the event any provision of the Contract Documents shall be deemed illegal, invalid, unenforceable and/or void, by a court or any other governmental agency of competent jurisdiction, such provision shall be deemed to be severed and deleted from the Contract Documents, but all remaining provisions hereof, shall in all other respects, continue in full force and effect.

16.6 **No Assignment by Contractor.** Contractor shall not sublet or assign the Contract, or any portion thereof, or any monies due thereunder, without the express prior written consent and approval of Owner, which approval may be withheld in the sole and exclusive discretion of Owner. Owner's approval to such assignment shall be upon such terms and conditions as determined by Owner in its sole and exclusive discretion.

16.7 **Gender and Number.** Whenever the context of the Contract Documents so requires, the neuter gender shall include the feminine and masculine, the masculine gender shall include the feminine and neuter, the singular number shall include the plural and the plural number shall include the singular.

16.8 **Independent Contractor Status.** In performing its obligations under the Contract Documents, Contractor is an independent contractor to Owner and not an agent or employee of Owner. Nothing contained herein shall be deemed or construed as creating a relationship of employer and employee between Owner and Contractor or any Subcontractors, employees of Contractor or Subcontractors or

their respective agents and representatives. Neither Contractor, Subcontractors nor any employees of Contractor or Subcontractors are entitled to any rights or privileges of Owner employees.

16.9 Notices. Except as otherwise expressly provided for in the Contract Documents, all notices which Owner or Contractor may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by postage prepaid, First Class Certified Return Receipt Requested United States Mail, addressed to Owner or Contractor at their respective address set forth in the Contract Documents, or such other address (es) as either Owner or Contractor may designate from time to time by written notice to the other in conformity with the provisions hereof. In the event of personal delivery, such notices shall be deemed effective upon delivery, provided that such personal delivery requires a signed receipt by the recipient acknowledging delivery of the same. In the event of mailed notices, such notice shall be deemed effective on the third working day after deposit in the mail. .

16.10 Disputes; Continuation of Work. Notwithstanding any claim, dispute, disagreement or other matter and controversy between Owner and Contractor arising out of or related in any manner to the Contract Documents or the Work thereunder, Contractor shall, unless expressly excused in writing by Owner, proceed diligently with performance of the Work in accordance with the Contract Documents, pending any final determination or decision regarding any such claim, dispute, disagreement or other matter in controversy.

16.11 Claims Resolution.

16.11.1 Public Contract Code §9204 Claims Resolution Procedures. Claims of Contractor are subject to the non-binding dispute resolution procedures set forth in Public Contract Code §9204 (“Section 9204”) provided, however, that the Section 9204 procedures are expressly subject to Contractor’s prior full and timely compliance with requirements and procedures of the Contract Documents relating to procedures for resolution of claims, change orders, disputes and other matters in controversy under the Contract Documents.

16.11.1.1 Claim Submittal and Documentation. Claims shall be submitted in strict compliance with Section 9204 submittal requirements and supported by documentation of: (i) contractual and legal basis establishing Claim entitlement or merit; (ii) factual basis for Owner liability for the Claim; (iii) detailed breakdown of labor, materials, equipment and other costs included in the Claim; and (iv) detailed basis, including Construction Schedule analysis and fragnets supporting any Contract Time adjustment or Liquidated Damages relief included in the scope of a Claim.

16.11.1.2 Owner Claim Review Statement. Within the time permitted by Section 9204 or such other time mutually agreed to by Owner and Contractor, Owner will review the Claim and provide Contractor with a written statement identifying the disputed and undisputed portions of the Claim (“Claim Review Statement”). If Owner fails to provide the Claim Review Statement within the time permitted under Section 9204 or other time mutually agreed to by Owner and

Contractor, the Claim is deemed rejected in its entirety and thereupon, Contractor may initiate the Meet and Confer process described below. If the Claim Review Statement identifies any undisputed portion of a Claim (“Undisputed Claim”) and payment is due from Owner on the Undisputed Claim, Owner shall process and make payment on the Undisputed Claim within sixty (60) days after the issuance date of the Claim Review Statement.

16.11.1.3 Meet and Confer.

16.11.1.3.1 Meet and Confer Demand. Within the time permitted under Section 9204, Contractor may demand an informal conference to meet and confer with Owner for settlement of the issues in dispute (“Meet and Confer”). Contractor’s Meet and Confer request must be submitted to Owner: (i) in writing; (ii) by registered mail or certified mail, return receipt requested; and (iii) within ten (10) days after the Claim Review Statement is submitted to Contractor or within ten (10) days after the date the Claim is deemed rejected, as applicable. Failure of Contractor to strictly comply with the foregoing is a waiver of Contractor’s right to request the Meet and Confer and the Non-Binding Mediation procedures under Section 9204. If Contractor strictly complies with the foregoing, Owner will schedule the Meet and Confer conference within thirty (30) days of Contractor’s Meet and Confer request.

16.11.1.3.2 Meet and Confer Statement. Within ten (10) business days after conclusion of the Meet and Confer conference, if any portion of a Claim remains disputed, Owner shall provide Contractor a written statement identifying the disputed and undisputed portions of the Claim (“Meet and Confer Statement”). If the Meet and Confer Statement identifies any Undisputed Claim and payment is due from Owner on the Undisputed Claim, Owner shall process and make payment on the Undisputed Claim within sixty (60) days after date the Meet and Confer Statement is issued.

16.11.1.4 Non-Binding Mediation.

16.11.1.4.1 Contractor Initiation. Contractor may request nonbinding mediation (“Mediation”) of disputed portions of a Claim identified in the Meet and Confer Statement. Contractor’s Mediation demand must be submitted to Owner: (i) in writing; (ii) by registered mail or certified mail, return receipt requested; (iii) within ten (10) days after the Meet and Confer Statement is submitted to Contractor; and (iv) with specific identification of the disputed Claims issues subject to Mediation. Failure of Contractor to strictly comply with the foregoing is deemed a waiver of Contractor’s right to demand Mediation procedures under Section 9204.

16.11.1.4.2 Mediator Selection. Owner and Contractor shall

mutually agree to a mediator within ten (10) business days after the date of Contractor's demand for Mediation. If Owner and Contractor do not mutually agree to a mediator, Owner and Contractor shall each select a mediator and Owner/Contractor selected mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim.

16.11.1.4.3 Mediation Procedures. Mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists Owner and Contractor in dispute resolution through negotiation or by issuance of an evaluation.

16.11.1.4.4 Mediation Costs. All costs, fees and expenses of the mediator(s) and mediation administration shall be shared equally by Owner and Contractor. The foregoing notwithstanding, Contractor and Owner shall each bear the costs, fees and expenses of their own attorneys, experts and consultants.

16.11.1.4.5 Post-Mediation Disputed Claims. Any Claims issues in dispute after Mediation shall be resolved in accordance with the applicable provisions of the Contract Documents.

16.11.2 Waiver. Owner and Contractor may mutually agree to waive, in writing, Mediation under Section 9204 and subject to Contractor's compliance with Government Code Claim requirements, proceed directly to commencement of a civil action or binding arbitration.

16.11.3 Payments of Undisputed Claims. If a payment due from Owner for Undisputed Claims identified in the Claim Review Statement or the Meet and Confer Statement issued for a Claim is not made within the time established under Section 9204 the overdue portion of such payment shall bear interest at the rate of seven percent (7%) per annum from the date due. Owner's credit application of any amount due for an Undisputed Claim against amounts due from Contractor under the Contract Documents shall be deemed payment of the Undisputed Claim.

16.11.4 Subcontractor Claims.

16.11.4.1 Subcontractor Claim Submittal. If a Subcontractor, of any tier (collectively "Subcontractor") lacks legal standing to assert a Claim against Owner because privity of contract does not exist, Contractor may present Owner a Claim on behalf of the Subcontractor ("Subcontractor Claim"). Each Subcontractor requesting submittal of a Subcontractor Claim to Owner shall furnish reasonable documentation to support the Subcontractor Claim. Within forty-five (45) days of receipt of a Subcontractor's written request to submit a Subcontractor Claim, Contractor shall notify the Subcontractor in writing as to whether Contractor presented the Subcontractor Claim to Owner. If Contractor did not present the Subcontractor Claim, Contractor shall provide the Subcontractor with a statement of the reasons for not

having done so. Contractor Certification of Subcontractor Claim. Owner's review of Subcontractor Claims is expressly subject to Contractor's submittal of a duly completed and executed form of Contractor Certification of Subcontractor Claim certifying that Contractor has thoroughly reviewed the Subcontractor Claim and based on Contractor's review, certify that:

(i) the Subcontractor Claim is made by the Subcontractor in good faith; (ii) the Subcontractor Claim is supported by reasonable documentation establishing entitlement to the relief requested and Owner liability therefor; and (iii) the Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Government Code §12650 et seq). The form of Contractor Certification of Subcontractor Claim is included in the Contract Documents.

16.11.4.2 Owner Review of Subcontractor Claim. Subcontractor Claims presented by Contractor to Owner are subject to the Section 9204 non-binding dispute resolution procedures set forth above, as modified herein. Requests for Owner conduct of the Meet and Confer and/or non-binding mediation procedures must be submitted jointly by Contractor and the Subcontractor submitting the Subcontractor Claim. If Mediation proceedings are initiated in connection with a Subcontractor Claim, mediator and mediation administration fees and costs shall be borne equally by Owner, Contractor and Subcontractor.

16.11.4.3 Disputed Subcontractor Claims. Subcontractor Claims which are not fully resolved by the Section 9204 non-binding dispute resolution procedures shall be resolved by Section 20104.4 Dispute Resolution Procedures or binding arbitration, as applicable. Commencement of Section 20104.4 Dispute Resolution Procedures or binding arbitration proceedings in connection with any Subcontractor Claim is subject to compliance with Government Code Claims requirements.

16.11.5 Government Code Claim Requirements. Pursuant to Government Code §930.6, any claim, demand, dispute, disagreement or other matter in controversy asserted by Contractor, whether on behalf of itself or a Subcontractor, against Owner for money or damages, including without limitation Claims or portions thereof remaining in dispute after completion of the Section 9204 non-binding dispute resolution procedures described above are deemed a "suit for money or damages" and shall be subject to the provisions of Government Code §§945.4, 945.6 and 946 ("Government Code Claims Process"). An express condition precedent to Contractor's initiation of Section 20104.4 Dispute Resolution Procedures or binding arbitration proceedings pursuant to the following is Contractor's compliance with the Government Code Claims Process, including without limitation, presentation of the claim, demand, dispute, disagreement or other matter in controversy between Contractor and Owner seeking money or damages to Owner and acted upon or deemed rejected by Owner in accordance with Government Code §900, et seq.

16.11.6 Section 20104.4 Dispute Resolution Procedures; Claims Less Than

\$375,000. Any Claim, or portion thereof, in dispute after completion of the Section 9204 non-binding dispute resolution procedures and the Government Code Claims Process which is equal to or less \$375,000 shall be resolved in accordance with the civil action procedures established in Public Contract Code §20104.4. Unless otherwise agreed to by Owner and Contractor in writing, the mediation conducted pursuant to Section 9204 procedures shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

16.11.6.1 Binding Arbitration of Claims Exceeding \$375,000. JAMS Arbitration. Any Claim, or portion thereof in dispute after completion of the Section 9204 procedures and the Government Code Claims Process which exceeds \$375,000 and any other claims, disputes, disagreements or other matters in controversy between Owner and Contractor arising out of, or related, in any manner, to the Contract Documents, or the interpretation, clarification or enforcement thereof shall be resolved by binding arbitration conducted before a retired judge in accordance with the Construction Arbitration Rules and Procedures of Judicial Arbitration Mediation Services (“JAMS”) in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the JAMS closest to the Site.

16.11.6.2 Demand for Arbitration. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. If more than one Demand for Arbitration is filed by either Owner or Contractor relating to the Work or the Contract Documents, all Demands for Arbitration shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by Owner and Contractor. Contractor’s Subcontractor or Material Supplier to Contractor and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements with Contractor, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between Owner and Contractor, in which case an appropriate severance order shall be issued by the Arbitrator(s).

16.11.6.3 Discovery. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference.

16.11.6.4 Arbitration Award. The award rendered by the Arbitrator(s) (“Arbitration Award”) shall be final and binding upon Owner and Contractor only if the Arbitration Award is: (i) supported by substantial evidence; (ii) based on applicable legal standards in effect

that the time the Arbitration Award is issued; and (iii) supported by written findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296. Any Arbitration Award that does not conform to the foregoing is invalid and unenforceable. Owner and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the Arbitration Award if, after review, the Court determines either that the Arbitration Award does not fully conform to the foregoing. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be made by the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

16.11.6.5 Arbitration Fees and Expenses. The expenses and fees of the Arbitrator(s) shall be divided equally among all of the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other costs or expenses incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators' fees but excluding attorneys' fees, to the prevailing party.

16.11.6.6 Limitation on Arbitrator. The Superior Court for the State of California for the County in which the Project Site is situated has the sole and exclusive jurisdiction, and an arbitrator has no authority, to hear and/or determine a challenge to the commencement or maintenance of an arbitration proceeding on the grounds that: (i) the subject matter of the arbitration proceeding is barred by the applicable statute of limitations; (ii) the subject matter of the arbitration proceeding is barred by a provision of the California Government Claims Act; (iii) the subject matter of the arbitration proceeding is outside the scope of the arbitration clause; (iv) Contractor has failed to satisfy all conditions precedent to commencement or maintenance of an arbitration proceeding; (v) waiver of the right to compel arbitration; (vi) grounds exist for the revocation of the arbitration agreement; and/or, (vii) there is the prospect that a ruling in arbitration would conflict or potentially with a ruling in a pending proceeding regarding the Project on a common issue of law or fact.

16.11.6.7 Inapplicability to Bid Bond. The arbitration proceedings described above are not be applicable to disputes, disagreements or enforcement of rights or obligations under the Bid Bond. All claims, disputes and actions to enforce rights or obligations under the Bid Bond shall be adjudicated only by judicial proceedings commenced in a court of competent jurisdiction.

16.11.6.8 Limitation on Special/Consequential Damages. In the event of Owner's breach or default of its obligations under the Contract Documents, the damages, if any, recoverable by Contractor shall be limited to general damages which are directly caused by the breach or default of Owner and shall exclude any and all special or

consequential damages, if any. Contractor expressly acknowledges the foregoing limitation to recovery of only general damages from Owner if Owner is in breach or default of its obligations under the Contract Documents; Contractor expressly waives and relinquishes any recovery of special or consequential damages from Owner.

16.12 Capitalized Terms. Except as otherwise expressly provided, capitalized terms used in the Contract Documents shall have the meaning and definition for such term as set forth in the Contract Documents.

16.13 Attorneys' Fees. Except as expressly provided for in the Contract Documents, or authorized by law, neither Owner nor Contractor shall recover from the other any attorney's fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either Owner or Contractor thereunder.

16.14 Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in the Contract Documents is deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

16.15 Days. Unless otherwise expressly stated, references to "days" in the Contract Documents shall be deemed to be calendar days. Prohibited Interests. No employee of Owner, who is authorized in such capacity on behalf of Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or subcontract in connection with the Work shall become directly or indirectly financially interested in the Work or any part thereof.

16.16 Entire Agreement. The Contract Documents contain the entire agreement and understanding between Owner and Contractor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements or amendments, whether written or oral. No amendment or modification to any provision of the Contract Documents shall be effective or enforceable except by an agreement in writing executed by Owner and Contractor.

ARTICLE 17: DESIGN SERVICES

17.1 Application of Article 17. The provisions of this Article 17 relate to Contractor's Design Services responsibilities.

17.2 Use and Ownership of Design Documents.

17.2.1 Ownership. Subject to the provisions hereof, all Drawings, Specifications, calculations, and other Instruments of Service and other tangible items ("Project Documents") prepared by or through Contractor for the Project shall be and remain the property of Owner, regardless of the format on which said items are prepared or stored, including without limitation paper copies, original or reproducible transparencies, AutoCAD R-2002 files

(or similar computer-aided drafting of design formats), or other types of computerized/electronic data. Owner specifically maintains ownership of the design of the Project and the design of any buildings or other improvements which are a part thereof, notwithstanding creation/preparation of such design by or through Contractor, and such design may not be re-used by Contractor or any members of Contractor, including without limitation, sub-consultants to the members of Contractor, without the specific prior written consent of Owner which may be granted, denied or conditioned in the sole exclusive discretion of Owner.

17.2.2 Right to Use. Contractor and the AOR member of Contractor grants to Owner a perpetual license to use and/or reuse all or any part of the Project Documents at Owner's sole discretion with no additional compensation to the Architect for the purposes of: (i) construction of all or part of the Project; (ii) the repair, renovation, modernization, replacement, reconstruction or expansion of the Project; or (iii) the construction of another project by or for Owner for Owner's ownership and/or use. Owner is not bound by the Contract Documents to employ the services of Contractor or the AOR in the event any of the Project Documents are used for such purposes. Owner shall be authorized to use or reuse the Project Documents for these purposes without liability to Contractor or the AOR, its Design Consultants or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall be not be construed or interpreted to waive or limit Owner's right to recover for latent defects or for errors or omissions of Contractor provided, however, that any use or reuse by Owner of the Project Documents on any project other than the Project for which the Project Documents were prepared without employing the services of the AOR shall be at Owner's own risk. If Owner uses or reuses the Project Documents on any project other than the Project for which the Project Documents were prepared for, Owner shall remove the AOR's seal from the Project Documents and indemnify and hold harmless the AOR from claims arising out of the use or re-use of the Project Documents on such other project. Owner License to Use Project Documents. The Contract Documents create a non-exclusive and perpetual license for Owner to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Contractor shall require any and all of the Design Consultants to Contractor or the AOR member of Contractor to agree in writing that Owner is granted a non-exclusive and perpetual license for the work of such Design Consultants.

17.2.3 Contractor and AOR Right to Grant License. Contractor and the AOR represent and warrant that Contractor and/or the AOR have the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents prepared by or through Contractor and/or AOR under the Contract Documents.

17.3 Design Services Standard of Care. Contractor, AOR and Design Consultants to Contractor and/or the AOR shall provide and complete the Design Services: (i) using their best professional skill and judgment; (ii) acting with due care and in accordance with respective applicable standards of care under California law for those providing similar services for projects of the size, scope and complexity of an Assigned Project; and (iii) the terms of the Contract Documents.

17.4 Compliance with Regulatory Agencies. Contractor and/or the AOR shall respond to and comply with all requests relating to the Project made by any federal, state, regional or local governmental or quasi-governmental agency with jurisdiction over any portion of the Project, including without limitation, the California Public Works Board. All communications by and between Contractor/AOR and regulatory agencies with jurisdiction over any portion of the Project shall be in writing, including without limitation, graphics and calculations; verbal communications shall be reduced to and memorialized in writing. All written communications (in any form, including without limitation electronic files) by and between Contractor/AOR and any regulatory agency relating to the Project shall be available to Owner and CM for review, inspection and/or reproduction upon reasonable advance notice and request.

17.5 AOR Development of Design Documents.

17.5.1 General. Design Documents prepared by the AOR shall be based on and conform to requirements established by the Bridging Documents prepared by Contractor during Part 1 – Preconstruction Phase Services: Phase I, Preconstruction Period Services on behalf of Owner which set forth the scope and other project criteria requirements. Notwithstanding traditional development of Design Documents for a project by sequential phases of Schematic Documents, Design Development Documents and Construction Documents, Contractor/AOR acknowledge and agree that the Bridging Documents reflect preparation of Design Documents through the Design Development Documents phase of a traditional design process. Accordingly, Design Documents to be completed by Contractor/AOR are in the nature of the Construction Documents phase of a traditional design process.

17.5.2 AOR Development of Construction Documents. The AOR shall prepare Construction Documents which incorporate requirements of the Bridging Documents. Construction Documents consist of all Drawings and Specifications and other Design Documents necessary or appropriate for setting forth in detail the requirements for the Work of the Project sufficient for City of Oakland review and issuance of the construction permit. The Construction Documents shall include all materials, equipment and other products along with layouts and configurations of spaces within the Project conforming to Bridging Documents' requirements. Any work, services, materials, equipment, products or other tangible or intangible items/services necessary to complete the Project in accordance with the Bridging Documents' requirements for the Project shall be provided or performed by Contractor/AOR without adjustment of the Contract Price hereunder.

17.5.3 Owner Review of 50% CDs. When the Construction Documents are fifty percent (50%) completed ("50% CDs"), the AOR shall submit the 50% CDs to Owner and CM for review and comment. Owner and CM shall complete review of and comments to the 50% CDs within seven (7) days of their respective receipt thereof from the AOR or Contractor. Upon Owner and CM completion of their review of the 50% CDs, Owner, CM and the AOR and such Design Consultants as deemed reasonably necessary by Owner, shall meet and confer to review the review notes and comments and to determine the extent of revisions of the Construction Documents necessary for Owner's acceptance of the completed Construction Documents. If mutual concurrence between the AOR and Owner is not reached as to the extent or nature of the

AOR's revisions to 50% CDs, the AOR shall complete such revisions as directed or authorized by Owner. If Contractor/AOR elect to develop Design Documents for the Project in phases and obtain regulatory approval of the Design Documents for discrete phases of the Project, the foregoing review process shall be applicable to the Design Documents for each Project phase.

17.6 Approvals/Permitting of Design Documents. Contractor and/or AOR shall obtain, on behalf of Owner, all necessary approvals or permits for the Design Documents for the Project from governmental and quasi-governmental agencies with jurisdiction over any portion of the Project as necessary for construction of the Project including without limitation, City of Oakland review and permitting. Without adjustment of the Contract Price, Contractor and/or the AOR shall revise the Design Documents as required by the City of Oakland or other governmental or quasi-governmental agencies with jurisdiction over the Project, or portions thereof, to obtain their respective approval(s) or permit issuance.

17.7 Disbursement of Design Services Contract Price. The provisions of Article 8 of the General Conditions shall be applicable only to disbursement of the Construction Services Contract Price. The Design Services Contract Price shall be disbursed in accordance with the provisions hereof.

17.7.1 Billings to Owner for Design Services Contract Price Payment. During the course of completing Design Documents, Contractor shall submit billings to Owner for payment of the portion of the Design Services Contract Price due for the Design Services completed in the immediately prior month. Billings of Contractor for payment of portions of the Design Services Contract Price shall be reflect the time incurred by personnel of Contractor, AOR and Design Consultants to complete Design Services in the prior month. The foregoing notwithstanding, if the portion of the Design Services Contract Price is exhausted prior to Contractor/AOR completing the Project Design Documents and obtaining all necessary permits and approvals of the Project Design Documents to construct the project, Contractor/AOR shall complete Design Documents and obtain approvals/permits thereof without additional compensation from Owner.

17.7.2 Owner Payments to Consultant. Within thirty (30) days of receipt of billing invoices for payment of a portion of the Design Services Contract Price, Owner will make of undisputed amounts due Contractor/AOR on such billings. Owner may withhold or deduct from any portion of the Design Services Contract Price due Contractor/AOR hereunder if Contractor/AOR fail to timely and completely perform material obligations to be performed, with the amounts withheld or deducted being released after Contractor/AOR has fully cured such failure of performance, less costs, damages or losses sustained by Owner resulting therefrom. Notwithstanding any provision of the Contract Documents to the contrary, if Owner shall, in good faith, dispute the amount due Contractor/AOR under any billing invoice rendered by the Contractor/AOR for payment of any portion of the Design Services Contract Price, pursuant to Civil Code 3320(a), Owner may withhold from payment to the Consultant an amount not to exceed one hundred and fifty percent of the disputed amount.

D.SUBSTITUTION REQUEST FORM

Failure to complete this Substitution Request Form with information required including signature, will result in LIGHTHOUSE’s summary rejection of a request to substitute a Specified Project Item.

TO: Lighthouse Community Public Schools

PROJECT: Lighthouse High School, Lodestar Elementary and Middle School Tenant Improvement Project

FROM: _____

The above-identified Respondent hereby submits for LIGHTHOUSE’S consideration the proposed substitutions for Specified Project Items.

| Project Document Reference | Specified Project Items | Proposed Substitution (Including Underwriters Laboratory or ICBO Number of Proposed Substitution) |
|----------------------------|-------------------------|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

For each proposed substitution set forth above, the Respondent certifies to each of the following (check lines).

___ All necessary substantiating data and/or rationale for each proposed substitution which establish the equivalent quality and performance to the Specified Project Item are attached. The Respondent acknowledges that failure to attach substantiating data will result in LIGHTHOUSE’s summary rejection of a proposed substitution.

___ The functional capabilities, quality, appearance and other components of each proposed substitution are equal to or greater than the Specified Project Item.

___ Each proposed substitution complies with all applicable regulatory, legal and/or building code/building standards requirements.

I am authorized by the above-identified Respondent to complete, execute and submit this Substitution Request Form on behalf of the Respondent. I have reviewed all of the foregoing and have confirmed that all of the information set forth above and in any attachments hereto are complete, accurate, true and correct.

Dated: _____

By: _____

Title: _____

E. NON-COLLUSION AFFIDAVIT

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

PROJECT: Lighthouse High School, Lodestar Elementary and Middle School Tenant Improvement Project

I, _____, being first duly sworn, deposes and says that I am
(Typed or Printed Name)

the _____ of _____, the party
(Title) (Bidder Name)

submitting the foregoing Bid Proposal ("the Bidder"). In connection with the foregoing Bid Proposal, the undersigned declares, states and certifies that:

1. The Bid Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.
2. The Bid Proposal is genuine and not collusive or sham.
3. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in sham bid, or to refrain from bidding.
4. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
5. All statements contained in the Bid Proposal and related documents are true.
6. The bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this _____ day of _____, 20__ at _____
(City, County and State)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Signature)

F. RFP CERTIFICATIONS

These RFP Certifications are submitted by the undersigned Respondent, _____ to Lighthouse Community Public Schools (“LIGHTHOUSE”) concurrently with the Proposal of the Respondent for the DBE Contract relating to the **Lighthouse High School, Lodestar Elementary and Middle School Tenant Improvement Project**. The Respondent acknowledges that: (i) LIGHTHOUSE will rely upon the matters disclosed and verified in these Certifications as part of LIGHTHOUSE’s review and evaluation of the Proposal for the DBE Contract; and (ii) that if LIGHTHOUSE reasonably determines that any of the following Certifications or the matters to which the Certifications verify are false, untrue, misleading or omit material facts rendering the Certification to be false or misleading, LIGHTHOUSE may reject the Respondent’s Proposal for non-responsiveness.

1. Project Team. By execution and submission of this Certification with the Respondent’s Proposal, the Respondent certifies to LIGHTHOUSE that if awarded the DBE Contract, the Respondent intends to complete its obligations under the DBE Contract with Project Team identified in its Pre-qualification Application. The Respondent acknowledges that if there are any substitutions the Project Team that are not approved by LIGHTHOUSE, prior to the Respondent’s submission of its Proposal, the Proposal may be rejected by LIGHTHOUSE for non- responsiveness.

2. Adequacy of Proposed Price. By execution and submission of this Certification with the Respondent’s Proposal, the Respondent certifies to LIGHTHOUSE that the Proposed Price set forth in the Respondent’s Proposal is sufficient and adequate for completing all of the Respondent’s obligations under the DBE Contract and that the allocation of the Proposed Price between the Design Services and the Construction Services, as set forth in the Respondent’s Proposal are sufficient and adequate for the scope thereof.

4. Acceptable Safety Record. Please check one of the following:

_____ The undersigned Respondent’s experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average Total Recordable Injury/Illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category

_____ The undersigned Respondent is a party to an alternative dispute resolution system pursuant to Labor Code § 3201.5.

5. Review and Acceptance of Project Documents. The Respondent certifies that: (i) the Respondent has thoroughly reviewed the Project Documents and obtained a complete understanding of the scope and other requirements of the Project; (ii) the Respondent has thoroughly reviewed the Site of the Project and obtained a complete understanding of the physical conditions of the Site and other limitations, constraints and other conditions which may affect the Project or the construction thereof; (iii) the Project Documents reflect and incorporate physical conditions of the Site and other limitations, constraints or other conditions which may affect construction of the Project; and (iv) the Respondent accepts the Project Documents as being sufficiently complete and without errors or omissions so

that the Respondent can complete development of the Project Documents to produce complete Design Documents which will be permitted by DSA and which reflect the scope and other Project requirements established by LIGHTHOUSE.

I have reviewed each of the foregoing RFP Certifications and know them to be true and correct of my own personal knowledge or I have made due and diligent inquiry of persons with knowledge of the foregoing and based upon such inquiry, each of the foregoing are true and correct. I am duly authorized by the Respondent to execute these RFP Certifications on behalf of the Respondent.

Executed this ____ day of _____ 20__
at _____.
(City and State)

I declare under penalty of perjury under California law that the foregoing is true and correct.

(Signature)

(Typed or written name)