

**GENERAL CONDITIONS**

**TABLE OF CONTENTS**

**ARTICLE 1 – GENERAL ..... 4**  
1.1 Defined Terms ..... 4  
1.2 Documents..... 4  
1.3 Precedence Of Documents ..... 4

**ARTICLE 2 – SCOPE OF DESIGN-BUILD OBLIGATION..... 6**  
2.1 All-Inclusive Design-Build Obligation..... 6  
2.2 Description Of Design Requirements ..... 6  
2.3 Agency’s Right To Review..... 7  
2.4 Description Of Construction Obligations ..... 7

**ARTICLE 3 – REQUIRED INVESTIGATIONS ..... 11**  
3.1 Required Investigations ..... 11  
3.2 Additional Required Investigations for Excavation and Utilities Relocation ..... 12

**ARTICLE 4 – CONTRACT AWARD AND COMMENCEMENT OF THE WORK..... 14**  
4.1 Award Of Contract ..... 14  
4.2 Commencement Of Design and Construction Work ..... 14

**ARTICLE 5 – BRIDGING DOCUMENTS, DRAWINGS AND SPECIFICATIONS ..... 15**  
5.1 General ..... 15  
5.2 Intent..... 15  
5.3 Drawing Details..... 16  
5.4 Interpretation Of Bridging Documents ..... 16  
5.5 Checking Of Drawings..... 16  
5.6 Standards To Apply Where Specifications Are Not Furnished..... 16  
5.7 Deviation From Specifications And Drawings ..... 17

**ARTICLE 6 – CONSTRUCTION BY COUNTY OR BY SEPARATE CONTRACTORS ..... 18**  
6.1 Agency’s Right To Perform Construction And To Award Separate Contracts ..... 18  
6.2 Mutual Responsibility..... 18  
6.3 Agency Authority Over Coordination ..... 18  
6.4 Agency Furnished Products ..... 19

**ARTICLE 7 – AGENCY..... 20**  
7.1 Agency Representative(s) ..... 20  
7.2 Means And Methods Of Design and Construction ..... 20

**ARTICLE 8 – CONTROL OF THE WORK ..... 21**  
8.1 Supervision Of Work By Design-Build Entity ..... 21  
8.2 Observation Of Work By Agency ..... 21  
8.3 Delegation To Consultant ..... 21  
8.4 Access To Work..... 22

**ARTICLE 9 – WARRANTY, GUARANTY, AND INSPECTION OF WORK ..... 23**  
9.1 Warranty And Guaranty ..... 23  
9.2 Inspection Of Work ..... 24  
9.3 Correction Of Defective Work..... 25  
9.4 Acceptance And Correction Of Defective Work By Agency ..... 26  
9.5 Rights Upon Inspection Or Correction..... 27  
9.6 Samples And Tests Of Materials And Work ..... 27  
9.7 Proof Of Compliance Of Contract Provisions ..... 27  
9.8 Acceptance ..... 28

<b>ARTICLE 10 – DESIGN-BUILD ENTITY’S ORGANIZATION AND EQUIPMENT .....</b>	<b>29</b>
10.1 Design-Build Entity’s Legal Address.....	29
10.2 Design-Build Entity’s Office At The Work Site.....	29
10.3 Design-Build Entity’s Superintendents Or Forepersons.....	29
10.4 Proficiency In English .....	29
10.5 Design-Build Entity’s And Subcontractors’ Employees .....	29
10.6 Design-Build Entity To List Trades Working.....	29
10.7 Design-Build Entity’s Use Of The Site.....	29
<b>ARTICLE 11 – PROSECUTION AND PROGRESS OF THE WORK .....</b>	<b>30</b>
11.1 Design-Build Entity To Submit Required Schedules .....	30
11.2 Design-Build Entity To Supply Sufficient Workers And Materials .....	30
11.3 Design-Build Entity To Protect Underground Facilities .....	31
11.4 Design-Build Entity To Locate Underground Utilities .....	31
11.5 Connections To Or Alterations To Existing Conditions And Facilities.....	33
11.6 Lines And Grades .....	33
11.7 Design-Build Entity To Not Disrupt Agency Operation.....	34
11.8 Maintenance, Product Handling, And Protection.....	34
11.9 Electronic Communications And Information Distribution .....	35
11.10 Design-Build Entity To Require, Review, Approve And Submit Submittals And Shop Drawings In Addition To Completed Design Drawings.....	35
11.11 Cost Data.....	36
11.12 Record Documents.....	37
<b>ARTICLE 12 – CLAIMS BY DESIGN-BUILD ENTITY .....</b>	<b>38</b>
12.1 General .....	38
12.2 Mandatory Pre-Claim Procedures .....	39
12.3 submission of Claims TO Agency.....	40
12.4 Agency Decision on Claims; Mediation; Arbitration.....	41
<b>ARTICLE 13 – LEGAL AND MISCELLANEOUS.....</b>	<b>43</b>
13.1 Laws And Regulations.....	43
13.2 Permits And Taxes .....	43
13.3 Concealed Or Unknown Conditions .....	43
13.4 Notice Of Hazardous Waste Or Materials Conditions .....	44
13.5 Contingent Assignment of Subcontracts and Design Agreements .....	45
13.6 Royalties and Patents.....	46
13.7 Limit Of Liability .....	46
13.8 Work Product.....	46
13.9 Independent contractor.....	46
<b>ARTICLE 14 – MODIFICATIONS OF CONTRACT DOCUMENTS .....</b>	<b>48</b>
14.1 Alterations, Modifications and Force Account Work.....	48
<b>ARTICLE 15 – DELAY.....</b>	<b>50</b>
15.1 Risk of delays .....	50
15.2 Adjustment of contract time for excusable delay.....	50
15.3 Adjustment of Contract Sum for compensable Delay.....	51
<b>ARTICLE 16 – WORKING CONDITIONS AND PREVAILING WAGES.....</b>	<b>53</b>
16.1 Use of Site / Sanitary Rules.....	53
16.2 Protection Of Work, Persons, Property And Operations .....	53
16.3 Responsibility For Safety And Health.....	54
16.4 Emergencies.....	54
16.5 Use Of Roadways And Walkways .....	55
16.6 Nondiscrimination .....	55
16.7 Prevailing Wages, Labor compliance .....	55
16.8 Environmental Controls .....	56
16.9 Shoring Safety Plan.....	56

**ARTICLE 17 – TERMINATION OR SUSPENSION OF CONTRACT ..... 58**  
17.1 Termination by design-build entity FOR DEFAULT..... 58  
17.2 Termination by agency for cause ..... 58  
17.3 Suspension by agency for convenience..... 60  
17.4 Termination by agency for convenience..... 60

**GENERAL CONDITIONS**

**ARTICLE 1 – GENERAL**

**1.1 DEFINED TERMS**

- A. All abbreviations and definitions of terms used and not otherwise defined in this Document 007253 are set forth in Section 014200 (References and Definitions).
- B. This Document 007253 subdivides at first level into Articles, at the second level into Sections, and then into paragraphs, and then into subparagraphs.

**1.2 DOCUMENTS**

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

**1.3 PRECEDENCE OF DOCUMENTS**

- A. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
  - 1. Permits issued by jurisdictional regulatory agencies
  - 2. Modifications or Contract Change Orders in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
  - 3. Division 005000 Series Documents, including but not limited to, Document 005200 (Agreement), and terms and conditions referenced therein, and such other documents within the Division 005000 Series (i.e., starting at 005200 and continuing to 005299) and the Division 006000 Series Documents (i.e., starting at 006000 and continuing to 006999);
  - 4. Division 007300 Series Documents, including but not limited to, Supplementary Conditions, and any Division 008000 Series Documents (i.e., starting at 008000 and continuing to 008999);
  - 5. Division 007200 Series Documents, including but not limited to, Document 007253 (General Conditions-Design-Build);
  - 6. Division 01 (General Requirements) Series Specifications;
  - 7. Bridging Documents in the following order:
    - a) Architectural Program Statement (Volume 1A);
    - b) Space Design Criteria and Data Sheets (Volume 1B);
    - c) Narratives (Volume 2A);
    - d) Drawings (Volume 3);
    - e) Technical Specifications (Volume 2B);
  - 8. Written numbers over figures, unless obviously incorrect;
  - 9. Figured dimensions over scaled dimensions;
  - 10. Schedules when identified as such will control over all other portions of the Drawings;
  - 11. Specific Notes will control over all other notes and all other portions of the Drawings except Schedules;
  - 12. Large-scale drawings over small-scale drawings;
  - 13. Specific details over standard or typical details.

- B. The Bridging Documents are considered complimentary in establishing design intent and Agency requirement. In case of conflict, the higher quality or quantity will govern.
- C. Any conflict between Drawings and Specifications above Division 1 will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- D. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.

## **ARTICLE 2 – SCOPE OF DESIGN-BUILD OBLIGATION**

### **2.1 ALL-INCLUSIVE DESIGN-BUILD OBLIGATION**

- A. Except as may be specifically limited or excluded in Document 005201 (Bridging Documents) and Section 011100 (Summary of Work), Design-Build Entity shall provide a complete, legally operable, functional and maintainable Project, in accordance with the Contract Documents, including providing, furnishing, and performing all necessary design, engineering, architectural and construction services and providing and furnishing all necessary supplies, housing, materials and equipment, and all necessary supervision, labor, and services required for the engineering, design, procurement, quality assurance and inspection, construction, installation, startup, checkout, testing, site cleanup and for the training of Agency's personnel, all in conformity with the requirements, legal requirements, criteria, performance guarantees, and warranties set forth in the Contract Documents, for a complete, full and legally operable Project in full conformance with Contract requirements. The signature and seal of a licensed engineer(s) or architect(s) shall be obtained as necessary for compliance with legal requirements.
- B. Design-Build Entity's professional architectural and engineering services shall include without limitation, all architectural services and all civil, electrical, fire protection, mechanical, structural engineering, landscape, cost estimating, planning and coordination services required to complete the Project and to perform Design-Build Entity's obligations under the Contract Documents ("Services"). Design-Build Entity and its Designers and other consultants shall possess all necessary training, licenses and permits to perform the Services, and performance of the Services shall conform to the standard of practice of a professional with substantial experience and expertise in performing professional services of like nature and complexity of the Services. Design-Build Entity's licensed architectural and engineering Designers shall owe a duty of care to Agency in performing their architectural and engineering portions of the Services.
- C. No construction or alteration of any Agency facility under the Contract Documents shall commence prior to the receipt of the written acceptance of the final Drawings and Specifications from the Agency and, as required, approvals from State Fire Marshal, BSCC, and County Fire Marshals (if applicable) and all authorities having jurisdiction. Design-Build Entity shall design and construct complete, operational, a fully functional and legally operable Project, in full compliance with all applicable laws, codes and standards (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems. Design-Build Entity shall have full responsibility to manage, coordinate and comply with requirements of authorities with jurisdiction, including but not limited to, State Fire Marshal, BSCC and Agency and State and local building officials.
- D. Without limiting any other provision of Contract Documents, Design-Build Entity must design and construct the Project to enable conformance with operational, fire and life safety, and physical plant standards contained in Titles 15 and 24, California Code of Regulations (CCR).

### **2.2 DESCRIPTION OF DESIGN REQUIREMENTS**

- A. Without limiting the generality of the foregoing section 2.1, Design-Build Entity and its Designers shall prepare preliminary designs, interim designs, complete designs, engineering, working drawings, shop drawings and generate drawings and/or engineering analysis setting forth in detail the specifications and requirements for the purchasing and procurement of the services, materials and equipment, all necessary utilities, natural gas and water supply for construction, and for the construction of the complete, operational, legally operable and fully functional Project and shall furnish the services of all necessary supervisors, architects, engineers, designers, draftsmen, and other personnel necessary

for the preparation of those drawings and specifications required for the Work. The design shall include all disciplines necessary to design and engineer the Project, including but not limited to, architectural, civil, structural, mechanical, electrical, instrumentation and control work.

- B. Design-Build Entity shall coordinate the services of all architectural and engineering disciplines and other Designers involved in completing the Work, including without limitation, conducting design coordination meetings with Designers in the frequency necessary for Design-Build Entity to meet its design coordination obligations herein and all other provisions of Contract Documents.
- C. All professional services shall be performed with the degree of care, skill, and responsibility customary among such licensed personnel with substantial experience and expertise in work similar to the Work of this Contract.
- D. Design-Build Entity and its Designers' design shall provide that all surfaces, fixtures and equipment are readily accessible for maintenance, repair or replacement by ladders, power lifts, cat walks, and the like without exceeding the design loads of the floors, roofs, ceilings, and that such access is in conformance with Cal OSHA requirements. All drawings, specifications, structural and electrical design calculations, site data, cost estimates and any other deliverable required by State or Federal law shall comply with State and federal standards. Design-Build Entity shall comply with any other requirements of public or private authorities with jurisdiction over the Project, the Drawings and Specifications, and tie-ins to the Project. Design-Build Entity shall comply with the applicable standard of care when preparing Drawings and Specifications to comply with applicable building codes, ordinances, statutes, laws, standards, governmental regulations and private restrictions, including necessary tie-ins, applicable to the Project and the Services, including, but not limited to, those listed in this Contract, all environmental, energy conservation, energy tie-in, and disabled access requirements, regulations and standards of the State Fire Marshal, BSCC, and County Fire Marshals (if applicable) and all other authorities having jurisdiction over the Project.
- E. Design-Build Entity shall attend meetings with the community, representatives of Agency, interested parties governmental entities, as necessary, and provide information and diagrams to fully describe the intended design and the Project.

### **2.3 AGENCY'S RIGHT TO REVIEW**

- A. Agency at all times shall have the right (but not the duty) to review Design-Build Entity's design work, whether performed by Design-Build Entity or Designers of any tier, and whether in a final or preliminary form, to determine progress and conformance to the requirements of Contract Documents.
- B. In the event Agency should ever dispute the conformance of any design work (at any stage) with the intent of the Bridging Documents, then Agency's determination shall control and Design-Build Entity and/or its Designers shall perform the disputed design services and/or work to completion in accord with the Agency's determination. Design-Build Entity shall, however, retain its rights under the procedure in this Document 007253 (General Conditions) Article 12 for claims and disputes, and Design-Build Entity may under that procedure, in its name, advance any claim of any Designer.

### **2.4 DESCRIPTION OF CONSTRUCTION OBLIGATIONS**

- A. Without limiting the generality of the foregoing section 2.1, Design-Build Entity shall provide, at a minimum, the following services and materials and equipment, provided, however, that these sections shall not be construed in any way to limit Design-Build Entity's obligations hereunder to design, engineer, furnish, construct, checkout, startup,

and test a complete, operable and maintainable Project in accordance with the provisions of the Contract Documents.

- B. Design-Build Entity shall furnish the services of all personnel, including supervisors, engineers, designers and draftsmen necessary for the Work. Except as otherwise provided in Contract Documents, Design-Build Entity shall obtain, at Design-Build Entity's expense, all governmental and private approvals, licenses, and permits required to complete the Work, including but not limited to, all aspects of coordination and approvals of any type from state and/or local agencies and authorities with jurisdiction, for example and not by way of limitation, State Fire Marshal, and Agency building officials.
- C. Design-Build Entity shall provide, install and complete as specified and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing (except that testing to be provided by the Agency), site cleanup, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Project including required permanent interconnection for electricity, and any other utilities and demonstration of fully satisfactory operation of all systems and equipment.
- D. Design-Build Entity shall provide all equipment and materials and furnish the services of all supervision, buyers, inspectors (other than any Agency-engaged-inspector acting solely on Agency's behalf), expeditors, and other personnel necessary to procure all materials and equipment for the construction of the Project. Design-Build Entity shall provide, install, complete and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction utilities (including all water, power and sanitary facilities), transportation (including road or other infrastructure and improvements on and off the Site), customs clearance, quality assurance, and other facilities and services (including any temporary or consumable materials, water, fuels, and electricity necessary for the proper execution and completion of the Work, including any of the utilities, as required). Design-Build Entity shall maintain all materials and equipment in accordance with manufacturer's requirements while such materials and equipment are in transit or care and custody of the Design-Build Entity. Design-Build Entity shall supervise and direct the Work, and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to design and construct the complete, operational, legally operable and fully functional Project and appurtenant projects described in the Contract Documents. Without limiting the generality of the foregoing, Design-Build Entity shall provide any and all construction required for the temporary upgrading of any public or private road which is inadequate for the performance of the Work, temporarily relocate any interference in public or private roadways necessary for the transportation of equipment and materials, and repair all excessive damage to, or deterioration (other than fair wear and tear) of, any public or private road which arises out of the performance of the Work.
- E. Design-Build Entity shall provide all Project-related insurance, except as otherwise provided by Contract Documents.
- F. Design-Build Entity shall supervise and direct Work, and shall furnish the services of all supervisors, foremen, skilled and unskilled labor, quality control and all other personnel in sufficient quantities and with sufficient skills necessary to perform the Services in accordance with the Contract Documents. At Agency's request, Design-Build Entity shall replace, at Design-Build Entity's expense, any individual if it is determined by Agency and Design-Build Entity that such individual's continued presence would jeopardize the quality or timely completion of the Work. Whenever required by applicable laws or the Contract Documents, Design-Build Entity shall employ licensed personnel as necessary to perform



engineering, design, architectural, or other professional services in the performance of the Work.

- G. Design-Build Entity shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract Documents, and Agency shall not be responsible for or exercise any control over the actions or omissions of Design-Build Entity, any supplier, or any of their employees or agents performing any of the Work or Design-Build Entity's warranty obligations. Design-Build Entity shall prosecute the Work continuously and diligently and complete the Work in accordance with all requirements of the Contract Documents.
- H. Design-Build Entity shall coordinate ingress and egress to and from the Site so as to minimize disruption to the Work and to traffic in the vicinity of the Site.
- I. Design-Build Entity shall be responsible for the layout of the Work and shall perform all necessary surveying during the construction of the Projects. Design-Build Entity shall take field measurements, verify all field conditions, and carefully compare all of the foregoing and other available information with Contract Documents. The accuracy of all grades, elevations, alignments, and plumbing of any structures and the location of all facilities described in the final plans and specifications shall be the responsibility of the Design-Build Entity. Design-Build Entity shall preserve all permanent survey construction monuments and benchmarks. Prior to the final completion date, Design-Build Entity shall accurately correct all Project documents to as-built conditions and deliver to Agency these as-built documents in accordance with the Contract Documents. Such documents shall show the location of the Project and shall show all related easements, improvement, utilities and rights of way above and below ground, on and off the Site, as of the date of delivery of such documents. Such documents shall also show the dimensions and the distances to the nearest benchmarks.
- J. Design-Build Entity shall provide appropriate installation and startup representatives from suppliers of major equipment and control systems, all necessary supervising personnel, all equipment, tools, construction and temporary material, and all labor for checkout, startup and testing. Design-Build Entity shall be responsible for checkout, startup and testing of the Project and shall carry out those activities in accordance with all applicable codes and legal requirements, startup and checkout requirements and procedures as set forth in the Contract Documents or established by any Agency-engaged Commissioning Agent.
- K. While Design-Build Entity shall provide all required safety and warning signs, and wage notices, Design-Build Entity may not post any other signs without Agency's express written consent.
- L. Design-Build Entity shall be responsible for Site security until Final Completion, or termination of the Work. Such security shall include, to the extent reasonably necessary, barriers, lighting, controlled access, and other measures required to prevent vandalism, theft, and danger to personnel, the Project, materials and equipment.
- M. Design-Build Entity shall prepare or cause to be prepared and shall furnish to Agency all drawing logs, drawings, manufacturer's drawings and data, supplier manuals and operating manuals in accordance with the Contract Documents.
- N. Design-Build Entity shall ensure that Agency and its representatives shall, at all times, have access to the Project for all purposes. In order to allow Agency and its representatives to be present, Design-Build Entity shall give Agency at least three (3) days advance notice of any system or equipment checkout or testing. If Agency desires access

to any places where work is being performed or from which materials and equipment are being obtained, Design-Build Entity shall provide or arrange reasonable access thereto and shall provide Agency reasonable advanced notice of any factory tests or other off site tests. Design-Build Entity shall maintain the Site in a safe condition to permit Agency and any person authorized in writing by Agency to inspect and review all field work during working hours, including materials and equipment, installation, calibration, startup and testing.

- O. As part of the procurement of equipment, to be determined by Agency and Design-Build Entity during Project Design, Design-Build Entity shall provide to Agency a list of recommended operating spare parts, which list shall include all relevant costs and ordering lead time information with terms and conditions. If requested, Design-Build Entity shall procure such operating spare parts from suppliers, as requested by Agency, on behalf of Agency. The cost of such operating spare parts shall be covered by Contract Modification.
- P. Design-Build Entity shall perform all services and activities necessary to comply with all applicable governmental regulations and requirements and to obtain all applicable governmental reviews and approvals for and regarding the Work.
- Q. When any equipment or portion of the Work is damaged, Design-Build Entity shall inform Agency as soon as possible and provide Agency a damage report detailing such occurrence, any required repairs, and the estimated duration of such repairs.
- R. Except for special inspections performed by Agency, Design-Build Entity shall provide to Agency all tests and measurements, laboratory analyses, and reports made or prepared in connection with the Work.
- S. Design-Build Entity's progress schedules shall be in accordance with Section 013200 (Progress Schedules and Reports).
- T. Design-Build Entity shall be responsible for all labor relations matters relative to the Work on the Site and shall at all times use all reasonable efforts to maintain harmony among all workers employed in connection with the Work on the Site.

## ARTICLE 3 – REQUIRED INVESTIGATIONS

### 3.1 REQUIRED INVESTIGATIONS

- A. Prior to submitting a Proposal, or executing Document 005200 (Agreement), Design-Build Entity shall make reasonable efforts to investigate fully the Work of the Contract per the requirements of this Article.
- B. Design-Build Entity shall visit the Site, examine thoroughly and understand fully the nature and extent of the Contract Documents, Work, Site, locality, actual conditions and as-built conditions, and all other information made available before executing the Work Authorization. Design-Build Entity's investigation shall include, without limitation, requesting and thoroughly examining of all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, product specification(s) or reports, made available by Agency for contracting purposes or during Design-Build Entity's pre-construction services, of existing above ground and (to the extent applicable) below ground conditions (together, "Existing Conditions Data"), including, as applicable, Underground Facilities, geotechnical data, as-built data, utility surveys, record documents of all types, hazardous materials surveys, or similar materials which may appear in the Contract Documents, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Design-Build Entity and safety precautions and programs incident thereto.
- C. Also, Design-Build Entity shall:
  - 1. Completely and thoroughly correlate all Existing Conditions Data, and shall provide Agency with prompt written notice of all conflicts, errors, ambiguities, or discrepancies of any type, that it discovered in or among the Contract Documents and the Existing Conditions Data, and
  - 2. Subject to Agency's approval conduct any such additional or supplementary examinations, investigations, explorations, tests, studies and data compilations, concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance or furnishing of work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Design-Build Entity and safety precautions and programs incident thereto or which Design-Build Entity deems necessary to determine that it could perform and furnish the Work in accordance with the time, price and other terms and conditions of Contract Documents.
- D. By executing Document 005200 (Agreement), Design-Build Entity agrees that Agency has responded to and resolved any conflict, error or ambiguity in the Existing Conditions Data and Contract Documents that Design-Build Entity has brought to Agency's attention. During performance of the Contract, Design-Build Entity will be charged with knowledge of all information that it should have learned in performing its required pre-construction services and pre-construction investigations and other obligations, and shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Design-Build Entity should have known as a part of this Work. Design-Build Entity shall be responsible for the resultant losses, including, without limitation, the cost of correcting Defective Work.
- E. In performing the Work of the Contract Documents, Design-Build Entity shall rely on the results of its own independent investigations of existing conditions and not on information provided by Agency. Design-Build Entity shall conduct such further investigations of existing conditions as are necessary for Design-Build Entity to perform the Services and shall advise Agency of any further design or other services necessary to complete the Project.

- F. Required Investigations – Renovation Projects: For Projects involving renovation of existing facilities, Design-Build Entity shall verify by independent investigation all such aboveground and as-built conditions, and bring any discrepancies to Agency’s attention through written question. In executing Document 005200 (Agreement), Design-Build Entity shall rely on the results of its own independent investigation and shall not rely on Agency-supplied information regarding aboveground conditions and as-built conditions, and Design-Build Entity shall accept full responsibility for its verification work sufficient to complete the Work as intended.
- G. Regarding aboveground and as-built conditions shown on the Contract Documents or supplied by Agency, such information has been compiled in good faith, however, Design-Build Entity must independently verify such information. Design-Build Entity shall also consider fully the fact that information supplied regarding existing above ground and as-built conditions at or contiguous to the Site is in many cases based on information furnished to Agency by others (e.g., the prior agency or builders), and that due to their age or their chain of custody since preparation, may not meet current industry standards for accuracy. Agency does not expressly or impliedly warrant or represent that information as to aboveground conditions or as-built conditions indicated in the Contract Documents or supplied by Agency, is correctly shown or indicated, or otherwise complete for construction purposes.

**3.2 ADDITIONAL REQUIRED INVESTIGATIONS FOR EXCAVATION AND UTILITIES RELOCATION**

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

reported soil types, actual reported water conditions, or actual obstructions shown or indicated in the Contract Documents. Agency is not responsible for the completeness of any subsurface condition information, Design-Build Entity's conclusions or opinions drawn from any subsurface condition information, or subsurface conditions that are not specifically shown. (For example, Agency is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown.)

## **ARTICLE 4 – CONTRACT AWARD AND COMMENCEMENT OF THE WORK**

### **4.1 AWARD OF CONTRACT**

- A. Agency will award the Contract to Design-Build Entity by issuing it a Notice of Award.
- B. Upon issuance of the Notice of Award to Design-Build Entity, Design-Build Entity shall deliver to Agency the executed agreements, forms, bonds and insurance documents required by Document 001119 (Request for Proposals), Document 004200 (Proposal Form) and Document 007316 (Insurance and Indemnification) in the required quantities and within the required times.
- C. Performance Bond and payment Bond
  - 1. Design Builder shall furnish bonds covering the faithful performance of the Contract (“Performance Bond”) and payment of obligations arising thereunder (“Payment Bond”) in the form of Document 00006113 (Surety Bonds)
  - 2. The Performance Bond and Payment Bond shall each be in the amount of the Contract Sum.
  - 3. Surety companies used by Design Builder shall be authorized to issue bonds in California. Bonds shall be accompanied by all the documents enumerated in Code of Civil Procedure section 995.660, subdivision (a), unless the surety company is listed in the latest version of U.S. Department of Treasury Circular 570, and its bonding limitation shown in said circular is sufficient to provide bonds in the amount required by the Contract.
- D. If the State of California Department of Finance disapproves of the award, then Agency may rescind the Notice of Award.

### **4.2 COMMENCEMENT OF DESIGN AND CONSTRUCTION WORK**

- A. When Design-Build Entity and Agency have signed the Contract Documents and all other applicable conditions have been satisfied, Agency will issue Design Build Entity a Notice to Proceed. The start date for Contract Time shall be on the date indicated in the applicable Notice to Proceed or, if no date is indicated, 15 days after issuance of the Notice to Proceed.
- B. When Design-Build Entity has demonstrated to Agency that it has obtained all approvals required to begin actual on-Site construction of the Work (including without limitation from Agency, County Building & Safety, BSCC and State Fire Marshal), Agency will give Design-Build Entity a written approval to commence construction. No construction Work may be performed at the Site prior to such written approval.

## **ARTICLE 5 – BRIDGING DOCUMENTS, DRAWINGS AND SPECIFICATIONS**

### **5.1 GENERAL**

- A. Bridging Documents supplied under Document 005201 establish the design intent and the minimum requirements for the quality and type of materials to be used in the Project. Bridging Documents and any addenda will be used to confirm that Design-Build Entity-prepared Design Development and Construction Documents are in conformance with the design intent and the minimum requirements for the quality and type of materials to be used in the Project.
- B. Design-Build Entity-prepared Construction Documents are the Drawings and Specifications for construction. Subject to all provisions of Contract Documents, Design-Build Entity shall construct the Project in accordance with those Drawings and Specifications. The warranty and other requirements in the Contract Documents (including Bridging Documents), however, shall constitute the minimum design, material, quality, workmanship and other standards required under the Contract Documents, and shall have higher precedence in case of inconsistency with the Design-Build Entity prepared Construction Documents.
- C. Where Agency has specified equipment or materials, Design-Build Entity shall provide the specified equipment or materials (regardless of any Design-Build Entity contention that proposed equipment or materials meet or exceed Agency's requirements).
- D. Design-Build Entity shall be fully responsible for all design errors, including without limitation all errors, inconsistencies and omissions in the Design-Build Entity-prepared Construction Documents, and shall report any such matter to Agency promptly following discovery. Design-Build Entity has full "turnkey" responsibility to deliver the fully functional, operational Project described in Document 005201 (Bridging Documents), as referenced in the Contract Documents.

### **5.2 INTENT**

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

Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.

**5.3 DRAWING DETAILS**

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

**5.4 INTERPRETATION OF BRIDGING DOCUMENTS**

- A. Should any discrepancy appear or any dispute arise as to the importance of anything contained in Bridging Documents, or should Design-Build Entity have any questions or requests relating to Bridging Documents or any Contract Document for which Agency is responsible under the Contract Documents, Design-Build Entity shall refer the matter to Agency, in writing. Agency will issue with reasonable promptness written responses, clarifications or interpretations as Agency may determine necessary, which shall be consistent with the intent of and be reasonably inferable from Contract Documents. Such written clarifications or interpretations shall be binding upon Design-Build Entity. If Design-Build Entity believes that a written response, clarification or interpretation justifies an adjustment in Contract Sum, Design-Build Entity shall give Agency prompt written notice as provided in Section 012600 (Modification Procedures and Pricing of Changed Work). If the parties are unable to agree to the amount or extent of the adjustment, if any, then Design-Build Entity shall perform the Work in conformance with Agency's response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article 12 of this Document 007253.

**5.5 CHECKING OF DRAWINGS**

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

**5.6 STANDARDS TO APPLY WHERE SPECIFICATIONS ARE NOT FURNISHED**

- A. Wherever in the Contract Documents (including without limitation Bridging Documents), or in any orders given by Agency, it is provided that Design-Build Entity shall furnish materials or manufactured articles or shall do work for which no detailed or performance specifications are set forth, and Document 000201 (Bridging Documents) does not otherwise establish the applicable standard, the following general specifications shall apply.
  - 1. Design and construction shall meet the standards required to provide Agency with a first class, fully functional Project, designed and constructed in a manner consistent with the standards, equipment, materials and design, found in comparable, first class, fully functional, contemporary facilities. Reference facilities identified in Document 000201 (Bridging Documents) shall be used as the guide in this determination, but only when the Bridging Documents are otherwise silent.



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

## **5.7 DEVIATION FROM SPECIFICATIONS AND DRAWINGS**

- A. Design-Build Entity shall perform work in accordance with Drawings and Specifications. Deviations from Drawings and from the dimensions therein given, or from the Specifications, whether or not error is believed to exist, and whether or not error is responsibility of Design-Build Entity and its Designers, shall be made only when approved in writing by Agency and, if required, by State Fire Marshal or other authority having jurisdiction. Design-Build Entity may deviate from Drawings or the dimensions given in the Drawings, and may deviate from the Specifications, only upon Agency's advance written approval of the proposed deviation, either by Change Order, Change Directive or Supplemental Instruction. Design-Build Entity will be responsible for all additional Agency costs relating to such matters, including, but not limited to, any additional costs of Bridging Architect.
- B. Change Orders changing the approved Drawings and Technical Specifications are subject to approval by:
  1. Agency as provided in Article 14 of this Document 007253 and Section 012600 (Modification Procedures and Pricing of Changed Work), and
  2. In certain cases, by BSCC and State Fire Marshal, including, but not limited to (for BSCC) Title 15 California Code of Regulations Section 568 and Title 24 California Code of Regulations Section 13101.
- C. Design-Build Entity's design and construction experience was a material factor in its selection as Design-Build Entity for this Project. Design-Build Entity shall rely on its experience and proactively cooperate, coordinate and schedule (as necessary) Change Requests, submittals, field questions (if any), inspections, and document assembly, to facilitate the prompt and efficient use of the Change Order and Change Directive procedure as necessary to prevent delay in actual field construction.

## **ARTICLE 6 – CONSTRUCTION BY COUNTY OR BY SEPARATE CONTRACTORS**

### **6.1 AGENCY’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

- A. Agency may perform with its own forces, construction or operations related to the Project. Agency may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility agencies perform other work.

### **6.2 MUTUAL RESPONSIBILITY**

- A. Design-Build Entity shall afford all other contractors, utility agencies and Agency (if Agency is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials. Design-Build Entity shall ensure that the execution of its work properly connects and coordinates with others’ work, and shall cooperate with them to facilitate the progress of the Work.
- B. Design-Build Entity shall coordinate its work with the work of other separate contractors, Agency, and utility agencies. Design-Build Entity shall hold coordination meetings with other contractors, Agency and its representatives, and utility agencies as required by Section 013119 (Project Meetings).
- C. Unless otherwise provided in the Contract Documents, Design-Build Entity shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design-Build Entity shall not endanger any work of other separate contractors, Agency or utility agencies by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Agency and the others whose work will be affected.
- D. Design-Build Entity’s duties and responsibilities under Article 6 of this Document 007253 are for the benefit of Agency and also for the benefit of such other contractors and utility agencies working at the Site to the extent that there are comparable provisions for the benefit of Design-Build Entity in the direct contracts between Agency and such other contractors and utility agencies.
- E. To the extent that any part of Design-Build Entity’s work is to interface with work performed or installed by other contractors or utility agencies, Design-Build Entity shall inspect and measure the in-place work. Design-Build Entity shall promptly report to Agency in writing any defect in in-place work that will impede or increase the cost of Design-Build Entity’s interface unless corrected. Agency will require the contractor responsible for the Defective work to make corrections so as to conform to its contract requirements, or, if the defect is the result of an error or omission in any Contract Documents for which Agency is responsible (i.e., excluding Construction Documents), issue a Change Order. If Design-Build Entity fails to measure, inspect and/or report to Agency in writing defects that are reasonably discoverable in Contract Documents for which Agency is responsible, Design-Build Entity shall bear all costs of accomplishing the interface acceptable to Agency. This provision shall be included in any and all other contracts or subcontracts for work to be performed where such a conflict could exist.

### **6.3 AGENCY AUTHORITY OVER COORDINATION**

- A. Agency will have authority over coordination of the activities of multiple contractors in cases where Agency performs work with its own forces or contracts with others for the performance of other work on the Project, or utilities work on the Site. Agency may at any time and in its sole discretion, designate a person or entity other than Agency to have authority over the coordination of the activities among the various contractors. Agency’s authority with respect to coordination of the activities of multiple contractors and utility agencies shall not relieve Design-Build Entity of its obligation to other contractors and

utility agencies to coordinate its work with other contractors and utility agencies as specified in this Article. Design-Build Entity shall promptly notify Agency in writing when another Design-Build Entity on the Project fails to coordinate its work with the Work of Contract Documents.

- B. Design-Build Entity shall suspend any part of the Work or carry on the same in such manner as directed by Agency when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or claims by Design-Build Entity will be allowed if the suspension or work change is due in whole or in part to Design-Build Entity's failure to perform its obligation to coordinate its work with other contractors and utility agencies. Damages or claims will be allowed only to the extent of fault by Agency if the suspension or work change is due in whole or in part to another Design-Build Entity's failure to coordinate its work with Design-Build Entity, other contractors, and utility agencies. Agency reserves the right to back charge Design-Build Entity for any damages or claims incurred by other contractors as a result of Design-Build Entity's failure to perform its obligations to coordinate with other contractors and utility agencies. Agency may deposit the funds retained with a Court of competent jurisdiction pursuant to applicable interpleader procedures and Design-Build Entity releases Agency of further liability regarding such funds.

**6.4 AGENCY FURNISHED PRODUCTS**

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

## **ARTICLE 7 – AGENCY**

### **7.1 AGENCY REPRESENTATIVE(S)**

- A. Agency Representative(s) will have limited authority to act on behalf of Agency as set forth in the Contract Documents. Except as otherwise provided in these Contract Documents or subsequently identified in writing by Agency, Agency will issue all communications to Design-Build Entity through Agency Representative, and Design-Build Entity shall issue all communications to Agency through Agency Representative in a written document delivered to Agency. Should any direct communications between Design-Build Entity and Agency's consultants, architects or Architect / Engineers not identified in Document 005200 (Agreement) occur during field visits or by telephone, Design-Build Entity shall immediately confirm them in a written document copied to Agency.

### **7.2 MEANS AND METHODS OF DESIGN AND CONSTRUCTION**

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

## **ARTICLE 8 – CONTROL OF THE WORK**

### **8.1 SUPERVISION OF WORK BY DESIGN-BUILD ENTITY**

- A. Design-Build Entity shall supervise, inspect, and direct work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform work in accordance with Contract Documents.
- B. Design-Build Entity is fully responsible for Design-Build Entity's own acts and omissions. Design-Build Entity is responsible for all acts and omissions of its Subcontractors, suppliers, Designers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Design-Build Entity.
- C. Design-Build Entity shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and procedures, safety precautions and programs in connection with the Work. Design-Build Entity shall be responsible to see that the completed work complies accurately with Contract Documents.
- D. In addition to Design-Build Entity's Project Manager as described in Document 005200 (Agreement), Design-Build Entity shall keep on the Site at all times during work progress a competent resident Superintendent, who shall not be replaced without Agency's express written consent. The Superintendent shall be Design-Build Entity's representative at the Site and shall have complete authority to act on behalf of Design-Build Entity.

### **8.2 OBSERVATION OF WORK BY AGENCY**

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

### **8.3 DELEGATION TO CONSULTANT**

- A. Agency may engage Bridging Architect and/or other Agency consultant (collectively for purposes of this paragraph, "Consultant") to assist the Agency with site observations, design reviews and to perform construction administration including receiving, reviewing, and responding to RFI submittals (if any), and initial review of change order requests.
- B. If engaged, Consultant will advise and consult with Agency, but will have no authority to act on behalf of Agency, only to extent provided in the Contract Documents or as set forth in writing by Agency.
- C. Consultant may review Design-Build Entity's submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents.

- D. Consultant may visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of work and to determine in general if work is proceeding in accordance with Contract Documents. Based on its observations, Consultant may recommend to Agency that it disapprove or reject work that Consultant believes to be defective or will not produce a complete Project that conforms to Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by Contract Documents.
- E. Consultant may conduct inspections to recommend to Agency the dates that Design-Build Entity has achieved Substantial Completion and Final Acceptance, and will receive and forward to Agency for review written warranties and related documents required by Contract Documents.

#### **8.4 ACCESS TO WORK**

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

## **ARTICLE 9 – WARRANTY, GUARANTY, AND INSPECTION OF WORK**

### **9.1 WARRANTY AND GUARANTY**

- A. **General Representations and Warranties.** Design-Build Entity represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with Title 24, California Code of Regulations and the terms of Contract Documents. Design-Build Entity warrants that all design and construction services shall be performed in accordance with generally accepted professional standards of good and sound design and construction practices and all requirements of Contract Documents, and that the design as developed will comply with the Bridging Documents and the intended use of the Project. Design-Build Entity warrants that work, including but not limited to each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, architecture and/or engineering, materials, construction and workmanship. Design-Build Entity warrants that work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses, and permits, Bridging Documents and all descriptions set forth therein, and all other requirements of Contract Documents. Design-Build Entity shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.
- B. **Extended Guaranties.** Any guaranty exceeding two years provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Design-Build Entity shall supply Agency with all warranty and guaranty documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- C. **Environmental and Toxics Warranty.** The covenants, warranties and representations contained in this paragraph are effective continuously during Design-Build Entity's work on the Project and following cessation of labor for any reason including, but not limited to, Project completion. Design-Build Entity covenants, warrants and represents to Agency that:
  1. To Design-Build Entity's knowledge after due inquiry, no lead or asbestos-containing materials were installed or discovered in the Project at any time during Design-Build Entity's construction thereof. If any lead or asbestos-containing materials were discovered, Design-Build Entity made immediate written disclosure to Agency.
  2. To Design-Build Entity's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Design-Build Entity's construction thereof.
  3. To Design-Build Entity's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Design-Build Entity's construction thereof. If any such materials were discovered, Design-Build Entity made immediate written disclosure to Agency.
  4. Design-Build Entity's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Design-Build Entity claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such laws, ordinances, codes, or regulations, with which Design-Build Entity has not complied. If there are

any such notices with which Design-Build Entity has complied, Design-Build Entity shall provide Agency with copies thereof.

## **9.2 INSPECTION OF WORK**

- A. All materials, equipment, and workmanship used in the Work shall be subject to inspection and testing at all times during construction and/or manufacture in accordance with the terms of Contract Documents. Work and materials, and manufacture and preparation of materials, from beginning of construction until final completion and acceptance of the Work, shall be subject to inspection and rejection by Agency, its agents, representatives or independent contractors retained by Agency to perform inspection services, or governmental agencies with jurisdictional interests. Design-Build Entity shall provide them proper and safe conditions for such access and advise them of Design-Build Entity's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, Agency shall be afforded access for inspection at the source of supply, manufacture or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- B. Design-Build Entity shall give Agency a minimum of two business days' notice, in writing, of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. The Design-Build Entity's written request for inspection must include QA/QC manager's signature that the Work has been inspected by them and complies with the Contract Documents.
- C. Agency will hire through separate contract, a testing and special inspection agency. Upon advance notice as set forth above, Agency will endeavor to schedule required inspections, but if resources are not available, Design-Build Entity may need to reschedule the Work at no additional cost to the Agency. If Work fails any inspection, Design-Build Entity will be responsible for Agency's re-inspection costs.
- D. In the event that a scheduled inspection is canceled in less than twenty-four (24) hours' notice by Design-Build Entity and the Agency incurs costs associated with the cancellation, Design-Build Entity will reimburse Agency for the actual costs of the canceled inspections. The amount will be deducted from payment owed Design-Build Entity.
- E. If applicable laws or regulations of any public body (other than BSCC) having jurisdiction require any work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Design-Build Entity shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish Agency with the required certificates of inspection, or approval. Agency will pay the cost of initial testing and Design-Build Entity shall pay all costs in connection with any follow-up or additional testing. Design-Build Entity shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Design-Build Entity's purchase thereof for incorporation in the Work.
- F. If Design-Build Entity covers any work, or the work of others, prior to any required inspection, test or approval without written approval of Agency, Design-Build Entity shall uncover the work at Agency's request. Design-Build Entity shall bear the expense of uncovering work and replacing work.
- G. In any case where Design-Build Entity covers work contrary to Agency's request, Design-Build Entity shall uncover work for Agency's observation or inspection at Agency's request. Design-Build Entity shall bear the cost of uncovering work.



- H. Whenever required by Agency, Design-Build Entity shall furnish tools, labor and materials necessary to make examination of the Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished work. Should work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Design-Build Entity. If work is found to be satisfactory, Agency, in manner herein prescribed for paying for alterations, modifications, and extra work, except as otherwise herein specified, will pay for examination.
- I. Agency shall select testing and special inspection agencies to conduct required tests and inspections for the Project. A list of required structural tests and inspections prepared by Design-Build Entity shall be provided to the designated testing agency, Agency's representative and Inspector prior to the start of construction.
- J. The testing agency shall forward the test results to Design-Build Entity, Agency, the Project Inspector, and any authority having jurisdiction requested by Agency, within fourteen (14) days of the date of the test.
- K. Inspection of the Work by or on behalf of Agency, or Agency's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Design-Build Entity shall have an absolute duty, in the absence of a written Change Order signed by Agency, to perform work in conformance with the Contract Documents.
- L. Any inspection, evaluation, or test performed by or on behalf of Agency relating to the Work is solely for the benefit of Agency, and shall not be relied upon by Design-Build Entity. Design-Build Entity shall not be relieved of the obligation to perform work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by Agency, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Design-Build Entity shall be solely responsible for testing and inspecting work already performed to determine whether such Work is in proper condition to receive later work.

### **9.3 CORRECTION OF DEFECTIVE WORK**

- A. Design-Build Entity shall correct Defective Work promptly upon knowledge of it. If Design-Build Entity fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, Agency may order Design-Build Entity to replace any Defective Work, or stop any portion of the Work to permit Agency (at Design-Build Entity's expense) to replace such Defective Work. These Agency rights are entirely discretionary on the part of Agency, and shall not give rise to any duty on the part of Agency to exercise the rights for the benefit of Design-Build Entity or any other party.
- B. Agency may direct Design-Build Entity to correct any Defective Work or remove it from the Site and replace it with work that is not defective and satisfactorily correct or remove and replace any damage to other work or the work of others resulting from the correction or removal. Design-Build Entity shall be responsible for any and all claims, costs, losses and damages caused by or resulting from such correction or removal. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Agency may decide the proper amount or, in its discretion may elect to leave the Contract Sum unchanged and deduct from moneys due Design-Build Entity, all such claims, costs, losses and damages caused by or resulting from the correction or removal. If Design-Build Entity disagrees with Agency's calculations, it may make a claim as provided in Article 12 of this Document 007253.

Agency's rights under this paragraph shall be in addition to any other rights it may have under the Contract Documents or by law.

- C. Correction period:
  - 1. With respect to equipment and machinery supplied by Design-Build Entity and incorporated into the Work and placed into continuous service, if within one year after the date of Final Completion of the portion of the Work incorporating the equipment and/or machinery (or, to the extent expressed by Change Order or Certificate of Final Completion, one year after Agency's written acceptance of such equipment), or such longer period as may be prescribed by laws or regulations, or by the terms of the Contract Documents, any equipment or machinery is found to be defective, Design-Build Entity shall promptly, without cost to Agency and in accordance with Agency's written instructions, correct such Defective Work.
  - 2. With respect to structures within the scope of the Work, if within one year after the date of Final Completion, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any work is found to be defective, Design-Build Entity shall promptly, without cost to Agency and in accordance with Agency's written instructions, correct such Defective Work.
  - 3. Design-Build Entity shall remove any Defective Work rejected by Agency and replace it with work that is not defective, and satisfactorily correct or remove and replace any damage to other work or the work of others resulting therefrom. If Design-Build Entity fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Agency may have the Defective Work corrected or the rejected work removed and replaced.
  - 4. Design-Build Entity shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Design-Build Entity fails to correct Defective Work, or defects are discovered outside the correction period, Agency shall have all rights and remedies granted by law.
- D. Where Defective Work or rejected work (and damage to other work resulting therefrom) has been removed and replaced under this provision after the commencement of the correction period, the correction period hereunder with respect to such work shall be extended for an additional period of one year after such removal and replacement has been satisfactorily completed.
- E. If following installation of any equipment, machinery, or facilities furnished by Design-Build Entity, defects requiring correction by Design-Build Entity are found, Agency shall have the right to operate such defective equipment or facilities and make reasonable use thereof until the equipment, machinery, or facilities can be shut down for correction of defects without causing injury to Agency.

#### **9.4 ACCEPTANCE AND CORRECTION OF DEFECTIVE WORK BY AGENCY**

- A. Agency may accept Defective Work. Design-Build Entity shall pay all claims, costs, losses and damages attributable to Agency's evaluation of and determination to accept such Defective Work. If Agency accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Agency may deduct from moneys due Design-Build Entity, all claims, costs, losses, damages, expenses and liabilities attributable to the Defective Work. If Design-Build Entity disagrees with Agency's calculations, Design-Build Entity may make a claim as provided in Article 12 of this Document 007253. If Agency accepts any Defective Work after final payment, Design-Build Entity shall pay to Agency, an appropriate amount as determined by Agency.

- B. Agency may correct and remedy a deficiency if, after five (5) days' written notice to Design-Build Entity, Design-Build Entity fails to correct Defective Work or to remove and replace rejected work as set forth in this Article; or provide a plan for correction of Defective Work acceptable to Agency; or perform work in accordance with Contract Documents. In connection with such corrective and remedial action, Agency may exclude Design-Build Entity from all or part of the Site; take possession of all or part of the Work and suspend Design-Build Entity's work related thereto; take possession of all or part of Design-Build Entity's tools, appliances, construction equipment and machinery at the Site; and incorporate into the Work any materials and equipment stored at the Site or for which Agency has paid Design-Build Entity but which are stored elsewhere. Design-Build Entity shall allow Agency, its representatives, agents, employees, and other contractors and Agency's consultants' access to the Site to enable Agency to exercise the rights and remedies under this paragraph. Design-Build Entity shall be responsible for all claims, costs, losses, damages, expenses and liabilities incurred or sustained by Agency in exercising such rights and remedies. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Agency may deduct from moneys due Design-Build Entity, all claims, costs, losses and damages caused by or resulting from the correction or removal. If Design-Build Entity disagrees with Agency's calculations, Design-Build Entity may make a claim as provided in Article 12 of this Document 007253.

#### **9.5 RIGHTS UPON INSPECTION OR CORRECTION**

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

#### **9.6 SAMPLES AND TESTS OF MATERIALS AND WORK**

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

#### **9.7 PROOF OF COMPLIANCE OF CONTRACT PROVISIONS**

- A. In order that Agency may determine whether Design-Build Entity has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of work and materials, Design-Build Entity shall at any time, when

requested, submit to Agency properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

**9.8 ACCEPTANCE**

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

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

### **10.1 DESIGN-BUILD ENTITY’S LEGAL ADDRESS**

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

### **10.2 DESIGN-BUILD ENTITY’S OFFICE AT THE WORK SITE**

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

### **10.3 DESIGN-BUILD ENTITY’S SUPERINTENDENTS OR FOREPERSONS**

- A. Design-Build Entity shall at all times be represented on Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that Agency may give, and shall be liable for faithful observance of instructions delivered to Design-Build Entity or to authorized representative or representatives on Site.. The obligations of this paragraph are in addition to all matters relating to Design-Build Entity’s Project Manager described in Document 005200 (Agreement)

### **10.4 PROFICIENCY IN ENGLISH**

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

### **10.5 DESIGN-BUILD ENTITY’S AND SUBCONTRACTORS’ EMPLOYEES**

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

### **10.6 DESIGN-BUILD ENTITY TO LIST TRADES WORKING**

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

### **10.7 DESIGN-BUILD ENTITY’S USE OF THE SITE**

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

## **ARTICLE 11 – PROSECUTION AND PROGRESS OF THE WORK**

### **11.1 DESIGN-BUILD ENTITY TO SUBMIT REQUIRED SCHEDULES**

- A. At the pre-scheduling conference described in Section 013200 (Progress Schedules and Reports), or as otherwise agreed by the parties, Design-Build Entity shall submit to Agency for review and discussion, and again in final form prior to the first payment application, the following documents:
  - 1. Work Breakdown Schedule / Schedule of Values (“WBS/SOV”) per Section 012000;
  - 2. Progress schedules and reports as required in Section 013200, as applicable;
  - 3. Quality Control program and other submittals; and
  - 4. Schedule of submittals per Section 013300.
- B. No progress payment shall be due or owing to Design-Build Entity until such schedules are submitted to and acceptable to Agency as meeting the requirements of the Contract Documents. Agency’s acceptance of Design-Build Entity’s schedules will not create any duty of care or impose on Agency any responsibility for the sequencing, scheduling or progress of the Work nor will it interfere with or relieve Design-Build Entity from Design-Build Entity’s full responsibility therefore.
- C. Before commencing any portion of the Work, Design-Build Entity shall inform Agency in writing as to time and place at which Design-Build Entity wishes to commence work, and nature of work to be done, in order that proper provision for inspection of work may occur, and to assure measurements necessary for record and payment. Information shall be given to Agency a reasonable time in advance of time at which Design-Build Entity proposes to begin work, so that Agency may complete necessary preliminary work without inconvenience or delay to Design-Build Entity.

### **11.2 DESIGN-BUILD ENTITY TO SUPPLY SUFFICIENT WORKERS AND MATERIALS**

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

conferred upon Agency under this subparagraph are, like all other such rights, cumulative to Agency's other rights under any provision of the Contract Documents.)

### **11.3 DESIGN-BUILD ENTITY TO PROTECT UNDERGROUND FACILITIES**

- A. Drawings may indicate above and below grade structures and Underground Facilities such as: drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities. Design-Build Entity shall locate these known existing installations before proceeding with trenching or other operations that may cause damage. Design-Build Entity shall further locate, by carefully excavating with small equipment, potholing and principally by hand, all such utilities or installations that are to remain and that are subject to damage. If additional utilities whose locations are unknown are discovered, Design-Build Entity shall immediately report to Agency for disposition of the same.
- B. Additional utilities whose locations are unknown to Agency are suspected to exist. Design-Build Entity shall be alert to their existence; if they are encountered, Design-Build Entity shall immediately report to Agency for disposition of the same. Design-Build Entity shall also investigate the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site, even if not shown or indicated in information supplied by Agency or the regional notification center. Design-Build Entity shall immediately secure all such available information and notify Agency and the utility agency, in writing, of its discovery.
- C. At all times during construction, all operating Underground Facilities shall remain in operation, unless the Contract Documents expressly indicate otherwise. Design-Build Entity shall maintain such Underground Facilities in service where appropriate; shall repair any damage to them caused by the Work; and shall incorporate them into the Work, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Design-Build Entity shall take immediate action to restore any in service installations damaged by Design-Build Entity's operations.

### **11.4 DESIGN-BUILD ENTITY TO LOCATE UNDERGROUND UTILITIES**

- A. Before commencing work of digging trenches or excavation, Design-Build Entity shall also review all information available regarding subsurface conditions, including but not limited to information supplied in Document 003132 (Geotechnical Data and Existing Conditions), and subject to the terms and conditions of these documents, Design-Build Entity shall also comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part:

"Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two working days, but no more than fourteen (14) calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation."
- B. Design-Build Entity shall contact USA, and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Design-Build Entity is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, Design-Build Entity shall provide Agency with copies of all USA records secured by Design-Build Entity. Design-Build Entity shall advise Agency of any conflict between information provided in Document 003132 (Geotechnical Data and Existing Conditions), the Drawings and that

provided by USA records. Design-Build Entity's excavation shall be subject to and comply with the Contract Documents, including without limitation all applicable requirements set forth in this Document 007253 (General Conditions).

- C. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Design-Build Entity's attention, including reasonable action taken to protect or repair damage, shall be determined as provided in this Document 007253.
  - 1. At no additional cost to Agency, Design-Build Entity shall incorporate into the Work main or trunk line utilities identified in the Contract Documents and other utilities or underground structures known or reasonably discernible and that will remain in service, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Design-Build Entity shall take immediate action to restore any in service installations damaged by Design-Build Entity's operations. Should Agency determine that Design-Build Entity has not responded in a timely manner or not diligently pursued completion of the Work, Agency may restore service and deduct the costs of such action by Agency from the amounts due under the Contract.
  - 2. Consistent with Government Code Section 4215, as between Agency and Design-Build Entity, Agency will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or Document 003132 (Geotechnical Data and Existing Conditions). Agency will compensate for the cost of locating and repairing damage not due to Design-Build Entity's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or Document 003132 (Geotechnical Data and Existing Conditions) with reasonable accuracy, and equipment on the Project necessarily idled during such work.
- D. Design-Build Entity shall have full responsibility for:
  - 1. Reviewing and checking all available information and data and information supplied from the regional notification center;
  - 2. Locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation including, but not limited to, and by way of example only, engaging qualified locating services and all necessary back hoeing and potholing;
  - 3. Coordination of the Work with the agencies of such Underground Facilities during construction; and
  - 4. The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- E. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by Agency or in information on file at USA or is otherwise reasonably available to Design-Build Entity, then Design-Build Entity shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven (7) days), and prior to performing any work in connection therewith (except in an emergency as required by this Document 007253), identify the agency of such Underground Facility and give written notice to that agency and to Agency. During such time, Design-Build Entity shall be responsible for the safety and protection of such Underground Facility.
- F. Design-Build Entity shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that is owned and was built by Agency only where the Underground Facility:



1. Was not shown or indicated in the Contract Documents or in the information supplied pursuant to Document 003132 (Geotechnical Data and Existing Conditions) or in information on file at USA; and
  2. Design-Build Entity did not know of it; and
  3. Design-Build Entity could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Price or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to Design-Build Entity pursuant to Document 003132 (Geotechnical Data and Existing Conditions), in information on file at USA, or otherwise reasonably available to Design-Build Entity.)
- G. Design-Build Entity shall bear the risk that Underground Facilities not owned or built by Agency may differ in nature or locations shown in information made available by Agency pursuant to Document 003132 (Geotechnical Data and Existing Conditions), in information on file at USA, or otherwise reasonably available to Design-Build Entity. Underground Facilities are inherent in construction involving digging of trenches or other excavations and Design-Build Entity is to apply its skill and industry to verify the information available.

#### **11.5 CONNECTIONS TO OR ALTERATIONS TO EXISTING CONDITIONS AND FACILITIES**

- A. In planning and performing the Work, every effort shall be made to minimize the levels of noise, dirt, dust, molds, biological organisms (e.g., aspergillus), fumes, odors and similar items to the extent possible. Design-Build Entity shall remove, cut, alter, replace and repair existing building infrastructure, including without limitation plumbing, medical gas, fire and life safety equipment, utilities and casework, consistent with Design-Build Entity's coordination and planning responsibilities to not interfere with ongoing Agency operations, as necessary to install new work. Except as otherwise shown or specified, Design-Build Entity shall not cut, alter or remove any structural work, and shall not disturb any ducts, plumbing, steam, gas, or electrical work without approval of Agency.
- B. Unless otherwise specified or indicated, Design-Build Entity shall make all connections or alterations to existing facilities, including structures, drain lines, and utilities such as water, sewer, gas, telephone, and electric, necessary to complete the Work of the Contract Documents. In each case, Design-Build Entity shall provide advance notice to and receive permission from Agency or the owning utility prior to undertaking any connection or making any alterations.
- C. Design-Build Entity shall restore existing conditions (walls, structures, partitions, floors, mechanical and electrical work, etc.) disturbed or removed as a result of performing required new work to the original conditions. Existing conditions or facilities to be altered or extended and found to be defective in any way, shall be reported to Agency before commencing work. Materials and workmanship used in restoring conditions or facilities shall conform or exceed in type and quality that of original existing construction, except as otherwise shown or specified or required by codes or applicable standards.

#### **11.6 LINES AND GRADES**

- A. All work shall be done to the lines, grades, and elevations indicated on the Drawings.
- B. Agency may such provide basic horizontal and vertical control points to be used as data for the Work, as may be indicated on Drawings and Specifications; however, all further survey, layout, and measurement work shall be performed by Design-Build Entity as a part of the Work.
- C. Design-Build Entity shall provide at its cost an experienced, appropriately licensed civil engineer or land surveyor, and all required instrument persons, competent assistants, and such instruments, tools, stakes and other materials required to complete the survey,

layout, and measurement of work. In addition, Design-Build Entity shall furnish at its cost competent persons and such tools, stakes, and other materials as Agency may require in establishing or designating control points, or in checking survey, layout, and measurement work performed by Design-Build Entity.

- D. Design-Build Entity shall locate control points before commencing construction work on any Site, preserve all reference points throughout construction, and promptly replace all points which become lost or destroyed.
- E. Design-Build Entity shall keep Agency informed, a reasonable time in advance, of the times and places at which it wishes to do work, so that any checking deemed necessary by Agency may be done with minimum inconvenience to Agency and minimum delay to Design-Build Entity.
- F. Design-Build Entity shall remove and reconstruct work which is improperly located.

#### **11.7 DESIGN-BUILD ENTITY TO NOT DISRUPT AGENCY OPERATION**

- A. Design-Build Entity shall schedule and execute all work in a manner that does not interfere with or disrupt Agency operations, including but not limited to, parking, utilities, noise, vibration, odors / fumes, access by employees and administration, access by vendors and any other person or entity using Agency facilities or doing business with Agency. Design-Build Entity shall produce and supply coordination plans and make timely requests to Agency, following Agency procedures, for any necessary interference of construction with Agency, with which Agency will reasonably cooperate. At a minimum, Design-Build Entity shall make every effort to minimize the levels of noise, vibration, dirt, dust, molds, biological organisms, fumes, odors and similar items to the extent possible and in accordance with local ordinances or other requirements.
- B. Design-Build Entity's use of service areas and equipment and vehicle ingress and egress shall be kept to the minimum essential to its operations. Non-essential vehicles and equipment shall be kept out of such areas. In the event of unavoidable conflict with Agency's operations, and upon request of facility staff or vehicle attendants, Design-Build Entity shall eliminate such conflicting use immediately for emergency services.
- C. Design-Build Entity shall produce and supply coordination plans and requests to Agency, following Agency procedures, for all necessary interface of construction with Agency, which Agency will reasonably cooperate with.

#### **11.8 MAINTENANCE, PRODUCT HANDLING, AND PROTECTION**

- A. Design-Build Entity shall transport, deliver, handle, and store materials and equipment at the Site in such a manner as to prevent the breakage, damage or intrusions of foreign matter or moisture, and otherwise to prevent damage. Design-Build Entity shall arrange for Agency right of inspection or observation of all materials and equipment in fabrication, assembly or transport, which right Agency may exercise in its sole unfettered discretion.
- B. Design-Build Entity shall provide Agency with copies of the OSHA Material Safety Data Sheets (MSDS) for all products containing a hazardous substance, examples: Adhesives, paints, sealants, and the like.
- C. Design-Build Entity shall provide packaged material in manufacturer's original containers with seals unbroken and labels intact until incorporated into the Work.
- D. Design-Build Entity shall remove all damaged or otherwise unsuitable material and equipment promptly from the Site.
- E. Design-Build Entity shall protect all work in place.

- F. Cost of maintenance of systems and equipment prior to either Substantial Completion or Final Completion will be considered as included in Contract prices and no direct or additional payment will be made therefore.

**11.9 ELECTRONIC COMMUNICATIONS AND INFORMATION DISTRIBUTION**

- A. To maximize the efficiency of Project communication, Design-Build Entity agrees to work collaboratively with Agency to implement a common, accessible system for creating and maintaining Project reports, storing and retrieving Project minutes, logs, CAD files, and other critical Project documentation.
- B. All communications recognized under the Contract Documents shall be in writing, in the form of a serialized document, by type of communication. For example, RFI's shall be serialized beginning with RFI No. 1; payment applications shall be serialized beginning with Payment Application No. 1, submittals shall be serialized per specification section and transmitted with transmittal sheets beginning with Transmittal No. 1; and correspondence shall be serialized beginning with Letter No. 1. Design-Build Entity may propose other record management and identification systems or protocols, intended to facilitate orderly transmittal of project information, storage and retrieval of such information, which Agency will review consistent with these stated objectives, and accept or reject in its sole discretion.
- C. All documents requiring signatures for approval prior to implementing action, as stipulated in other portions of these Contract Documents, shall require a manually signed, serialized letter delivered to the other party at its address for notice otherwise specified in the Contract Documents, either personally or by mail. Electronic data transfer of such correspondence will serve to expedite preliminary concurrence of information, only. Receipt of "hard copy" signature on forms is required prior to implementing action or work as the conditions may require. For example, change orders and authorizations for extra cost, require signatures. A party may acknowledge receipt of correspondence by e-mail, but in the absence of such acknowledgment, mail or personal delivery is required.
- D. All e-mails shall be copied to Agency's and Design-Build Entity's Project Representative. Agency reserves the right to preclude e-mail communication, in whole or in part, as Project needs may require.
- E. Communication between Agency and Design-Build Entity shall not be via Twitter, Facebook, or other types of instant text message systems. Any such communications shall be inadmissible for any purpose related to this Contract.

**11.10 DESIGN-BUILD ENTITY TO REQUIRE, REVIEW, APPROVE AND SUBMIT SUBMITTALS AND SHOP DRAWINGS IN ADDITION TO COMPLETED DESIGN DRAWINGS**

- A. Design-Build Entity's design team must obtain from Design-Build Entity's construction team, and then independently review and approve (and so indicate thereon), all technical submittals, to verify the quality of the Work and its conformance to design intent. Design-Build Entity's technical submittals consist of Shop Drawings, Manufacturer's Data, Samples and Miscellaneous Submittals.
  - 1. Shop Drawings include, but are not limited to, custom prepared data such as fabrication, erection and installation drawings, schedule information, setting diagrams, actual shop work manufacturing instructions, custom templates, special wiring diagrams, coordination drawings, individual system or equipment inspection and test reports, concrete design mixes, Design-Build Entity engineering calculations and specially prepared operating and maintenance instructions, as applicable to the Work.

2. Manufacturer's Data includes, but is not limited to, standard prepared data for manufactured products such as a manufacturer's production specification and installation instructions, printed statements of compliance and applicability, catalogue cuts, product photographs, product operation and maintenance instruction and spare-parts listings, printed product warranties, as applicable to the Work.
  3. Samples include, but are not limited to, physical samples of the Work such as sections of manufactured or fabricated work, cuts or containers of materials, complete units for repetitively used products, paint samples, textile swatches, specimens for coordination of visual effect, graphic symbols and units of the Work to be used for independent inspection and testing, as applicable to the Work.
  4. Miscellaneous Submittals include, but are not limited to, job-prepared warranties and guaranties, maintenance agreements, project photographs, Design-Build Entity's survey data, excavating / foundation field reports, tradesmen testing / qualifying / certifying reports, list and delivery schedule for Agency-furnished and Design-Build Entity installed equipment, printed industry standards, record drawings, as-built records, collected and bound operating and maintenance manuals, keys and other security, protection and/or safety devices, maintenance tools and spare parts, as applicable to the Work.
- B. Design-Build Entity shall coordinate all technical submittals from Subcontractors or otherwise, and review them for completeness and compliance with applicable Contract Documents. Design-Build Entity's design team must independently review and approve (and so indicate thereon), all technical submittals, prior to their coordination and review by Design-Build Entity.
- C. Design-Build Entity shall submit submittals to Agency for review in strict accordance with Section 013300 (Submittals). Design-Build Entity's submittal of Shop Drawings shall be in addition to Design-Build Entity's Design Documents developed pursuant to the Contract Documents. Submission of a submittal shall constitute Design-Build Entity's representation that all requirements of Section 013300 (Submittals) have been complied with. All submittals will be identified as Agency may require and in the number of copies specified in Section 013300 (Submittals).
- D. Design-Build Entity shall not perform work that requires submission of a Shop Drawing or Sample or other submittal prior to submission and favorable review of the Shop Drawing or Sample or submittal. Where a Shop Drawing or Sample or other submittal is required by Contract Documents or the final Schedule of Shop Drawing and Sample Submittals accepted by Agency, any related work performed prior to Agency's approval of the pertinent submittal shall be at the sole expense, responsibility and risk of Design-Build Entity.

#### **11.11 COST DATA**

- A. Design-Build Entity shall maintain full and correct information as to the number of workers employed in connection with each subdivision of the Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Design-Build Entity of each class of materials, tools and appliances used by Design-Build Entity in the Work, and the amount of each class of materials used in each subdivision of the Work. Design-Build Entity shall provide Agency with monthly summaries of this information. If Design-Build Entity maintains or is capable of generating summaries or reports comparing actual Project costs with Proposal estimates or budgets, Design-Build Entity shall provide Agency with a copy of such report upon Agency's request and whenever it is generated.
- B. Design-Build Entity shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, work activities, problems encountered and

delays. Design-Build Entity shall provide Agency with copies for each day Design-Build Entity works on the Project, to be delivered to Agency either the same day or the following morning before starting work at the Site. Design-Build Entity shall take monthly progress photographs of all areas of the Work. Design-Build Entity shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.

- C. Agency shall have the right to audit and copy Design-Build Entity's books and records of any type, nature or description relating to the Project (including but not limited to financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Design-Build Entity's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, Agency shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Proposal and negotiation documents, cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by Design-Build Entity. Agency and any other applicable governmental entity shall have the right to inspect all information and documents maintained under this paragraph 11.11. at any time during the Project and for a period of five years following Final Completion. This right of inspection shall not relieve Design-Build Entity of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

#### **11.12 RECORD DOCUMENTS**

- A. Design-Build Entity shall maintain in a safe place at the Site, construction records to include, but not limited to, the following documents to be maintained on a current basis:
  - 1. One record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, and written interpretations and clarifications, organized and in good order and marked to show all as-built changes made during construction.
  - 2. Shop drawings; product data / material data sheets; samples; submittal; purchases; materials; equipment; inspections; applicable handbooks; Title 15; Title 24; the California Building Code; maintenance and operating manuals and instructions; other related documents and revisions which arise out of the Construction Contracts. Design-Build Entity shall maintain records in duplicate, of principal building layout lines, elevations for the bottom of footings, floor levels, and key site elevations (certified by a qualified surveyor or professional engineer, if necessary).
- B. Design-Build Entity shall make all such records available to Agency. At the completion of the Project, Design-Build Entity shall deliver all such records to the Agency to have a complete set of record as-built drawings.
- C. Design-Build Entity's failure to comply with recordkeeping requirements under this subparagraph entitles Agency to withhold five percent of any Application for Payment until compliance.

## ARTICLE 12 – CLAIMS BY DESIGN-BUILD ENTITY

### 12.1 GENERAL

- A. As used in this Article 12, the term “claim” means a written demand or written assertion by Design-Build Entity seeking, as a matter of right, the adjustment or interpretation of Contract Documents terms, the payment of money, extension of time, or other relief arising under or relating to Contract Documents, including a determination of disputes or matters in question between Agency and Design-Build Entity arising out of or related to the Contract Documents or the performance of the Work. However, the term "Claim" shall not include, and the Claims procedures provided under this Article 12, including but not limited to arbitration, shall not apply to the following:
1. Claims respecting penalties for forfeitures prescribed by statute or regulation that a government agency is specifically authorized to administer, settle, or determine.
  2. Claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death.
  3. Claims by Agency, except as set forth in section 12.4, paragraph C, subparagraph 3 of this Article 12.
  4. Claims respecting subcontractor or consultant stop notices.
- B. Notices, claims and other documents or correspondence referred to in this Article shall be deemed served on, filed with, submitted to or otherwise given to the other party when sent by certified mail return receipt requested or by e-mail to the e-mail provided [WHERE] when receipt is acknowledged by the receiving party by reply e-mail.
- C. All contracts valued at more than \$25,000 between the Design-Build Entity and Subcontractors and suppliers shall include a provision that the Subcontractors and suppliers shall be bound to the Design-Build Entity to the same extent that the Design-Build Entity is bound to the Agency by all terms and provisions of the Contract, including this Article 12.
- D. Throughout the process prescribed by this Article 12, Agency and Design-Build Entity shall continue to make good faith efforts to informally resolve their disagreements through discussion at weekly meetings and negotiation at the project management and at the executive levels, as appropriate. The claim notice and documentation procedure described in this Article 12 is intended to require notice and sufficient documentation of claims, potential claims, disputes and disagreements, to permit discussions and negotiations of the matters in question, between and among all parties involved, prior to and contemporaneously with the matters in question, in sufficient time for the parties to make informed decisions, mitigate and document costs and potential costs. Design Builder agrees that strict compliance with the requirements of this Article 12 are conditions precedent to Design Builder's right to arbitrate or litigate a claim. Design Builder specifically agrees to assert no claims in arbitration or litigation unless there has been strict compliance with this Article 12. The failure of Design Builder to strictly comply with the requirements of this Article 12 constitutes a failure by Design Builder to exhaust its administrative remedies with the Agency, thereby denying any court or arbitrator of jurisdiction to adjudicate the Claim.
- E. A waiver of, or failure by, Agency to enforce any requirement in this Article 12 in connection with any claim shall not constitute a waiver of, and shall not preclude the Agency from enforcing, any other requirements with respect to that claim or such requirements in connection with any other claims. Design-Build Entity may request and Agency, in its sole discretion, may grant an extension of any deadlines or time periods specified herein, but any such extension shall only be granted in writing.

## 12.2 MANDATORY PRE-CLAIM PROCEDURES

- A. Exhaustion of Applicable Contract Procedures Required: Design-Build Entity may not make any claim for any reason whatsoever unless and until Design-Build Entity has timely followed and complied with, in all respects, and completed any and all applicable procedures set forth in the Contract for addressing such matters, including without limitation, Articles 13, 14 and 15 of this Document 007253 (General Conditions) and Section 012600 (Modification Procedures and Pricing of Changed Work).
- B. Timely Notice of Disputed Work Required:
1. Before commencing any work with respect to which that the Design-Build Entity may contend it is entitled to extra compensation (hereafter "Disputed Work") or within ten (10) days after Design-Build Entity's first knowledge of the Disputed Work, whichever is earlier, Design-Build Entity shall file a written notice and preliminary good faith Change Proposal Request, as defined in Section 012600 (Modification Procedures and Pricing of Changed Work), for the Disputed Work with Agency stating clearly and in detail its objection and reasons for contending the Disputed Work is outside or in breach of the requirements of Contract Documents or otherwise entitles it to extra compensation.
  2. The written notice must describe and substantiate Design-Build Entity's contention and identify the Disputed Work, including identifying all Subcontractors, Designers, vendors, or suppliers affected thereby, sufficiently for Agency to investigate the basis of Design-Build Entity's contention, including inspecting any and all relevant portions of the Site and Work and telephoning or meeting with any and all the persons involved. Design-Build Entity shall provide to Agency concurrently with the written notice any and all photographs relevant to the dispute. Digital photographs may be provided by email and must be provided in native format.
  3. If Design-Build Entity fails to file a timely written notice and good faith preliminary cost proposal for any Disputed Work in accordance with this paragraph B, including subparagraphs 1 and 2 above, Design-Build Entity shall be deemed to have thereby waived any rights to additional compensation for that work and to assert further claims based on grounds that could have been raised through a notice of Disputed Work with respect to such work.
  4. Agency will review and respond in writing to a timely, compliant notice and preliminary cost proposal for Disputed Work. If the Design-Build Entity and the Agency are unable to reach agreement on Disputed Work, the Agency may direct Design-Build Entity to proceed with the Disputed Work, through a Change Directive as defined in Document 012600 (Modification Procedures and Pricing of Changed Work). Payment shall be as later determined through the following claims resolution process set forth in this Article. Although not to be construed as proceeding under Extra Work provisions of the Contract, Design-Build Entity shall keep and furnish records of Disputed Work in accordance with Document 012600 (Modification Procedures and Pricing of Changed Work).
- C. Timely Notice of Potential Claims for All Claims Required:
1. Design-Build Entity shall file a written notice of potential claims to Agency with respect to any and all claims of any nature whatsoever as soon as possible, but in no event later than thirty (10) days after being directed to proceed with Disputed Work, or of written direction that gives notice of Design-Build Entity's time to file a notice of specific potential claims, or (for claims not subject to paragraph B, above) from the time that the claim arises.

2. A notice of potential claims shall: state that it is a notice of potential claims; describe the potential claims and Design-Build Entity's continuing disagreement and the grounds therefor; and provide all available substantiation for and all information relevant to the same, including Design-Build Entity's best estimated quantification of the claim. With respect to claims arising from Disputed Work, Design-Build Entity shall update all information and substantiation that was provided with its written notice and preliminary good faith cost proposal provided under paragraph B, above.
3. Design-Build Entity shall continue to prosecute the Disputed Work to completion as directed by Agency. If Design-Build Entity fails to file a timely written notice of potential claims with respect to any claim whatsoever, Design-Build Entity shall be deemed to have thereby waived such claim.

### **12.3 SUBMISSION OF CLAIMS TO AGENCY**

- A. Time of Submission: Design Builder shall submit a claim in writing, in accordance with the provisions of this section 12.3 not later than 30 days after filing the corresponding notice(s) of potential claims required by section 12.2, paragraph C, above.
- B. The claim must include the following:
  1. A statement that it is a claim filed under this Section and a request for a decision pursuant to Section 12.4;
  2. A factual narrative of events fully describing the nature and circumstances giving rise to the claim, including but not limited to, necessary dates, locations, and items of work affected.
  3. A statement demonstrating timely compliance with section 12.2 (Mandatory Pre-Claim Procedures) of this Article 12, including but not limited to a listing of each notice of potential claim relevant to the claim.
  4. A certification, executed by Design Builder and each Subcontractor claiming not less than 5% of the total monetary amount sought by the claim, stating: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the County of Ventura is liable; and that I am duly authorized to certify the claim on behalf of the contractor";
  5. A detailed justification with reference to the relevant Contract Documents and all available supporting data for any and all remedy or relief sought by the claim, including, without limitation, all arguments, costs or estimates, schedule analysis, and documentation supporting Design Builder's position. To the extent costs have been incurred when the claim is submitted, the claim must include actual cost records (including without limitation, payroll records, material and rental invoices and the like). The justification must directly link any and all remedy or relief sought by the claim to one or more listed notices of potential claims. Total cost claims shall not be allowed. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a month during any periods costs are incurred.
- C. For each notice of potential claim that Design-Build Entity intends to pursue as a formal claim, Design-Build Entity shall establish in the formal claim a direct causal link between the separate item of cost/time requested, the separate notices of potential claim timely issued, and the specific changed work asserted. Total cost claims shall not be allowed.
- D. Claims shall be calculated in the same manner as Change Orders per Section 012600 (Modification Procedures and Pricing of Changed Work).



## 12.4 AGENCY DECISION ON CLAIMS; MEDIATION; ARBITRATION

### A. Agency Decision on Claims:

1. Agency will promptly review decide claims submitted by Design-Build Entity. If Agency determines that additional supporting data are necessary to fully evaluate a claim, Agency will request such additional supporting data in writing. Design-Build Entity shall furnish such data no later than 10 days after the date of such request. Agency will serve on Design-Build Entity a final decision on the claim within the later of forty-five (45) days of receipt of the claim or the deadline for furnishing additional supporting data. Only the Director of the Public Works Agency is authorized to issue an Agency's final decision and only a decision citing this paragraph and identifying itself as the Agency's final decision is the Agency's final decision, except that failure of Agency to serve Agency's final decision on Design-Build Entity by the applicable deadline shall be deemed an Agency final decision denying the claim in its entirety served on Design-Build Entity on the date of the deadline.
2. The Agency's final decision shall be binding and not subject to appeal or challenge of any kind unless Design-Build Entity serves written notice on Agency within 20 days of service of the Agency's final decision electing to arbitrate the claim under paragraph C of this section.

B. Meet and Confer and Mediation Pending Arbitration: Any time after Design-Build Entity elects to arbitrate a claim and before the time to file a Complaint in Arbitration under paragraph C of this section expires, the Design-Build Entity may serve on Agency a demand to meet and confer on the claim. Such demand shall toll the time to file a Complaint in Arbitration under paragraph C, subparagraph 2 of this section until mediation is unsuccessful, the claim is deemed rejected in its entirety or parties waive their right to mediate under this paragraph. The Agency shall schedule a meet and confer conference within 30 Days of service of Design-Build Entity's demand to meet and confer on Agency's final decision. Within 10 business days following the conclusion of the meet and confer conference, the Agency shall provide the Design-Build Entity a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 Days after the Agency issues its written statement. Any disputed portion of the claim, as identified by the Design-Build Entity in writing, shall be submitted to nonbinding mediation, with the Agency and the Design-Build Entity sharing the associated costs equally. The Agency and Design-Build Entity shall agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the Agency and Design-Build Entity cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to arbitration as provided in paragraph C, below. 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 the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section. Failure by the Agency to meet the time requirements of this paragraph shall result in the portion of the claim that remains in dispute being deemed rejected in its entirety. The parties may agree to waive, in writing, mediation under this paragraph.

### C. Arbitration.

1. All claims shall be resolved by arbitration unless Agency and Design Builder agree in writing, after the claim has arisen, to waive arbitration and to have the claim litigated in a court of competent jurisdiction or resolved in some other manner. Arbitration shall be pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2 of the Public Contract Code and the regulations promulgated

thereto, Chapter 4 (commencing with Section 1300) of Division 2 of Title 1 of the California Code of Regulations. The arbitration decision shall be decided under and in accordance with California law, supported by substantial evidence and, in writing, contain the basis for the decision, findings of fact, and conclusions of law. Where an election is made by either party to use the Simplified Claims Procedure provided under Sections 1340-1346 of said Chapter 4, the parties may mutually agree to waive representation by counsel.

2. Arbitration shall be initiated by filing a Complaint in Arbitration in compliance with the requirements of said Chapter 4. The Complaint in Arbitration must be filed no later than 90 days after the date upon which Design Builder provides Agency its notice of election to arbitrate the claim in accordance with paragraph A, subparagraph 2 of this section. Failure to file a Complaint in Arbitration within this period shall result in the Agency's decision on the subject Claim becoming final and binding and not subject to arbitration, appeal or challenge.
3. Agency may, but is not required to, assert as a counterclaim any matter arising out of a claim asserted by Design Builder in the arbitration. Agency's failure to assert any such counterclaim in the arbitration shall be without prejudice to the Agency's right to assert the counterclaim in litigation or other proceeding.
4. No Subcontractor or other third party shall have a right or obligation to join in, or be a party to, any arbitration proceeding provided for in this paragraph C either directly, by joinder, by consolidation or actions, by counterclaim or cross-claim, or otherwise without the express written consent of Agency and Design Builder.
5. Unless otherwise agreed in writing, and notwithstanding any other rights or obligations of either of the parties under any Contract Documents, Design Builder shall carry on with the performance of its services and duties under the Contract during the pendency of any arbitration or other proceeding to resolve any claim or dispute, and the Agency shall continue to make payments in accordance with the Contract Documents, but Agency shall be under no obligation to make payments on or against such claims or disputes during the pendency of any administrative review, arbitration or proceeding to resolve such claims or disputes.

## **ARTICLE 13 – LEGAL AND MISCELLANEOUS**

### **13.1 LAWS AND REGULATIONS**

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

### **13.2 PERMITS AND TAXES**

- A. Design-Build Entity shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable), pay all charges and fees, including fees for street opening permits, comply with, implement and acknowledge effectiveness of all permits, initiate and cooperate in securing all required notifications or approvals therefore, and give all notices necessary and incident to due and lawful prosecution of the Work, unless otherwise provided herein. Agency will pay applicable building permits, school, sanitation and water fees, except as otherwise provided in the Contract Documents. If, under federal excise tax law, any transaction hereunder constitutes a sale on which a federal excise tax is imposed, and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the Agency, upon request, will execute a certificate of exemption which will certify (1) that the Agency is a political subdivision of the state for the purpose of such exemption, and (2) that the sale is for the exclusive use of the Agency. No excise tax for such materials shall be included in any bid price. Design-Build Entity shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into the Work, and all other taxes properly assessed against equipment or other property used in connection with the Work, without any increase in the Contract Sum. Design-Build Entity shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where Agency may have already obtained permits for the Work.

### **13.3 CONCEALED OR UNKNOWN CONDITIONS**

- A. If either of the following conditions is encountered at Site when digging trenches or other excavations that extend deeper than four feet below the surface, Design-Build Entity shall give a written Notice of Differing Site Conditions to Agency promptly before conditions are disturbed, except in an emergency as required by this Document 007253, and in no event later than seven (7) days after first observance of:

1. Subsurface or Latent physical conditions which differ materially from those indicated in the Contract Documents; or
  2. Unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- B. In response to Design-Build Entity's Notice of Differing Site Conditions under this paragraph, Agency will investigate the identified conditions, and if they differ materially and cause increase or decrease in Design-Build Entity's cost of, or time required for, performance of any part of the Work, Agency will issue either a Proposal Form or a Construction Change Directive under the procedures described in the Contract Documents, including without limitation Section 012600 (Modification Procedures and Pricing of Changed Work). If Agency determines that physical conditions at the Site are not latent or are not materially different from those indicated in Contract Documents or that no change in terms of the Contract Documents is justified, Agency will so notify Design-Build Entity in writing, stating reasons. Design-Build Entity shall in all cases continue to prosecute the Work.
1. Design-Build Entity shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Latent or materially different Site conditions (whether above or below grade) if:
    - a) Design-Build Entity knew of the existence of such conditions at the time Design-Build Entity submitted its Proposal; or
    - b) Design-Build Entity should have known of the existence of such conditions as a result of having complied with the requirements of Contract Documents; or
    - c) The information or conditions claimed by Design-Build Entity to be Latent or materially different consist of information, conclusions, opinions or deductions of the kind that this Document 007253 precludes reliance upon; or
    - d) Design-Build Entity was required to give written Notice of Differing Site Conditions and failed to do so within the time required.
- C. If Agency and Design-Build Entity are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or Contract Time required under this paragraph, Design-Build Entity may make a claim as provided in Article 12 of this Document 007253.

#### **13.4 NOTICE OF HAZARDOUS WASTE OR MATERIALS CONDITIONS**

- A. Design-Build Entity shall give a written Notice of Hazardous Materials Condition to Agency promptly, before any of the following conditions are disturbed (except in an emergency as required by this Document 007253), and in no event later than twenty-four (24) hours after first observance of any:
1. Material that Design-Build Entity believes may be hazardous waste or hazardous material, as defined in Section 25117 of the Health and Safety Code (including, without limitation, asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law ("hazardous material"); or
  2. Other material that may present an imminent substantial danger to persons or property exposed thereto in connection with the Work at the Site ("other materials").
- B. Except as otherwise provided in the Contract Documents or as provided by applicable law, Design-Build Entity shall not be required to give any notice for the disturbance or observation of any such hazardous materials or other materials where such matter is disturbed or observed as part of the scope of the Work under the Contract Documents

(such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of work under the Contract Documents), where Design-Build Entity complies with all requirements in the Contract Documents and applicable law respecting such materials.

- C. Design-Build Entity's Notice of Hazardous Materials Condition shall indicate whether the hazardous materials or other materials were shown or indicated in the Contract Documents to be within the scope of the Work, and whether the hazardous materials or other materials were brought to the Site by Design-Build Entity, its Subcontractors, suppliers, or anyone else for whom Design-Build Entity is responsible.
- D. Design-Build Entity shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials if:
  - 1. Design-Build Entity knew of the existence of such hazardous materials or other materials at the time Design-Build Entity submitted its Proposal; or
  - 2. Design-Build Entity should have known of the existence of such hazardous material or other materials as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies, and data concerning the conditions at or contiguous to the Site prior to submitting its Proposal;
  - 3. Design-Build Entity failed to give the written notice within the time required by this Document 007253; or
  - 4. Design-Build Entity failed to give advance written notice, at least sixty (60) days prior to date when removal was required, of hazardous materials known to exist and required to be removed prior to execution of the Work.
- E. If Agency determines that conditions involve hazardous materials or other materials and that a change in Contract Document terms is justified, Agency will issue either a Proposal Form or Construction Change Directive under the procedures described in the Contract Documents, including without limitation Section 012600 (Modification Procedures and Pricing of Changed Work). If Agency determines that conditions do not involve hazardous materials or other materials or that no change in Contract Document terms is justified, Agency will notify Design-Build Entity in writing, stating the reasons for its determination.
- F. If Agency and Design-Build Entity are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or Contract Time required, Design-Build Entity may make a claim as provided in Article 12 of this Document 007253.
- G. In addition to the parties' other rights under this Document 007253, if Design-Build Entity does not agree to resume work based on a reasonable belief that it is unsafe, or does not agree to resume work under special conditions, Agency may order the disputed portion of work deleted from the Work, or performed by others, or Agency may invoke its right to terminate Design-Build Entity's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant. If Design-Build Entity does not agree with Agency's determination of any adjustment in the Contract Sum or Contract Time as a result, Design-Build Entity may make a claim as provided in Article 12 of this Document 007253.

### **13.5 CONTINGENT ASSIGNMENT OF SUBCONTRACTS AND DESIGN AGREEMENTS**

- A. Design-Build Entity hereby assigns to Agency each Subcontract for a portion of the Work and each Design agreement, provided that:

1. The assignment is effective only after Agency's termination of Design-Build Entity's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract or Designer) for cause or for convenience, under Document 007253.
2. The Assignment is effective only for the Subcontracts and Design agreements which Agency expressly accepts by notifying the Subcontractor or Designer in writing;
3. After the effectiveness of an assignment, Design-Build Entity shall, at its sole cost and expense, sign all instruments and take all actions reasonably requested by Agency to evidence and confirm the effectiveness of the assignment in Agency; and
4. Nothing in this paragraph shall modify or limit any of Design-Build Entity's obligations to Agency arising from acts or omissions occurring before the effectiveness of any Subcontract or Design agreement assignment, including but not limited to all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract or Design agreement.

### **13.6 ROYALTIES AND PATENTS**

Design Builder shall pay all royalties and license fees required for the performance of the Work. Design Builder shall defend suits or claims resulting from Design Builder's or any Subcontractor's infringement of patent rights and shall indemnify, defend and hold harmless Agency and Agency's Representative from losses on account thereof.

### **13.7 LIMIT OF LIABILITY**

- A. Agency, and each of its officers, board members, employees, consultants and agents including, but not limited to, bridging architect and each other County representative, shall have no liability to Design-Build Entity for special, consequential, or incidental damages, except to the limited extent that the Contract Documents or applicable public contracting statutes specify their recovery.

### **13.8 WORK PRODUCT**

- A. Upon completion of the Work, or termination, Agency shall be entitled to immediate possession of all reports, drawings, graphics, plans, studies, memoranda, computational sheets, Construction Documents, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes, and other data or documents, in whatever form or format, assembled or prepared by Design-Build Entity or Design-Build Entity's Designer's, Subcontractors and other agents in connection with the Work (collectively "Work Product"). Agency has a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and authorize other public entities related to Agency to use, Work Product for government purposes. Design-Build Entity may retain copies of the Work Product. Work Product shall not be modified by Agency unless Designer's name, signatures and professional seals, if any, are completely deleted. Design-Build Entity is authorized to place the following statement on the drawings, specifications and other Work Product prepared pursuant to the Contract: "This drawing [or These specifications], including the designs incorporated herein, is [are] an instrument of professional service prepared for use in connection with the project identified hereon under the conditions existing on [date]. Any use, in whole or in part, for any other project without written authorization of [Designer's name] shall be at the user's sole risk."

### **13.9 INDEPENDENT CONTRACTOR**

- A. No Employment Relationship. Design-Build Entity is an independent contractor, and no relationship of employer and employee is created by this Contract. Neither Design-Build Entity nor any of the persons performing services for Design-Build Entity pursuant to this

Contract, whether said person be a principal, member, partner, officer, employee, agent, volunteer, associate, Subcontractor or otherwise of Design-Build Entity, will have any claim under this Contract or otherwise against Agency for any salary, wages, sick leave, vacation pay, retirement, social security, workers' compensation, disability, unemployment insurance, federal, state or local taxes, or other compensation, benefits or taxes of any kind. Agency is not required to make any deductions from the compensation payable to Design-Build Entity under this Contract.

- B. No Agency Control of Means and Methods of Performance. Except as specified in this Contract, Agency will have no control over the means or methods by which Design-Build Entity will perform services under this Contract.
- C. Third Parties Employed by Design-Build Entity. Any and all third parties (including, without limitation, Subcontractors) employed by Design-Build Entity in the performance of this Contract will be entirely and exclusively under the direction, supervision and control of Design-Build Entity. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, and other applicable requirements of law will be the responsibility of and determined by Design-Build Entity, and Agency will have no right or authority over such third parties or the terms of such employment, except as provided in this Contract.
- D. Compliance with Workers' Compensation Laws. Design-Build Entity will comply with all applicable provisions of the Workers Compensation Insurance and Safety Act of the State of California (codified as amended commencing at Labor Code section 3200), including, without limitation, divisions 4 and 5 of the California Labor Code, and all amendments thereto, and all applicable similar state and federal acts or laws, and will indemnify and hold harmless Agency from and against all Third Party Claims (as defined in Document 007316, section 3.2) presented, brought or recovered against Agency, for or on account of any liability under any of said laws which may be incurred by reason of any services to be performed under this Contract.
- E. Indemnity for Claims of Employer-Employee Relationship. Design-Build Entity agrees to defend, through attorneys approved by Agency, indemnify and hold harmless Agency and its boards, agencies, departments, officers, employees, agents and volunteers from and against any and all Third Party Claims (defined in Document 007316, section 3.2) made against Agency based upon any contention by any third party that an employer-employee relationship exists by reason of this Contract. Design-Build Entity further agrees to hold Agency harmless from and to compensate Agency for any Third Party Claims against Agency for payment of state or federal income or other tax obligations relating to Design-Build Entity's compensation under the terms of this Contract. Design-Build Entity will not settle or otherwise compromise a Third Party Claim covered by this subsection without Agency's advance written approval. This paragraph does not apply to any penalty imposed by any governmental agency that is not caused by or the fault of Design-Build Entity.

## **ARTICLE 14 – MODIFICATIONS OF CONTRACT DOCUMENTS**

### **14.1 ALTERATIONS, MODIFICATIONS AND FORCE ACCOUNT WORK**

- A. No modification or deviation from the BSCC and State Fire Marshal approved Drawings and Specifications will be permitted except by written addenda, written Change Order or written Supplemental Instruction. As appropriate or otherwise required by law, Change Orders are subject to approval by the BSCC, State Fire Marshal, or both.
- B. Agency may, without notice to the sureties, make alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, contract or otherwise change the Contract Time; delete any item or portion of the Work; and require extra work. Design-Build Entity shall perform such work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. In the case of any ordered extra work, Agency reserves the right to furnish all or portions of associated labor, material, and equipment, which Design-Build Entity shall accept and use without payment for costs, markup, profit, or otherwise for such Agency-furnished labor, materials, and equipment.
- C. Agency may make changes to the Work during the course of construction to bring the Work into compliance with environmental requirements or standards established by state and federal statutes and regulations enacted after the Contract has been awarded. Design-Build Entity shall be compensated for changes affecting the Contract Time or Contract Sum of the Work as set forth in this Article 14 and in Section 012600 (Modification Procedures and Pricing of Changed Work).
- D. Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order that shall specify:
  - 1. The Work performed in connection with the change to be made;
  - 2. The amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the Work ordered; and
  - 3. The extent of the adjustment in the Contract Time, if any.
- E. A Change Order will become effective when signed by Agency and Design-Build Entity. If Agency exercises its right to decide disputed issues pertaining to changed work as set forth in Articles 12 and 14 of this Document 007253, then the resulting Change Directive shall be effective when signed by Agency, notwithstanding that Design-Build Entity has not signed it.
- F. Changes not affecting the Contract Time or Contract Sum of the Work, in Agency's discretion, may be set forth in a written RFI-Reply executed by Agency. Execution of such an RFI-Reply constitutes Design-Build Entity's agreement to make the specified change without change to the Contract Sum or the Contract Time.
- G. Changes or deviations from Contract Documents affecting the Contract Time or Contract Sum of the Work shall not be made without the authority of an effective Change Order or Change Directive as provided in Section 012600 (Modification Procedures and Pricing of Changed Work), except in cases of emergency discussed in Article 16 of this Document 007253.
- H. If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the Contract Documents shall be increased or decreased by the amount that Design-Build Entity and Agency may agree upon as a reasonable and proper allowance for the cost increase or decrease. If an agreement cannot be reached, then Agency will reach a determination, which shall be final, subject to Design-Build Entity's rights under Article 12 of this Document 007253. In



all cases Design-Build Entity shall perform the changed work as directed by Agency subject to Design-Build Entity's rights under Article 12 of this Document 007253.

- I. Design-Build Entity shall, upon Agency's request, permit inspection of the original unaltered Proposal estimate, subcontract agreements, purchase orders relating to the change, and documents substantiating all costs associated with its cost proposal or claims arising from changes in the Work.
- J. Changes in the Work made pursuant to this Article 14 and extensions of Contract Time necessary by reason thereof shall not in any way release the guaranties and warranties given by Design-Build Entity pursuant to provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties of bonds executed pursuant to said provisions. The Sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of time made by reason thereof.
- K. Change Orders in excess of Agency's approved limit must be approved by Agency's Board and a performance bond rider covering the changed work executed before proceeding with the changed work. Design-Build Entity is charged with knowledge of Agency's approved Change Order limits and procedures in effect at the applicable time.

## ARTICLE 15 – DELAY

### 15.1 RISK OF DELAYS

- A. Except and only to the extent provided otherwise by the Contract Documents, by signing the Agreement, Design Builder agrees to bear the risk of delays to the Work; and that Design Builder's Proposal for the Contract was made with full knowledge of this risk.
- B. In agreeing to bear the risk of delays to the Work, Design Builder understands that, except and only to the extent provided otherwise in the Contract Documents, the occurrence of events that delay the Work shall not excuse Design Builder from its obligation to achieve Final Completion of the Work within the Contract Time, and shall not entitle the Design Builder to an adjustment of the Contract Sum.
- C. Acceptance of a schedule by Agency showing the Work completed in less than the Contract Time, does not entitle Design Builder to adjustment of the Contract Time or Contract sum excusable delay or Compensable Delay pursuant to section 15.2 and 15.3 until such delays extend the Final Completion of the Work beyond the expiration of the Contract Time.

### 15.2 ADJUSTMENT OF CONTRACT TIME FOR EXCUSABLE DELAY

- A. Subject to paragraph B, below, the Contract Time will be extended for each day of delay for which Design Builder demonstrates that all of the following four conditions have been met; a time extension will not be granted for any day of delay for which Design Builder fails to demonstrate compliance with the four conditions:
  1. Condition Number One: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying Final Completion of the Work to a date that is beyond the Contract Time.
  2. Condition Number Two: Within 7 days of the date the Design Builder discovers or reasonably should discover an act, error, omission or unforeseen condition or event causing the delay is likely to have an impact on the critical path of the Project, (even if the Design Builder has not yet been delayed when the Design Builder discovers or reasonably should discover the critical path impact of the act, error, omission or unforeseen condition giving rise to the delay) the Design Builder submits a Change Proposal Request adjusting Contract Time in compliance with Document 012600 (Modification Procedures and Pricing of Changed Work).
  3. Condition Number Three: The delay is not caused by:
    - a) A concealed, unforeseen or unknown condition or event except for a materially differing site condition pursuant to Article 13, section 13.3, of these General Conditions; or
    - b) The financial inability, misconduct or default of the Design Builder, a Subcontractor or supplier; or
    - c) The unavailability of materials or parts; or
    - d) An error or omission in the Contract Documents caused by Design Builder or a Designer.
  4. Condition Number Four: The delay is caused by:
    - a) Fire; or
    - b) Strikes, boycotts, or like obstructive actions by labor organizations; or
    - c) Acts of God (as used herein, "Acts of God" shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves); or
    - d) a materially differing site condition pursuant to Article 13, section 13.3, of these General Conditions; or
    - e) An error or omission in the Contract Documents caused by the Agency; or

- f) The Agency's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Design Builder; or
  - g) The Agency's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Design Builder; or
  - h) The failure of the Agency (including the Agency acting through its consultants, Bridging Architect, design professionals, separate contractors or the Agency's Responsible Administrator) to perform any Contract obligation unless such failure is due to Design Builder's default or misconduct.
  - i) Weather delays, as discussed Section 013200 Progress Schedules and Reports, Part 3.1; but only for such days of adverse weather, or on-site conditions caused by adverse weather, that are in excess of the number of anticipated adverse weather days specified in that Part 3. In order for a day to be considered a day of adverse weather for the purpose of determining whether Design Builder is entitled to an adjustment in Contract Time, both of the following conditions must be met:
    - i) The day must be a day in which, as a result of adverse weather, less than one half day of critical path work is performed by Design Builder; and
    - ii) The day must be identified in the Contract Schedule as a scheduled work day.
- B. If and only if a delay meets all four conditions prescribed in paragraph A above, then a time extension will be granted for each day that Final Completion of the Work is delayed beyond the Contract Time, subject to the following:
1. When two or more delays (each of which meet all four conditions prescribed in paragraph A above) occur concurrently on the same day, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Time should be adjusted pursuant to this paragraph, such concurrent critical delays shall be treated as a single delay for each such day.
  2. Design Builder shall be entitled to a time extension for a day of delay that meets all four requirements of paragraph A above if the delay is concurrent with a delay that does not meet all four conditions of paragraph A above.
- C. If for any reason one or more of the four conditions prescribed in paragraph A above is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Contract Time under paragraph B above.

**15.3 ADJUSTMENT OF CONTRACT SUM FOR COMPENSABLE DELAY**

- A. To the maximum extent allowed by law, any adjustment of the Contract Sum as the result of delays shall be limited to the amounts specified in herein. Such adjustment shall, to the maximum extent allowed by law, constitute payment in full for all delay related costs (including costs for disruption, interruption and hindrance, general conditions, on and off-site overhead and profit) of Design Builder, its Suppliers and Subcontractors of all tiers and all persons and entities working under or claiming through Design Builder in connection with the Project.
- B. By signing the Agreement, the parties agree that the Agency is buying the right to do any or all of the following, which are reasonable and within the contemplation of the parties:
  1. To order changes in the Work, regardless of the extent and number of changes, including without limitation: changes to correct errors or omissions caused by Agency, if any, in the Contract Documents; changes resulting from the Agency's

- decision to change the scope of the Work subsequent to execution of the Contract; changes due to unforeseen conditions;
2. To suspend the Work or any part thereof;
  3. To delay the Work, including without limitation, delays resulting from the failure of the Agency to timely perform any Contract obligation and delays for Agency's convenience.
- C. The Contract Sum will be adjusted for a delay if, and only if, Design Builder demonstrates that all of the following four conditions are met:
1. Condition Number One: The delay results in an extension of the Contract Time pursuant to the foregoing section 15.2;
  2. Condition Number Two: The delay is caused solely by one, or more of the following:
    - a) An error (an omission is not an error) in the documents included in the Request for Proposals that could not have been avoided by Design Builder in meeting the applicable standard of care, or by Design Builder's reasonable efforts to mitigate such extra costs or delay, if all of the following conditions exist: (1) Design Builder was not aware of and, in the exercise of reasonable care, should not have been aware of the error at the time Design Builder submitted its Proposal; and (3) Design Builder notified Agency of such error and its impact prior to the completion of construction documents; or
    - b) The Agency's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Design Builder; or
    - c) The Agency's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Design Builder; or
    - d) The failure of the Agency (including the Agency acting through its consultants, Bridging Architect, design professionals, separate contractors or the Agency's Responsible Administrator) to perform any Contract obligation unless such failure is due to Design Builder's default or misconduct.
    - e) A materially differing site condition.
  3. Condition Number Three: The delay is not concurrent with a delay that is caused by an event other than those listed in paragraph C, subparagraph 2 above.
- D. For each day of delay that meets all three conditions prescribed in paragraph C above, the Contract Sum will be adjusted by the daily rate included in the Agreement and specifically identified as the rate to be paid to Design Builder for Compensable Delays. Said daily rate shall not apply to delays occurring after Substantial Completion.

## **ARTICLE 16 – WORKING CONDITIONS AND PREVAILING WAGES**

### **16.1 USE OF SITE / SANITARY RULES**

- A. All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. Design-Build Entity shall furnish toilets for use of Design-Build Entity's and Subcontractors' employees on the Site where needed, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed and maintained subject to Agency's approval.
- B. Design-Build Entity shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by Agency, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Design-Build Entity shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to the agency or occupant thereof resulting from the performance of the Work.
- C. During the progress of the Work, Design-Build Entity shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Design-Build Entity shall remove all waste materials, rubbish and debris from and about the Site as well as all tools, appliances, construction equipment and machinery and surplus materials. Design-Build Entity shall leave the premises clean and ready for occupancy by Agency at Substantial Completion of Work. Design-Build Entity shall restore to original condition all property not designated for alteration by Contract Documents.
- D. Design-Build Entity shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Design-Build Entity subject any part of the Work or adjacent property to stresses or pressures that will endanger it. Design-Build Entity shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment or structures to accommodate performing the Work.

### **16.2 PROTECTION OF WORK, PERSONS, PROPERTY AND OPERATIONS**

- A. Design-Build Entity shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Design-Build Entity shall comply with all safety requirements specified in any safety program established by Agency, or required by state, federal or local laws and ordinances. Design-Build Entity shall be responsible for all damage to the Work, property or structures, all injuries to persons, and all damage and interruptions to Agency's operations, arising from the performance of the Work of the Contract Documents. Except as otherwise expressly approved by Agency in writing, Design-Build Entity shall at all times perform all work in a manner which does not interrupt, damage or otherwise adversely impact any facilities, operations, or real or personal property of Agency, its officers, employees, agents, invitees, licensees, lessees or contractors.
- B. Design-Build Entity shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Build Entity shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.

- C. Design-Build Entity shall remedy all damage, injury, loss or interruption to any property or operations referred to above, caused, directly or indirectly, in whole or in part, by Design-Build Entity, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any work or anyone for whose acts any of them may be liable. Design-Build Entity's duties and responsibility for safety and for protection of the Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. Agency and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Design-Build Entity's work.
- D. Design-Build Entity shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- E. Agency may, at its option, retain such moneys due under the Contract Documents as Agency deems necessary until any and all suits or claims against Design-Build Entity for injury to persons, property or operations shall be settled and Agency receives satisfactory evidence to that effect.

### **16.3 RESPONSIBILITY FOR SAFETY AND HEALTH**

- A. Design-Build Entity shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Site. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and Agency's safety regulations as amended from time to time. Design-Build Entity shall comply with all Agency directions regarding protective clothing and gear.
- B. Design-Build Entity shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Design-Build Entity shall notify Agency, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Design-Build Entity's control. Design-Build Entity shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Design-Build Entity, Subcontractors or persons from recognized hazards until the responsible party corrects the hazard. Design-Build Entity shall provide protective clothing and gear to all visitors to the Site.
- C. Design-Build Entity shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Site where Work under the Contract Documents is to be performed: Agency designated routes for ingress and egress thereto and any other Agency designated area. Except those routes for ingress and egress over which Design-Build Entity has no right of control, within such areas, Design-Build Entity shall provide safe means of access to all places at which persons may at any time have occasion to be present.

### **16.4 EMERGENCIES**

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

**16.5 USE OF ROADWAYS AND WALKWAYS**

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

**16.6 NONDISCRIMINATION**

- A. Design-Build Entity shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis Section 1735 of the Labor Code.

**16.7 PREVAILING WAGES, LABOR COMPLIANCE**

- A. This Project is subject to the requirements of Division 2, Part 7 of the Labor Code (Public Works). "Subcontractor" as used in this section 16.7 refers to Subcontractors that perform work subject to prevailing wage. In addition to construction, such work may include work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying. Design-Build Entity shall comply with applicable provisions of the Labor Code and Federal, State, and local laws related to labor.
- B. Prevailing Wages. Pursuant to Section 1773.2 of the Labor Code, the current prevailing rate of per diem wages at the time of the Bid as determined by the Director of the Department of Industrial Relations (DIR) are on file at the office of the Engineer. The Design-Build Entity shall post a copy of these rates at the Work site. Pursuant to Section 1774 of the Labor Code, the Contractor and any Subcontractors shall pay not less than the specified prevailing rates of wages to workers employed on the Contract. If the Contract is Federally-funded, the Design-Build Entity and any Subcontractors shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor. Pursuant to Section 1775 of the Labor Code, the Design-Build Entity and any Subcontractors, shall, as a penalty to the Agency, forfeit the prescribed amounts per calendar day, or portion thereof, for each worker paid less than the prevailing wage rates. The project is subject to the compliance monitoring and enforcement by the California Department of Industrial Relations (DIR). The Design-Build Entity is responsible for posting job site notices as prescribed by regulation pursuant to Labor Code section 1771.4, subdivision (a)(2). The Design-Build Entity and each Subcontractor, if any, must be registered with the DIR pursuant to Labor Code section 1725.5 and section 1771.1. The Design-Build Entity and each Subcontractor, if any, must submit certified payrolls to the Labor Commissioner pursuant to Labor Code 1771.4.
- C. Apprentices. Apprentices shall be employed on the Work in accordance with Labor Code Section 1777.5. The Design-Build Entity is responsible for compliance with Labor Code Section 1777.5 for all apprenticeable occupations whether employed directly or through subcontractors.
- D. Design-Build Entity Duties Concerning Labor Code Compliance. As required by Labor Code 1775(b)(1), Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are required to be included in the contract between the Contractor and subcontractors. The Design-Build Entity agrees to comply with these sections and all remaining provisions of the Labor Code.
- E. Payroll Records. Pursuant to Section 1776 of the Labor Code the Design-Build Entity and each Subcontractor, if any, shall keep, make available, and submit to the Engineer within ten (10) days of receipt of a written request, certified payroll records. Pursuant to Labor Code section 1776, subsection (h), the Design-Build Entity and each Subcontractor, if any,

shall, as a penalty to the Agency, forfeit the prescribed amount for each calendar day, or portion thereof, for each worker, the Design-Build Entity and each Subcontractor, if any, fails to comply with that subsection until strict compliance is effectuated. The Contractor and each Subcontractor, if any, waives any right to any notice or hearing on the forfeiture of such penalties pursuant to Labor Code sections 1726 or 1771.6. The Design-Build Entity shall include terms in its subcontracts as required to make this paragraph effective as to each Subcontractor. Upon written request, the Design-Build Entity shall withhold penalties forfeited by a Subcontractor pursuant to Labor Code section 1776, subsection (h), and this paragraph from payment due to such Subcontractor and remit such penalties withheld to the Agency.

- F. Hours of Labor. Pursuant to Section 1810 of the Labor Code, 8 hours of labor shall constitute a legal day's work. Pursuant to Section 1813 of the Labor Code, the Design-Build Entity and any Subcontractors, shall, as a penalty to the Agency, forfeit the prescribed amount per calendar day for each worker required or permitted to work more than 8 hours in any 1 calendar day and 40 hours in any 1 calendar week without being compensated in accordance with Section 1815. Pursuant to Section 1810 of the Labor Code, 8 hours of labor shall constitute a legal day's work. Pursuant to Section 1813 of the Labor Code, the Design-Build Entity and each Subcontractor, if any, shall, as a penalty to the Agency, forfeit the prescribed amount per calendar day for each worker required or permitted to work more than 8 hours in any 1 calendar day and 40 hours in any 1 calendar week without being compensated in accordance with Section 1815. Design-Build Entity and each Subcontractor, if any, waives any right to any notice or hearing on the forfeiture of such penalties pursuant to Labor Code sections 1726 and 1771.6. Design-Build Entity shall include terms in its subcontracts as required to make this paragraph effective as to each Subcontractor. Upon written request, Design-Build Entity shall withhold penalties forfeited by a Subcontractor pursuant to Labor Code section 1813 and this paragraph from payments due to such Subcontractor and remit such penalties withheld to the Agency

## **16.8 ENVIRONMENTAL CONTROLS**

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

## **16.9 SHORING SAFETY PLAN**

- A. At least five (5) days in advance of excavating any trench five feet or more in depth, Design-Build Entity shall submit to Agency a detailed plan showing the shoring, bracing and sloping design and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
- B. During the course of the Work, Design-Build Entity shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth. Design-Build Entity will be solely responsible for any damage or injuries that may result from excavating or trenching. Agency's acceptance of any drawings showing the shoring or bracing design or work schedule shall not relieve Design-Build Entity of its responsibilities under this paragraph.



- C. Cal OSHA Permit: Design-Build Entity shall comply with Labor Code 6500 and shall obtain, as applicable, a permit as required by Cal/OSHA for each of the following:
1. Construction of trenches or excavations that are five feet or more in depth and into which a person is required to descend.
  2. Construction or demolition of any building, structure, or scaffolding for falsework more than three stories high, or the equivalent height (36 feet).
  3. Erection or dismantling of vertical shoring systems more than three stories high, or the equivalent height (36 feet).
  4. The underground use of diesel engines in mines or tunnels.

## **ARTICLE 17 – TERMINATION OR SUSPENSION OF CONTRACT**

### **17.1 TERMINATION BY DESIGN-BUILD ENTITY FOR DEFAULT**

- A. Subject to below paragraph B, Design-Build Entity shall have the right to terminate the Contract if Agency fails to perform any material obligation under the Contract Documents and fails to cure such default within 30 days of written notification by Design-Build Entity, or Agency has not commenced to cure such default within 30 days and continued to diligently prosecute the same to completion where such cure will require a reasonable period beyond 30 days, after receipt of notice from Design Builder stating the nature of such default(s).
- B. Upon the occurrence of the events described in above paragraph A, Design-Build Entity may, upon 10 days additional notice to Agency and Agency's Responsible Administrator, and provided that the condition giving rise to Design-Build Entity's right to terminate is continuing, terminate the Contract.
- C. Design Build Entity may only terminate the Contract for Owner default in accordance with this section 17.1. Upon termination by Design-Build Entity, Agency will pay to Design-Build Entity the sum determined by section 17.4, paragraph D of this Article. Such payment will be the sole and exclusive remedy to which Design Builder is entitled in the event of termination of the Contract by Design Builder pursuant to this Section 17.1; and Design-Build Entity will be entitled to no other compensation or damages and expressly waives the same.

### **17.2 TERMINATION BY AGENCY FOR CAUSE**

- A. Agency will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:
  - 1. Design Builder becomes insolvent or files for relief under the bankruptcy laws of the United States, or is the subject of an involuntary petition in bankruptcy which is not dismissed within sixty (60) days, or files or fails to contest any petition seeking any reorganization, liquidation or dissolution of Design-Build Entity;
  - 2. Design Builder makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due;
  - 3. A receiver is appointed to take charge of Design Builder's property.
  - 4. The commencement or completion of any Work activity on the critical path is more than 30 days behind the date set forth in the approved Detailed Final Baseline Design/Construction Schedule for such Work activity as a result of a delay for which Design-Build Entity is not entitled to an adjustment of Contract Time.
  - 5. Design Builder abandons the Work by failing to report to the Work site and diligently prosecute the Work to completion.
  - 6. Design-Build Entity disregards written instructions from the Agency.
  - 7. Design-Build Entity disregards laws or regulations of any public body having jurisdiction.
  - 8. Design Builder commits continuous or repeated violations of regulatory or statutory safety requirements.
- B. Upon the occurrence of any of the following events, Agency will have the right to terminate the Contract for cause if Design Builder fails to promptly cure such default upon notice as specified in paragraph C, below:

1. Design Builder persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
  2. Design Builder fails to make prompt payment of amounts properly due Subcontractors or Designers after receiving payment from Agency.
  3. Design Builder disregards applicable code requirements.
  4. Design Builder persistently or materially fails to execute the Work in accordance with the Contract Documents.
  5. Design Builder is in default of any other material obligation under the Contract Documents.
  6. Design Builder persistently or materially fails to comply with applicable safety requirements
- C. With respect to grounds for termination specified in paragraph B, above, Agency must allow Design-Build Entity an opportunity to cure such default within ten (10) days of the date of notice from Agency to Design-Build Entity providing notice of the default. With respect to such default that is curable but not curable within ten-days, Design-Build Entity must provide Agency with a realistic and achievable written plan acceptable to Agency to cure said default within ten (10) days. Such plan shall include, evidence of necessary resources, Subcontractor commitments, schedules and recovery schedules, including milestones, meeting Contract Document requirements. Upon approval of the plan, Design-Build Entity must then diligently commence and continue such cure according to the plan and failure to do so is deemed sufficient cause to terminate without providing any further opportunity to cure.
- D. Upon occurrence of grounds for termination specified in the foregoing paragraphs, Agency may, at its election, upon notice of termination for cause to Design Builder: terminate the Contract; take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Design Builder; accept the assignment of any or all of the subcontracts; and then complete the Work by any method Agency may deem expedient. If requested by Agency, Design Builder shall remove any part or all of Design Builder's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within 7 days of such request; and if Design Builder fails to do so, Agency may remove or store, and after 90 days sell, any of the same at Design Builder's expense.
- E. Upon termination pursuant to this section 17.2, Design-Build Entity shall deliver to Agency all designs, architectural and engineering, Project records, Project Record Documents, cost data of all types, Bridging Documents and contracts with vendors and Subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period.
- F. Design Builder shall not be entitled to receive any further payment until the expiration of 60 days after Final Completion and acceptance of all Work by Agency. If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for Agency staff time, plus all losses sustained, including any liquidated damages provided under the

Contract Documents, such excess shall be paid to Design Builder. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, Design Builder shall pay such excess to Agency.

- G. No termination or action taken by Agency after termination shall prejudice any other rights or remedies of Agency provided by law or by the Contract Documents upon such termination; and Agency may proceed against Design Builder to recover all losses suffered by Agency.
- H. In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Design-Build Entity shall have the recovery rights as specified in section 17.4 below.

### **17.3 SUSPENSION BY AGENCY FOR CONVENIENCE**

- A. Agency may, at any time and from time to time, without cause, order Design Builder, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to 90 days, as Agency may determine, with such period of suspension to be computed from the date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this section 17.3. The Work may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, Design Builder shall, at Agency's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within 90 days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by Design Builder and Agency, Agency shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order.
- B. If a Suspension Order is canceled or expires, Design Builder shall continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. Any Claim by Design Builder for an adjustment of the Contract Sum or the Contract Time shall be made within 21 days after the end of the Work suspension. Design Builder agrees that submission of its claim within said 21 days is an express condition precedent to its right to Arbitrate or Litigate such a claim.
- C. The provisions of this section 17.3 shall not apply if a Suspension Order is not issued by Agency. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

### **17.4 TERMINATION BY AGENCY FOR CONVENIENCE**

- A. Agency may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to Design Builder. Upon such termination, Design Builder agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of Design Builder, Agency shall pay Design Builder in accordance with paragraph D below.
- B. Upon receipt of notice of termination under this section 17.4, Design Builder shall, unless the notice directs otherwise, do the following:
  - 1. Immediately discontinue the Work to the extent specified in the notice.
  - 2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued.

3. Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
  4. Thereafter, do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.
- C. Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and, subject to Design Builder's obligations under paragraph B above, as to bona fide obligations assumed by Design Builder prior to the date of termination.
- D. Upon such termination, Agency shall pay to Design Builder the sum of the following:
1. The amount of the Contract Sum allocable to the portion of the Work properly performed by Design Builder as of the date of termination, less sums previously paid to Design Builder.
  2. Plus previously unpaid costs of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work and procured and not yet incorporated into work.
  3. Plus any proven losses with respect to materials and equipment directly resulting from such termination.
  4. Plus reasonable demobilization costs.
  5. Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and losses in connection with such termination.
  6. Plus reasonable cost incurred terminating subcontractors and design consultants.

The above payment shall be the sole and exclusive remedy to which Design Builder is entitled in the event of termination of the Contract by Agency pursuant to this Article 13.4; and Design Builder will be entitled to no other compensation or damages and expressly waives same.

END OF DOCUMENT

**SUPPLEMENTARY GENERAL CONDITIONS**

**ARTICLE 1 – SUMMARY**

**1.1 GENERAL**

- A. This Document 007300 includes requirements that supplement the paragraphs of Document 007253 (General Conditions) and other provisions of Contract Documents.

**ARTICLE 2 – AWARD OF CONTRACT**

**2.1 DEPARTMENT OF FINANCE**

- A. Notwithstanding any other provision of Contract Documents, any Contract award by Agency is conditioned on, and subject to, receipt of all required approvals from the California Department of Finance (“DOF”). Agency shall have no obligation under Contract Documents, including without limitation any obligation to pay any portion of Contract Sum, unless and until DOF provides all required consents.
- B. Agency will notify Design-Build Entity of receipt of DOF consents promptly after Agency receives them.

**ARTICLE 3 – AGENCY AGREEMENTS WITH STATE OF CALIFORNIA**

**3.1 PROJECT DELIVERY AND CONSTRUCTION AGREEMENT AND JAIL CONSTRUCTION AGREEMENT**

- A. Design-Build Entity shall be responsible for complying with Agency’s construction-related obligations pursuant to the Project Delivery and Construction Agreement between Agency and the State of California (“PDCA”) and the Board of State and Community Corrections Jail Construction Agreement (“BSCC Agreement”). Such obligations include but are not limited to the following:
  - 1. Establishment of Official Project File.
    - a) Design-Build Entity shall establish an official file for the Project (the “Official Project File”). The file shall contain adequate documentation of all actions that have been taken with respect to the Project, in accordance with generally accepted government accounting principles and the requirements for record retention for capital projects constructed with the proceeds of tax exempt bonds. Design-Build Entity will provide a copy of such file to Agency upon completion of this Contract. The documents to be retained shall include, but are not limited to contracts, payment of invoices, transfer of funds and other related accounting records.
  - 2. Preservation of Records.
    - a) Design-Build Entity agrees to protect records adequately from fire or other damage. When records are stored away from Design-Build Entity’s principal office, a written index of the location of records stored must be on hand and ready access must be assured. All Design-Build Entity records contained in the Official Project File must be preserved a minimum of three years after Final Completion of the Project. These records shall be subject at all reasonable times to inspection, examination, monitoring, copying, excerpting, transcribing, and audit by the Agency or designees. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the relevant time period set forth in the second sentence of this paragraph, the related records must be retained until the completion of the action and resolution of all issues which arise from it if such date is later than the end of the aforementioned three year period.

3. Provision of Insurance.
  - a) Procure all insurance in the amounts and with the limits required by the PDCA and BSCC and naming the required state agencies and officials as additional insureds as required by the PDCA and BSCC.

#### **ARTICLE 4 – SECURITY CLEARANCES**

##### **4.1 ACCESS TO SITE**

- A. Security clearances may be required for all personnel accessing the Project site in accordance with Document 002110 (Operational Security and Safety Procedures).

#### **ARTICLE 5 – MANDATORY PREREQUISITES TO PERFORMING WORK ON PROJECT SITE**

##### **5.1 STATE FIRE MARSHAL**

- A. Under no circumstances may Design-Build entity perform any construction Work at the Site until State Fire Marshal has approved Design-Build Entity's final Construction Documents and Agency has issued Document 005500 (Notice to Proceed With Construction). Violation of these requirements could jeopardize \$55,137,000 in State funding for the Project.

END OF DOCUMENT

**SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION**

**ARTICLE 1 – AGENCY PROVIDED INSURANCE**

**NOT APPLICABLE**

**ARTICLE 2 – INSURANCE REQUIREMENTS**

**2.1 INTRODUCTION**

A. Design-Build Entity shall procure and maintain in full force during the term of the Contract the following types of insurance:

<u>Coverages</u>	<u>Limits</u>
1. Workers' Compensation Insurance	Statutory Limit
2. Employer's Liability Insurance	
a) Bodily Injury by Accident, each accident	\$1,000,000
b) Bodily Injury by Disease, each employee	\$1,000,000
c) Bodily Injury by Disease, policy limit	\$1,000,000
3. Commercial General Liability Insurance (written on most current ISO Occurrence Form, or its equivalent)	
a) Each Occurrence Limit	\$5,000,000
b) General Aggregate Limit for all Enrolled Parties	\$10,000,000
c) Products & Completed Operations Aggregate for all Enrolled Parties	\$10,000,000
d) Major exclusions:	
i) Nuclear Energy Liability	
ii) War	
iii) Terrorism	
iv) Total Pollution Exclusion	
v) Asbestos & Silica	
vi) Lead	
vii) Employment Related Practices	
viii) Funghi & Bacteria	
ix) EIFS	

Coverage for products and completed operations shall be maintained for at least ten (10) years after acceptance.

4. Excess Liability Insurance (over Employer's Liability & General Liability)	
a) Combined Single Limit	\$25,000,000
b) General Annual Aggregate for all Enrolled Parties	\$25,000,000
c) Products & Completed Operations Aggregate for all Enrolled Parties	\$25,000,000

Coverage for products and completed operations shall be maintained for at least ten (10) years after acceptance.

5. Commercial Automobile Liability Insurance	
a) Combined Single Limit, bodily injury and property damage	\$5,000,000

Include coverage for all "owned", "hired", and "non-owned" automobiles, or coverage for "any auto".



6. Builder's Risk Insurance
  - a) Design-Build Entity shall arrange for it's own Builder's Risk Course of Construction Insurance on the Project, as County does not have this coverage.
  - b) Endorsement shall include coverage for fire, explosion, vandalism, flood, malicious mischief, earthquake, water intrusion and collapse
  - c) Should the work being constructed be damaged due to causes listed above, it shall be replaced by Design-Build Entity in accordance with the requirements of the Contract without additional expense to Agency.
  
7. Professional Liability Insurance (Errors & Omissions)
 

a) Per Occurrence	\$5,000,000
b) General Aggregate for all Enrolled Parties	\$10,000,000

Coverage shall include direct liability arising from and error, omission, negligent, or wrongful act of the Design-Build Entity, it's officers, agents, employees, sub-consultants and subcontractors. The Coverage shall continue to be maintained for at least 10 years after acceptance

8. Contractor's Pollution Liability Insurance
 

a) Per Occurrence	\$5,000,000
b) General Aggregate for all Enrolled Parties	\$10,000,000

For bodily injury, property damage, cleanup costs and claim expenses, arising at or emanating from the Project Site arising from all operations performed.

Coverage for products and completed operations shall be maintained for at least ten (10) years after acceptance.

**2.2 PREMIUM OBLIGATIONS**

- A. Design-Build Entity shall pay the costs of premiums for the coverages, and shall be entitled to receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits or otherwise.

**2.3 WAIVER OF SUBROGATION**

- A. To the greatest extent permitted by law, Design-Build Entity agrees to waive all rights of subrogation against the Agency, the County of Ventura, its boards, and all special Districts governed by the Board of Supervisors for losses arising directly or indirectly from the activities or Work performed by Design-Build Entity.

**2.4 ADDITIONAL INSURED ENDORSEMENTS**

- A. The Agency and the County of Ventura, including its boards, all special Districts governed by the Board of Supervisors, agencies, departments, officers, Consultants, employees, agents and volunteers, shall be named as Additional Insured as respects Work done by Contractor under the terms of the Contract on all policies required (except Workers' Compensation).

**2.5 DOCUMENTATION REQUIRED**

- A. Prior to execution of the Contract by Agency, Design-Build Entity shall provide Agency with Certificates of Insurance for all required coverages (see Appendix A for example) and indicating that the endorsement(s) required have been issued.
  
- B. It is the responsibility of the Design-Build Entity to confirm that all terms and conditions of this Article are complied with by any and all subcontractors that Design-Build Entity may use in the completion of the Work.

## **ARTICLE 3 – RESPONSIBILITY OF DESIGN-BUILDER AND INDEMNIFICATION**

### **3.1 LIABILITY FOR AND REPAIR OF DAMAGED WORK.**

- A. Design-Build Entity shall be liable for any and all losses or damage to the Project, or materials and other things used in performing the Work, prior to Agency's Acceptance of the Work as complete. Design-Build Entity shall promptly repair and replace any Work or materials damaged or destroyed.

### **3.2 DEFENSE AND INDEMNIFICATION.**

- A. All activities arising out of or relating to the performance of the Work covered by this Contract shall be at the risk of Design-Build Entity. Except as to the specific indemnity provisions applicable to design professionals set forth in paragraph B, below, to the furthest extent permitted by law, Design-Build Entity shall defend (through attorneys approved by the Agency), indemnify and hold harmless Agency and its board, departments, officers, officials, employees, agents and volunteers (collectively, "Indemnitee") from and against any and all claims, suits, actions, legal or administrative proceedings, judgments, debts, demands, damages, including those involving injury or death to any person or persons, and damage to any property including loss of use resulting therefrom, incidental and consequential damages, losses, liability, interest, costs, attorneys' fees and expenses of every kind, nature and description (collectively "Third Party Claims"), whether arising before, during or after commencement or completion of the Work, whether against Design-Build Entity or any Agency Parties, which are in any manner, directly, indirectly, in whole or in part, arising from any act or omission of Design-Build Entity, a Subcontractor or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable in connection with or incident to the Contract, even though the same may have resulted from the joint, concurring or contributory negligence, or from the passive negligence, of Indemnitee or any other person or persons, unless the same be caused by the sole negligence or willful misconduct of Indemnitee, or except to the extent caused by the active negligence of Indemnitee.
- B. To the maximum extent permitted by law, Design-Build Entity shall defend (through attorneys approved by Agency), indemnify and hold harmless, Indemnitee, from and against Third Party Claims, whether arising before, during or after commencement or completion of the Work that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of a "design professional" (as that term is defined in Civil Code section 2782.8) directly or indirectly employed by, or providing services for the benefit of, Design-Build Entity, Designers or Subcontractors in connection with the Work, Contract, or Project, unless the same be caused by the sole negligence or willful misconduct of Indemnitee, or except to the extent caused by the active negligence of Indemnitee.
- C. With respect to Third Party Claims made by an employee of Design-Build Entity or any Subcontractor, a person indirectly employed by Design-Build Entity or any Subcontractor, or anyone for whose acts Design-Build Entity or any Subcontractor may be liable, Design-Build Entity's defense and indemnification obligations shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design-Build Entity or any Subcontractor under workers' compensation laws, disability benefit laws. Or other state or federal employee benefit laws.
- D. Agency shall promptly notify Design-Build Entity of all Third Party Claims against Indemnitee regarding the Contract. Design-Build Entity shall promptly provide a legal defense to any and all Indemnitee made a party to any action, lawsuit or other adversarial proceeding for which Design-Build Entity is required to provide defense and indemnification pursuant to paragraphs A or B above, including instances in which such Agency Parties' active negligence is alleged to have contributed to a percentage of liability.

Legal counsel provided by Design-Build Entity shall have no conflict of interest with such Agency Parties and shall be subject to Agency's reasonable approval.

- E. Design Builder shall indemnify, defend, and save harmless Indemnatee from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in equity, including, without limitation, attorney's fees, court costs, and other litigation expenses that may at any time arise or be set up for any known infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark or any other proprietary right of any person or entity in consequence of the use on the Project by Indemnatee of the Design Materials or Construction Documents (excluding any method, process, product, concept specified or depicted by the Agency) supplied by Design Builder in the performance of this Contract.
- F. Nothing in this Contract, including the provisions of this section 3.2, shall constitute a waiver of limitation of any rights which Agency Parties may have under applicable law, including without limitation, the right to implied indemnity.

**3.3 SCOPE OF INDEMNIFICATION OBLIGATION.**

- A. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Design-Build Entity, its Subcontractors of any tier, or the officers or agents of any of them. In the event of loss, however, Design-Build Entity shall give all required notices to all insurance carriers, and shall require its subcontractors to do the same. Agency may, in its discretion, request evidence of such notices from Design-Build Entity.

END OF DOCUMENT